

CROOK COUNTY PLANNING COMMISSION MEETING
September 8, 2021

Meeting minutes are not a complete representation of discussions at the meeting. An audio recording is available from Crook County Community Development at plan@co.crook.or.us or (541) 447-3211.

Crook County Planning Commission Chair Michael Warren II called the meeting to order at 4:04 p.m. The meeting was conducted by WebEx (a call-in service) and in-person at the Crook County meeting room. Commissioners attending the meeting in person were Chair Michael Warren, Susan Hermreck, Laquita Stec, *Pro Tem* Commissioner Lawrence Weberg and Gary Bedortha. Commissioner George Ponte attended via WebEx. The following County staff was present at the meeting: Community Development Director, Will Van Vactor; Planning Manager, Brent Bybee; and Senior Permit Tech, Hannah Elliott and Planner, Katie McDonald. Planning Permit Tech, Jennifer Orozco participated via WebEx.

Parties in Attendance:

See sign in sheet

Participating via phone WebEx:

See sign in sheet

MINUTES

• **August 11, 2021 minutes**

Planning Commissioners have the minutes from the August 11, 2021 hearing before them.

Chair Warren asked for any comments, additions, or corrections on the minutes?

Commissioner Bedortha moved to accept the minutes as presented.

Commissioner Stec seconded the motion.

Chair Warren called for the vote?

Commissioner Ponte- aye

Commissioner Hermreck- aye

Commissioner Bedortha- aye

Commissioner Stec- aye

Chairperson Warren- aye

PUBLIC HEARING

Chair Warren called the Public Hearing to order at 4:10 pm.

Chair Warren read the opening statements, asked for questions on process, and introduced the item for consideration:

First Public Hearing Item on the agenda which is the **deliberation only of Planning File No. 217-21-000510-PLNG**; an appeal of a relative farm help dwelling approval issued under Planning File No. 217-21-000431-PLNG.

The Planning Commission heard testimony on the application on August 11, 2021, closed the public hearing, left the record open for the parties to submit additional evidence, and continued the hearing to a time and date certain for Planning Commission deliberation only.

The Planning Commission will be evaluating the request and appeal against the following applicable criteria:

Crook County Code, Title 18 Zoning, Chapter 18.16 Exclusive Farm Use Zone, EFU-2 (Prineville Valley- Lone Pine Area) more specifically:

18.16.015(3)	Conditional Uses Permitted
18.172.110	Appeals
18.16.075	Development standards

Crook County – Prineville Area Comprehensive Plan, Chapter III, Land Use, Agricultural Objectives-Policies.

Crook County-Prineville Area Comprehensive Plan,

Oregon Revised Statute 215.203

Oregon Revised Statute 215.283(1)

Oregon Administrative Rules 660.033.130

Chair Warren asked if any of the Planning Commission members had a conflict of interest or bias.

Commissioner Ponte- no

Commissioner Hermreck- no

Commissioner Bedortha- no

Commissioner Stec- no

Pro Tem Commissioner Weberg mentioned that anyone who has been in the area long enough will have shopped at the Prineville Men’s Wear store and are familiar with the Lane’s.

Chair Warren - no

Commissioner Hermreck stated that because she was not in attendance for the first hearing regarding the Lane application, she would abstain from participating in the deliberations.

Chair Warren asked if any of the Planning Commission members had any ex-parte contact with the Applicant or any member of the public.

Chair Warren stated that there was a site visit on August 11.

Commissioner Ponte- no

Commissioner Hermreck- no

Commissioner Stec- no

Pro Tem Commissioner Weberg - no

Chair Warren - no

The Chair then asked if any member of the public, including those participating by phone, wished to challenge any member of the Commission. No members of the public stated a challenge.

Chair Warren read the proceedings for deliberations:

The Planning Commission will consider information in the record when deliberating.

Chair Warren will call for a motion for deliberations:

1. Approve with proposed findings and conditions drafted by Staff.
2. Approve with modifications to proposed findings and conditions with specific direction to staff regarding modifications.
3. Denial of proposed relative farm help dwelling application

After deliberations a vote is called for the motion on the table.

