

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, October 26, 2023, 6:30pm

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Don Wysocki, Vice Chair, Tammie Williams, Tami Green, Sam Tucker, John Standley, Emery Gentry, and Ann Minton

COMMISSIONERS

ABSENT: Kim Gillet

PLANNING STAFF: Megan Davchevski, Planning Manager, Tierney Cimmityotti, Planner, Charlet Hotchkiss, Planner, and Shawna Van Sickle, Administrative Assistant

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE.

CALL TO ORDER

Chair Danforth called the meeting to order at 6:30PM.

MINUTES

Chair Danforth called for any corrections or additions to the July 27, 2023 meeting minutes. No additions nor corrections were noted.

Commissioner Tucker moved to approve the draft minutes from the July 27, 2023 meeting minutes, as presented. Commissioner Standley seconded the motion. Motion carried by consensus.

Chair Danforth read the opening statement.

NEW HEARING

LAND DIVISION & VARIANCE REQUEST, #LD-6N-441-23 & #V-366-23: JOHN AND AMY WELLS, APPLICANTS/OWNERS: The applicants are requesting land division approval to divide the property located on Map 6N 35 23A, Tax Lot #502 into two parcels for future residential development. Each parcel would be two acres in size, in conformance with the Rural Residential 2-acre minimum zoning. The applicants are also requesting a variance to the road improvement standards, due to existing right-of-way of Mauer Lane being less than 60-feet wide. The land use standards applicable to the applicants' request are found in Umatilla County Development Code Sections 152.684, Type II Land Divisions and 152.627, Circumstances for Granting a Variance.

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. Commissioner Tucker reported he has a conflict of interest due to knowing parties on both sides of proponents and opposition as current friends or past clientele and asked to be excused from this decision. No other reports were made.

She called for the Staff Report.

STAFF REPORT

Megan Davchevski, Planning Division Manager, stated the Planning Division received a request for Public Hearing filed September 7, 2023 in opposition of the proposed Type II Land Division and Variance request. The applicants request is processed under administrative review and the request was received during the 21-day comment period. The applicant's requested to divide Tax Lot 502 on Map 6N3524A into two parcels, each two acres in size. The property is located north of Mauer Lane and of Tum a Lum Rd outside Milton Freewater, Oregon. It is zoned Rural Residential, two-acre minimum. The applicant is also requesting a Variance to the County's P-2 road improvement standard due to the location and dedicated width of Mauer Lane, an existing 25-foot private access easement.

Mrs. Davchevski stated the current P-2 Road Improvement standard is 60-foot wide right-of-way with an improved surface width of 22-feet. Opponents provided photos with existing conditions of Mauer Lane, which can be found on pages 43-46 of the Planning Commission packet. Photos provided demonstrate the existing road at least meets the County's P-1 Road Standard, and in some areas may meet the P-2 Road Standard. She stated the applicant has provided additional information in response, page 53 in the packet. The criteria of approval in Umatilla County Development Code Section 152.684, Type II Land Divisions and Section 152.627, Circumstances for granting a Variance.

Mrs. Davchevski stated various notified property owners provided written comments during the comment period and in request for a Public Hearing. Staff provided a detailed response to every concern in the preliminary findings. Concerns raised included loss of nearby property views, traffic, potential effects of an additional septic system and well, reduction in nearby property value, easement and contamination issues. She stated the presence of Special Flood Hazard Area, and a surveying firm were procured by the applicant. Additional nearby property owners requested to have special restrictions placed on the new parcel regarding size and height of a new dwelling.

Mrs. Davchevski explained traffic and floodplain development concerns do correlate to applicable standards for approval, specifically UCDC 152.684(D); Complies with provisions of 152.019, Traffic Impact Analysis, as applicable and UCDC 152.684(K); Adequately addresses any known development limitations within the proposed Type II Land Division, outlining appropriate measures to mitigate the limitation. She explained both of which are addressed in detail in the preliminary findings.

