

MINUTES
UMATILLA COUNTY BOARD OF COMMISSIONERS
LAND USE HEARING
Meeting of September 28, 2016
1:30 p.m., Room 130, Umatilla County Courthouse
Pendleton, Oregon

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Commissioners Present: Chair George Murdock, Vice-Chair Larry Givens and
Commissioner Bill Elfering

County Counsel: Doug Olsen

Members and Guests Present: Brandon Seitz, Tamra Mabbott, Rod Rainey, Don Stauffer, Melissa
Homan, Darrel & Donna Gage, Mary Vaughn, Sheriff Terry Rowan

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CALL TO ORDER

The meeting was called to order at 1:30 p.m. by Chair Murdock and turned over to Commissioner Elfering to chair the meeting as the liaison to the Planning and Land Use Department. Commissioner Elfering welcomed all and reminded those present that the meeting is a public forum. He read the statement regarding land use into the record as well as the purpose of the meeting: Appeal of Conditional Use Request #C-1264-16, submitted by Rodney Rainey, applicant and facility manager of Power House Residential Drug Treatment Center. CUP standards are found in Umatilla County Development code section 152.616 UU, HHH 152.615, 15.060. He began the hearing by asking staff to summarize the application, to be followed by testimony -- proponents first, then opponents. Questions can be asked by the Board and staff during testimony. He outlined the rules of the day. When called, please step forward and announce your name and address; if you represent someone else or if you have documents or physical evidence to be part of the record, please note that.

Regarding abstentions, conflicts of interest or ex parte contact, Commissioner Elfering declared ex parte contact with those who asked for the appeal whereby he advised them about the process and requirements. County Counsel Doug Olsen advised that contact does not preclude him from participating in the hearing. No others were noted.

Land Use Hearing Appeal - called to order at 1:30 p.m.

Staff report was presented by Brandon Seitz, Assistant Planner. The purpose today is an appeal of Planning Commission decision, #C-1264-16. Appellants submitted an appeal on July 14, 2016. The Planning Commission met on June 28, 2016 and the decision was signed. The property has two dwellings – one stick built home adjacent to the road and a smaller manufactured home at the northerly end of the parcel (not a part of the facility). A code enforcement issue was noted to the current owner Michael Atkinson, as a temporary boarding facility, but that was a different piece. He referred to the applicable Umatilla County Development Code and to his September 8, 2016 memo regarding classification of a convalescent home. Based on number of people housed, the State has two categories -- residential home is 5 or less, residential facility for 6 to 15 individuals. In addition, the CUP uses include Convalescent Home but that definition is not in the Code; therefore, staff and county counsel interpreted 6 to 15 people qualify as a Convalescent Home based on the simple definition. Previously, the Planning Commission had unanimously approved another similar facility at a different close-by location (not the subject of this appeal).

Discussion continued about the two houses on the property, where on the map is the mobile home located (Mr. Seitz noted it is the very northeast corner of the property), the main large house is centered adjacent to the road, homes are vacant (as of last week) Chair Murdock asked about current occupancy as he had reports over the last few weeks of various numbers of people were there.

Commissioner Elfering asked for any proponents, or those in favor of the project? Rod Rainey was called to the podium. 32405 Diagonal Rd, Hermiston. He advised Mr. Seitz had stated the situation fairly. He closed a deal with the bank last Friday and furniture is being moved into the facility. Workers have been out since 9/6; but no one is there now. It is being cleaned up now. There is a shop with equipment stored. No one is living there, eating there, etc. A license is to come through this week for occupancy. Commissioner Elfering asked what a license permits? Mr. Rainey: it is for additional permission for 15 clients at the facility. The intended purpose is for all male in-patient alcohol and drug rehabilitation facility licensed through the State. For the last 2 ½ years at a separate facility on Diagonal they have helped 200+ patients, with successful accommodations.