If decision is reached, please direct staff to prepare the final decision and the Chair will sign within 10 days outside of a meeting.

Chair Warren then asked the Commissioners for any questions of staff.

Katie McDonald, Planner stated that the appeal file is actually 217-21-000513 not 510 as was mentioned earlier.

Chair Warren noted since there are no questions for staff, he would entertain a motion.

Commissioner Bedortha made a motion to accept the amended staff report for 217-21-000513-PLNG the appeal of 217-21-000431-PLNG and approve the application.

Commissioner Stec seconded the motion.

Chair Warren called for discussion

Commissioner Ponte clarified the motion as approving the application for the family farm help dwelling.

Chair Warren clarified that the motion was to accept the amended staff report for approval of the relative farm help dwelling.

Commissioner Stec stated that the criteria had been met.

Commissioner Bedortha agreed with Commissioner Stec and felt the concerns had been addressed.

Pro Tem Commissioner Weberg agreed that the criteria had been met.

Chair Warren stated that the amended staff report was helpful with the items that had been discussed.

Chair Warren then called for the vote.

Commissioner Ponte - aye

Commissioner Stec - aye

Commissioner Bedortha -aye

Pro Tem Commissioner Weberg - aye

Chair Warren – aye

Motion Passes 5-0-0

Chair Warren then directed staff to prepare the final decision and the Chair will sign within 10 days outside of a meeting.

He asked for a motion to close the public hearing on 217-21-000513-PLNG

Commissioner Ponte so moved

Commissioner Bedortha seconded the motion.

Commissioner Ponte - aye

Commissioner Stec - aye

Commissioner Bedortha -aye

Pro Tem Commissioner Weberg - aye

Chair Warren – aye

Motion passes 5-0-0

Commissioner Ponte left the meeting.

Chair Warren called the second item on the agenda (public hearing) to order and introduced the application.

The Planning Commission will consider **Planning File Number 217-21-000556-PLNG** –a Vested Right Review for a Conditional Use Permit (C-CU-2229-04) to operate a minimart/gas station, based on improvements that have been made to the property. The subject property is located at 11301 SE Juniper Canyon Road, Prineville Map & Tax Lot 16S 16E Section 12, Tax Lot 409.

The Planning Commission will be evaluating the request against the following applicable criteria:

Crook County Code, Title 18 Zoning, Chapter 18.08 Definitions, Chapter 18.172 Administration Provisions; Decision C-CU-2229-04 Conditional Use Approval for a Gas Station/Mini Mart; Decision MS 14-0135 Placement of Sign for Granny’s Rocket Espresso.

Chair Warren read the opening statements, including process for the hearing, and asked for questions on process.

Chair Warren asked if any of the Planning Commission members had a conflict of interest or bias.

Commissioner Hermreck- no

Commissioner Bedortha- no

Commissioner Stec- no

Pro Tem Commissioner -no

Chair Warren - no

Chair Warren asked if any of the Planning Commission members had any ex-parte contact with the Applicant or any member of the public.

Commissioner Hermreck and Commissioner Bedortha did a drive by of the site, she stated that they did not stop and get out of the car or talk to anyone.

Commissioner Stec- no

Pro Tem Commissioner Weberg -no

Chair Warren - no

The Chair then asked if any member of the public, including those participating by phone, wished to challenge any member of the Commission. No members of the public stated a challenge.

Chair Warren asked to hear from staff.

Will Van Vactor, Community Development Director, asked if Commissioner Hermreck saw anything in the drive by of the site that may influence her decision.

Commissioner Hermreck stated no.

Commissioner Bedortha stated no.

Van Vactor then provided a background for a Vested Right determination and identified the lack of criteria outlined in Crook County Code. He stated that a case from 1983 laid out a 6 factor test and then described the factors.

Commissioner Hermreck asked if the Vested Right is acknowledged does it transfer with the property.

