

UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, January 23, 2014
6:30 p.m., Umatilla County Justice Center, Media Room
Pendleton, Oregon

COMMISSIONERS PRESENT: Randy Randall (Chair), Gary Rhinhart, Don Marlatt, Suni Danforth, John Standley, Don Wysocki, Cecil Thorne.

STAFF: Tamra Mabbott, Carol Johnson, Gina Miller, Connie Hendrickson.

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Chairman Randall opened the meeting at 6:31 p.m. and read the opening statement.

APPROVAL OF MINUTES:

Commissioner Standley moved to accept the minutes of December 19, 2013 as presented, and Commissioner Marlatt seconded the motion. Motion passed 7:0.

NEW HEARING:

TYPE III LAND DIVISION, REPLAT REQUEST: #LD-5N-819-13; Port of Umatilla, Applicant. The Port of Umatilla requests approval of a replat of Lot 1 of Draper Subdivision, Book 15, Page 22, identified as Tax Lot 200 on Map Assessor's 5N2814B, and Lot 7 of the Port Terminal Subdivision Plat, Book 15, Page 60, identified as Tax Lot 2600 on Assessor's Map 5N2811. The applicant's replat proposal adds the southeast corner of Lot 7 into adjoining Lot 1. The property is located at the southwest corner of the intersection of Bud Draper Drive and Roxbury Road. Lot 7 is within the City of Umatilla's Urban Growth Boundary, and Lot 1 is within the City of Umatilla. The Joint Management Agreement between Umatilla County and the City of Umatilla authorizes the County to process Land Use Requests within the City's Urban Growth Boundary. The Replat approval standards are found in the Umatilla County Development Code Section 152.697 (C).

Staff Report: Carol Johnson, Senior Planner, presented the staff report. The applicant is the Port of Umatilla and the replat is for Lot 1 of the Draper Sub-Division. The subdivision had been approved by the Planning Commission back in 2006, and has since been annexed into the city of Umatilla. It is being adjusted with Lot 7 of Port Terminal Sub-division, which remains outside of the city limits but in the Urban Growth Area (UGA). It was determined, with confirmation from the city, that the county would process the replat since it was the county that initially approved the Draper Sub-division. The name of the replat will be the Draper Lot 1 Replat, and approval of this request will extend Lot 1 to the north and add half an acre to Lot 1. Mrs. Johnson advised that there were maps showing the request in the Planning Commission packets to review, and she referenced a large map. She explained that this was industrial port property and zoned Heavy Industrial, the standards are found in the Umatilla County Development Code (UCDC) Section 152.697(C). Mrs. Johnson said the replat review looks at logical extensions of roads, public facilities, and surveys when reviewing a replat. She stated that comments were received from the City of Umatilla, and one phone inquiry from Ron Hosek, owner of the Big River Golf Course. It was recommended that he visit with the Port of Umatilla on the topic of future development. There is access in place at the southeast corner on to Bud Draper Drive. Bud Draper Drive provides access to the docks. Mrs. Johnson said that the applicant representative, J.R. Cook, was available on the conference phone to answer questions.

Chairman Randall asked for any declarations of bias or ex-parte contact, and there were none.

Applicant Testimony: J.R. Cook (via teleconference phone), 370 Marshall, Pendleton, OR. Mr. Cook stated that this was a very straight forward replat application, and Mrs. Johnson covered all the high points. He had conversations with the planner from the City of Umatilla, and the city was satisfied with the county handling the replat application. It is in a unique parcel, where part is in the city jurisdiction and part is outside of the city where the county has jurisdiction per the joint management agreement. They have no additional comments but he will be available for rebuttal. Mr. Cook requested that the Planning Commission approve the application.

Commissioner Rhinhart asked if there were any issues with the Lewis & Clark trail that was planned to be developed there. Mr. Cook replied that the Lewis & Clark Commemorative Trail had been discussed, and the original design for that trail has expired for the Port of Umatilla. He expressed concerns for running a trail so close to a major collector road of an industrial park, and there is no legal binding requirement on the Port of Umatilla to develop or maintain this trail. He stated that this is a civil matter between the Port of Umatilla and the city and they are trying to figure out how to proceed. Mr. Cook said that the trail did not warrant consideration for this application.