Mrs. Davchevski stated the notice of the applicant's request and the public hearing were mailed on October 6, 2023 to the owners of properties located within 250-feet of the perimeter of Tax Lot 502. She stated a notice was additionally published in the East Oregonian on October 14, 2023 notifying the public of the applicants' request before the Planning Commission on October 26,

2023. She noted several comments were received from agencies and notified property owners and were included in the hearing packets. At this time, she did not receive any further comments.

Mrs. Davchevski noted that at the top of the Public Notice Map, the Assessor Map and Tax Lot numbers were incorrectly identified on the map's header as 5N2835C, Tax Lot 600. The subject property's correct identifier is on the map itself as 6N3524A, Tax Lot 502.

Mrs. Davchevski concluded her Staff Report by explaining that the process of approval by the County involves review by the County Planning Commission for a final decision, unless timely appealed to the Board of County Commissioners.

Commissioner Standley asked when the property was zoned Rural Residential-2, RR-2. Mrs. Davchevski stated research was not performed regarding when exact enactment of the RR-2 zoning was implemented but that likely was around the time the Zoning was first applied in 1972.

Commissioner Williams asked if there were any CCR's with the properties in this area. Mrs. Davchevski replied that generally CCNR's are only with subdivision's and that Umatilla County doesn't enforce these, as they would be manned by an HOA.

Commissioner Standley stated additional information referencing some prior year documents on page 31, and how it tied to the zoning regarding a right-of-way easement. Mrs. Davchevski responded that the County didn't apply zoning until 1972. She also stated the easement was dedicated first, before zoning was applied and that both parcels were substandard in size.

Chair Danforth called Mr. Wells to allow for applicant testimony.

Applicant Testimony: John Wells, 54015 Mauer Ln, Milton Freewater, OR. Mr. Wells stated he and his wife, Amy, purchased the property in 2006 and raised their family there. He works for Anderson Perry Associates as a Civil Engineer. He voiced that several complaints are tied to his workplace, and his primary expertise is water related fields of study (i.e. flood systems, water systems, and sewer or septic systems).

Mr. Wells stated his application is for a partition of the current parcel into two 2-acre parcels. He demonstrated the conditions of Mauer Lane, page 5 in the packet, and where areas of concern are, due to topography on either side of the road. He noted that the geography around the road seems to deter motorists from speeding down the road. Mr. Wells also added that this is a private access road. The current private access is 25-feet and they are proposing to add an additional 5-feet to allow for a 30-foot access to serve Parcel Number One as well as the parcel they'd like to create, Parcel Number Two, relating to the Variance request.

Mr. Wells stated all property pins were located during the survey. He demonstrated that the requested division creating Parcel Number Two would allow for this 30-foot easement to serve Parcel Number One. He mentioned they recently held a private family event with twenty cars, about 70 total people, and stated there was no difficulty with parking, entering or exiting the

property. Mr. Wells stated that many drivers could stage on the side of the road when opposing traffic is exiting the road to allow for passing. He explained that over the years, deterioration of the road has occurred and noted Mr. Mauer had stocked gravel to allow repairs due to motorists and general wear and tear on the road.

Mr. Wells talked about the flood plain along the southeast side of his property. He stated they had flooding in 2020, which created a lot of run off. He further added that the difference in topography in this area varies about 25-feet from the east to west side of the south portion of the current property (referring to what would be the newly created Parcel Number 2). He explained how septic, well systems or even development would be placed on the higher northwest part of this parcel and not where the floodplain exists. He added that testing would need to be completed and obtain County Public Health review, with soil typing. Mr. Wells stated the current well he shares with Mr. Mauer is also outside the floodplain.

