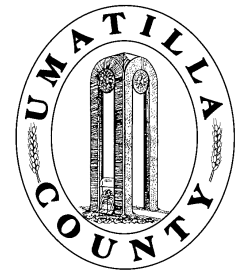


Umatilla County

Department of Land Use Planning



AGENDA

**Umatilla County Planning Commission Public Hearing
Thursday, April 25, 2019 at 6:30 pm
Justice Center Media Room, Pendleton, Oregon**

Planning Commission

Suni Danforth, Chair
Don Wysocki, Vice-Chair
Tammie Williams
Gary Rhinhart
Tami Green

Cecil Thorne
Hoot Royer
Molly Tucker Hasenbank
Jon Salter

Planning Staff

Bob Waldher, Planning Director
Carol Johnson, Senior Planner
Elizabeth Ridley, Planner II/ GIS
Gina Miller, Code Enforcement Coordinator
Tierney Dutcher, Administrative Assistant

1. Call to Order

2. New Hearing:

LAND USE DECISION #LUD-247-19: THOMAS FINE, APPLICANT & OWNER.

The applicant requests approval to construct a Primary Farm Dwelling on Non-High Value Farmland on 160+ acres of Exclusive Farm Use (EFU) Zoned land. The property is located approximately eight (8) miles south of Pendleton, north of Shaw Road and Holmes Road intersection, east of McKay Reservoir. The property is identified as Tax Lot 1101, on Assessor's Map 1N 32A. The Land Use Decision standards applicable to the applicants request are found in Umatilla County Development Code 152.059(K)(2).

3. Adjournment

**UMATILLA COUNTY
PLANNING COMMISSION HEARING
APRIL 25, 2019
FINE PRIMARY FARM DWELLING #LUD-247-19
PACKET CONTENTS**

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| 3. Email Correspondence | Page 5-16 |
| 4. Staff Report/Findings | Page 17-21 |

Umatilla County

Department of Land Use Planning



DIRECTOR
ROBERT
WALDHER

MEMO

LAND USE
PLANNING,
ZONING AND
PERMITTING

TO: Umatilla County Planning Commission
FROM: Elizabeth Ridley, Planner II / GIS
DATE: April 18, 2019

CODE
ENFORCEMENT

RE: April 25, 2019 PC Hearing
Land Use Decision, #LUD-247-19

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

Request and Criteria

GIS AND
MAPPING

The applicant, Thomas Fine, requests approval of a Primary Farm Dwelling as allowed in the Exclusive Farm Use (EFU) zone, pursuant to Umatilla County Development Code (UCDC) Section 152.059 (K) (2). Primary Farm Dwellings may be approved on non-high value farmland where the local government, based on facts in the record, can Find and Conclude all of the following:

RURAL
ADDRESSING

- the parcel of land is at least 160-acres,
- the subject tract of land is currently employed for farm use,
- there are no other dwellings on the subject tract of land, and
- the dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

Background Information

Initially, the applicant represented he would be the person principally engaged in the day-to-day operations of farming the land and partitioned 160-acre parcel from the family farm with the intent of obtaining approval of a dwelling. Additional information was requested from the applicant on the number of crop acres, crop types, who would be working on the farm (i.e., the applicant, employee, etc.) and whether the applicant would be making day-to-day decisions, as prescribed in the standard. The responses supplied by the applicant included the land would continue to be farmed under lease with Jeff Shaw. Jeff would perform the day-to-day functions associated with a traditional agricultural lease. The applicant has explained he will be involved in perimeter weed control, maintenance of fencing, consulting on farm crops, decisions for chemical application and negotiation and market sell of crops. Also, the applicant includes at some point, likely when Jeff retires, he may consider self-farming, but for now he holds a full time General Management position with a local company.

Location

The property is located approximately eight (8) miles south of Pendleton, north of the intersection at Shaw Road and Hawthorne Road, east of the McKay Reservoir. The surrounding tax lots are likewise zoned EFU (see vicinity map).

Memo

Planning Commission Hearing – April 25, 2019

Notice

Notice of the applicant's request was mailed on April 1, 2019 to the owners of properties located within 750-feet of the perimeter of Tax Lot 1101. Notice was also published in the *East Oregonian* on April 13, 2019 notifying the public of the applicants request before the Planning Commission on April 25, 2019.