Opponent Testimony: Ron Hosek, owner of Big River Golf Course, 1000 S Hwy 395, Suite 8, Hermiston, OR. Mr. Hosek stated that his opposition to the replat was because it only affects the golf course. He said that this was their only chance to try to stop the

replat, because the land would then be zoned Heavy Industrial. They are very concerned about the ramifications of the Heavy Industrial zoning and how it will affect the golf course. He said the facility can create visual and noise issues for people walking in the park. Mr. Hosek spoke about information he had received today from the City of Umatilla. They indicated that this was done back in the mid 1990's to make this area heavy industrial, and this should have never happened because it was in direct opposition to the current zoning for the golf course that was already there. He spoke about the definition of the M-2 zone inside the city limits that was quite different from the Urban Growth Boundary (UGB) zoning of M-2. Mr. Hosek said that it allows for current light industrial uses, but it also involves the ability to have an accessory dwelling with a Conditional Use Permit (CUP). It also allowed for the handling and storage of hazard chemicals and flammable liquids. He said that these are not compatible with the golf course that was established before the current zoning in place with the City of Umatilla. Mr. Hosek stated that he understood that the zoning rules are the way that they are, but he wanted to raise these objections. He said he has been in contact with Port Commissioners and will be meeting with others to request that they look for a different place for this development. The site has not been sold, and it is currently speculation only. Mr. Hosek said that to allow this to happen in this area, where the golf course is zoned residential, is not advisable. He stated that the city planner said it was not overly compatible when this was done, but there was nothing the city could do to stop it. The Planning Commission was the best chance for not approving the replat.

Commissioner Rhinhart asked if there was a buffer zone, or could they make a condition of a buffer zone. Mr. Hosek said that he didn't know how there could be a buffer zone, because the parcel they are considering is right on the border of the golf course. He said this was a high traffic area, and with the heavy trucks coming and going there would be runoff into the golf course of gas and diesel. Mr. Hosek stated that they have deer and bald eagles that come to the golf course and this type of development should not be so close.

Commissioner Standley asked what the current use of the subject parcel was. Mrs. Johnson replied that it was zoned Heavy Industrial and that this application was not for a re-zone; the application was only to change the configuration of the existing lots. Commissioner Standley said he looked at the parcel on Google Earth, and saw logs stacked there and that it was a good thing that there were no children near to play on this lot. Mr. Hosek stated that children were allowed to use the golf course, and they hosted several events there for children. Mr. Hosek said that Boise Cascade had cleared out the logs. He said that there were many other locations owned by the Port that could be used. Commissioner Standley said the only thing the Commission could do was try to mitigate future development impacts. Mr. Hosek stated that the Commission could also deny the replat, and then the Port could site this development at a different location. He said the Port's replat is all speculation.

Commissioner Danforth asked Mr. Hosek if he had anything in writing from the city of Umatilla about this matter to share with the Planning Commission. Mr. Hosek said he

had only met with the city planner at 2 p.m. earlier that day, and he had a copy of their zoning. Commissioner Wysocki asked if there was anything like a fence to separate the golf course from this property. Mr. Hosek replied that there was barb wire fencing in some places, but in other places there is nothing.

Rebuttal Testimony: J.R. Cook, representing the applicant. Mr. Cook said this was a tragic case in support of Senate Bill 100, to limit conflicts in land use through long range planning. The City of Umatilla and the Port of Umatilla industrial park were in place prior to any of this happening. There is an industrial park that abuts a golf course that was designed by the Federal government, and it was created to promote industry and jobs in Umatilla County. The Port of Umatilla is replatting to reconfigure a parcel, and the development would be reviewed and permitted by the City of Umatilla. It is zoned Heavy Industrial and there is no buffer room between the industrial park and the golf course. He stated that the objections raised at this hearing were not applicable to the replat application, and he encouraged the Planning Commission to approve it.

