

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, June 25, 2015**  
**6:30 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, OR**

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**COMMISSIONERS**

**PRESENT:** Randy Randall (Chair), Gary Rhinhart (Vice Chair), Don Wysocki, David Lee, Don Marlatt, Suni Danforth, Cecil Thorne.

**ABSENT:** Tammie Williams

**STAFF:** Tamra Mabbott, Carol Johnson, Connie Hendrickson

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*Note: The following is a summary of the meeting. An electronic recording of the meeting is available at the Planning Department.*

**CALL TO ORDER:**

Chair Randall called the meeting to order at 6:30 p.m. and read the opening statement. He called for abstentions, bias, conflict of interest or declarations of exparte` contact and there were none.

**NEW HEARING:**

**REQUEST FOR A PUBLIC HEARING FOR VARIANCE #V-340-15, Filiberto Esparza, Applicant/Property Owner:** The applicant requests approval of a variance to the side yard setback requirements for the existing 15' X 50' patio cover. Approval of the variance would allow the existing patio cover to remain approximately 6 feet from the north property line instead of the required 20-feet in the Rural Residential (RR-2) Zone. A notice of preliminary decision was mailed to surrounding property owners on April 14, 2015. A request for a Public Hearing was filed on May 4, 2015. The property is located on the west side of Kik Road, approximately 1900 feet north of West Punkin Center Road, north of the City of Hermiston. Standards of approval for the Variance are found in the Umatilla County Development Code Section 152.627.

**Staff report:** Planning Director Tamra Mabbott stated that Mr. Esparza filed the Variance application after a deck was built without a land use permit. Planner Shane Finck, who no longer works for the planning department, drafted the Findings for the application and public notices for the Variance request were mailed to surrounding property owners. One of the property owners, Jody Cross, filed a request for a public hearing. He also wrote a detailed letter which is included in the packets. Mrs. Mabbott read a copy of an email from Katherine Wilson requesting that the Planning Commission require Mr. Esparza to remove the junk from his property and that he not be allowed to build any other structures until the property is cleaned up.

The packets also contains a memo from Code Enforcement Coordinator Gina Miller describing the process over the past 1 ½ years stating reasons that Code Enforcement had visited the property, including solid waste and operation of a truck repair business. Mr. Esparza applied for a permit to build a shop and was told he could not operate a truck business but continued to do so. He also constructed a patio without regard to the required setbacks.

Mrs. Mabbott explained that English is not Mr. Esparza's first language but has been accompanied by an interpreter during his visits to the planning department so there is no reason to believe he did not understand the code and what was required. The memo from Gina Miller recommends the Planning Commission not approve the Variance request based on the history of code violations.

Commissioner Rhinhart asked what the setbacks were if a variance was approved and Mrs. Mabbott answered that the structure could be no closer than five feet from the property line.

Chair Randall stated he did not see exceptional circumstances in the draft Findings that would warrant granting a variance. Mrs. Mabbott explained that it was each Commissioner's choice whether to agree or disagree with the draft Findings. There was discussion regarding the width and length of the property.

Mrs. Mabbott clarified that information from the neighbors had not been received when the preliminary Findings were drafted. Commissioner Danforth stated that the lot was large enough to accommodate the current structures but Mr. Esparza clearly ignored the setbacks.

**Proponent testimony:** The applicant was not present at the hearing and there were no other proponents.

**Opponent testimony:** Jody Cross, 80542, Kik Road, Hermiston, OR 97838. Mr. Cross identified the properties he owns to the north and to the west of Mr. Esparza's property. He stated that Mr. Esparza's carport is protruding toward his property. He added that he has watched this process since approximately 2000. There was discussion about the structures built by the former owner of Mr. Esparza's property. When the property was sold to Mr. Esparza he added on to one of the structures in order to drive large trucks in and out of it. Mr. Cross called Code Enforcement to report the problem.

Chair Randall asked if the covered patio had a concrete floor. Mr. Cross answered that he had not gone that close to the property line to see if it did or not. Commissioner Danforth asked for clarification as to the number of times the shop construction was shut down since Mr. Esparza owned the property. He replied that it had been shut down several times.