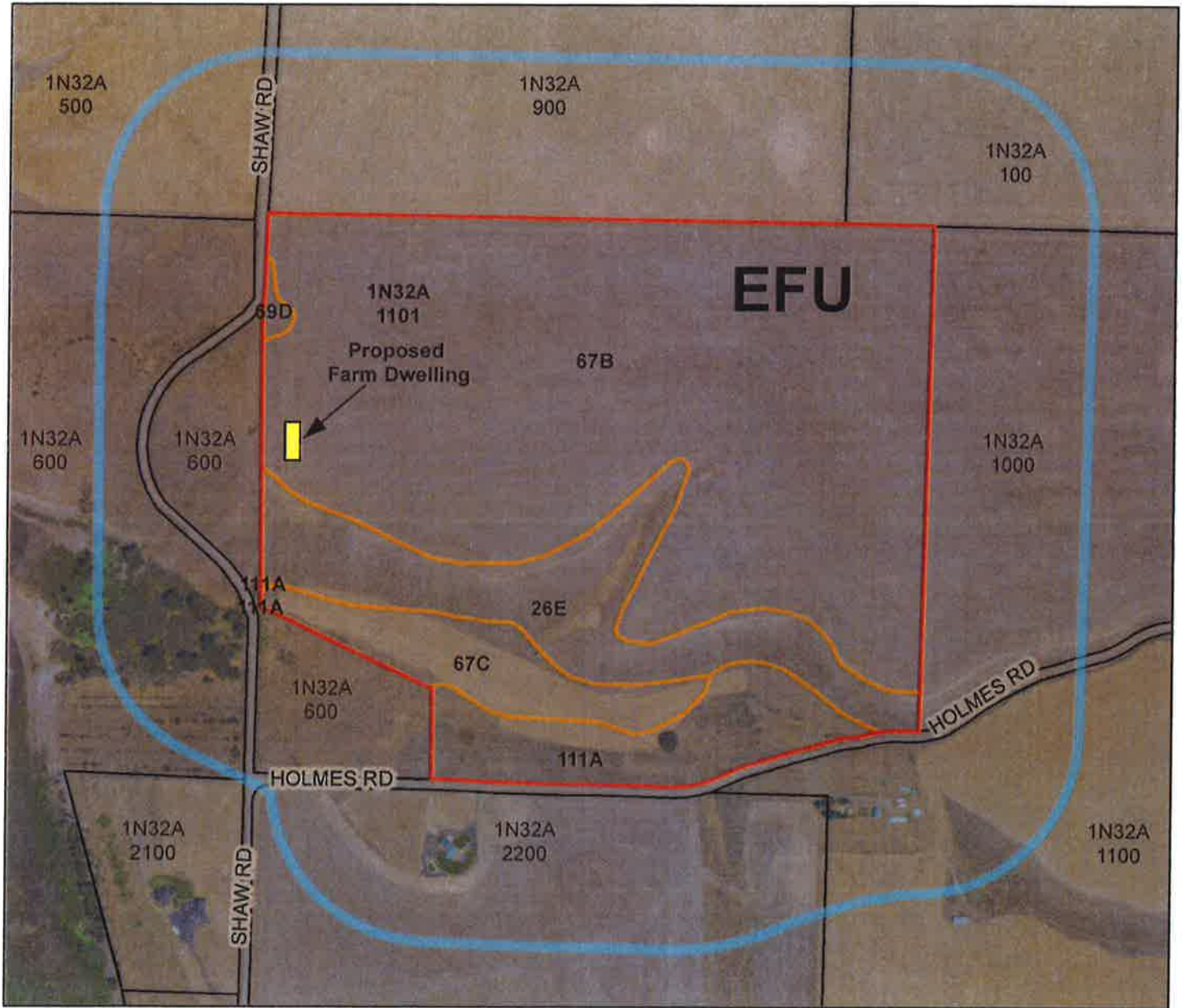
Conclusion

Staff questions who would be principally engaged in the farm use of the land for planting, harvesting, marketing or caring for livestock, at a commercial scale, and forwards the applicant's request for decision to the County Planning Commission. The decision made by the Planning Commission is final unless timely appealed to the County Board of Commissioners.

**APPLICANT: THOMAS FINE
 OWNER: THOMAS FINE
 APPLICATION FOR: LAND USE DECISION PRIMARY FARM DWELLING
 MAP: 1N32A TAX LOT 1101**



Notified Landowners within 750 feet of Parcel 1N32A Tax Lot 1101



MAP	TAX	OWNER
1N32A	100	HORNE DAVID & CHARLENE
1N32A	500	WYLAND RANCHES INC
1N32A	600	USA - IN CARE OF BUREAU OF LAND MGT
1N32A	900	BOWMAN MICHAEL L (LE) & CHRISTOPHER
1N32A	1000	HATLEY JAMES D & EVELYN E
1N32A	1100	HOLMES BETTY J (TRS)
1N32A	1101	FINE THOMAS C
1N32A	2100	COLLIER LAMOND S & DIANE J
1N32A	2200	SHAW J & K (LE) SHAW S J & K L & JEROME MK

- Subject Parcel
- Soil Types
- 750 ft Notice Area
- Tax Parcels



Map Disclaimer: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of the data. Parcel data should be used for reference purposes only. Created by E. Ridley, Umatilla County Planning Department. Date: 4/17/2019



Welcome to
Umatilla County

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Property information

15 messages

Jacob Potterf <jacob.potterf@umatillacounty.net>
To: tfine75@hotmail.com
Cc: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Fri, Feb 15, 2019 at 1:55 PM

Mr. Fine,

This e-mail is in regard to your recent Farm Dwelling application. I was able to locate the property information.

Your tax account number: 167387
Map: 1N32A Tax Lot: 1101

I've included this information into your file and either I or Elizabeth will be in touch if we have any further questions when we begin processing your application.

Thanks for your time,

Jacob

--

Jacob Potterf Planner II / GIS

| <http://umatillacounty.net>
Tel: 541-278-6249 | Fax: 541-278-6374
216 SE 4th Street | Pendleton, OR 97801

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by Umatilla County are subject to Oregon Public Records law and are NOT CONFIDENTIAL. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

Tom Fine <tfine75@hotmail.com>
To: Jacob Potterf <jacob.potterf@umatillacounty.net>
Cc: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Fri, Feb 15, 2019 at 1:59 PM

Jacob,

Thank you for sharing! I appreciate your guidance through this process, and look forward to anticipated closure on this portion of approval! Tom

From: Jacob Potterf <jacob.potterf@umatillacounty.net>
Sent: Friday, February 15, 2019 1:55 PM
To: tfine75@hotmail.com
Cc: Elizabeth Ridley
Subject: Property information

[Quoted text hidden]

Tom Fine <tfine75@hotmail.com>
 To: Jacob Potterf <jacob.potterf@umatillacounty.net>
 Cc: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Fri, Feb 15, 2019 at 2:25 PM

Also.. when i looked up the previous tax lot history associated.. it lists Pilot Rock Fire Dept. 7-401. Tom

From: Jacob Potterf <jacob.potterf@umatillacounty.net>
Sent: Friday, February 15, 2019 1:55 PM
To: tfine75@hotmail.com
Cc: Elizabeth Ridley
Subject: Property information

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>
 To: Tom Fine <tfine75@hotmail.com>

Wed, Feb 20, 2019 at 4:58 PM

Good evening Tom,

I am emailing in regards to your application for your property located at Map 1N32A Tax Lot 1101. I have began to process your application for a Farm Dwelling and was hoping you could answer or confirm some items below.

Have you discussed with the Public Works department about your road access permit from Shaw Rd?

I was also curious if you have talked to the Umatilla County Public Heath Dept. in regards to a well and septic.

Lastly, I need a description with a bit more information than was provided in your application about the description of your proposal and the farm operations on your property.

If you have questions, please don't hesitate to contact me.

Best,

Elizabeth
 [Quoted text hidden]

--



Elizabeth Ridley
Planner II / GIS

<http://umatillacounty.net/>

Tel: 541-278-6246 | Fax: 541-278-6374

216 SE 4th Street | Pendleton, OR 97801

<http://www.umatillacounty.net/planning> - Visit our website for copies of planning documents, permit applications and other helpful information.