Mr. Wells mentioned a comment from Oregon Water Resources Department (OWRD) regarding the irrigation easement. He added there is an existing pipeline serving the floodplain area for the Wells and Mauer properties and allows for surface water diversion and is operated as a single pipeline; which was installed by Mr. Mauer. Mr. Wells demonstrates where the pipeline pumps water out from the surface and into the river for the purpose of irrigation. There is no existing easement for access to the point of diversion. He added, Mr. Mauer has continued to operate this pump system. He also stated the north part of the parcel dries out faster than the lower south side and becomes less green earlier in the summer months than the lower region and Mr. Mauer's property.

Mr. Wells explained he would like to have an easement added onto the proposed new parcel, so they would still have access to the water pipeline. Commissioner Standley asked about Mr. Wells domestic water well and who he shares that well with. Mr. Wells answered the well belongs to Mr. Mauer and they have shared water rights to the well. Commissioner Standley asked about whether a concern or issue had been brought up regarding another service to that shared well. Mr. Wells answered they would not utilize the same shared well and propose a new well.

Opponents: Derek Wood, 85207 Tum A Lum Rd, Milton Freewater, OR. Mr. Derek Wood stated he lives on the larger 12-acre parcel north of the Wells property, tax lot 400. He stated his family has owned the home and property for many years. The property line has always been divided by the fence line. Mr. Wood mentioned the lines listed on the map would cross into other neighbors' lots and buildings they have established. Mrs. Davchevski asked to make a disclaimer regarding the interactive map. She stated it is not surveying quality and the aerial view often shifts with the tax lot line. Mr. Woods stated he was aware it may not be accurate and mentioned the fence line has been used as an established property line since 1956. Chair Danforth mentioned that fence lines do not make property lines.

Discussions went on further regarding the lines represented on the map, which again was clarified by Chair Danforth that it is not an accurate representation of accurate lot lines. He stated he called and spoke with Dave Krumbein, Umatilla County Surveyor, who he claimed had not seen a survey come across his desk to implement these changes. Chair Danforth stated she understood his concerns and mentioned surveyors find those pins. Mr. Wood finished by stating his family has adverse possession and they have owned the property, fence established, since 1956.

Commissioner Gentry asked when the last time this property has been legally surveyed. Mr. Wood stated he was unsure.

Opponents: Charles Lawrence, 85115 Tum A Lum Rd, Milton Freewater, OR. Mr. Charles Lawrence started by describing his property, located west of Mr. Wells. He stated the lines on the map in the packet, page 4, are incorrect. He stated Mr. Wells spoke about the road down to the corner of Mauer Lane, by his property, does not extend 25-feet wide for two-way traffic. He referenced the next map, on page 5, which indicated the survey completed by Anderson Perry. Mr. Lawrence stated he paved the very end of the lane closest to Tum a Lum Road. He stated he was told by his realtor that this portion of Mauer Lane was their property and maintained it as such. He mentioned Mr. Wells gave him \$500 to help with the cost of the paving material. Mr. Lawrence further stated with the addition of a house, foliage and such it would take away the view from his home and believed would decrease the value of his property.

Opponents: John Mauer, 54059 Mauer Ln, Milton Freewater, OR. Mr. John Mauer stated he lives in the parcel to the east of Mr. Wells. He stated the neighbors and himself were under the assumption the road in front of those respective properties were owned and maintained by their owners. He explained they all maintained the roads adjacent to their land. Mr. Mauer added it wasn't until more recent, after the survey was complete, that Mr. Wells was the actual owner of the road. Additionally, he stated the tree line on the northeast side of the property was agreed upon was his. He stated over the last forty-two years he has maintained that property.

He mentioned an ORS 105.620, effective 1990, stating common law if you maintain it for over ten years and never said anything it is deeded to you. Chair Danforth stated if he wanted to submit it as an exhibit, but it was not relevant to the hearing today. She stated it would be more of a civil issue.

Mr. Mauer stated the lower proposed parcel floods. He explained the University of Oregon did a five-year study for the underground aquifer in this area. He stated water is flowing underground constantly. He mentioned the aquifer creates a pond, which he has helped divert by adding an underground culvert to pump the water back to the river. Mr. Mauer stated he was concerned with the recent flooding and future installation of a septic system that it might leach down into the aquifer.