Commissioner Rhinhart asked Mr. Cross if the property were cleaned up and the shop issue taken care of, would he still be opposed to the carport overhang. Mr. Cross said it

would still be a problem because a fire truck would need a forty foot easement in order to drive through the property. There should be a twenty foot setback on both properties. Discussion followed.

**Deliberation:** Chair Randall closed the hearing and deliberations began. Commissioner Rhinhart stated that the variance should be denied at this time. He added that if Mr. Esparza cleaned up the property and was in compliance with Code Enforcement the variance request for the carport could be addressed at another time. Commissioner Danforth stated she agreed. Chair Randall said if the issue of the variance could be revisited there should be time limit of ninety days for Mr. Esparza to come into compliance with Code Enforcement. Commissioner Marlatt stated that the code violations are a separate issue from the variance request before the Planning Commission at this hearing.

Mrs. Mabbott stated that Mr. Esparza had the opportunity to reapply for the variance request within one year. He also has the right to appeal the decision of the Planning Commission to the Board of Commissioners.

Commissioner Rhinhart moved to deny the Variance Request and the motion was seconded by Commissioner Marlatt. Motion to deny the application carried 7:0.

Mrs. Mabbott stated that she would re-write the findings to reflect the decision of the Planning Commission before the Chair could sign them.

### **NEW HEARING:**

**LAND USE DECISION REQUEST #LUD-175-14, Casey Severe, Applicant/Property Owner:** The applicant requests approval to construct a Non-Farm Dwelling on a 1.25 acre parcel zoned Exclusive Farm Use. The property is located to the south and east of Adams Road. Access to the parcel is Helix Highway, adjacent to the ODOT rock quarry and north of State Highway 11. Standards for approval are found in Umatilla County Development Code Section 152.059 (8).

Chair Randall called for any declarations of ex parte` contact, bias or conflicts. Commissioner Wysocki stated that he has had contact outside the hearing with the applicant and has been to the property, and had advised Mr. Sever on soils types. He said that he would abstain from the vote on this application. Commissioner Rhinhart stated that he also knew the applicant outside of the hearing, but it would not reflect on his participating in this hearing.

**Staff report:** Tamra Mabbott presented the staff report. She referenced a map showing the property provided to the commission. Last year the Planning Commission approved an application for Oregon Department of Transportation (ODOT) for a Goal 5 significant resource site. The proposed dwelling site would be more than 500 feet from this quarry. The property is near Wildhorse Creek, but is not in a designated floodplain.

The standards to approve a Non-Farm Dwelling application require extensive analysis, with mapping included. Staff are required to estimate how many Non-Farm dwellings could be created in the surrounding areas, and determined that number could be as many as 20. Mrs. Mabbott explained the cumulative effect that might impact surrounding properties and farming practices. She discussed the two options open to the Planning Commission for this application. Mr. Severe, applicant, purchased the subject parcel from the Duff family in 2000. They had a Lot-of-Record dwelling approval from 1999, which is subject to the grandfather provision in the Oregon Administrative Rules (OAR). Mr. Severe had requested several extensions for the Lot-of-Record approval, but did not act on it and it expired after 4 years. Mrs. Mabbott said that the small parcel was created prior to 1948 by the Duff family for a grain storage structure.

Mrs. Mabbott discussed the process for applying for a Non-Farm dwelling and how important the soil surveys are to this process. Mr. Severe was not able to meet the criteria of approval of providing a soil survey from a certified soil scientist. She stated that Mr. Severe directed staff to proceed with his new application without a current soil survey. Mrs. Mabbott said the application did not meet the criteria for a soil test, and even though it is a small parcel, it could be combined with another parcel and farmed and therefore cannot be considered for a “non-farm” dwelling parcel. Putting a “non-farm” dwelling there would also not meet the “impact” rule test.

Mrs. Mabbott drafted two (2) conclusions for the Planning Commission to consider. The first one was for the Planning Commission to find that the application does not comply with the standards, or the Planning Commission could make findings requiring that the applicant submit the soil survey showing that the parcel is not farmable in order to qualify for the non-farm dwelling status.