[Quoted text hidden]

Tom Fine <tfine75@hotmail.com>
 To: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>
 Cc: Jacob Potterf <jacob.potterf@umatillacounty.net>

Wed, Feb 20, 2019 at 5:28 PM

6 Hello Elizabeth,

Thanks for touching bases. In reply to your email below..

1. No, i haven't contacted public works regarding formal access. When speaking with Jacob I indicated that there is currently access from Shaw rd. to the property via a gated fence, but i will certainly follow up with Public Works regarding formal access if necessary.
2. Also, at the time of application submission.. , Jacob and I discussed touching bases with the health dept. about well/septic, but the formal tax lot wasn't available yet, and we agreed it would be best to move forward with this aspect once obtained. I have however received from Jacob since, and at first availability i will visit the health dept. about the well/septic. Do you need me to provide a certain form from them? Please advise.
3. Please let me know specifically what further detail in respect to the proposal and operation is needed, and ill be glad to elaborate.
4. I apologize for the lack of specified detail.. i'm not familiar with this process, so any guidance & clarification you can provide to assist me through this process successfully will be welcomed.

Thank you Elizabeth,

Tom

From: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Sent: Wednesday, February 20, 2019 4:58 PM

To: Tom Fine

Subject: Re: Property information

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

To: Tom Fine <tfine75@hotmail.com>

Thu, Feb 21, 2019 at 8:41 AM

Good morning Tom,

Although you have access through a gated fence via Shaw Road, we will need formal access issued from the Public Works Department.

Additionally, when a dwelling is placed in a rural area, a septic evaluation must be performed. That is something you will be responsible for completing through the Health Department. Approval for the well/septic will be a condition on the approval of your dwelling.

In regards to your proposal and operation of the property can you expand on the following:

1. What crops are you growing and what is the rotation of these crops?
2. How many acres of land will you use for the farm operation?
3. Will you be responsible for making day to day decisions? If so, what might those decisions be?
4. Will you be working on the farm or will you have employees who will assist you?

Thank you for your quick response. I look forward to hearing from you.

Best,

Elizabeth

[Quoted text hidden]

Tom Fine <tfine75@hotmail.com>

To: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Thu, Feb 21, 2019 at 3:40 PM

Thanks Elizabeth,

Ok, I will follow up with the Public Works and the Health Dept.

As far as the property.. crop and management portion.. is this something i can expand on within an additional e-mail to you, and that you can add to my application.. or will i need to add it to the sheets that are currently in your possession? Please let me know. Thanks! Tom

From: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Sent: Thursday, February 21, 2019 8:41 AM

[Quoted text hidden]

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Thu, Feb 21, 2019 at 3:42 PM

To: Tom Fine <tfine75@hotmail.com>

Tom,

An elaboration through email would be great.

Thank you,

Elizabeth

[Quoted text hidden]

Tom Fine <tfine75@hotmail.com>

Fri, Feb 22, 2019 at 8:25 F.

To: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Elizabeth,

Thank you for sharing.

I have gathered forms from both the Health & Public Works departments, and have submitted the road access portion. You should be receiving this soon.

To expand on the land and crop, a little background. I grew up on a wheat ranch locally in the Helix area . The land I'm applying for the dwelling has been in my family for over a century.. since the early 1900's. My Grandparents, Cecil & Betty Holmes Ranch is due South of this partition. This partition was conducted through a replat process and is now separate from Holmes Ranches, as I have purchased from them. Cecil's father and Grandfather dryland wheat farmed this their whole lives and up until my Grandpa retired he did too. Prior to his retirement, I worked on this farm with him, as well as my other grandparents farm.. seeding, harvesting, working in the shop etc. When he retired, he chose to lease the land to Farmer and long-time family friend Jeff Shaw, who still leases and farms this piece. I have visited with Jeff and Cindy regarding the change in ownership and have agreed to continue a similar partnership continuance as my grandparents have had with him.

This portion is traditionally wheat crop of nearly 115 acres rotate harvested every other year likewise in turn summer fallow.

I will be hands on in decision making, land management, and day to day operations regarding all associated 8with the agricultural aspects including potential alternative crop option decisions, applicable chemical

application decisions, selling of crop to market, crop insurance, perimeter weed control, maintaining fence etc. and in partnership Jeff who will perform day to day functions associated with a traditional agriculture lease partnership at this time, and foreseeable future. I may consider at some-point self farming, without partnership, but i now hold a full time General Management position within a local company, so this change would take place likely at Jeff's retirement.

There is grain storage located on the property that i can elect to house grain until selling, but no other building type is currently on this parcel and doesn't have an associated parcel.

In addition to the use described above, the portion of land considered suited pasture will likely have either cows and/or horses, mine and/or continuance of renowned local cowboy Mike Evans, as has been longstanding with my grandparents in this arrangement too. And may elect to further this venture through raised cattle or sheep. I may offer access for honey bee hives too. Anyway, looking forward to it.

Hope this helps.

Thanks again Elizabeth!

Tom

From: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Sent: Thursday, February 21, 2019 3:42 PM

[Quoted text hidden]

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Mon, Feb 25, 2019 at 8:02 AM

To: Jacob Potterf <jacob.potterf@umatillacounty.net>

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Thu, Feb 28, 2019 at 10:30 AM

To: Carol Johnson <carol.johnson@umatillacounty.net>

----- Forwarded message -----

From: **Tom Fine** <tfine75@hotmail.com>

Date: Fri, Feb 22, 2019 at 8:25 PM

Subject: Re: Property information

To: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

[Quoted text hidden]

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Fri, Mar 1, 2019 at 11:34 AM

To: Tom Fine <tfine75@hotmail.com>

Cc: Robert Waldher <robert.waldher@umatillacounty.net>

Hello Tom,

Please see the attached letter for the current status of your application for the Primary Farm Dwelling at Map 1N32A Tax Lot 1101.

