

WALLOWA COUNTY BOARD OF COMMISSIONERS

WALLOWA COUNTY COURTHOUSE

101 S. River Street, Rm 202

Enterprise, OR 97828

**IN THE MATTER OF THE REQUEST)
FOR A HOME-BASED OCCUPATION) FINDINGS OF FACT,
TO OPERATE A BED AND) CONCLUSIONS, AND DECISION OF
BREAKFAST IN THE EFU ZONE) THE WALLOWA COUNTY BOARD
OF COMMISSIONERS)
)**

RE: Hunter HBO Band B CUP# 11-04

The request was deemed to be complete on October 4th, 2011. It was advertised in the Chieftain on October 13th, and noticed to landowners within 750 ft and other interested parties on October 5th, 2011. The request came before the Wallowa County Planning Commission on October 25, 2011. The Planning Commission was unable to reach a decision and forwarded the matter to the Board of Commissioners, but not to a date certain. The Board of Commissioners noticed landowners within 750 ft, parties with standing from the Planning Commission hearing, and other interested parties on November 8th, 2011. The request was advertised in the Chieftain on November 17th, November 24th, and December 1st, 2011. The Board of Commissioners initially heard the request on December 6th and then again on December 18th, 2011 and January 17th, 2012, with decision and adoption on February 6th, 2012. The additional time was necessary to allow the record to remain open for written comments and rebuttal. The Board of Commissioners having reviewed the record, the materials introduced in the above-referenced hearings, and having heard and considered oral testimony in the above-referenced hearings, and being fully advised, makes the following findings of fact and decision.

01. **APPLICANT:** James and Diana Hunter
85156 Powers Road
Enterprise, OR 97828
02. **OWNER:** Same
03. **REQUEST:** To permit a Home-Based Occupation to establish a Bed and Breakfast in the Exclusive Farm Use (EFU) zone
04. **LOCATION:** The property description is Township 2 south Range 46 east tax lot 3601

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05. **PARCEL CHARACTERISTICS:** The parcel contains about 16.1 assessed acres. The Zoning is Exclusive Farm Use (EFU). Access is via Daggett Road, a county road. The parcel is bordered by EFU on all sides. The parcel was created via HB3326 in 2007 (LP#07-02 and CUP#07-03) and was declared buildable and predominantly unsuitable for agriculture.

06. **REVIEW CRITERIA:** Article 5, Public Hearing Review, Sections 5.025(01-03) and 5.040(01); Article 9 (Conditional Use) Section 9.020(01-06); Article 15 (EFU) Section 15.020(08); Article 35 (Home Based Occupation), Sections 35.020, and 35.025; and OAR 660-33-130(5) and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon.

SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:

[.....]

C. Seven hundred fifty (750) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.

03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

FINDING 6.1: The Board of Commissioners finds the public hearings were properly noticed to all property owners within 750 feet of the subject property, in a newspaper of general circulation and was posted on the Wallowa County Courthouse Public Notice Board prior to the hearing within the required time frame as indicated above. In addition the Board of Commissioners noticed all parties with standing from the Planning Commission hearing.

SECTION 5.035, REVIEW PROCESS AND DECISION:

01. The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to insure the use or development complies with the applicable standards and criteria.

FINDING 6.2: The Board of Commissioners finds that as this request is denied, Conditions of Approval are not necessary to ensure the use or development complies with the applicable standards and criteria and is compatible with the zone.

SECTION 9.020, REVIEW CRITERIA: After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.

01. The proposed use will be consistent with the purpose of [and is allowed conditionally in] the zone in which the use proposed.

FINDING 6.3: The Board of Commissioners finds, via evidence presented, that although the proposed use is allowed conditionally in the zone in which the use proposed, it is not consistent with the purpose of the zone. See Findings 6.4 and 6.5.

Additionally, testimony was heard regarding other B&Bs located in resource zones. Whereas it is true that there are currently about 14 B&Bs located on lands where resource uses are allowed, each of these decisions was evaluated separately on its own merits and do not set a precedent. Also, these B&Bs are all located close to other rural development on lands zoned, Rural Residential, Rural Commercial, or Existing Lot, whereas the current proposal is surrounded by EFU and is far from significant rural development.

02. The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.
03. The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.