Commissioner Wysocki asked Mr. Cook if they could build a fence or secure the area. Mr. Cook replied that he could not speak for the Port of Umatilla on this issue. He did recommend that Mr. Hosek contact the Port and the city and continue to work them to find an appropriate solution to his concerns. However, Mr. Cook said he did not support a fence as a condition of approval for the replat.

Commissioner Standley asked who had the authority for the next step to mitigate problems. Mr. Cook said the city would handle land use permitting, and he encouraged a conversation between the Port and the city about an appropriate barrier for the next step.

Public Agency testimony: none offered

Chairman Randall asked if anyone wanted to continue this hearing, or keep the record open. There were no requests for this. Chairman Randall closed the hearing and moved to deliberation.

Commissioner Standley stated that Mr. Cook had summed it up as a land use issue, and the land is already zoned. This is just a change in the area of the property. Mrs. Mabbott added that any conditions of approval they wanted to include must be linked to a standard of approval from the ordinance. The compatibility issues were compelling, but this replat was not a re-zoning issue.

Commissioner Rhinhart moved to approve the replat application with precedent and subsequent conditions, and Commissioner Standley seconded the motion. Motion passes 7:0.

Break before next hearing.

CONTINUED HEARING:

REQUEST FOR A PUBLIC HEARING, #LUD-163-13. East End Rod & Gun Club submitted an application to continue operation of firearms training facility located at 54752 Milton Cemetery Road, approximately one mile east of Milton Freewater on tax lot 1200 of Assessor's Map 5N 36. The Planning Director issued a preliminary approval of the Land Use Permit and sent notice to adjacent property owners and agencies. Subsequently, a REQUEST FOR A PUBLIC HEARING was submitted on November 8, 2013. The standards of review for the Land Use Permit are found in the Umatilla County Development Code, Section 152.617(II) (5) and 152.063.

Chairman Randall opened the continued hearing, and called for declarations of ex-parte contact. Commissioner Danforth recused herself from the hearing due to personal association.

Patrick Gregg, 222 SE Dorian, Pendleton, OR, representing the opposition. Mr. Gregg stated that he understood that Chairman Randall had indicated at the last hearing that there would not be additional testimony accepted about safety and noise issues. He asked that any additional letters in support of the applicant be stricken from the record as being outside the scope of the hearing. Mrs. Mabbott explained that the procedure for testimony is different in a land use hearing from a court hearing. Chairman Randall stated that he will not strike any written testimony that had been submitted, but they were not prepared to hear additional testimony at this hearing regarding safety and noise issues. He stated that testimony would be limited the relevancy of the cited court case from the prior hearing, and the applicant had new evidence to present.

Michael Robinson, 1120 Couch Street, Portland, OR, representing the applicant. Mr. Robinson stated that this was a continued hearing, and according to the statute the Planning Commission would be starting over. The applicant has testimony relevant to the approval criteria that they would be presenting at this hearing to meet the burden of proof. Discussion followed on what testimony would be accepted at this hearing.

Staff report: Mrs. Mabbott presented a brief staff report. She summarized what occurred at the December 19th hearing. The Planning Commission determined that the hearing would be continued and the record left open for additional submission of materials. She stated that the Chairman had indicated that enough testimony had been heard about noise and safety issues and these matters did not need to be revisited at the continued hearing. Mrs. Mabbott consulted County Counsel Doug Olsen to confirm that all letters received since the last hearing would be allowable to the record. Mr. Olsen also stated that the chairman could encourage limiting the testimony at this hearing to limit repetition. Mrs. Mabbott said that the Planning Commission had indicated they wanted to hear additional testimony on the footprint of the gun club in 1995, and

documentation of what certification and training was conducted at that time. She stated that all materials received since the last hearing were included in the information packets. Exhibits #1-23 were adopted at the December 19th hearing. The packets mailed last week included Exhibits #24-69, and these have been posted on the website for one week. The materials presented at this meeting are Exhibits #70-103. Mrs. Mabbott stated that the additional materials would need to be adopted into the record.