Chair Randall asked for input from the members of the Planning Commission who have farming experience, and discussion followed on the merits of farming a small parcel. Commissioner Marlatt asked if the OAR’s took property ownership into account when requiring the small parcel to be combined with an adjoining parcel, and it does not. Commissioner Wysocki asked if the soils were mostly Class 7, could this lead to a parcel being allowed to have a non-farm dwelling. Commissioner Rhinhart advised that it would have to be at least 51% of the soils under the Class 7 designation to be classified as eligible for a non-farm dwelling.

**Applicant Testimony:** Casey Severe, 301 NE Olins Court, Pendleton, OR. Mr. Severe stated he had photographs of the property to share with the Commission. He said that he paid \$39,000.00 for the property, and has invested another \$20,000.00 by drilling a well, and having 9 grain silos removed from the property. In 2000, he had been looking for property to build a home, when he found the subject parcel and bought it. At the same time he was building a home in town. He stated that he was aware of the permit deadlines at the time, and consulted with Bob Perry, Planning staff, about what his options were. Mr. Perry had advised him that he needed to start building, but that staff does not typically go out and inspect properties for building progress. Mr. Severe stated that he believed that he was in compliance with the permit, but was not aware that he

needed to take out a Zoning Permit to keep the process going forward. He stated that Mr. Perry should have advised him of the need for a Zoning Permit. Mr. Severe said that he was not lying about these conversations with Mr. Perry. He showed receipts for work that he has had done on the parcel, such as well drilling, excavation and weed prevention. It was never his intention to allow the permit to lapse, as demonstrated by all the work he had done on the parcel.

Chair Randall asked what Mr. Severe's intentions were, should his application be approved. Mr. Severe stated that he intended to build a dwelling on this parcel. Commissioner Rhinhart asked about the Oregon Department of Transportation (ODOT) easement for the property, and Mr. Severe stated that he did have a copy of the recorded access easement. He also said that he had the Department of Environmental Quality (DEQ) site evaluation and approval for a septic system for the property. Commissioner Rhinhart asked Mrs. Mabbott if someone could build a farm building on the property. Mrs. Mabbott confirmed that a shop could be built as long as it was for farming purposes. She went on to explain that a farm shop may not qualify for an Ag Exempt permit because the property is not on farm-deferral tax status. Commissioner Rhinhart said that there was some potential for building on the property, should the dwelling not be approved.

Mr. Severe referenced his packet and the 2000 Impact Analysis on page 3A for Non-Farm dwellings. He discussed a grain facility that had been put there by the McCormack's in the past. He confirmed that he would keep the tax lots separate even though he owns both. He intends to have this dwelling be his retirement residence, and would develop it to promote wildlife habitat. Mr. Severe discussed the criteria for approval in the packet. He had assistance with his application from Richard Jennings. He pointed out that a dwelling had been approved on this parcel before Dennis Olson was the Planning Director, and read from the Findings of that application. He discussed the parcel being approved as farm land, without Class 7 Soils, and he has to show why it is unreasonable to farm this small parcel. Mr. Severe said the property cannot be farmed due to the slope hill to the south, the creek and rail bed to the north with compacted soil, and ODOT owns the property to the east for gravel storage. Farming is not really an option on this small parcel for all these reasons.

Commissioner Danforth asked about the auger that is still left onsite. Mr. Severe said that they discovered a transfer system when they were removing the silos, and it was a concrete tunnel auger from the grain bins. The auger is still in the ground. Discussion followed on what Mr. Severe intended to do with this system and equipment. He said that the red bricks being stored on the property were from Hawthorne School for some people that he knows.

Mr. Severe discussed criteria for approval on farm use and soil quality, and he explained how the soils have been repeatedly disturbed and moved around on the subject parcel. He talked about where he wanted to build the proposed home and that he was being very careful to meet setbacks. Chair Randall asked if he had an exempt residential well, and Mr. Severe confirmed that it was. He stated that nothing has changed on the subject

parcel since the application for a Lot-of-Record dwelling had been approved for the Duff's. The location of the proposed dwelling is on a parcel that has never been used for farming, and was the site of an old grain elevator that has been removed. The concrete slab from the grain elevator is still there. There is considerable sloping on the property, as well as poor quality soils that have been disturbed. For these reasons, Mr. Severe feels that this meets the criteria for approval for a non-farm dwelling. He said that the surrounding land owners have farmed that land for many years, and would probably not consider converting to other non-farm dwellings within the 2000 acres impact area.

