

CROOK COUNTY PLANNING COMMISSION MEETING

December 2, 2020

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 6:00 p.m. The meeting was conducted by WebEx, a call-in service and at the Crook County meeting room. Commissioners attending the meeting in person were Chair Warren, Susan Hermreck, and Gary Bedortha. Commissioners Laquita Stec and George Ponte attended via phone. Commissioners Bob Lundquist and Linda Manning were not present. The following County staff was present at the meeting: Ann Beier, Katie McDonald; Assistant County Counsel John Eisler and Hannah Elliott participated on the phone.

Participating via phone WebEx:

Rory Isbell, Central Oregon Land Watch

Rachael Davee, Crook County Soil and Water Conservation District

ITEMS NOT ON THE AGENDA

- NA

APPROVAL OF MINUTES

- August 26, 2020: Commissioner Bedortha asked for an edit to the minutes. Commissioner Hermreck moved to approve the minutes as amended. Commissioner Stec seconded. Commissioners Hermreck, Bedortha, Stec and Chair Warren voted Aye; Commissioner Ponte abstained. 4-0-1, minutes are approved as corrected.
- September 9, 2020: No quorum, will postpone consideration of the minutes.

ITEMS OF CONSIDERATION

- NA

PUBLIC HEARING

Chair Warren called the Public Hearing to order.

Chair Warren read the opening statements and introduced the item for consideration. **Crook County File Number 217-20-001038-PLNG** – This is an appeal of an administrative decision to approve a non-farm dwelling on property located in Riverside Ranch Unit 1 (file number 217-20-000891-PLNG). The appeal, filed by Central Oregon LandWatch, is subject to the provisions of Crook County Code 18.172.

He then read the applicable criteria that the Planning Commission would be weighing the decision against: Crook County Code, Title 18 Zoning, Chapter 18.16 Exclusive Farm Use Zone, EFU-1 (Post-Paulina Area) more specifically:

18.16.020 Conditional Uses Permitted

18.16.040 Limitations on Conditional Uses

18.16.080 Limitations on Non-Farm Residential Uses

18.16.090 Dimensional Standards

And

18.172.110 Appeals

Also

Crook County-Prineville Area Comprehensive Plan, Chapter III, Land Use, Agriculture, Policies for Agricultural Areas of Crook County and Wildlife Policy #2.

Oregon Revised Statute 215.284(2)

Oregon Administrative Rules 660.033.130

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

Commission Hermreck responded that she had met the applicant at the site visit and declared no conflict

Commission Bedortha responded that he had met the applicant at the site visit and declared no conflict

Commissioner Stec responded no

Commissioner Ponte responded no

Chair Warren responded no.

The Chair then asked if a 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 if any member of the Planning Commission had any ex-parte or contact outside of the site visit:

Commission Hermreck no

Commission Bedortha no

Commissioner Stec responded no

Commissioner Ponte responded no

Chair Warren responded no

Chair Warren asked to hear from staff.

Ann Beier (Crook County Community Development Director) stated that a site visit was conducted on November 12, 2020. Commissioners Hermreck, Bedortha, and Manning were present. She asked the Commissioners if they would like to share any observations made from the site visit or wait until deliberations. Commissioners Hermreck and Bedortha said they would wait until deliberations. Assistant County Counsel John Eisler and she had attended the site visit as well.

Beier provided background on the matter before them, stating the appeal is on an administrative approval for a non-farm dwelling in Riverside Ranch, a subdivision that was platted in 1972 prior to any subdivision ordinances and prior to the county adopting zoning laws that applied to the area. Riverside Ranch has approximately 90 to 100 possible parcels ranging from five to twelve acres and was intended for recreational residential development in 1972. The applicant is proposing a dwelling on tax lot 300, which is a legally created lot, as a part of that subdivision. County policy to reduce density for that subdivision (starting around 2000), supported by

Department of Land Conservation and Development has been: Riverside Ranch Unit 1 must have a minimum of 20 contiguous acres to allow application for a nonfarm dwelling. This policy is more restrictive than the general non-farm dwelling criteria from Oregon Revised Statute (ORS) and Oregon Administrative Rules (OAR). She then went on to clarify possible confusion on the configuration of the lots. She explained that there are four separate tax lots, will continue to be four separate tax lots, the dwelling will be sited on tax lot 300, and the other three tax lots will have a deed restriction recorded.

Beier then described the location of the property in relation to other, surrounding properties, existing structures, and suitability for agriculture. By definition a property is unsuitable for agriculture if there are class 7 and/or 8 soils. This property has class 4 and 6 soils with no irrigation. Historically it has not had water rights and has steep slopes. During the site visit an observation was made by the Wolvertons (long term ranchers in the area) that the slopes are south facing, would dry out quickly and not provide much forage, indicating it would be very difficult to graze and/or raise crops.