Chairman Randall asked about entering exhibits into the record that they had not reviewed yet. Mrs. Mabbott said that most of the materials submitted were similar letters of support for the applicant, and letters from the representing attorneys. The attorneys will address their own letters. She indicated that adopting these materials into the record only acknowledged them. Commissioner Standley moved to accept all new materials into the record, and Commissioner Wysocki seconded the motion. Motion passed 6:0 in favor.

Applicant Testimony: Michael Robinson, representing the applicant. Mr. Robinson distributed pertinent statutes to the Planning Commission to review. He was joined by Verl Presnall, president of the gun club. He discussed the substantial evidence presented by the applicant, and how it met the burden of proof and clarified what the applicant was requesting. He cited Oregon Revised Statutes (ORS) 197.770. The applicant is requesting a determination that the gun club is a firearms training facility under ORS 197.770 and that expansion of the facility under this statute is allowable. They had originally requested an expansion of the size of the gun club range area, but that aspect has been withdrawn. He wanted to identify the approval criteria and cited "Citizens for Responsibility versus Lane County" decided by the Court of Appeals in 2006. Mr. Robinson also cited Administrative Rules adopted by the Land Conservation and Development Commission (LCDC), Oregon Administrative Rules (OAR) Chapter 660, Division 33, parts 0120, table 1 and 0130, 2(a-c). The Commission adopted this rule, aware of the legislative history to this 1995 statute, and allowed expansion of a firearms training facility. Mr. Robinson cited Umatilla County Development Code (UCDC) 152.059 and 152.617. He explained that the ORS 215 statutes are not before the Commission today. The firearms training facility are not found in 215, and are not subject to the Conditional Use standards. Noise and safety issues are not a relevant matter under these criteria that must be applied.

Mr. Robinson explained the four points relevant to the decision under the statute. He stated that the facility was established by September 9, 1995, and there is testimony in the record to support this. The second point is whether or not the facility has continued as this function since that date, and the answer is yes. This is an outdoor facility that satisfies the third point. Under ORS 197.772 A-C, this facility provides training certificates for law enforcement personnel, Oregon Department of Fish and Wildlife (ODFW) and is part of nationally recognized programs that promote shooting matches, target shooting and safety. There is substantial oral and written testimony in the record to prove this. Mr. Robinson states that the county ordinance repeats the statutes in the code, and so this is also satisfied. He said that the Administrative Rules (OAR) states

that as long as the facility meets the statute, it can be maintained, enhanced and expanded, as long as the building capacity does not exceed 100 people. The gun club has always been located on the same tract of land, owned by the same person. Mr. Robinson stated that the applicant meets the ORS, OAR, and county code.

Mr. Robinson discussed whether or not the gun club must have been lawfully established, and said the answer was no. He stated that the gun club meets the Citizens for Responsibility case and that it ruled that the facility did not have to be lawful or permitted when established in 1995, because the statute did not require it. He said that the gun club did not have to be treated as a non-conforming use, based on page 5 of his memo and the Citizens for Responsibility case law. ORS 215.296 is not applicable because this is not a Conditional Use permit. He stated that this facility can be expanded on the same tract, according to the OAR adopted by LCDC (Land Conservation Development and Conservation) with full knowledge of the legislative history. He does not agree with the opponent that the facility cannot be expanded. During the exchange between the two senators on the floor in the Conrady case, they were speaking only of new facilities, not expanded or enhanced facilities. Mr. Robinson talked about the members of the gun club conducting the training sessions for the gun club, and that the opponent does not agree with this. Mr. Robinson said there is nothing in the statute that states members cannot conduct the training and certification for the firearms training facility. It seems reasonable that a club member, on club property, would be able to conduct training if they are qualified. This is also supported by the Citizens case.

Mr. Robinson commented on the issue of whether or not training and certification had been offered in the past. He explained the statute says, 'training and certification', and it does not indicate any particular form of training and certification or impose any requirements for how it must be completed. Mr. Robinson said that there is evidence before the commission that members offered training/certification for a variety of reasons that all meet 770.2 (A-C) and this satisfies the statute.