Mr. Severe referenced a letter from April 2015, where he amended his proposal of where to build the non-farm dwelling. He said he is fine to build a home on the concrete slab if that is the best solution. He reiterated that he would develop the surrounding property to wildlife habitat with no formal landscaping. He thought that he was in compliance on the original permit, and felt that had he been told by the Planning staff that a Zoning Permit was needed, he wouldn't be in this position today. There is no power to the property at this time. He said that he waited so long because he had built the other house, and used money there instead of the subject property. He is ready to develop this property now.

**Proponent Testimony:** none

**Opponent Testimony:** none

**Agency Testimony:** none

Chair Randall closed the hearing and moved to deliberation.

**Deliberation:** Commission Rhinhart asked if neighboring land owners were given notice of this hearing, and Mrs. Mabbott confirmed that they were and referenced the public notice page in the packet. She clarified that when the first application was processed, there was no requirement for the soils analysis from a soils scientist on the approved list from the Department of Land Conservation and Development (DLCD), but there is now. She said that Mr. Severe did not submit a soils analysis for this current application. She said that if the Planning Commission chose to approve this application, they would be required to include a Condition of Approval that the applicant would need to submit a soils analysis from a soils scientist on the DLCD list. Discussion followed on whether to approve this application or not, and would it set a precedent on non-farm dwellings on Class 7 soils.

Commissioner Danforth asked about the Condition of Approval that would require the applicant to submit a soils study completed by a soils scientist from the DLCD approved list for the home site. Mrs. Mabbott said she had no way to foresee if this would enable the applicant to build a home or not, but if the condition was not required, it would be a violation of the Administrative Rule. She also said that Mr. Severe had been in the office multiple times over the years, according to notes in the file. He spoke with several members of staff who would have explained how the process worked and he was granted

extensions of time so it would seem that he was aware of needing the final permit before the original approval for a Lot-of-Record dwelling expired.

Chair Randall asked why the status whether or not the parcel was farmable had changed from the original approval to this current application. Mrs. Mabbott explained that the Administrative Rules for determining this had changed since the original application was processed, and the current application did not meet the standards for non-farm status. Discussion followed on the impact of allowing a dwelling on this parcel to the area.

Commissioner Danforth asked if there was some sort of grandfather clause on this parcel, and Mrs. Mabbott explained that right expired with the original application when it expired. Mrs. Mabbott said that the Condition of Approval should read that the applicant will provide a soils survey from a DLCD soil scientist that the home site will be located on the portion of the parcel that is not farmable and that the application complies with Chapter 152.059 (K8; 1 and 2). Commissioner Rhinhart asked if a survey could be a condition of approval, and Mrs. Mabbott replied that a condition must be related to a standard, and there was no standard requiring a survey to be done. Discussion followed on what conditions of approval should be included if the application was approved, and would they be setting a precedent if the application was approved. Mrs. Mabbott said she could add language to the findings that the Planning Commission determined the parcel to not be farmable and that it would not set a precedent for other non-farm dwellings.

Commissioner Marlatt moved to approve #LUD-175-14 with the conditions of approval to be added to the findings to show that the Planning Commission found the subject parcel to not be farmable, and was seconded by Commissioner Lee. Motion carried 5:1 with one recused vote.

Mr. Severe asked if the application had been approved, with the condition that he would be required to get a soils survey. He asked how the results of the soils survey would affect the application. Mrs. Mabbott said it would have to comply with the Administrative Rule. She also indicated that the home would have to be built on the concrete slab.

Mrs. Mabbott advised the Planning Commission that they would be hearing the topic of medical marijuana and would have a recommendation to consider on definitions for land use purposes at the next hearing in July.

Chair Randall adjourned the meeting at 9 p.m.

Respectfully submitted,

Gina Miller  
Secretary