Commissioner Elfering asked about treatment. Mr. Rainey advised it is mostly counseling; if there are drug needs, that is locked up and tracked and documented. Regarding prescription drugs, patients are permitted to have them, but the facility does not prescribe any medications. Clients are there voluntarily, mainly, but some are court mandated -- it is treatment or to jail. If they leave the property without permission, their stay is terminated, but they can leave with permission; they have had no problems with people leaving and coming back. At the current facility, for the first few months, it was co-ed living; it is all-male at the proposed facility. Nothing is mandatory, no sentencing, it is not locked – arrangements must be pre-approved with their counselor.

Commissioner Elfering asked about the success rate. Mr. Rainey advised it is difficult to say; once they leave, they do not have much of a plan for follow up although they hear if someone is incarcerated or if they come back. Their facility is pretty successful – they have a waiting list.

Commissioner Givens asked about the about houses, the application shows Atkinson is the owner. Mr. Rainey advised as of Friday, Kevin Gray is the new owner and owns the other property as well after reaching agreement with Mr. Atkinson. He has a lease agreement with Mr. Gray. Commissioner Givens asked about the larger main house and intentions of using the mobile home. Mr. Rainey noted the main house is the facility for clients; the double-wide mobile home on the back has been rented to a counselor; the shop remains the property of Mr. Gray.

Mr. Rainey explained the process. Clients can leave any time they want; the law does not require keeping people there. There is a contract to be signed with agreement for rehabilitation rules at the outset. Staff members take patients on outings and they are chaperoned; they are not allowed to have vehicles. Commissioner Givens asked about proximity to various things. Mr. Rainey advised it is about 1 mile off of Diagonal; to the Short Stop Market, off of Walls Road, it is between ½ mile and 1 mile (on Craig Road). The other facility is only about 300 yards to the Short Stop. He also noted UAs are given randomly; they use a newer system that is very accurate. There is close tracking of medications.

Commissioner Givens asked about the fencing. Mr. Rainey said the original facility has a 6 feet chain link fence. Clients are not dangerous – they are recovering addicts. In response to a question about the screening process, Mr. Rainey advised full background is known on all clients - drug history, personal history, probation, etc. They have a method for criminal checks; clients come from a detox center directly to the facility. Police records are publicly available and documented at intake on a client's first day. They have denied some people. And, some have been dishonest about their history and have been terminated after housed. Reprimands are given and documented; there are strict rules about manners and politeness.

Commissioner Givens asked for an approximate percentage of alcohol dependency compared to other types of drug dependency. Mr. Rainey felt alcohol is the least, but it varies from month to month. The average stay is 60 days (30, 60, 90 and 120). The ultimate goal is for clients to be totally clean at the end of their period.

There were questions about staff. Mr. Rainey noted with this new proposed facility, it will double everything (15 clients at each facility); they will be adding 1 part-time back-up staff. Counselors, staff, cooks – will be doubled. Clients can move from one facility to the other. They are not required to have nursing staff on site; the medical director is on-call (Dr. Joel Rice). They have a company vehicle and are close to Good Shepherd Hospital. But, there has not had once incidence where medical care was needed. There is counseling staff on-site; coverage is usually 2 counselors, house manager and the director during day. All counselors are certified. Staff move up and get necessary certifications. The night shift staff does not have counseling requirements since clients are asleep. Cooks have food handler licenses.

Commissioner Givens was still concerned about counseling. Mr. Rainey advised there is on the job training; a college is not required, but there is rigorous testing and hours of counseling are tracked.

Chair Murdock noted he has had contact with other neighbors over the last few months on the subject property. Ms. Mabbott advised that ex parte contact when declared and as long as there is not a financial benefit, he should be OK. She will follow-up with Doug Olsen.

Commissioner Elfering asked about the configuration of 15 beds. Mr. Rainey responded that state requirements are met regarding occupancy and there are regular state and county inspections.

Regarding withdrawal symptoms, Mr. Rainey advised clients are past the withdrawal stage or need for hospitalization; for stronger drugs, they must be past that stage or they are not accepted at the facility.

Melissa Homan, 32405 Diagonal, Hermiston. She is currently the Director at the Power House facility. She will be living on premises on the back lot with her children. She understands concerns of neighbors; she demands it be safe for her and her kids. She wants open communication with neighbors. There are no drugs or alcohol on that property; they are not breaking the law. There is a stigma no doubt; however, these people want to be there. They are out of detox and are there voluntarily because they want and need help. It has been successful and she wants to have open communication with the neighbors and any issues that arise will be dealt with.