Discussions went on about the amount of water in the aquifer and the fields Mr. Mauer has. He ended by stating his biggest concern was the aquifer and if a proposed septic would be within the area that does flood and possibility of leaching back into the aquifer.

Public Agencies: None

Applicant Rebuttal: John Wells, 54015 Mauer Ln, Milton Freewater, OR. Mr. John Wells spoke about opposing comment from Mr. Wood regarding the County Surveyor. He stated his surveyor spoke with Mr. Krumbein about the tentative plat partition and it is correct per requirements with the state of Oregon. Mr. Wells added that his surveyor was able to find all the survey pins and their locations were accurate. He mentioned, per his surveyor, since their property was subdivided first theirs takes precedence to those created after.

Mr. Wells spoke in length regarding the representation of the map, on page 4, and that GIS is only used for geographical representation of data and not of survey quality, as previously mentioned by Staff. He stated property lines are recorded by a surveyor and not by fence lines, but by the legal description of your property. He stated his legal description states his parcel is 4-acres.

Commissioner Standley asked if Mr. Wells had looked into septic systems that avoid contamination of groundwater. Mr. Wells stated he had not looked into options yet, but he intends to. Commission Standley mentioned there are options out there, but they can be costly and gaining a system or avoiding the area is best to help resolve or mitigate those concerns.

Commissioner Williams asked if this was the first survey completed in most recent years. Mr. Wells stated he believed that was correct. He stated his surveyor did a title search which located the property boundaries, and the original survey which subdivided this 4-acre parcel from the larger parent parcel from Mr. Mauer's property. Mr. Wells added that all the pins surrounding his parcel were located and they were accurate per the legal description.

Commissioner Gentry asked how Mr. Wells could mitigate issues with the road maintenance benefitting all in the area, that is not publicly maintained. He added by asking how could they eliminate the problem of one person bearing the expense to repair and maintain, while others are reaping the benefits of the access. Mr. Wells stated he has good neighbors, Mr. Mauer and Mr. Lawrence have helped with the road maintenance. He added Staff found information regarding private roads and it being a civil issue. Mr. Wells stated there was mention of coming to an agreement amongst neighbors that are all benefitting from the road in the Staff Report.

Commissioner Standley asked a question directed to Mrs. Davchevski regarding P1 and P2 road improvements and the amount of traffic in the area. Ms. Tierney Cimmiyotti directed Commissioner Standley to page 22 in the packet. Mrs. Davchevski stated part of the application was a requested Variance from the P-2 road standard, because they don't own the property on either side of the existing easement on Mauer Lane. The P-2 road standard requires a 60-foot-wide right-of-way with a 22-foot improved surface. She stated Mr. Wells application requests a variance

to the P-1 standard. Commissioner Standley asked if that was to stay with the 16-foot improved surface width. Mrs. Davchevski confirmed.

Commissioner Standley asked if the 16-foot width road exists now. Mr. Wells stated there is a current 16-foot width road. He stated he spoke with Tom Fellows, County Roadmaster, about specifics regarding adequate gravel coverage. He added according to the P-1 standard, “Any changes to surfacing width or depth or variance from current Oregon Transportation Standards must be approved by the Director of Public Works”. He explained Mr. Fellows was familiar with Mauer Lane, its condition, and mentioned he had no concern about adding another residence. This email is in the record, page 53 in the packet.

Chair Danforth called for any requests for the hearing to be continued, or for the record to remain open. There were none.

Chair Danforth closed the hearing.

DELIBERATION & DECISION

Chair Danforth stated someone who has purchased many properties it is upon the buyer to do their due diligence; whereas realtors will say anything and not all is completely true. She mentioned many comments tonight centralized on the map from page 4, and this can be confusing. She reiterated that she believed many concerns will have been met, with the potential approval of this application with the precedent conditions set forth by Staff.