Van Vactor stated that the application includes a request it not be revoked. Oregon courts have indicated that they could be lost, but he would like to check with legal counsel for sure regarding the specific case. The application included mention of potential takings. He continued to explain the specifics of a Vested Right ability to be lost.

Brent Bybee, Planning Manager stated that part of the Vested Right is the Conditional Use permit that was granted in 2004, that is subject to 18.172.100, which deals with the revocation of a permit.

Van Vactor stated one of his concerns is the age of the approval and the lack of development.

Bybee asked if there were any questions regarding the legal framework.

Chair Warren stated that it appears as if the applicant had received extensions but the approval expired in 2017.

Bybee responded yes it was expired.

Commissioner Hermreck asked why the applicant was trying to vest an expired permit.

Bybee responded that staff had suggested coming in with a new permit and the applicant came in with an application for a Vested Right, indicating that the project was vested prior to the expiration.

Chair Warren asked for clarification on the expiration of the Conditional Use approval.

Bybee explained the dates of the application.

Van Vactor stated that Vested Right generally occurs when zoning has changed and no zone change has taken place. He stated that Crook County has utilized the process for substantial construction and brings the question of is it an appropriate use of a Vested Right process.

Commissioner Hermreck asked if the Commission treats it as not a new application and if neighbors come in, and it gets appealed, is it the correct process. Would it come back to them with direction that it should have been treated as a new CUP.

Bybee stated that Vested Right is separate from the Land Use process and more from Common Law.

Van Vactor stated the current code generally has a condition and question of substantial construction for completion and that is what the Applicant is asking by utilizing the Vested Right application.

Commissioner Bedortha asked what in staff's opinion triggers completion for the conditional use.

Van Vactor responded that is a great question, staff has struggled with it and other Conditional Use approvals have been more specific on when the conditions are met.

Commissioner Bedortha followed up with asking the question again and referencing other CU approvals in the County.

Chair Warren stated that generally look at the cost.

Commissioner Bedortha stated that at some point the conditions are met and the use is going. His concern is that it has been 17 years, expired for 2 years and that is why it is coming to the PC now. His question is what makes a Conditional Use done or not done and how do they get to that point.

Bybee stated that those timeframes are now included in the conditions, however the original approval did not speak to any timeframes.

Commissioner Bedortha then stated there was a Commissioner present who signed off on the original approval.

Van Vactor described the process for the Conditions of Approval and what triggers approval, generally it is the building permit and certificate of occupancy.

Commissioner Bedortha stated that *Pro Tem* Commissioner Weberg was one of the signers on the original approval and may be able to provide a little insight.

Pro Tem Commissioner Weberg stated that the approval was given because the applicant had met the criteria for approval. He stated that historically they looked for any effort made to start the project and not let it drop, and then staff would approve it.

Van Vactor stated that his research has shown that completion of a driveway was approved as a vesting, therefore consistent with what *Pro Tem* Commissioner Weberg stated.

Bybee continued with history of the application, uses, improvements and timelines.

Commissioner Bedortha asked if the original approval was for a mini-mart and gas station.

Bybee stated the review title read mini-mart, gas station but through the decision there was mention of the coffee drive thru. He continued with timeline history including extensions.

Chair Warren clarified that four extensions is the limit.

Commissioner Stec asked if it has always been four.

Bybee said he could not speak to code changes over the years, but currently the limit is four.

Commissioner Hermreck stated if the application is approved tonight could they get another extension, no, because regardless of time it has been vested.

Van Vactor responded that is the Applicant's request. Staff's opinion is that it could be lost if the project was abandoned. He continued with explanation of the differences faced with a Vested Right application.

Commissioner Bedortha asked if they could condition a Vested Right.

Van Vactor responded that is one of the questions before them.

Commissioner Bedortha asked about the notice for this application.

Van Vactor replied that the property owner notice went out the statutory 250ft from the property lines.

Bybee stated this application was before the Planning Commission because the original decision was from the Planning Commission and notices were sent out.

