

CROOK COUNTY PLANNING COMMISSION



October 10, 2018

Crook County Planning Commission Chairperson Michael Warren II called the hearing to order at 6:00 p.m. Commissioners present in addition to Warren were Laquita Stec, George Ponte, Bob Lundquist, Susan Hermreck, Gary Bedortha, and Commissioner Pro Tem Lawrence Weberg.

Crook County Planning staff present were Planning Director Ann Beier and Planner Katie McDonald. County Attorney Jeff Wilson was also present.

Warren led all persons present in saying the Pledge of Allegiance.

OPENING STATEMENTS

Warren explained the Commission procedures. He called upon the Planning Commissioners present to state any conflicts of interest or ex parte contacts. He asked if any member of the public wished to challenge any of the Commissioners concerning any item on the agenda.

Conflicts of Interest: Bedortha stated that he had done business with the applicant for the second item on the agenda, but said that it would not affect his judgement.

Lundquist said that he knew the applicant for the second item, but said that it would not affect his judgement.

Ex Parte Contacts: Hermreck stated that she had been present at the County Court hearing on the first item on the agenda.

Lundquist stated that he had been present at the County Court hearing.

Warren said that he had received a call concerning the first item, but had told the caller that he could not discuss it.

Challenges: None.

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APPROVAL OF MINUTES

The Commissioners reviewed the draft minutes for the meeting of September 5, 2018.

Stec moved for approval of the minutes.

Hermreck seconded.

The Commissioners approved the motion by a vote of 7-0.

PUBLIC HEARING

The Crook County Court voted unanimously to remand the decision of the Crook County Planning Commission denying conditional use approval for a residential care facility in the Suburban Residential SR-1 zone, finding that the Planning Commission's decision was based on a misinterpretation of applicable law. The Court found that the Commission erred in limiting its analysis to the impact of the proposed use on the neighborhood as it currently exists, rather than the impact of the proposed use compared to outright permitted uses which could be established on the property, as required by Crook County Code (CCC) 18.160.020(2).

Deborah Roe (owner) submitted a conditional use application to operate a residential home facility at 3391 NW Knob Hill Way, Prineville, Oregon – Record Number 217-18-0000096-PLNG.

Roe is presently operating a residential home (up to 5 residents) in an existing duplex unit. She requested conditional use approval to convert the entire existing structure into a single residential unit to be occupied by a residential care facility for up to 15 residents, subject to the licensing requirements of the Oregon Department of Human Resources. A residential care facility is permitted as a conditional use in an SR-1 zone, under CCC 18.48.020(14), and is reviewed under CCC 18.160 (conditional uses). The property is identified as T 14 S R 16 EWM, Sec. 30A TL 3509.

Beier said that the present hearing was the third time the item had been before the Commission. She said that the Commission had held two previous hearings, and that staff had met with neighbors and with the applicant. She said the Commission had denied the application, and that it had been appealed by the applicant to the County Court on July 25, 2018, and remanded because of an error in the decision process.

County Attorney Jeff Wilson said that the County Court had heard the case on the record, and had received testimony. He said the Court had been concerned about the Commission deliberations. The Commission had compared the proposed use to the current use of the property, rather than to possible uses of the property which could be approved outright. Wilson said that the Court's policy is to remand with instructions

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in case of error, and that the Court wants the law applied. Wilson advised that testimony at the present hearing be limited to that analysis, with other issues not being considered. He said that most of the issues put into the record by the opponents had been heard and rejected by the Court.

Beier said that she had attached the Court decision to the staff report presented to the Commissioners.

Bedortha asked how findings for a conditional use differ from those for an outright use.

Wilson said that the Commission must not compare the impact of the proposed use of the property with that of the current use, but must compare it with the impacts of prospective outright uses. He said that two residential homes for up to five residents each could be permitted on the property outright.

Beier said that the property could be developed for many outright uses, including residential homes for up to five residents each.

Bedortha asked if staff had reviewed potential outright uses.

Beier said that they had. She said that listed standards can be applied to a site plan review, but that conditions cannot be imposed.

Hermreck asked if combining the two lots comprising the property could be a condition of conditional use approval.

Wilson said that it could be.

Hermreck asked if the use could be passed to a subsequent owner of the property.

Wilson and Beier said that it could not be.

Wilson said that the applicant had agreed to that condition.

Warren asked if a proposed outright use would not be brought to the Commission.

Beier said that was the case.

Stec asked if the lots would remain combined if the use follows the operator.

Wilson said that was the case.

Lundquist asked what the impact would be if the property did not have sufficient area for a drainfield.

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Beier said that septic approval would be required for any use of the property. She said that many applications had been received for parcels with poor septic conditions. She said that a way can usually be found to meet the requirement for a septic system.