Regarding her background, she is a drug & alcohol counselor II; almost 15 years clean and sober and has been in the career for 12 ½ years. In regard to an earlier question about certification, she clarified that counselors have to prove clean and sober by documentation. In addition, about the earlier comments about a cook now wanting to be a counselor, they worked with her since they knew she wanted to get into the career. The State does have required classes for certification and a test must be passed; it takes about 2 years. In addition to classes, there is on-the-job training.

There were no others to speak in favor.

Commissioner Elfering asked for opponents.

Don Stauffer, Hermiston, 32801 W. Walls Road. He handed out information in support of his testimony (marked Exhibits A, B and C). He lives next door to the house in question and has lived there 20 years (he noted all the rest (of the neighbors) have lived there longer). His core position is he believes the facility in an R4 zoning based on Umatilla County Development Code should not be allowed. Information is available at the County Planning Department and also on the website. However, he could not find out what is allowed in the zones. Planning gives a copy of UCDC R4 zoning, which included definitions of R4. The Comprehensive Plan is very lengthy and is the controlling land use document; it must be consistent. However, he feels this facility would not be considered

consistent with R4 zone. Rural housing types and development maintain a lifestyle, he did not feel that applies to a drug and alcohol facility. The rural lifestyle is consistent in the area. When the facility was a nursing home, they had some livestock and felt it was consistent with the zone.

Regarding permitted uses, the subject application relates to conditional uses. He felt it is clear what is allowed; a drug and alcohol treatment facility is not listed. Some allowable uses are nursing home, convalescent home. A conclusion from UCDC does not provide for an alcohol and drug treatment facility as allowed use. The Code does not include all allowed uses, so the closest definition is being considered under the “convalescent home” definition. He felt it is arbitrary; can Planning have the authority to make that determination? He felt it is up to the Board of Commissioners to make the ultimate decision. The Board has the authority to revise County Codes and Planning does not need to use a “close standard”.

He advised that three Planning Commission members drove by the house; they stated the house would work well as a drug & alcohol treatment facility. However, it would also work for a large family, a nursing home or other uses allowed and as specifically stated in the R4 zone. The building is suitable and there are many other areas in the county that would also serve the purpose of a drug & alcohol treatment facility in the nearby property area.

He then went to his Exhibit B, sec. 3, generally accepted definition of convalescent home, and of disability. He does not agree with statement that drug & alcohol treatment meets definition of convalescent - rest and recovery, loss of strength. Things are tied together as shown by the definitions in the exhibits he has provided. (Mr. Stauffer was interrupted by a member of the audience). Commissioner Elfering advised Mr. Stauffer should proceed as he sees fit; he continued talking about the Planning Department materials. Mr. Stauffer pointed out zoning laws preserve the character of the community.

Commissioner Givens asked him about his Exhibit C, the highlighted information about property values. Mr. Stauffer pointed out when drugs are mentioned, property values are affected. This is a real thing.

Commissioner Givens asked Mr. Rainey about insurance for his clients. Mr. Rainey advised clients and staff are covered with liability insurance consistent with state facilities. He added that medical insurance covers the cost of treatment.

Discussion turned to purposes of land use code, generally accepted definitions of treatment and the difference, the code covers uses even though not specifically named (i.e. drug & alcohol rehabilitation center). Commissioner Givens has sat on committees for the State Land Conservation and Development Commission where they are constantly making decisions on land use because something is not named specifically. Ms. Mabbott advised that, by law, things have to fit or not fit to be determined moving forward and consideration must be given for appeals,

Ms. Mabbott referred to the staff report by Brandon Seitz including the ORS definitions in the memo, which are the same as that presented to the Planning Commission. The Code is not changed more than once a year – in this case, there was a lot of internal discussion and with county counsel and the collective interpretation of the proposed facility met the definition to be permitted as conditional use. With the record, things are addressed to policy interpretation – the Board can make that decision today to set the record straight. Subjective matters are referred to the Planning Commission with thorough analysis. Mr. Stauffer asked about treatment facility vs. care facility to Ms. Mabbott. Commissioner Elfering noted that will be considered in deliberation.