Mr. Robinson discussed conditions of approval that may or may not be imposed, and explained that any conditions of approval must be tied in some way to the criteria set forth in the statute. The gun club can also offer and agree to conditions. He stated that the gun club applicant will agree to the conditions proposed by staff. They are reasonable conditions and will make the gun club a better neighbor. He asked the Planning Commission to approve the application with the conditions proposed by staff. If there are any other conditions proposed by the Planning Commission, they would like the opportunity to discuss them before they are imposed. He expressed appreciation for the participation in the hearing, and said that it was his job to explain why the law allows for the Planning Commission to approve the application. They would ask that the record and hearing be closed and they waive their final written argument.

Commissioner Standley stated that he was convinced that the gun club was an established firearms training facility since 1995. He does have concerns about other events and

activities that may be going on there. Mr. Robinson said he would try and address these concerns as they went along.

Proponent Testimony: Andy Millar, PO Box 388, Milton-Freewater, OR. Mr. Millar said that he was responsible for starting this facility up with Pete Vonderahe, the land owner back in 1992. They started their first certified class in April 1993. They first shot sporting clays on the north side of the house, and Mr. Vonderahe told them to take any places they wanted to for the gun club ranges. They moved the area to the south of the house, where a bluff faces to the west and offered a high backstop for shooting safety. They put kids through the hunter safety course from age 9 and up, and each student has an instructor. Mr. Vonderahe had encouraged the gun club to talk to neighbors about what they were doing there. Mr. Millar stated that he spoke to down range neighbors to the east, south and west, including Dutch Wisenflu who owned adjacent land at that time. He also spoke with Herb March, who owned land to the south, and John Cockburn, downrange to the west. All were in favor of the gun club activities and location.

Mr. Millar spoke about the footprint of the range then and today. He said the range started with the shotguns on the north side of the house location, and were then moved to the south side where there was a natural barrier cliff, and rifles shot southward up a long draw and gully. They used small arms and handguns in the range to the east, into the embankment for a back stop. The footprint has stayed the same, but has just been improved to handle more shooters safely at the same time. The facility is using the same ground as it always has, with additional events such as 'Cowboy Action'. There are always range safety officers present.

Commissioner Wysocki asked why he did not speak with neighbors to the north. Mr. Millar said he spoke with neighbors primarily down range of the gun club. They weren't shooting north, and since the entrance was to the north, they could drive by and see the club from the road. Commissioner Standley asked if they had ever received any complaints since 1992, and Mr. Millar said they never did have any complaints until this application process. They have tried to be proactive on the range, and have prohibited large caliber firearms to reduce the impact to surrounding areas. Chairman Randall asked when Mr. Millar had these conversations with adjacent landowners, and Mr. Millar said they occurred in 1992-93 when the gun club was starting up. Commissioner Rhinhart said that they did not want to hear any more testimony about the safety issue, as they heard testimony at the last hearing on this.

Proponent Testimony: John Shafer and Michael Shafer, 135 E. College St., Athena, OR. Michael Shafer stated that he was a youth shooter at the gun club range, and had been shooting there for 6 years through the 4-H program. He shoots a 22 and a shotgun. He stated that the folks at the gun club are "world class folks", and have helped him get his hunter safety card and to be a better shooter. He discussed the safety training he has received at the gun club, and how to safely handle a gun. It would be good if the gun club stayed open to train other youth, instead of having kids go out into fields to shoot.

John Shafer stated that he has been a 4-H instructor for nearly 6 years. He holds a masters certification and national certification to teach youth and adults to shoot. He commented that the gun club is a premier spot for teaching youth to shoot and handle firearms safely. He cited an experience where he had gone to a gravel pit to shoot and that it was very unsafe conditions. Commissioner Wysocki asked what agency had issued his certifications and what did he have to do to achieve those certifications. Mr. Shafer replied that his certifications are through the National Rifle Association (NRA) and 4-H, and he said he attended training seminars in Colorado for 40 hours of instruction and had to pass exams to get these certifications.