Will Van Vactor offered testimony as a representative of the applicant. He said that the only issue which could be considered was comparison with potential outright uses. He said that a residential care facility can be approved as a conditional use, and can have up to fifteen residents, while residential homes can have only five residents. He said that one of the two duplex units on the property is presently used for a residential home. He said that the Oregon Department of Health and Human Services has indicated that a residential home is an appropriate use for a duplex unit, and a second residential home could be established in the other duplex unit on the property. He said that ORS 197-663 outlines legislative findings for residential facilities, and should be considered by the Commission. He said that Subsection (2) of the ORS indicates the need for residential facilities, and that Subsection (4) indicates that residential facilities are appropriate uses in residential zones. He said that Subsection (5) states that residential facilities should be part of a community. He said that Subsection (2) of CCC 18.160.020 describes outright uses in the SR-1 zone, which include duplexes and residential homes for up to five residents. He said that two residential homes could be approved outright on the property, with a total of ten residents, while a residential care facility could have up to fifteen residents. Van Vactor said that approval of a residential care facility would avoid duplication of staff and deliveries, which would occur with two residential homes. He said that a residential care facility would have less impact. He said that the Commission can apply conditions such as a deed restriction to a residential care facility as a conditional use, which is not possible with residential homes as outright uses. He said that the applicant has agreed to a deed restriction. He said that other potential outright uses would have greater impacts than a residential care facility. He said that neighbors have expressed concerns about traffic, which would be less with a residential care facility.

Van Vactor said that the same situation applies to parking. He said that the applicant has agreed to construct two separated parking lots to reduce impact. He said that state regulations require a loop driveway for a residential care facility, which would have less impact than two separate driveways. He said that a residential care facility would result in no increase in runoff on the property.

Van Vactor said that the existing residential home has generated only one police call in the past seven months. He said that previous multiple police calls had been generated by squatters on the property. He said that the applicant has a letter from the Department of Health and Human Services which indicates that the use of duplex units for residential homes is not prohibited by state regulations. He said that all of the other criteria have been met, and that the Commission should apply the law as directed by the County Court. He said that other potential uses would have greater impacts.

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Ponte asked how many visitors the existing residential home has.

Taylor Henderson offered testimony as a representative of the applicant. She said that it has a variable number of visitors, but fewer than other residential homes.

Ponte asked if the number of visitors would vary with the number of residents.

Van Vactor said that is the case.

Hermreck commented that the residential care facility would have a special license for residents with special needs.

Taylor Henderson said that is the situation with the present residential home.

Lundquist asked if the needs of residents are different for residential homes and residential care facilities.

Van Vactor and Taylor Henderson said that the needs are the same.

Beier said the two kinds of facilities have the same kind of residents, but a residential care facility would be more efficient.

Weberg asked if the Commissioners could ask questions concerning residents with special needs.

Warren said that was not permissible under the County Court's instructions.

Hermreck said that the present residential home is a special care facility for people with nowhere else to go.

Taylor Henderson said that the proposed facility would continue to serve such residents.

Wilson said this cannot be considered in accordance with the Court's instructions.

Weberg said this was a question of good neighborship.

Wilson said that the application could only be considered in accordance with the Court's instructions.

Beier said that mitigation of impacts must be considered.

Bedortha asked if approval must be separate from conditions.

Wilson said that conditions must be considered after approval.

Ponte asked what the County role would be in regulating the facility.

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Beier said that septic, road approach, and building permits would be required. She said that there would be few changes from the present situation.

Stec asked if these permits would be issued by staff.

Beier said that is the case, and that there would be no notice of issuance of permits.

Van Vactor said that he had prepared draft conditions.

Weberg asked if the applicant had agreed to the conditions.

Van Vactor said that the applicant had.

Weberg asked if the listed conditions came from statutes.

Van Vactor said that some had, but that he had listed additional conditions to minimize the impact of the facility to less than that of other outright uses.

Warren asked if there had been any state agency contacts.

Beier said that a letter of support had been received from Health and Human Services.

Van Vactor said that other proponents of the proposal wished to speak.

Lance Henderson asked if public comment was not allowed.

Warren said that public testimony must be limited to the criteria of the Court's remand. He said that testimony concerning other issues could not be permitted.

Lance Henderson asked if character testimony would be permitted.

Beier said that the Commission must apply judgement in accordance with the remand criteria.

Warren asked for proponent testimony.

An audience member indicated that her father was a resident, and that she wished to present character testimony.

Warren said this could not be considered.

Beier said that character testimony was included in the record.

Patricia Fenn said that she had presented a letter which she wanted to read.

Hermreck said that the letter was in the Commissioners' packets.

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Warren asked what the letter referred to.