Best,

9

Elizabeth

[Quoted text hidden]

 **Fine Letter 2019.pdf**
248K

Tom Fine <tfine75@hotmail.com>
To: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Thu, Mar 7, 2019 at 12:14 PM

Hello Elizabeth,

Thank you for getting back to me and relaying. I hadn't referenced this e-mail account recently. I apologize for my delay in touching bases with you, but i didn't anticipate doing so until my test holes were dug in preparation for the required soil tests related to septic, per our prior conversation. I'm just waiting on mother nature improving conditions for this portion.

Reading through the attached response, it is my understanding that the core group involved doesn't share the view of terms met for a farm dwelling. I respectfully ask for further consideration by this membership. Please see below my reasoning justification(s) to allow moving forward with the anticipated approval process, including the requested/required soil test you and I have discussed.

1. In my discussions with Jacob P. within the Umatilla County Planning Office, I feel we both left with the impression that farm dwelling approval had a high chance of being granted on this replat. This was a big part of what i based my decision to purchase.. as it would not only allow me to maintain a piece of my family history in traditional use, but also have the added benefit of a farm dwelling furthering my ties to the land with family roots. I am not implying that I feel Jacob mis-led me, or that that I was under the impression that Jacob had sole authority to grant approval, but I left your office after numerous visits with Jacob, under the impression that the likelihood to gain farm dwelling approval was extremely high. Jacob was aware from the beginning of my intent to submit approval paper work for a farm dwelling prior to, and during the whole replat process and land purchase process. I understand that Jacob has moved out of the Country and is no longer with this department, but my consultations with Jacob were intentional and concise.
2. The proposed dwelling will reside on farmland that has been owned and farmed by my family for over a century, and that under my ownership will continue to be utilized for agricultural crop production too, with my involvement. The involvement includes, but not limited to, responsibility on Crop to Market, where I will be responsible for negotiation and market sell, and where I have sole responsibility of property Taxes responsibility for this land, Crop insurance, liability Insurance responsibility of this land, responsibility of costs incurred with crop production, other landowner risks associated with crop production, crop management and decisions etc.
3. The proposed dwelling should be considered tied to this land which is used for producing commercial agriculture and reflected in ownership dwelling ties. It shouldn't necessarily be tied to owners personal status and well being or necessarily occupation if the land is used for agricultural purposes and includes my involvement as the owner. There is just no guarantee that I or anyone could personally farm this piece of ground, disregarding circumstances. This is due to too many potential aspects outside of anyone's control. Including potential health problems, natural aging process that someday would leave me or anyone physically incapable of personally providing the type of labor that the groups objection is suggesting as reason. These scenarios would also require a decision be made someday anyway, similar to the current status and partnership of cropland that my Grandparents experienced going into their sunset years. It would require someone that is capable, where the lands primary use would continue to be agricultural farm land. This dwelling will always be

10

tied to and considered part of this piece of agricultural land and its ownership, as its past, present, and future purpose too. My ownership intends to continue utilization of the land for agricultural production, regardless of occupation, physical capabilities, age, status or well being. The ability to farm this land will always be available to me. or the owners after me, when i have moved on.

4. There are other approved surrounding farm dwellings tied to the land that reflect a similar arrangement tied to the land as my request, and not necessarily based on the owners primary occupation, status or health. Under the circumstance, the attached document provided states expectations where other like scenarios, similar to my request, do exist. So..

Elizabeth, I'm not requesting preferential treatment, but i do ask that a reasonable decision be reached in this case.

As such, I respectfully ask for approval reconsideration, with the anticipation of approval pending meeting the soil test requirements to proceed with this dwelling. Formal road access approval has been granted by the Public Works department. Your office may have received a copy? Please let me know If you haven't and I can provide a copy.

I am happy to meet with the governing group to discuss this further if necessary. Thank you!

Sincerely,

Thomas Fine

From: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>
Sent: Friday, March 1, 2019 11:34 AM
To: Tom Fine
Cc: Robert Waldher
Subject: Re: Property information

[Quoted text hidden]

Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>
To: Tom Fine <tfine75@hotmail.com>

Fri, Mar 8, 2019 at 11:21 AM

Hello Tom,

Thank you for your email response. Based on the circumstances, the Planning Department believes the decision should be made by the Planning Commission at a public hearing. The next available hearing date is April 25, 2019.

Also, thank you for addressing access to the property. The Planning Department has received a copy of the County access approach permit and has placed into the file.

Again, your application will be directed to a hearing before the County Planning Commission on April 25, 2019. A public notice with the time, location, and application request details will be mailed 20-days prior to the April 25th hearing date.

Thank you again,

Elizabeth

[Quoted text hidden]

Tom Fine <tfine75@hotmail.com>
To: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

Fri, Mar 8, 2019 at 6:39 PM

Elizabeth,

Thank you for sharing. I'll keep an eye out for the invitation letter. I have received a summons to serve as a member of the Umatilla County Grand Jury too, beginning April 2nd. Hopefully a conflicting schedule wont be produced on the specified date between the two.

Thanks Elizabeth!

Thomas Fine

From: Elizabeth Ridley <elizabeth.ridley@umatillacounty.net>

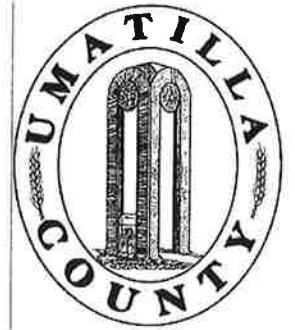
Sent: Friday, March 8, 2019 11:21 AM

[Quoted text hidden]

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Umatilla County

Department of Land Use Planning



**DIRECTOR
ROBERT
WALDHER**

March 1, 2019

**LAND USE
PLANNING,
ZONING AND
PERMITTING**

Thomas Fine
Road

**CODE
ENFORCEMENT**

Pendleton, Oregon 97801

**SOLID WASTE
COMMITTEE**

Re: Tom Fine Letter - Land Use Decision Request
Primary Farm Dwelling – Size Test
Map #1N32A, Tax Lot #1101, Account #167387

**SMOKE
MANAGEMENT**

**GIS AND
MAPPING**

Dear Tom:

**RURAL
ADDRESSING**

Thank you for the history and details about your plans for your property. Much time has been spent reviewing your application and the facts in support of your application. Also, your request has resulted in much discussion with other Planners in the Department. Please find a summary of your responses as they relate to one of the standards the County must evaluate in making a decision on your request for a primary farm dwelling.