Next, Beier described the mapped Wildlife Habitat for that area. She stated that the parcel with the proposed dwelling and part of the parcel to the north is located in general deer habitat, which requires a density test of 1 dwelling per 80 acres. To the north of those parcels, the area is mapped critical deer habitat. The application included sign off and comments from Oregon Department of Fish and Wildlife regarding the location of the dwelling in relation to the existing road and noting that the site would not result in habitat fragmentation.

Assistant County Counsel Eisler concurred with staff review.

Commission Bedortha asked for clarification regarding "contiguous acres".

Beier stated that in Riverside Ranch 1 the acreage needs to be contiguous and in Riverside Ranch 2 and 3 the county policy is that there is 20 acres in the same ownership and it does not need to be contiguous. She then acknowledged the different land use and litigious histories for Riverside Ranch 1, 2, and 3.

Chair Warren asked if the property is a platted subdivision which was intended for residential use, why the criteria for non-farm dwellings and EFU-1 apply. He then referenced Brasada Ranch, which is a destination resort with EFU-3 zoning.

Beier responded and stated for the record that the original CCR's have been included to show that the original intent was to create a subdivision. To Chair Warren's question, it is about timing. Riverside Ranch was platted prior to the Oregon Land Use system, where Brasada Ranch was zoned Exclusive Farm Use and had the Destination Resort zoning overlaid. Historically, a lot of property was zoned farm use, even though there were other existing uses happening on the property. She then went on to identify some other areas.

Eisler concurred with staff explanation and said it would be something to look at in the future for correction.

Commissioner Bedortha added that it had tried to be corrected and the process had not been successful. Discussion continued identifying other areas in the county where this type of conflicting uses are located.

Beier summed up the county's position in supporting the application and recognized the desire to preserve the Post/Paulina area and farm ground, especially the valley areas.

No further questions from the Commissioners.

Chair Warren asked if any state or local agency was in attendance.

Staff identified a call in number and Chair Warren asked the caller to identify themselves. The caller identified herself as Rachael Davee, with Crook County Soil and Water Conservation District and she had no comment.

Beier stated for the record that exhibits 1-5 were included in the record.

Chair Warren asked for public testimony.

Randy Schoaff (applicant) stated he had nothing further and was available to answer questions.

Commissioner Hermreck had no questions

Commissioner Bedortha had no questions

Commissioner Stec had no questions

Commissioner Pone had no questions

Chair Warren asked if the applicant had submitted the 40 acres due to all three properties were on two deeds; one held tax lot #300 and the second held the other three individual tax lots?

Mr. Schoaff answered yes. He knew he had to have a minimum of 20 acres to build and the other lots were not buildable.

Beier asked the applicant to describe the slopes on the property.

Mr. Schoaff said the majority of the property has 40% to 50% slope and is very rocky, non-farmable.

Chair Warren then asked if anyone else wanted to speak.

Charles McGrath, a neighboring rancher, provided testimony, asking why the EFU-1 zoning designation was still in place on the platted subdivision.

Chair Warren agreed that it was confusing and something that the County should take a look at correcting.

Commissioner Bedortha stated that the "sagebrush subdivisions", indicating platted subdivisions prior to zoning is something that the County had tried to correct. It had been a part of a larger process that had been appealed to the Land Use Board of Appeals (LUBA) and ultimately was unsuccessful.

Commissioner Bedortha then asked McGrath if he ranched in this area and runs cattle. Does he have any concerns with this proposal?

McGrath answered that it does not pose any concern for him and it is his understanding from what the applicant would like to do would be complementary to his operation.

Chair Warren added for the record that McGrath's property borders the applicants'.

McGrath offered that he would not like to have the subdivision there are at all, but it is and he is supportive of the application.

Chair Warren asked for questions from Commissioners.

No questions

Chair Warren then asked Davee if she had any questions, she responded no.

Chair Warren then asked for opponents.

Rory Isbell, staff attorney with Central Oregon LandWatch, thanked the Planning Commission for holding the hearing and providing an opportunity to participate. He then confirmed that the Commissioners had received comments submitted December 1st. He provided an apology and explanation as why he was not available for the site visit.

Isbell started the discussion on why COLW had appealed the decision which is detailed in the comments submitted. He stated that the Crook County Comprehensive Plan clearly does not support development in the Post/Paulina valley and specifically lists potential conflicts, including impact to ranching/farming operations and disruptions to wildlife, along with other factors. He acknowledged prior discussion regarding how and why this property is zoned EFU and although those are good questions, the property is zoned EFU and LandWatch believes the decision does not meet the County's code.