Fenn said that the facility was to be located on a dead end road, where impact would be minimal. She said that she had seen residential facilities where residents were tied to chairs.

Warren said this testimony was not relevant.

Lance Henderson said that he wanted to discuss the context regarding the applicant.

Warren said that this was not relevant at the present hearing.

Lance Henderson said he couldn't testify before. He asked if he could testify later.

Warren said the testimony must be relevant.

Lance Henderson said that the applicant had a specific mission. He said he wanted to talk about what his mother was about. He said there had been a paradigm shift, and that decisions for tomorrow were being made today. He said that children are customers.

Wilson said this testimony was irrelevant. He said that he respected the speaker's position, but that the record must not be opened too far.

Warren asked for opposition testimony.

Richard Pauls offered opposition testimony. He said that the property was directly above his property, and that his family had been subjected to screaming.

Warren said this was not relevant. He said that testimony concerning the existing residential home was not relevant.

Pauls asked if he could call the police.

Warren said that the Commission could not advise him.

Weberg asked Pauls if he had called about water.

Pauls said that he had. He said that police calls and water use would quadruple.

Beier commented that the applicant proposed to send laundry out to minimize water use.

Melissa Case said that there had been negotiations with state agencies regarding residents with special needs. She said that residential facilities could include training

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or treatment centers, which would bring in more people with problems. She said that the duplex on the property is a single structure, and should have no more than five residents as an outright use. She said the applicant had called the police concerning employees. She said the number of deliveries would not change.

Stec asked what impacts Case was addressing.

Case said that ten residents could not be permitted as an outright use. She said it would be limited to five residents.

Beier said that a letter had been received from Health and Human Services indicating that duplex units could accommodate separate residential homes with five residents each.

Stec asked if this was a relevant issue.

Wilson said that the Crook County Code does not prohibit separate residential homes in duplex units, and that this is authorized by Health and Human Services.

Beier said that the Legislature has left interpretation of the regulations to Health and Human Services.

Dave Holmes said that he is concerned about Health and Human Services interpreting regulations. He said he believes that the Planning Commission should interpret state statutes.

Ed Whale said that he does not believe that need for facilities is relevant. He said that no one has suggested closing the existing residential home. He asked if a residential care facility is needed in this location. He said that Van Vactor had neglected the impact of visitors to the facility. He said there is a potential for tripling the number of visitors, and that approval would have more than a minimum impact.

Van Vactor said that Beier's interpretation of the ORS is accurate, and that Health and Human Services says that two residential homes could be permitted in the existing duplex structure. He said they are not prohibited by the County Code. He said that duplexes and adult residential homes are permitted outright. He said that the Legislature has determined that there is a need for such facilities, and that they are compatible with residential neighborhoods. He said that both the state and the County consider them an appropriate use.

Warren closed the public hearing.

Stec said that the Commission must compare the impacts of outright uses. She said that duplexes, cell towers, wind turbines, and solar farms are all permitted in residential zones in the County. She said that the existing duplex structure looks like a

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residence, and no outside changes will be required to accommodate the proposed use. She said that traffic will not go up the street.

Beier commented that the property is the last parcel on the left.

Stec said that property values would not be changed. She said that the proposed facility will have less impact than a wind turbine.

Lundquist asked about permitted outright uses.

Beier said that the applicant could rent out the duplex units as residences. She said that a house and a wind turbine could be located on the property.

Ponte said that he was troubled by comparison with potential development. He said that ten beds may not have more traffic than fifteen beds. He said that if two residential homes were located on the property, deliveries would be combined.

Weberg said that he resented that the Commissioners' hands were tied. He said that they were not being allowed to consider people's concerns. He said that there is no question about need, but the question is about location. He said that the Commission had been given little room to deny the application.

Beier said that the people's concerns could be addressed by conditions. She said that would not be possible with outright uses.

Hermreck said that she had previously voted against the proposal because of location. She said that she would not change her vote.

Beier said that findings concerning impacts were needed.

Warren commented that the proposed use would have less impact than some potential uses of the property.

Stec said that outside activity on the property could be restricted by conditions. She said that the proposal would be no more invasive than other uses.

Hermreck said that the Commission could not deny the application under the Court's instructions.

Beier said they could use conditions to minimize impacts.

Ponte said that the proposal would have less impact than outright uses.

Beier said they must look at potential uses.

Hermreck commented that deed restrictions cannot be appealed.

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Beier said lots can be required to be combined.

Wilson said they could look at the law concerning conditional use applications.

Weberg commented that livability was usually ignored.

Wilson said that the proposed use would impact livability, but would have less impact than multiple adult residential homes.

Ponte asked about flexibility regarding the other duplex unit.