**LIAISON,
NATURAL
RESOURCES &
ENVIRONMENT**

Since your grandfather's retirement, the land has been leased and farmed by Jeff Shaw. Through an agreement with the Shaws, Jeff will continue to farm the subject property that you acquired from your grandparents. However, you plan to be involved in perimeter weed control, maintaining fence, and consulting on the farming that occurs, as well as, on the decisions for chemical applications. At this time and for the foreseeable future, Jeff Shaw will perform day to day functions and continue to conduct the farm use of planting and harvesting the farm crop. At some point, likely when Jeff retires, you may consider self-farming.

In addition to farming a crop, you describe some suitable pasture is located on the parcel. This area has been used by Mike Evans through a longstanding arrangement with your grandparents. Your responses provide that this arrangement may continue and that there likely could be cows and/or horses pastured on the property, yours, or Mr. Evan's. Also, perhaps raising cattle or sheep may be pursued as a future venture. Some area also could be offered as access for honey bee hives.

The Oregon State Administrative Rules (OAR) 660-033-0135 (1) (c) and the Umatilla County Development Code (UCDC) 152.059 (K) (2) (a) (ii) include, "The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, *at a commercial scale.*"

After reviewing this standard against your additional information it appears you could meet the standard in the future as the person principally engaged in the farm use of the land, by planting, harvesting and marketing a crop at a commercial scale or by caring for livestock at a commercial scale. At this time, as you have described the farm activities, it appears Jeff Shaw is the person who meets this standard.

If you wish to proceed with the application, the application would have to meet all of the standards, including the standard discussed above. Alternatively, if you choose to withdraw your application the Planning Department can refund you the full amount of the application fee.

Please feel free to contact me at elizabeth.ridley@umatillacounty.net or 541-278-6246, to discuss how you choose to proceed. Thank you for your attention to this matter.

Best Regards,



Elizabeth Ridley

Enclosures: OAR 660-033-0135 (1), UCDC 152.059 (K) (2)

CC: Robert Waldher, Planning Director

Land Conservation and Development Department

Chapter 660

Division 33 AGRICULTURAL LAND

660-033-0135 Dwellings in Conjunction with Farm Use

(1) On land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(a) The parcel on which the dwelling will be located is at least:

- (A) 160 acres and not designated rangeland; or
- (B) 320 acres and designated rangeland; or

(C) As large as the minimum parcel size if located in a zoning district with an acknowledged minimum parcel size larger than indicated in paragraph (A) or (B) of this subsection.

(b) The subject tract is currently employed for farm use, as defined in ORS 215.203.

(c) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.

(d) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract.

(2)(a) If a county prepares the potential gross sales figures pursuant to subsection (c) of this section, the county may determine that on land not identified as high-value farmland pursuant to OAR 660-033-0020(8), a dwelling may be considered customarily provided in conjunction with farm use if:

(A) The subject tract is at least as large as the median size of those commercial farm or ranch tracts capable of generating at least \$10,000 in annual gross sales that are located within a study area that includes all tracts wholly or partially within one mile from the perimeter of the subject tract;

(B) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;

(C) The subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in paragraph (B) of this subsection;

(D) The subject lot or parcel on which the dwelling is proposed is not less than 10 acres in western Oregon or 20 acres in eastern Oregon;

(E) Except for seasonal farmworker housing approved prior to 2001, there is no other dwelling on the subject tract;

(F) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; and

(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.

~~(H) In determining the gross sales capability required by paragraph (C):~~

recorded with the county clerk of Umatilla County or counties where the property subject to the covenants, conditions and restrictions is located. The covenants, conditions and restrictions shall be recorded for each lot or parcel subject to the application for the primary farm dwelling and shall preclude:

(i) All future rights to construct a dwelling except for accessory farm dwellings, relative farm assistance dwellings, temporary hardship dwellings or replacement dwellings allowed by ORS Chapter 215; and

(ii) The use of any gross farm income earned on the lots or parcels to qualify another lot or parcel for a primary farm dwelling.

(g) The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of Umatilla County or counties, where the property subject to the covenants, conditions and restrictions is located.

(h) Enforcement of the covenants, conditions and restrictions may be undertaken by the Department of Land Conservation and Development or by Umatilla County or counties where the property subject to the covenants, conditions and restrictions is located;

(i) The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property, which is subject to the covenants, conditions and restrictions required by this division;

(j) The County Planning Director

shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting the lots and parcels subject to the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.

(k) Sign and record a Covenant Not to Sue as provided in § 152.059 (K) (1).

(2) *Primary Farm Dwelling on Non-High Value Farmland.*

A Primary Farm Dwellings customarily provided in conjunction with farm use may be allowed on non-high value farmland as defined in § 152.003 if the following standards are met:

(a) *Size Test.* The parcel on which the dwelling will be located is at least 160 acres. A dwelling may be considered customarily provided in conjunction with farm use if:

(i) The subject tract is currently employed for farm use as defined in § 152.003 of this chapter;

(ii) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale;

(iii) There are no other dwellings on the subject tract.

(iv) The parcel on which the dwelling will be located is at least 160 acres.

**UMATILLA COUNTY PLANNING COMMISSION
PRELIMINARY FINDINGS AND CONCLUSIONS
FINE LAND USE DECISION, # LUD-247-19
Map # 1N 32A, Tax Lot # 1101, Account # 167387**

- 1. APPLICANT:** Thomas Fine, 612 SW 9th Street, Pendleton, Oregon 97801
- 2. OWNER:** Thomas Fine, 612 SW 9th Street, Pendleton, Oregon 97801
- 3. REQUEST:** The applicant requests approval of a primary farm dwelling via the 160 acre size test as allowed in the Exclusive Farm Use Zone.
- 4. LOCATION:** The subject parcel is located approximately eight (8) miles south of Pendleton, north of the Shaw Road and Holmes Road intersection, east of the McKay Reservoir.
- 5. ACREAGE:** Tax Lot 1101 = 164.50 acres.
- 6. COMP PLAN:** North/South Agriculture Region Plan Designation.
- 7. ZONING:** Exclusive Farm Use (EFU) zone.
- 8. ACCESS:** The applicant has access via Shaw Road and has obtained approval for an access approach from the Umatilla Public Works Department.
- 9. ROAD TYPE:** Shaw Road is a gravel road, County Road No. 1075.
- 10. EASEMENTS:** The applicant indicates a utility easements exist on the subject property.
- 11. LAND USE:** The property is zoned for farm use and has been managed for wheat land farming.
- 12. ADJACENT USE:** Parcels surrounding the applicant's property are likewise zoned EFU.
- 13. LAND FORM:** Columbia Plateau
- 14. SOIL TYPES:** High Value Soils are defined in UCDC Section 152.003 as Land Capability Class I and II. The Soils on the applicant's property are predominately Non-High-Value soils.

