

This meeting of the Wallowa County Planning Commission convened at 7:00 p.m. on Tuesday, September 24, 2013, with the following present:

MEMBERS: Ken Wick
Georgene Henson
Ramona Phillips
Sterling Shetler
Benjamin Curry

STAFF: Harold Black, Planning Director
Chrystal Allen, Permit Tech

OTHERS PRESENT:

Robert Reading Joseph Resident	John & Rebecca Lenahan Enterprise Residents	Chad Nash Enterprise Resident
Leo Beckwith Joseph Resident	Chet Hanks Enterprise Resident	Jeff Jenkins Dayton WA Resident
Skip & Aleta Melville Enterprise Resident	Rick Robinson LaGrande Resident	Mike Fluit Joseph Resident
Bryan Melville Enterprise Resident	Hanley Jenkins II Union Resident	Carrie Hermens Wallowa Resident
Blair Woodfield College Place WA Resident	Dina Jenkins Dayton WA Resident	Katy Nezbit Observer Reporter
Janie Burcart LaGrande Resident		

KEN WICK, CHAIRMAN: [Introduced members and staff and read agenda.]

[Please note that draft and adopted findings, staff reports, written testimony, and the official Planning Commission meeting audio record are available for review and/or purchase in the Planning Department.]

Public Hearing Procedure

Ladies and Gentlemen, I call the regular September 24, 2013 hearing session of the Wallowa County Planning Commission to order. My name is Ken Wick, and I am the Chairman of the Planning Commission for Wallowa County, Oregon. The members of the Planning Commission are appointed by the Wallowa County Board of Commissioners and we all serve as volunteers. Now I would like to introduce the current members of the Commission who are present tonight, and the staff of the Planning Commission, who have prepared the materials we will consider. (Does introductions of members and staff).

We conduct two types of hearings, legislative and quasi-judicial. Legislative hearings involve the

making of rules, either new ones or revisions to existing rules. In these cases we recommend our conclusions to your elected lawmakers, the County Commissioners, who always take the final action on legislative issues. Oregon law requires that persons who attend a land-use hearing be advised of certain rights and duties before the quasi-judicial hearing begins. We must tell you about approval criteria, the raise-it-or-waive-it rule, and the right to have the record left open. First approval criteria: the law requires the County to list the applicable County and State zoning criteria. A County Planner will do so in a few minutes. The law requires us to identify those standards which an applicant must satisfy in order for the County to approve an application. Each of the standards must be supported by substantial evidence in the record. Make sure to direct your testimony, claims, or evidence toward the criteria stated by the Planner or any other criteria which you believe applies to the application. Second, the raise-it-or-waive-it-rule. The law says that any issue which might be raised in an appeal of the decision after this hearing must be raised before the record of this hearing is closed. If you do not raise the issue before the record is closed, you cannot raise the issue on appeal. You must identify the issue clearly enough so that the County and all parties have an opportunity to respond to the issue. Third, the right to have the record remain open. The law grants the participant the right upon proper request to have the record of the hearing remain open for at least seven days. The request must be made before the conclusion of this hearing. The participant is the applicant or anyone who has submitted written or oral testimony regarding the application. The request may be made at any time during the initial hearing, but must be made prior to the time the Planning Commission Chair announces that the hearing is closed. Once the hearing is closed, there is no longer a legal right to have the record remain open for additional evidence.

Melville CUP#13-02 & Findings

Harold Black presents the Melville staff report and attachments.

Aleta Melville states her name and address for the record and explains that she has nothing further to add to the information outlined in the staff report.

Ken Wick asks if Mr. Melville works as a rancher.

Aleta Melville replies that yes, he works at the Collens Ranch here in Wallowa County and also helps with haying and irrigation on a ranch in Baker.

Testimony

No oral or written testimony presented.

Benjamin Curry moves to close the hearing.

Ramona Phillips seconds the motion. [Motion passes 5-0-0]

Benjamin Curry moves to approve the application.

Ramona Phillips seconds the motion.

Harold Black states that by allowing family members to live on the farm/ranch it helps keep the operation in the family.

Ken Wick states that this application meets all the Goal and clustering requirements for development.

Motion passes [5-0-0]

Georgene Henson moves to approve the Melville findings as presented

Ramona Phillips seconds the motion. **[Motion passes 5-0-0]**

Hayes APP#13-01

The **Planning Commission** discuss the possibility of reopening the hearing.

John Lenahan interjects and asks if he can speak before the Planning Commission makes their decision to reopen the hearing. Lenahan was informed by **Chairman Wick** and **Director Black** that the hearing is currently closed and, if reopened, he will have an opportunity to provide testimony at that time.

Benjamin Curry moves to reopen the hearing and to allow new testimony.

Georgene Henson seconds the motion. **[Motion passes 5-0-0]**

At this time the following documents were entered into the record:

- Email dated September 24, 2013 submitted by Janie M. Burcart with an attached document titled "Wallowa County Partitions LP#13-10 & LP#13-11 Planning Commission Appeal Applicants Testimony"
- Email dated September 24, 2013 submitted by Elaine R. Albrich with attached revised Findings of Fact, revised Minutes of the July 30, 2013 Planning Commission meeting, a letter written by Elaine Albrich dated September 24, 2013, and a letter written by John Lenahan dated September 24, 2013.
- Title Report prepared by the Wallowa Title Company dated May 29, 2013.
- Letter written by James Monteith & Nancy Duhnkrack dated September 23, 2013
- A colored NRCS Soils Class Map titled "Hayes M49 partition" dated May 26, 2011
- Goal 5 Resource Overlay zone Article 44.035A, Page 8 of 17
- ORS 215.429 "Mandamus proceeding when county fails to take final action on land use applications within specified time" language which describes the 150 day ruling requirement.