Commissioner Stec asked if the Planning Commission needed to decide if the improvements made to the property now were applicable for the original conditional use permit and what were required and /or proposed.

Van Vactor and Bybee stated that the original conditions were applicable and Bybee listed out some of the conditions.

Commissioner Stec asked about process for the use and expired permit.

Bybee stated that the use would be approved and conditions would be carried forward.

Chair Warren then stated that to answer Commissioner Bedortha's question, you couldn't add to the conditions.

Bybee stated if a modification was applied for then there is a potential more conditions could be added.

Commissioner Stec then asked if it is an either or: a vested rights approval is the original conditional use or a modification of the original. Would it then have to come before the Planning Commission and new conditions could be imposed.

Bybee responded yes.

Commissioner Bedortha then said they could not do a modification on an expired permit and that is why they have a Vested Right application before them.

Bybee responded that was correct and staff originally suggested a new conditional use application.

Commissioner Stec said that in May of this year staff advised to come in with a new conditional use application and the Applicant chose to file a Vested Rights application instead of a new application or modification.

Chair Warren asked if prior to expiration would the vested application be handled internally.

Van Vactor responded that because the original decision was through the Planning Commission, staff felt this should be heard through the Planning Commission.

Chair Warren said it appears there was enough money put in it could have gone.
Van Vactor said that was for the Commissioners to decide and deliberate on.

No further questions for staff.

Lisa Andrach, Attorney for the Applicant, spoke to the history of Vested Rights and the application before the Commission. She said that when someone has done enough under the 6 factors for a Vested Right determination and then if that is taken away, they would be due just compensation. She also stated that review is done in Circuit Court for evidence of compliance to the 6 factors. Andrach went over the conditions of approval and explained how the Applicant has met those requirements.

Chair Warren asked for questions from the Commissioners.

Commissioner Stec asked about the supplemental burden of proof in that it states the 2009 extension, the improvements prior to 2011 and there are receipts dated from 2004 all the way through 2021 all included as part of the application.

Andrach responded that her position is the Applicant was vested prior to the extension from 2010 and that he had met the conditions at that time.

Commissioner Stec replied that he had done what he needed to do at that time, so why did it keep getting extended.

Andrach responded that she didn't know, perhaps because it was not complete.

Chair Warren then asked if it was possible that the direction was given to the Applicant to get an extension rather than a Vested Right approval.

Andrach responded that perhaps because it was not a land use approval it may not have been suggested. He hasn't completed the project. She stated that had he come to her in 2010, they would have been applying for a Vested Right and no more extensions. She said that the Applicant is up and running the coffee kiosk everyday; which adds another layer of complexity to the application in that, if the Vested Right is to be denied, what happens to the coffee kiosk.

Chair Warren stated that there is an active business going on.

Andrach stated that the kiosk has all the proper building permits and is up and running. What would happen to that, would it become a non-conforming use.

Commissioner Bedortha then asked about the three-part application, mini-mart, gas station and coffee kiosk. He went on to ask if it was three-part approval, then would the applicant have meet only one of the three parts.

Andrach responded that is one way to look at it.

Chair Warren then asked for clarification of Commissioner Bedortha's reasoning for vesting, and he doesn't think the Applicant would need to meet all three components.
Commissioner Bedortha agreed.

Andrach stated that if at some point the Applicant did not do anymore work on the property, then the Vested Right could be lost. Her point is that the County could not revoke it without it being abandoned.

No further questions from Commissioners.

Richard Bartels, Applicant, Property Owner spoke about the timelines and improvements that he has made over the years.

Pro Tem Commissioner Weberg commented that the culvert which was put in was extremely large and was part of the subdivision but took care of the Dry Creek runoff.

No further questions from Commissioners.

Chair Warren stated that no other parties were present.

Chair Warren asked if the applicant would waive their seven-day right.

Andrach stated she would waive the seven-day final rebuttal.

Bybee asked if there were further questions of staff.

Pro Tem Commissioner Weberg asked staff about any legal issues which may have come up during the testimony which the Applicant should respond to or hasn't been discussed.