Soil Name, Unit Number, Description	Land Capability Class	
	Dry	Irrigated
26E: Entic Durochrepts, 20-40 percent slopes	7e	-
67B: Pilot Rock silt loam, 1 to 7 percent slopes	3e	3e
67C: Pilot Rock silt loam, 7 to 12 percent slopes	3e	3e
69D: Pilot Rock silt loam, 12 to 20 percent slopes	4e	-
111A: Vitrandepts, 0 to 5 percent slopes	3e	2e

Soil Survey of Umatilla County Area, 1989, NRCS. The suffix on the Land Capability Class designations are defined as "e" – erosion prone, "c" – climate limitations, "s" soil limitations and "w" – water (*Survey*, page. 172).

- 15. BUILDINGS:** There are no structures on the parcel.
- 16. UTILITIES:** Pacific Power serves electricity to the area.
- 17. WATER/SEWER:** The applicant indicates that a domestic well and on-site septic system will be installed to serve the proposed farm dwelling.
- 18. RURAL FIRE:** The property is located within the service district of Pilot Rock Fire District No. 1.
- 19. IRRIGATION:** The applicant indicates there are no irrigation water rights on the property. The property is not located within an irrigation district.
- 20. FLOODPLAIN:** The property is not located in a flood hazard zone.
- 21. PUBLIC NOTICES SENT:** April 1, 2019
- 22. PLANNING COMMISSION HEARING DATE:** April 25, 2019
- 23. NOTIFIED AGENCIES:** Department of Land Conservation – La Grande, Umatilla County Public Health Department, Oregon Water Resources Department, Umatilla County Assessor, Umatilla County Public Works, Pacific Power, Pilot Rock Fire District No. 1
- 24. COMMENTS:** Comments are pending.

25. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE FOR LAND USE DECISIONS, Section 152.059 (K) (2), *Primary Farm Dwelling*, contains the criteria of approval to establish a primary farm dwelling on property in the EFU resource zone, and Section 152.612, Procedure for taking action on a Land Use Decision Application. Primary Farm Dwellings customarily provided in conjunction with farm use may be allowed on non-high value farmland, as defined in § 152.003, when the following standards are met. Once approval is obtained for a dwelling (structure) a zoning permit is required as provide in Sections 152.612 (D) and 152.025. The following standards are listed and underlined below, responses and findings follow in standard text.

Section 152.059 (K) (2) (a) Size Test.

The parcel on which the dwelling will be located is at least 160 acres. A dwelling may be considered customarily provided in conjunction with farm use if:

- (i) The subject tract is currently employed for farm use as defined in § 152.003 of this chapter;
- (ii) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale;

Applicant's Response:

The dwelling is proposed on farmland that has been owned and farmed as dryland wheat by the applicant's family for over a century. Prior to the applicant's grandfather's retirement, the applicant worked on the family farm helping with seeding, harvesting and working in the shop. Since the applicant's grandfather's retirement from farming, the farm has been leased to long-time family friend, Jeff Shaw. Jeff continues to lease and farm the property.

Earlier this year a land division was approved to separate 160-acres out of the family farm. This 160-acres is the subject tract (parcel) now owned by the applicant. The property has some areas on steeper slopes not in crop production, resulting in approximately 115 acres of crop land. The applicant also has a lease agreement with Jeff Shaw to continue to farm the 115 acres and perform the day-to-day functions associated with a traditional agricultural lease, now, and in the foreseeable future. The applicant, in partnership with Jeff Shaw, will make decisions on land management including alternative crop option decisions, applicable chemical application decisions, selling the crop to market, crop insurance, perimeter weed control and maintenance of fences. The applicant's supplemental information adds that his involvement includes, but not limited to, the responsibility on crop to market, where he will be responsible for the negotiation and market sell. Further, the applicant includes he will be responsible for property taxes, crop insurance, and liability insurance and other risks associated with growing a crop.

The applicant may consider at some point self-farming; however, at this time he works full time as a General Manager with a local company and therefore, a farming change would likely not occur until Jeff Shaw's retirement.

In addition to dryland farming, a portion of the land considered suitable pasture could have either cows and/or horses, or possibly the applicant will venture into raising cattle or sheep.

Planning Response:

In order to approve the request Planning must find the subject tract is currently employed for farm use, as defined in § 152.003.

The family farm, including the applicant's tract of land, has a history of dryland farming. Planning does not have information on the current crop year and therefore, it is assumed the applicant's tract of land is currently employed for dryland farm use.

Planning also must find the person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale will be occupying the proposed farm dwelling.

This finding is not based on who, in the future, will be principally engaged in the farm use, but who, at the time of the application for the farm dwelling, is principally engaged in farm use at a commercial scale. The list includes planting, harvesting, marketing or caring for livestock. The applicant, has a lease agreement with Jeff Shaw to perform day-to-day functions associated with a traditional agricultural lease now, and in the foreseeable future. However, the applicant will be involved in negotiations and marketing.

Therefore, where the subject tract (parcel) is leased to someone else to farm for planting and harvesting a crop, the question becomes, does the applicant's involvement in marketing a crop satisfy the standard "the dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale."

Findings:

Planning finds the subject tract is currently employed for farm use, as defined in § 152.003.

Planning finds the dwelling will _____ be occupied by a person or persons who will be principally engaged in the farm use of the land, such as planting, harvesting, marketing or caring for livestock, at a commercial scale.