Commissioner Givens added to the explanation given by Ms. Mabbott, there is a huge difference in what is legally acceptable by standards of law and what we as citizens want to socially accept. Often times that comes to moral standards. As a Commissioner he has to look at what laws are compared to his personal standards. Laws have changed and are what is accepted in society. Alcoholism now is considered a disease, which is different from when he grew up. All across the state, there are land use issues of what is not listed – many things are

changing and there are legal and other things to be considered. Legally, we are in position some things must be allowed, but not without conditions or “what ifs”.

Chair Murdock asked about Exhibit C, where it says centers in the future may be located in residential areas (he read from Exhibit C). He felt it is conflicting – on one hand Mr. Stauffer presented in opposition, but it indicates there is not much you can do about it. Mr. Stauffer advised it is to give the overall overview; it does not necessarily trump zoning codes. The exhibit is a balanced piece for explanation. He is here to look at all aspects for a balanced view before the Board decision. He went back to the character and atmosphere in his area (neighborhood) and he wants to maintain it.

Mary Vaughn, 32847 W. Walls Road, Hermiston. She agreed with Don Stauffer as far as UCDC. However, she feels it is being changed to make a drug treatment center allowed. She noted a rough summer and complaints have been made. Situations: a bunch of guys drinking beers on the property and other activity all summer – concerned about her grandchildren in that area. Drug problem is huge. Mr. Rainey pointed out clients are coming from Portland. He also said in most cases they do not have a car and most leave the program and stay in the county since they do not have other places to go. In contrast, a nursing home is local people who live in the area and are covered with private insurance. Mr. Rainey pointed out most insurance of his clients are usually state or county – not private insurance. Ms. Vaughn speaks on behalf of her husband. They live on a road for farmers. The original nursing home was grandfathered in; they do not feel the master plan was intended to allow a business in that area. She is concerned about certification of counselors as outlined previously. She feels the original plan for that area was for farms and it should stay that way.

Commissioner Givens asked for more explanation by Mr. Rainey as to property ownership. The paperwork shows property was owned by Mr. Atkinson; today, they hear there is a third party and he is going to rent it. Ms. Vaughn noted that during previous months (summer) and up to last week, it is unknown how many people were at the property – it appeared to be way more than 15. In the back portion alone, there were as many as 15-16. With buses and delivering people, she has seen more than 20 roaming around the property. Commissioner Elfering asked her to keep her comments to the current time. She agrees with drug treatment, but feels hospital setting is appropriate, and also near sheriff’s office, there are plenty of other places for businesses of this type vs. residential areas – they want to feel safe in their neighborhood with all the turn-over of clients.

Commissioner Givens asked Mr. Rainey what type of insurance his clients have. He responded Oregon Health Plan covers most clients as well as Medicaid. Also, some private insurance and private pay.

Donna Gage, 33073 Diagonal Rd., Hermiston. She apologized for speaking out of turn earlier. She agreed with Mr. Stauffer’s and Ms. Vaughan’s statements. She lives south of property since 1974. She is concerned with the proposed drug rehabilitation center and about the potential drop in property values. In addition, she is also concerned about how children will be affected.

Commissioner Givens asked Planning staff, with the change in ownership, what about code violations? Mr. Seitz advised it was back in about March when issues started with the property being used as temporary housing. No citation was issued. He explained the process -- if a person is working out violation and discussing an application, they are allowed to continue use. Ms. Mabbott elaborated. Mr. Atkinson bought it for use by labor/services workers – summer is busy time; he has refurbished a lot of apartments in the area. She did not know about ownership. Code enforcement followed up but it wasn’t clear he was violating a code. There is not a way to monitor how many people live in a house – it is a residence. After informal discussion, Mr. Atkinson continued use and then put it on the market. Commissioner Givens summarized; the house was used as boarding facility to workers and that had nothing to do with the current owner or this application for drug treatment.