FINDING 6.4: With regard to paragraph (02) there was testimony indicating concern over the proposal's effect on traffic, noise, and glare from lights. The business would increase traffic on Daggett Road and as the intersection with the Imnaha Highway is a blind intersection, would increase the risk of an accident. Also, as this is open land, any noise generated by the business and any glare from headlights or other lights would be heard and seen for a great distance. Therefore, the Board of Commissioners finds that the above criteria are not met.

With regard to paragraph (03), the subject property has an existing well and septic system. Additionally, storm drainage and electrical service should not be an issue. As the Hunters have no children living at home, there should be no impact on schools. However, the establishment of a bed and breakfast in this remote location would have an impact on fire protection as response times would be large and access in winter months difficult. Therefore, the Board of Commissioners finds that the above criteria are not met.

04. The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.
05. The proposed use will not interfere with uses permitted on adjacent parcels.

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06. The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.

FINDING 6.5: With regard to paragraphs (04) and (05), the parcel is suitable for this use as it has been previously determined to be unsuitable for agriculture and there is a flat area where a dwelling and outbuildings could be located. However, the size of the parcel means that the business will be in close proximity to ranching and agricultural operations on adjoining parcels. Therefore there will be no buffer for the impacts that the business may have on ranching and ag operations. Impacts such as lights, noise, traffic and pets will be in close proximity to agricultural operations. And, vice versa, regarding impacts from herbicides, dust, noise and poisons used to control pests. Therefore, the Board of Commissioners finds that the above criteria are not met.

Regarding paragraph (06) the Commissioners find that Article 36 is not applicable in this case as no habitat is impacted over what was allowed when the HB3326 partition and CUP were approved.

SECTION 15.020, BUILDINGS AND ACTIVITIES PERMITTED CONDITIONALLY: In the Exclusive Farm Use Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the provisions of Article 9, Public Hearing Review.

08. Home-based occupations as described in Article 35, Home-Based Occupation. Home-based occupations may not be authorized in structures accessory to resource use. A home-based occupation located on high-value farmland may employ only residents of the home.

FINDING 6.6: The Board of Commissioners finds that a bed and breakfast as a Home Based Occupation is a Conditional Use in the EFU zone, that this application has been properly brought before the Planning Commission and Board of Commissioners as part of the Conditional Use process.

SECTION 35.020, DEFINITION: Home-Based Occupation shall mean an activity carried on within a residence, within an accessory structure, or on the premise of a residence, which is intended to produce an income. The occupation must be accessory to the primary residential use and in compliance with the applicable requirements of this ordinance.

01. A Home-Based Occupation permit will not be required for:

- A. Storage of tools used to generate off-premise income.
- B. Farm and forest uses.

C. Activities which have no material negative impacts including:

- 1. The making of objects in the residence which are sold elsewhere, including but not limited to: arts and crafts, quilting, sewing, or toys, or

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2. A mail order business, including but not limited to: selling Avon (or other cosmetics), Fuller Brush, toys, or other items, or
3. A service which is conducted within the residence, including but not limited to: computer programming, data entry, consulting, accounting, and bookkeeping, if
 - a. The business does not have any employees.
 - b. The business does not have a sign.
 - c. Customers do not come to the residence to conduct business.
 - d. The business does not produce noise, dust, odor, or other nuisance that is in excess of that which is usual and customary in the zone where the property is located.

FINDING 6.7: The Board of Commissioners finds, via evidence presented, that as this bed and breakfast must have customers come to the premises to do business, therefore, this application cannot meet the above criteria and must have a Home Based Occupation permit.

SECTION 35.025, REVIEW CRITERIA: Applications for Home-Based Occupations shall be found to comply with the following criteria:

01. **AREA:** A Home-Based Occupation shall be restricted to no more than 25 percent of the gross square feet of the principal residence and 2,000 square feet of accessory buildings normally associated with uses permitted in the zone in which the property is located EXCEPT:
 - A. Bed and Breakfasts are excluded from the square footage criteria.
 - B. Other uses that provide overnight accommodations in conjunction with a home-based occupation.

FINDING 6.8: The plan presented by the applicants called for a cabin (with no kitchen) for one pair of guests and a room in the primary dwelling for another pair of guests. The Commissioners find that as the proposed bed and breakfast is exempt from the square footage requirements and may use outbuildings, these criteria are met.

However, the Commissioners also find that as the primary residence has not yet been built, a home based occupation permit cannot issued as there is no home in place at this time.