Conclusion:

(iii) There are no other dwellings on the subject tract.

The applicant owns the subject tract consisting of one (1) parcel of land of 164.50-acres. The criterion is met.

(iv) The parcel on which the dwelling will be located is at least 160 acres.

The EFU parcel is 164.50 (assessed) acres. County Planning finds the dwelling would be sited on a parcel that meets the size requirement of at least 160 acres. The criterion is met.

(v) Sign and record a Covenant Not to Sue as provided in § 152.059 (K) (11).

See (K) (11) below.

Section 152.059 (K) (11), Covenant Not to Sue.

All dwellings approved within the EFU zone require the landowners to sign and record in the deed records for the County a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

The landowner, Thomas Fine, has agreed to sign and record a Covenant Not to Sue document. County Planning finds that by the landowner signing and recording a Covenant Not to Sue agreement satisfies the criterion. The condition of approval to sign and record a Covenant Not to Sue agreement is imposed.

Section 152.612 (D) Procedure

An applicant granted a conditional use permit or land use decision must obtain a County zoning permit for each tax lot before commencing construction.

Section 152.025 (A) Zoning Permit

Prior to the construction, reconstruction, addition to or change of use of a structure, or the change of use of a lot, or the installation or replacement of a mobile home on a lot, a zoning permit shall be obtained from the County Planning Department.

A condition of approval to obtain a County Zoning Permit is imposed.

DECISION: THE THOMAS FINE LAND USE DECISION REQUEST TO ESTABLISH A

**PRIMARY FARM DWELLING COMPLIES WITH THE STANDARDS OF THE
UMATILLA COUNTY DEVELOPMENT CODE, SUBJECT TO THE FOLLOWING
CONDITIONS:**

Precedent Condition: The following precedent condition must be fulfilled prior to final approval and issuance of a County Zoning Permit.

1. Sign and record a Covenant Not to Sue agreement.

Subsequent Condition: The following subsequent condition must be fulfilled following satisfaction of the precedent conditions of approval for the land use decision.

2. Obtain a County Zoning Permit and State permits for construction of the dwelling. Approval of a County Zoning Permit requires a site plan showing access, existing or proposed structures and the proposed dwelling.

UMATILLA COUNTY PLANNING DEPARTMENT

Dated _____ day of _____, 2019

Robert Waldher, *Planning Director*

Mailed _____ day of _____, 2019

DRAFT MINUTES

SUBDIVISION REQUEST #S-056-19

**JEFF SKINNER, APPLICANT
HAZEL L. HARRAL ESTATE,
OWNER**

PLANNING COMMISSION HEARING

March 28, 2019

DRAFT MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, March 28, 2019, 6:30 pm
Umatilla County Justice Center, Media Room, 4700 NW Pioneer Place, Pendleton, OR

** ** ** **

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Gary Rhinhart, Vice Chair, Hoot Royer, Jon Salter, Molly Tucker Hasenbank, Tami Green, Cecil Thorne, Don Wysocki

ABSENT: Tammie Williams

STAFF: Bob Waldher, Planning Director; Carol Johnson, Senior Planner; Elizabeth Ridley, Planner/GIS; Tierney Dutcher, 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 6:30 p.m. and read the Opening Statement.

MINUTES

Chair Danforth called for any corrections or additions to the minutes from the February 28, 2019 meeting. There were none. Commissioner Rhinhart moved to approve the minutes as written. Commissioner Thorne seconded. Motion carried by consensus.

NEW HEARING

SUBDIVISION REQUEST #S-056-19; Jeff Skinner, Applicant, Hazel L. Harral Estate, Owner.

The applicant, Jeff Skinner, requests approval to subdivide 16.5 acres of Rural Residential (RR-2) Zoned land into a 6-lot subdivision consisting of a minimum lot size of at least 2-acres per lot. The property is located along the west side of State Highway 395, approximately 1-mile south of Pendleton. The property is identified as Tax Lot 300, on Assessor's Map 2N 32 21. Criteria include policies in the Comprehensive Plan listed in the public facilities, services, and transportation elements and approval criteria in Umatilla County Development Code (UCDC) 152.666(6).

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex-parte contact or objections to jurisdiction. There were none.

STAFF REPORT

Carol Johnson, Senior Planner, stated that the applicant, Jeff Skinner, is present and available to provide additional details and answer any questions the Planning Commissioners may have.

Mrs. Johnson stated that the 16.5 acre parcel of land is located to the south of Pendleton along McKay Creek. This area is one of 6 areas in the Pendleton vicinity that is zoned for rural residential use. She

stated that this parcel is among just a few remaining tax lots that have the potential to be further divided into 2 acre parcels. She stated that Mr. Skinner has met with Planning Staff over the past several months to determine the best way to divide this parcel of land. His first plan included applying for a land partition creating 3 parcels in 1 calendar year, followed by a subsequent partition the next calendar year for the remaining 3 parcels. Instead, Mr. Skinner decided to make request to partition all 6 lots at one time, knowing that dividing more than 3 lots in 1 calendar year would elevate the application to a Type I Land Division, or Subdivision.

Mrs. Johnson stated that proposed lots 1, 2 and 3 will be considered developed because there are currently 3 homes already located on the 16.5 acre parent parcel. Lots 4, 5 and 6 will be buildable. She stated that the standards for Subdivisions are related to facilities and roads and can be found in UCDC 152.666(6).

Mrs. Johnson stated that the tentative plan map (page 4 in Planning Commission Packets) shows the layout of the proposed properties in relation to McKay Creek which runs along the west side of the entire parcel. She added that the building standards include a 100 ft. setback from McKay Creek. There are also 2 access points to the properties. The northern access is a proposed 30 ft. easement which will serve Lots 1 and 2. The proposed southern access point located to the south of lots 4 and 5 will be a 60 ft. easement called Promise Lane and provide access to lots 3-6.