Commissioner Williams echoed on Chair Danforth’s comment, stating she had a prior incident where a flood wall was built on their property, or what they thought was theirs. She stated they were sued because it was proven to be the neighbor’s property. Commissioner Williams spoke in length about other previous property purchases and abiding by zoning. She added that on their particular property the pins were found in the survey and is confident going with the legal survey is going to be best for everyone.

Commissioner Standley stated he doesn’t like to deal with neighborly tensions, but part of their duties as Planning Commissioners is to take the evidence and make a decision. He stated this was plotted in 1972 as RR-2. Commissioner Minton stated the survey was taken with the original pins and it appears clear and concise.

Commissioner Williams made a motion to approve the Wells Land Division and Variance Request, #LD-6N-441-23 and #V-366-23, based on the foregoing Findings of Fact and Conclusions of Law.

Commissioner Standley seconded the motion. Motion carried with a vote of 7:0.

OTHER BUSINESS

Mrs. Megan Davchevski introduced our new Administrative Assistant, Shawna Van Sickle, and new Planner, Charlet Hotchkiss. She added the Community Development Department is working

on the Umatilla River Trail Project from Echo to Umatilla. She stated our department received funding from Oregon Department of Transportation (ODOT) and are working with them to develop the scope of work. The hope is for project work to begin within the next year.

Mrs. Davchevski added they have another big project with the transportation system plan update; which hasn't been updated in more than 21 years. They received a grant, have selected a consultant and meetings will begin early 2024. She requested having a few planning commissioners on the advisory committee for this project. She added the plan will go before the Planning Commission as a recommendation to amend the Comprehensive Plan to show areas of County roads that need improvement, bridge replacements, changes to road standards, etc.

Mrs. Davchevski explained that her and Mr. Robert Waldher have been centered with the planning at the Umatilla Chemical Depot, which was officially transferred over to the Columbia Development Authority (CDA). The CDA is a board with various County Commissioners from Umatilla and Morrow Counties and additional entities. They will have the master plan to demonstrate how development will grow. She stated all development permits will come through the Community Development, Planning Division, for final approval.

Mrs. Davchevski stated Umatilla County has appealed the Energy Facility Site Evaluation Council (EFSEC) decision on the Nolin Hills Project for not abiding by the Umatilla County 10-mile setback to the wind turbines. She stated it is going to the Oregon Supreme Court and received information regarding that today. She added the Community Development Department received a decision from Land Use Board of Appeals (LUBA) regarding the Girth Dog/ Craig Coleman Aggregate Pit that went before the Planning Commissioners earlier this year. She stated it was remanded back to Umatilla County on five assignments of error out of six. Chair Danforth asked if the packet that was received today. Mrs. Davchevski stated no, that was a different application. Commissioner Tucker asked what the remand will entail. Mrs. Davchevski stated the applicant will have to supply additional information and would then come before the Planning Commission, once again if they choose to reapply.

Mrs. Davchevski stated the new packets sent out the day prior are about a new proposed Goal-5 Aggregate site. Commissioner Standley mentioned it was near Hat Rock. Mrs. Davchevski agreed. She added the applicant is another developer. Commissioner Williams mentioned she was excited the grants came through on the Chemical Depot. Mrs. Davchevski agreed and stated she believes there are approximately 800-acres under Industrial zone on Umatilla County land, and that CTUIR will receive approximately 4,000-acres. She stated the remaining land, that is not Industrial zoned and under the Military side, is going to become a refuge; which was decided around 2012 or 2013 when zoning was applied to the area.

Commissioner Williams asked about the location of that land. Mrs. Davchevski added it was around the Interstate-82 and Interstate-84 interchange. Discussions continue a bit about businesses in the area between Chair Danforth and Commissioner Tucker.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:47PM.

Respectfully submitted,

Shawna Van Sickle,

Administrative Assistant

Minutes adopted by the Planning Commission on April 11, 2024