Beier said no conditions could be imposed. She said that the applicant could sell or develop the second parcel, and the Commission could not control it. She said that the duplex units could be required to be combined into one if the application is approved.

Bedortha asked if there could be a condition that the lots be combined.

Wilson said this could be done.

Beier said that conditions did not have to be linked to the Court's instructions, but could be imposed as general conditions.

Hermreck asked when the state would make judgement.

Beier said that the County would not abdicate all responsibility. She said there could be conditions for state licensure, which would not be issued until local approval is granted.

Warren said that findings of less impact were needed.

Ponte asked if two votes would be required.

Stec moved that the Commission find that the proposal will have minimal impact compared to possible outright uses, if suitable conditions are imposed. She moved that the Commission find that, taking into account design, location, etc., the impact would be less than that of comparable uses.

Ponte seconded the motion.

The Commissioners approved the motion by a vote of 4-3. Hermreck, Weberg, and Bedortha cast dissenting votes.

Bedortha suggested postponing consideration of conditions.

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Wilson said that he was concerned about timing. He said that the applicant was claiming that timing requirements were being violated, and could seek mandamus with the Circuit Court.

Beier said that the Commission could direct staff to come up with conditions, and continue deliberations to October 24, 2018.

Bedortha suggested that a meeting be held on the following Wednesday.

Hermreck moved that the hearing be continued to October 17, 2018.

Wilson said that the application had been approved.

Hermreck moved that staff be directed to come up with conditions.

Stec seconded.

Warren asked if there could be a condition that the approval not follow the property.

Weberg asked about the distinction between residential homes and residential care facilities.

Beier said that the distinction is made in the County Code.

Warren called a five minute break at 8:25 p.m.

The meeting was resumed at 8:30 p.m.

Craig and Lucy Woodward (owners) and Knife River Corporation (applicant) – Record Number 217-18-000347-PLNG are requesting modifications of the conditional use approval authorizing mining and extraction of sand and gravel on the subject property (**217-15-0001-15-PLNG**) approved by the Crook County Planning Commission on September 24, 2015. The specific request is to modify Condition #9 which limits the operation to no more than 80 truck trips per day to and from the site. The applicant is requesting approval to increase the limit to no more than 160 trips per day to meet the demand for concrete in Crook County and Central Oregon. Aggregate sites are subject to the requirements of CCC 18.144, and transportation impacts are subject to review under CCC 18.180. The property has been designated as a significant aggregate site in the Crook County Comprehensive Plan and is identified as T 14 S R 15 EWM TL 702, 703 at the corner of Stahancyk and Elliott Lane, Prineville, Oregon.

Beier said this was a request to modify a conditional use approval to permit an increased number of truck trips per day to and from an aggregate site. The number of trips is presently limited to 80 per day (40 each way), but demand for aggregate has

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increased. The applicant is requesting that the limit be increased to 160 trips per day (80 each way). There will probably never be that many trips, due to the limited availability of trucks, but the applicant wants the flexibility to meet demands. Beier described the truck routes to and from the site, which she said are not being changed. She said there will be no use of Stahancyk except for local deliveries, and trips will be scheduled to avoid school bus schedules. She said nothing has been heard from ODOT.

Hermreck asked if notice was provided to neighbors.

Beier said that it was.

Tim Marshall of the Knife River Corporation said that the number of trips would be limited by truck availability. He said there would be no Saturday trips, which the applicant wants to avoid. Marshall said there has been an average of 25 trips per day. He said that school bus hours will be avoided.

Weberg asked how many trips there will be on the O'Neill Highway.

Marshall said there will be very few. He said they had one today, but that was unusual. He said that Knife River has a batch plant in Tumalo, and one between Prineville and Powell Butte.

Ponte asked if trucks would be turning south of Highway 26.

Marshall said that would mostly be the case.

Stec asked if there was a batch plant on the subject property.

Marshall said there never had been.

Bedortha asked how long they have operated.

Marshall said it had been ten to fifteen years. He said that one cell had been mined out on the west side, and the operation was moving east.

Bedortha asked if about five acres had been mined.

Marshall said that was the case.

Warren asked for additional proponent or opposition testimony. There was none. He closed the public hearing.

Hermreck asked why the number of truck trips had been limited to 40.

Marshall said the applicant had proposed it.

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Beier said there had been no written comments or complaints. She said that verbal complaints about dust had been resolved.

Lundquist asked what was wrong with using Elliott Lane.

Beier said there was concern that more residences would be impacted, and that truck turning would be more difficult.

Warren said there would be more congestion.

Bedortha moved that the application be approved, with the conditions stated.
Stec seconded.

The Commissioners approved the motion by a vote of 7-0.

Beier said that a site visit was scheduled for October 24.

Warren adjourned the meeting at 8:56 p.m.