Mrs. Johnson stated that after the public notice was mailed out on March 8, 2019, she received comments from Kristen Tiede, Archeologist with the Cultural Resources Protection Program at the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). The Tribe suggested that a pedestrian survey and subsurface testing take place prior to the start of construction in areas of proposed ground disturbance (page 19 in Planning Commission Packets). As a result, Planning Staff has added Subsequent Condition #10 to the Findings and Conclusions which states, “[d]iscovery of archeological objects during ground disturbance requires ceasing all activities and contacting a professional archeologist to conduct a site assessment prior to resuming development activities”. Mrs. Johnson stated that she reached out to The Oregon State Historic Preservation Office (SHPO) in Salem for guidance on setting this particular condition. They replied stating that the condition would be adequate and also provided a form used to report the discovery of archeological objects to the State. She stated that she has relayed this information and made the form available to Mr. Skinner.

Mrs. Johnson stated that she also received comment from Shawn Penninger, Assistant Fire Chief/ Fire Marshall with the City of Pendleton Fire & Ambulance. They stated that they have evaluated the property and determined that Mr. Skinner has met the ingress and egress requirements of the Oregon Fire Code Section Appendix D, D103 and the requirements of the Authority Having Jurisdiction.

Mrs. Johnson stated that she received a letter from Bonneville Power Administration (BPA). She pointed out that the south side of lots 3-5 contain a BPA overhead transmission line. BPA has requested that the applicant submit and sign a Land Use Agreement for development within the

easement. As a result, Mrs. Johnson added President Condition #9 which requires the applicant to complete the BPA Land Use Agreement and provide a copy to the Planning Department.

Mrs. Johnson stated that she received phone calls from two land owners with inquiries. The first property owner who called was concerned because his land is also tax lot 300 and he wanted to know more about what was planned on his property. However, he was mistaken because his tax lot is on a different Assessor's Map and he soon came to understand that the public notice was not about development on his parcel of land. The second surrounding land owner who called to inquire about the public notice expressed concern about the subdivision but was unable to attend the public hearing. Mrs. Johnson directed her to review the hearing materials posted on the Umatilla County Land Use Planning website to find out more about the application. The caller also expressed concern that a neighbor located on the other side of her property did not receive a public notice regarding the subdivision. Mrs. Johnson asked the GIS Manager to verify the mapping information for the public notice and was able to determine the land owner in question was located outside of the required distance. Additionally, she was able to verify that every person required by law to receive public notice did in fact receive a notice.

TESTIMONY

Applicant Testimony: Jeff Skinner, 72456 Highway 395 S., Pendleton, Oregon. Mr. Skinner stated that Mrs. Johnson did a wonderful job processing the application and organizing all the information in the Commissioner's Packets. He asked if the Planning Commissioner had any additional questions.

Commissioner Rhinhart asked Mr. Skinner if he was having difficulty obtaining an Access Permit for the easement under the area where the BPA overhead transmission line is located. Mr. Skinner stated that he has worked with the Oregon Department of Transportation (ODOT) for approximately 18 months and his Application for State Highway Approach was approved granting access off Highway 395 within the BPA utility easement. He is now working with Tom Lapp at ODOT to obtain a Permit to Construct in order to begin installation of the access approach.

Chair Danforth stated that several areas in Umatilla County are experiencing much higher water levels than they have seen in the last 30 years. She asked Mr. Skinner how high the water has been running out near his property since it is so close to McKay Creek. Mr. Skinner stated that they are in good shape because they are positioned approximately 6 feet above the 100-year floodplain.

Commissioner Wysocki asked about health requirements for the shared wells. Mr. Skinner stated that he is not sure. Mrs. Johnson stated that Oregon Health Authority (OHA) Drinking Water Services reporting standards and testing requirements come into play when a well serves 4 or more properties.

Commissioner Royer asked about the water rights for the property. He asked if there is a plan to develop delivery of irrigation water to the properties. Mr. Skinner stated that all the lots will have the opportunity to utilize their water rights by running lines in the easements that have been developed to

the Point of Diversion from McKay Creek on lot 2. He has no plans to move the existing water rights to the properties. Mrs. Johnson stated that the Oregon Water Resources Department (OWRD) Watermaster, Greg Sibernagel, provided an email (page 14 in Planning Commission Packets) stating that he has met with Mr. Skinner on several occasions regarding the subdivision request and he feels that he has successfully fulfilled all of his recommendations.

Chair Danforth added 3 additional exhibits to the record; Exhibit A, City of Pendleton Fire & Ambulance; Exhibit B, BPA; and Exhibit C, Revised Precedent Conditions list.

Public Agencies: CTUIR, City of Pendleton Fire & Ambulance, OWRD and BPA (see above). No additional comments.

Chair Danforth closed the hearing for deliberation.

DELIBERATION & DECISION

Commissioner Rhinhart made a motion to approve Subdivision request #S-056-19 with President and Subsequent Conditions. Commissioner Green seconded the motion. Motion passed with a vote of 8:0.

CHAIR & VICE CHAIR APPOINTMENTS

Commissioner Rhinhart made a motion to reappoint Suni Danforth as Chair and appoint Don Wysocki as Vice Chair. Motion seconded by Commissioner Green. Motion carried by consensus.

OTHER BUSINESS

Bob Waldher, Planning Director, stated that Planning Commissioners are invited to attend the second Community Meeting for the Highway 395 North Development Code Update Project next Wednesday, April 3rd at 5:30pm at the Stafford Hansell Government Center in Hermiston. Planning Commissioners are especially encouraged to attend the Planning Commission Work Session directly following the Community Meeting at 6:30pm. The purpose of the Work Session is to review the proposed Highway 395 North Development Code Amendments.

Mr. Waldher provided updates on past Planning Commission hearing requests. He stated that the County Text, Plan and Zoning Map Amendments to Co-adopt City of Stanfield Urban Growth Boundary (UGB) Adjustment was unanimously approved by the Umatilla County Board of County Commissioners (BCC). Mr. Waldher also stated that no opposition was voiced at the BCC hearing for the County Plan Amendment to amend the Exception for Local Access Improvements for TA Operating, LLC and TravelCenters of America. The request was approved by the BCC and next steps will include reviewing the development agreement and addressing the other issues identified by LUBA.

The next Planning Commission Hearing is scheduled for Thursday, May 23, 2019, 6:30pm at the Umatilla County Justice Center, Media Room, 4700 NW Pioneer Place, Pendleton, OR.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:05 p.m.

Respectfully submitted,

Tierney Dutcher
Administrative Assistant

DRAFT