02. PARTICIPATION/EMPLOYEES: A Home-Based Occupation shall employ, on site, no more than three full-time or part-time persons.

FINDING 6.9: The Board of Commissioners finds, via evidence presented, that James and Diana Hunter will be the only employees.

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03. COMPATIBILITY OF ACTIVITY: The residence, accessory buildings, or any new structures or reconstruction approved for use by the Home-Based Occupation shall conform to the area and shall not be non-conforming in terms of color, materials, design, construction, lighting, landscaping or the lack of landscaping. Also, the proposed use shall not unreasonably interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.

FINDING 6.10: As the Hunters have used weathered and natural materials in the construction of their cabin and plan to do the same for their residence, the Board of Commissioners finds, that the proposed and existing buildings meet the above criteria.

However, the Commissioners find that the proposed use would unreasonably interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located. See findings 6.4 and 6.5.

04. TRAFFIC GENERATION: The permitted activity should not generate a greater volume of vehicular traffic than is usual and customary in the zone where the property is located.

05. NOISE: The permitted activity shall not generate any noise that is in excess of that which is usual and customary in the zone where this property is located.

FINDING 6.11: Regarding paragraph (04), testimony at the hearings indicated a concern regarding increased traffic on Daggett Road and, as the intersection of Daggett Road with the Imnaha Highway is a blind intersection, the increased danger of accidents at this intersection.

Regarding paragraph (05), the increased activity associated with the proposed business would generate an increase in noise and, as this is open country, any noise would travel for a great distance. The Board of Commissioners finds that these criteria has not been met.

06. EQUIPMENT/RESTRICTIONS: Any equipment used in the activity and processes shall not create vibrations, glare, fumes, odors, or electrical interference that is detectable to normal sensory perception at the property lines.

07. HAZARDS: Within a residence; no equipment, process, or materials shall be used which will change the fire-rating or structure separation, fire wall, or ventilation requirements of the building shall be permitted. Attached garages shall not be considered part of the residence for the purpose of this ordinance. Accessory buildings, attached garages, or new structures permitted with the use shall meet all structural and life safety requirements for the use and activity. No hazardous materials shall be stored or used on the premise in quantities greater than customary for residential use unless specified and approved at the time of application. No Home-Based Occupation shall be permitted which presents a potential health or safety hazard to the area from discharges into the air, water, or ground; from surface run-off; or from increased need for vector control.

FINDING 6.12: The Board of Commissioners finds, via evidence presented, that the proposed activity will not create vibrations, glare, fumes, odors, or electrical interference. The Commission further finds that the proposed activity will not result in hazardous materials being stored or used on the

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premise in quantities greater than customary for use typical in the zone. Also, no discharge into the air, water, or ground which presents a potential health or safety hazard to the area will be permitted.

08. STORAGE AND USE OF YARD: All storage of materials and equipment associated with the Home-Based Occupation shall be enclosed unless specified and approved at the time of the application.

09. SIGNS: Signs shall conform to the provisions of Article 34, Signs.

10. PARKING: Parking shall be off-street and conform to the provisions of Article 33, Parking, Section 33.015(03).

FINDING 6.13: The Board of Commissioners finds, via evidence presented, that all business related storage will be enclosed, that the business signage will conform to Article 34, and that adequate parking with regard to Article 33 will be provided.

NOTE: The existence of Home-Based Occupations shall not be used as justification for a zone change [ORS 215.448(4)].

Additionally, from OAR 660-33-130(5):

Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:

1. (a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- (b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

FINDING 6.14: See Findings 6.4 and 6.5. Although conflicts would eventually be resolved in favor of resources uses, the possible conflicts mentioned in these findings could result in a significant change in accepted ranching practices, such as moving cattle to other locations or not spraying for noxious weeds. These changes would increase the cost of ranching on surrounding lands. The Commissioners find that these criteria are not met.

07. CONCLUSION:

All applicable criteria have not been met, and the Board of Commissioners denies this application.

APPEAL: This decision of the Board of Commissioners may be appealed to the Oregon Land Use Board of Appeals (LUBA) pursuant to ORS 197.380. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by LUBA within 21 days of the date of delivery of this decision.

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08. CONDITIONS OF APPROVAL:

The Board of Commissioners finds that as this request is denied, Conditions of Approval are not necessary to ensure the use or development complies with the applicable standards and criteria and is compatible with the zone.