Van Vactor stated that one of his notes is in response to applicant's statement that Vested Right decisions are not Land Use decisions, but that LUBA has heard one recently. Although vested right determinations under M37 & M49 were not Land Use decisions there have been some vested right determinations that are.

Bybee added that he had questions if the Vested Right was denied what would happen to the coffee kiosk. He wasn't sure if that use would expire or if that portion was established.

Van Vactor added that was a good question and that may not be allowed.

Commissioner Stec stated that the Espresso Stand will stay and was included in the original land use permit and therefore the original land use permit was met.

Bybee added that was met for that portion.

Commissioner Stec added that the original decision did not include that language as an all or nothing.

Discussion among the Commissioners regarding the timeline, construction of the coffee kiosk, expiration dates, and uses on the site.

Commissioner Bedortha asked if they could offer a final extension. He followed up with should County Counsel be addressing this, because it is not a Land Use issue.

Van Vactor responded the task in front of the Planning Commission is to look at the 2004 decision and have they met and done enough to vest the Conditional Use permit. He acknowledged the legal questions which were raised. It may require further research and this is a complex issue. The Planning Commission would go through the 6 factors and has the applicant met them or not.

Chair Warren stated that the infrastructure put in for the coffee shop ties into the site as a whole and is a substantial construction. The approval was not phased and was not dependent on one developing over another.

Commissioner Bedortha said that the Conditional Use has an end date and if you want more time or want more then a modification is asked for. Should they consider the application because it is expired.

Van Vactor responded that this application is a Vested Right for 17 years without substantial construction and this is a very convoluted case with complex analysis.

Commissioner Hermreck stated that the use is not a problem but may be setting a precedent about approving something that has been expired for two years. She asked would it not be better or cleaner for coming in a new application.

Commissioner Bedortha asked for direction from County to make this a cleaner process.

Van Vactor stated that he agreed with staff's letter recommending a new Conditional Use application.

Bybee added that a new application would be the most legally defensible, as a modification would also be for an expired permit.

Discussion regarding the Planning Commission options and potential conditions from the script took place. Bybee responded to the proposed conditions within the staff report.

Commissioners discussed and asked staff to go to County Counsel for answers to specific questions.

Chair Warren asked to hear from the Applicant.

Andrach stated that she will not waive the final argument. She will comment on any legal review.

Discussion around substantial construction and expiration took place with Commissioners and staff.

Commissioner Hermreck moved to continue meeting and County Counsel to respond to the specific questions brought up in tonight's meeting.

Chair Warren asked if it would helpful to have the specific questions listed in the motion.

Bybee stated the questions he had written down from the Commissioners for review:

Can there be an end date?

Can there be expiration date as a condition?

Is it transferable?

Is it setting precedent?

Should the Planning Commission be deciding on something that is expired?

Also review the expiration language at the end of the original decision.

Chair Warren asked about if there is a definition in the code of when it can be vested versus completion.

Commissioner Bedortha asked about the original decision language and the difference of language regarding the six extensions.

Commissioner Hermreck asked to have the letter from Ann Beier be reviewed as well.

Commissioner Hermreck amended her motion to include all of the questions posed to Legal Counsel.

Commissioner Hermreck amended her motion to include a date and time certain of October 13, 2021 at 4pm.

Commissioner Stec seconded the motion.

No Discussion

Chair Warren called for the vote.

Commissioner Hermreck- aye

Commissioner Bedortha- aye

Commissioner Stec- aye

Pro Tem Commissioner Weberg - aye

Chairperson Warren- aye

Motion Passes – 5-0-0

Staff provided an update for upcoming meetings.

Commissioner Hermreck moved to adjourn.

Commissioner _____ seconded the motion.

No Discussion

Commissioner Hermreck- aye

Commissioner Bedortha- aye

Commissioner Stec- aye

Pro Tem Commissioner Weberg - aye

Chairperson Warren- aye

Motion Passes – 5-0-0

Chair Warren closed the meeting @ 6:28 p.m.