Ms. Gage added the facility was previously a convalescent (nursing) home for years and years with no problems. This is a very different use. Chair Murdock commented earlier that he has not been engaged in discussions for intended use; however, he has visited the site and has had at least a dozen conversations with the neighbors about use of the property and strangers in the neighborhood. Mr. Olsen said his ex parte contact is disclosed; but if he feels he cannot make an unbiased decision, he should exclude himself. Commission Murdock noted conversations were entirely dealing with the previous issues, not the current situation or application.

Sheriff Terry Rowan came to the podium. He is not necessarily in opposition, but he wanted to request clarification. The unknown is to ponder. He listened to testimony today. He felt both sides have stated their case clearly and he applauds that. He has questions about accountability, inspections by state; concerns about drug activity and he does not want that introduced. He needs to understand the process. His goal is to provide safety to all citizens. He feels he needs more information about the organization applying for the CUP. He has not heard about other neighborhood concerns but he knows one other person could not attend the meeting (Ivan Meads). His comment for the future is he would like to be brought into the process earlier regarding applications such as this. The other issue is there is a grow operation for medical marijuana use very near this site (about ½ mile). He talked about proximity of that as well as Short Stop Market and the truck stop are close by with access to alcohol. Commissioner Elfering asked if he is normally consulted when an application of this type if made; he responded he is not.

Ms. Mabbott advised Ivan Meads had called the Planning office at 2 p.m. and gave the office assistant a statement to be read into the record. He had intended to be at the meeting, but he inadvertently got the date of the hearing mixed up. She read: I am appalled that anyone would want to put an alcohol and drug treatment facility in the area next door to where older people and young people live, but when you start talking about moving drug addicts and drunks into a neighborhood there are better places to locate. Also property value is impacted in a negative way. He apologized for not being present.

Commissioner Elfering asked if any public agencies had comments. Other than Sheriff Rowan's comments, there were no others.

Rebuttal of testimony. Mr. Rainey, as far as a marijuana grow operation close by, he noted there are no marijuana addicts at their facility, so that should not be a problem. Regarding inspections, the facilities are licensed and inspected by the state; site reviews of both facilities are slated soon. They are heavily regulated all day and documented and monitored. Three-quarters of a counselor's time is billing and documenting the treatment process. The County Health Department, Fire Marshall and DHS monitor on regular basis. All a client's time is accounted for regularly.

Commissioner Elfering asked for requests to continue the hearing or to have it remain open. Commissioner Givens asked to continue to consult with legal counsel and the Sheriff about issues of proximity and he would also like more information about Mr. Rainey's written plan to review on previous facility function and what the intentions are for this new facility. Also, there were additional requirements from the Planning Commission pertaining to fencing and lighting. Before a decision, he wants to continue for presentation of evidence of a business plan, completion expectations and other conditions for assurances things are being done.

Mr. Rainey added about the statement that clients are coming from Portland and staying here, clients stay if they are from here -- many clients do come from Umatilla County. People are not released unless they have a home, a job and place to go. If they are not from this area, there are programs that serve them.

Chair Murdock noted he is torn, however, he agreed with Commissioner Givens but also wants to further examine if the proposed use falls within intended zoning regulations. There was discussion about process for decision. Mr. Seitz noted the 150-day rule for a decision, which is October 13. The Board must look for a date for action

within that timeframe. Ms. Mabbott clarified: 1) Commissioner Givens wants to look at the business plan. 2) He wants a site plan, and 3) he wants to tour area (Chair Murdock requested that as well). If the record is closed, written testimony can be taken (per Ms. Mabbott). Mr. Olsen clarified what is allowed -- record can be left opened for written documents and the hearing can be closed. The Applicant can be asked to submit requested items by the end of the week. Chair Murdock must be present to participate in the decision. **Motion was made by Commissioner Givens to continue the public hearing to 10/12/16, 9:00 a.m. Room 130, Courthouse in Pendleton. Seconded by Chair Murdock. Carried, 3-0.** Ms. Mabbott clarified with that action, there would be no more testimony and the decision will be made on previous testimony given with allowance the Board can ask questions. Agreed.

The meeting recessed at 3:29 p.m.

Respectfully submitted,

Melinda Slatt

Executive Secretary Umatilla County Board of Commissioners