Isbell addressed criteria from 18.16.040(2)(a) which requires a dwelling be situated on a lot or parcel, which has had some good discussion, but in reading the decision, it is not consistent and goes back and forth between a single unit of land and all four units of land. In some cases the decision relies on it being only one and in some cases, it relies on it being four lots. It is their position that the code requires one parcel or lot. This conflation of one or four units of land is what taints the decision. He continues with the section of code regarding minimum lot size for the EFU-1 being 180 acres and speaks about previous court decisions regarding adjusting property lines and/or boundaries on EFU ground that the courts have upheld those as not being allowed. As this approval has a condition of that the tax lots be combined, it is not in compliance.

He addresses staff's earlier comment about a misunderstanding in LandWatch's interpretation of the decision and speaks specifically to condition number six, in that it says the lots shall be combined. That is creating a new parcel. Although the informal policy of requiring 20 acres which he has not seen, in Crook County Code as it written combining the lots would not meet criteria.

Isbell goes onto the next section of code that LandWatch feels is not being met, which is the parcel is created prior to 1993 and because the decision states in condition six that it consists of four parcels and that those parcels be combined, it would not meet the criteria for the parcel created prior to 1993. He then states case law to support that condition of approval six, as worded, indicates a future process that parcels will be combined and does not meet the criteria currently and does not allow it to be part of a public process.

Another part of County Code (18.16.040 (2)(a)), Isbell states is not met, is that the property is required to be unsuitable for agricultural use. The code goes on to say that it is presumed suitable if the property is class 4-6 soils. The application reports and the decision state that the soils for this property are class 4 and class 6, therefore presumptively agricultural soils. He acknowledged testimony tonight stating this land is not suitable for agriculture. He contends that the code indicates that it is presumptively suitable, even if it is joining with a neighboring operation. That is why he included the exhibit of a neighboring ranch with BLM leased land. He goes on to say that even if it does not meet it now it could in the future and then it would be used for agriculture.

Isbell next addressed Wildlife restrictions. There are two separate restrictions found in the County Code and they are applied differently. One of the restrictions relates to the size of the lot and the other relates to the number of dwellings in the one-mile density study. LandWatch's position is that the decision violates both of standards. In code section 18.16.070 (17), it states that property within the critical deer winter range shall be a minimum 160 acres and 80 acres within the general deer winter range. This issue is similar to the minimum lot size discussion, that big game lot size only applies to new parcels. Condition number six requiring the four parcels be combined would result in the minimum lot size, not being met. Secondly, regulation for wildlife habitat is done through dwelling density. The decision contends that because the dwelling is situated on a parcel in the general deer habitat, one dwelling per eighty acres is used. It is LandWatch's position that because most of the forty-eight acres used in the decision is in the critical deer habitat it should use the one per one hundred-sixty calculation. If that is the case, then it would only allow 22 dwellings and the staff report tells us that there are already 29 dwellings and thus exceeding the maximum dwellings for this area. Additionally, it is

LandWatch's position that because the 2,900 acres within the one mile study has the majority in the critical deer winter range the decision should be based on the one per one hundred sixty acre standard.

He concluded that for the reasons stated the decision should be reversed and the application should be denied.

Chair Warren asked Commissioners if they had any questions

Commissioner Hermreck no questions

Commissioner Bedortha no questions

Commissioner Ponte asked Isbell for a definition of presume or presumption.

Isbell responded it is a legal term of art, when there is a presumption, it requires someone to rebut that presumption with evidence and that is how he reads the County's code language –when soils are classified as they are, it is presumed they are agricultural soils and in order to overcome that presumption it requires someone who disagrees to present an argument that overcomes that high burden.

Commissioner Stec no questions

Chair Warren offered a comment that he understands the misreading of condition number six, but it could be read as combining them with a deed restriction because the lots are on one deed. It is his opinion that the intention was not to survey and combine the lots to make it one parcel.

Rory responded that they had similar situation where four lots were proposed to be combined to site a dwelling and in that instance it went to LUBA and it was decided that could not be the case because it did not meet the 1993 criteria for creation of lot.

Commissioner Stec asked Eisler if it does create a new parcel if combined.

Eisler stated that Rory makes a good point, in that it may have created a new parcel as it was worded before. The new proposed language it makes it clearer.

Commissioner Stec then clarified that the changes were reflected in the proposed condition number six.

Eisler adds that Rory is correct in if it creates a new parcel then it would not meet the criteria.