Testimony

Janie Burcart states her name and address for the record and explains that she represents Mary Hayes and Eastern Oregon Property Development. Burcart requests that the Planning Commission hear LP#13-10 and LP#13-11 separately as both applications were made on separate dates, involve separate properties, and are zoned differently.

The **Planning Commission** discuss Burcart's request and agree to allow the applications to be heard separately. Further, Chairman Wick informs John Lenahan that he can now testify if he so chooses.

John Lenahan explains that his legal counsel is absent due to family obligations and that he will hold his testimony for later hearings as this hearing was not properly noticed and is not authorized under the County ordinances, however, under direction from his attorney, will read his letter and a letter composed by his Attorney Elaine R. Albrich, both dated September 24, 2013, into the record once LP#13-10 & LP#13-11 have been reviewed.

The **Planning Commission** discuss their previous decision to allow each partition to be heard separately and agree, since the Lenahan and Albrich letters address both partitions, they will deliberate the partitions at one time once all testimony has been presented.

Janie Burcart proceeds to provide testimony in support of the approval of both LP#13-11 and LP#13-10 as outlined in her testimony document titled "*Wallowa County Partitions LP#13-10 & LP#13-11 Planning Commission Appeal Applicants Testimony*".

[Please note that this document is available for review in the Planning Department]

Hanley Jenkins states his name and address for the record and discloses that he is the Union County Planning Director and served two terms, for a total of eight years, on the Oregon State Land Conservation and Development Commission. Jenkins presents pages 8 & 9 of the Wallowa County Partitions LP#13-10 & LP#13-11 Planning Commission Appeal Applicants Testimony document. Jenkins further states that, since Wallowa County does not have established language in their ordinances or regulations granting them the right to impose easements, they do not have the authority to require an easement for the Cove ditch. Jenkins states that under proposed findings of fact 7.05, the applicant can find no local, State, or Federal law granting the Planning Commission the authority to impose conditions for unrecognized significant Goal 5 resources or that allows the Commission to require special considerations for the Cove ditch, and further states that this land is not designated as High Value farmland and is therefore exempt from the M49 condition which prevents homes from being located on said designated land.

The **Planning Commission, Staff, and Jenkins** discuss the requirements under M49 as they relate to High Value farmland vs farmland and the Planning Commission's limited authority with respect to

DLCD approved M49 claims and subsequent applications.

Hanley Jenkins further clarifies that under M49, the Planning Commission must only impose conditions if it is necessary to abate a nuisance, to protect public health and safety, or to carry out federal law.

Blair Woodfield states his name and address for the record and explains that an easement for Cove ditch will be addressed before they sell parcel 2.

John Lenahan states his name and address for the record and explains that he has been advised by his legal counsel that this hearing is not legally authorized by the Wallowa County land use ordinances and will not provide testimony, however, will provide responses to previous testimony and will read his letter and a letter composed by his Attorney Elaine R. Albrich, both dated September 24, 2013, into the record. Lenahan feels that the Planning Commission can not change their decision, which they rendered at the July 30, 2013 hearing and the purpose of this hearing is to approve the findings and to finalize the order, not to reopen the hearing without legal basis. Lenahan states that in response to previous testimony, he reiterates that there are no written easements for Cove ditch however, there is a prescribed easement which has existed for over 100 years, as this ditch has been in operation longer than that, and has been shown on maps of all kinds. Lenahan feels that the Cove ditch is an essential irrigation, domestic, and stock water conveyance for several hundred acres and feels that there has been no reassurance that an easement will be granted for non Hayes properties that have water rights to the Cove ditch and rely on that conveyance. Lenahan states that he did not provide new testimony relating to the Cove ditch or the 60' road easement but merely drew attention to the previously submitted information. Lenahan feels that it remains to be discovered whether the Planning Commission has the authority to designate where the parcels might be sited to minimize interference with actively farmed land within the Hayes boundaries. Lenahan explains that he received new material three working days ago and received draft minutes 24 hours ago, as of this afternoon, which allowed for very little time to prepare for any discussion on the content of the findings. Lenahan proceeds to read his letter and a letter composed by his Attorney Elaine R. Albrich, both dated September 24, 2013, into the record

[Please note that these documents are available for review in the Planning Department]

Georgene Henson moves to deny the appeal and instructs Staff to create findings showing approval of partitions LP#13-10 & LP#13-11 with suggested conditions, however requests Staff consult legal counsel regarding proposed conditions.

Benjamin Curry seconds the motion [Motion passes 5-0-0]

Other Business

Carrie Hermens, Staff, and the Planning Commission discuss farm stays and agree that more research and a business plan should be obtained before this issue can be brought to the Planning Commission for their review.

Minutes

Ramona Phillips moves to approve the minutes for the July 30, 2013 Planning Commission meeting as presented.

Georgene Henson seconds the motion. **[Motion passes 5-0-0]**

There being no further business before the commission, the meeting was, on motion duly made and seconded, adjourned at 10:00 p.m.

Chrystal Allen
Permit Technician

Date