Beier added that the intent was never to create a new parcel but to create a deed restriction on the other three parcels to meet the County policy for the twenty acre minimum. The subject property that will have the non-farm dwelling is located on tax lot three hundred; the furthest south and the other three tax lots are only included to meet the County's requirement. Therefore, the analysis of the wildlife overlay should be focused on where tax lot 300 where the dwelling is to be located. She then adds that during deliberations, the Commission may consider adding direction to staff to clarify the subject property and condition number six.

Chair Warren then asked for any comments.

Chair Warren asked if there was any other opposition.

Chair Warren asked if the applicants wished to rebut anything that was said. They declined.

Chair Warren asked staff if there was anything further they would like to add.

Eisler stated that the cases which had been mentioned included adjustment of property lines, therefore they were not identical, and there is case law that supports a similar situation to this.

Chair Warren clarified that the applicant has four lots on two deeds and the second deed has three of the lots listed.

Commissioner Bedortha asked as long as the ownership is the same does it matter if they are on separate deeds or not.

Eisler responded that it depends and it could matter if the lot was created by deed.

Beier added that there is a presumption of class six soils being suitable for agriculture, the findings need to be strong enough to overcome that presumption in that the soil is not suitable for agriculture. She asked the Commissioners for their experience in the county and in agriculture.

Commissioner Hermreck replied by stating that a cow might stroll by and take a bite of grass and that would be it. If Central Oregon LandWatch would have been able to be on the site visit it may have changed his argument on that point.

Beier stated that the same sentiment was included in the exhibit submitted by the Wolvertons.

Commissioner Hermreck thanked Central Oregon LandWatch in watching for these things, she is an advocate for keeping EFU-1 the way it is. Unfortunately, these subdivisions have been created and they are making the best of the situation, including the applicant, trying to make the best of the situation.

Commissioner Bedortha stated that after the site visit, he ranches further up county, and in his opinion it is not an advantageous site to do anything other than possible grazing. Even though the soil types may be there, it would cause more detriment to graze or farm the land than not. And the applicant is offering larger property than what is county policy.

Chair Warren added his agreement to what had been said and that it is hard to deny an application when there are neighbors next to it. He stated he understands the confusion in the decision around condition number six.

Commissioner Stec stated that the letter from the Wolvertons indicated that the property had never been used for grazing and the commissioners should take that into consideration. She then asked for clarification of Chair Warren's offer to hear anything else from the applicant.

Chair Warren clarified who was present.

Commissioner Stec clarified that the applicants did not have a rebuttal.

The applicant then waived their seven day rebuttal period.

Commissioner Hermreck moved that the hearing be closed to the public.

Commissioner Ponte seconded the motion.

Commissioner Hermreck voted Aye

Commissioner Bedortha voted Aye

Commissioner Stec voted Aye

Commissioner Ponte voted Aye

Chair Warren voted Aye

Passes 5-0.

Chair Warren closed the public hearing.

No further questions of staff.

Commissioner Ponte moved that they affirm the original decision.
Commissioner Stec seconded the motion.

Chair Warren asked for discussion.

Commissioner Hermreck asked that a modification to the motion should include the new condition six.

Commissioner Ponte moved to affirm the original decision except condition six and the modified condition six received this afternoon would replace the original.
Commissioner Stec seconded the motion.

Chair Warren asked for discussion

Commissioner Bedortha agreed with the motion as stated and added that staff use the general deer habitat for the density requirement and add consistency throughout the staff report reflect a new lot is not being created. He then stated that he feels strongly the soils and landscape do not lend itself to agriculture and the applicant has gone above and beyond by offering up more acreage than is required for a deed restriction. It fits the character of the area, being Riverside Ranch.

Commissioner Stec had none.

Commissioner Ponte added that he understands the soil productivity being suitable for Ag or not suitable Ag. He is somewhat familiar with the area and it is tough ground to do anything else but build a house on. At some point the appellant said the decision could not be based on size, but there are other considerations, in terms of land conditions, drainage, flooding, and size can be considered, just not the only consideration.

Chair Warren called for the vote.

Commissioner Hermreck voted Aye
Commissioner Bedortha voted Aye
Commissioner Stec voted Aye
Commissioner Ponte voted Aye
Chair Warren voted Aye
Motion passes 5-0

Commissioner Stec asked if the Commission needed to have a decision on the appeal.
Eisler stated that the decision to affirm is enough.

Staff provided next steps on this application; a decision will be out within ten days.

Staff then provided an update on what is upcoming, current planning and community development operations.

Commissioner Hermreck made a motion to adjourn the meeting, Commissioner Bedortha seconded the motion.
Commissioner Warren closed the meeting @ 7:30 p.m.