Neutral Testimony: Suni Danforth, 225 Maple Ave., Milton-Freewater, OR. Mrs. Danforth said she had looked at the 14 additional notarized statements received in the information packets, and felt that this was enough evidence to show that the gun club was established in 1995. She commented that she did not agree with the opponent citing the Conrady case as pertinent to this application because it did not apply, and agreed with Mr. Robinson that the Lane county case was more applicable. She asked why the opponent had never complained before now about the facility if it was such a concern for them. Mrs. Danforth commented that the gun club serves law enforcement, and offers a legal and safe environment to learn about firearms. She asked to promote the gun club facility instead of people using the gravel pits. She said that the gun club satisfies ORS 197.770 and she agrees with Mr. Robinson on his interpretation of the Citizens for Responsibility vs. Lane County as it does apply to this case. She encouraged the Planning Commission to approve the application with the recommended conditions.

Opponent Testimony: Patrick Gregg, Corey, Byler and Rew, representing the Rea family, 222 SE Dorion, Pendleton, OR. Mr. Gregg stated that the key issue is the statute ORS 197.770 and what must be shown to meet those criteria in 1995. He distributed a letter he wrote to the Planning Commission. He said that the Lane County case is significant but doesn't answer the question before the Planning Commission today. That case was about a Land Use Board of Appeals (LUBA) decision on whether or not a facility had continued to stay in use after September 1995. He disagreed with Mr. Robinson on his interpretation of this case. In order to meet the statute, there must be evidence to meet the burden of proof that training for law enforcement was done by the State Department of Wildlife or a nationally recognized program that promoted shooting matches. He said that there is no evidence in the record to support this. The only evidence is an affidavit from Mr. Millar about the training that was done. There is no evidence of training and certification prior to 1995.

Mr. Gregg said that he was presenting an affidavit from Mr. Nathan Rea, stating that he took a class from the gun club in 1999 and that the training did not occur at the subject property of the gun club. He referred to page 3 of his letter, section 152.772 (e) of the Umatilla County Development Code (UCDC). He read from this section. He said that the large number of people in the room spoke to the impact that the facility has. They contend that there is not enough evidence to meet the burden of proof. He cited aerial photos that he said show no activity on the ground in 1994. Mr. Gregg commented that

there may be some mis-analysis of his interpretation of the Conrady case. This case is important because it discusses the legislative history of the statute, and this is why he brought it up at the last hearing. The statute, ORS 197.770 is not designed to cover expansion. He said that the applicant is omitting a critical point that a use may be expanded, but ignoring a related part of the statute that counties may provide prescribe additional limitations and requirements to meet local concerns. He stated that he would consider the gun club a non-conforming use and would limit expansion. They see the OAR as the floor, and it would not constrain the Planning Commission from adding conditions. Mr. Gregg said that the critical question is whether or not the gun club has shown evidence that, as of September 9, 1995, they were conducting training and issuing certifications within the meaning of the statute. He asserted that they do not feel that the burden of proof has been met in this instance. If the Planning Commission does get to the question of conditions, he asked that the record be left open during deliberations.

Commissioner Standley stated that he felt that the applicant had met the burden of proof and feels that the gun club has been established. Mr. Gregg said that they need to consider it as a snapshot in time and what was occurring in 1995. He handed out the affidavit from Mr. Rea to the Planning Commission.

Mrs. Mabbott said these were additional materials that needed to be entered into the record. These materials were entered into the record by consensus.

Opponent Testimony: Nathan Rea, 84489 Hood Road, Milton-Freewater, OR. Mr. Rea read from a prepared statement. He stated that the question was to find what the gun club facility was comprised of in 1995. They need to know the scope and footprint from 1995. He stated that the gun club is one mile from the Milton-Freewater Urban Growth Boundary, it sits on high value farmland zoned EFU, and that the noise can be heard a mile away. The facility sits approximately 200 yards from a public road. They have a storage container, a sporting clay trailer, shooting stations, portable benches and target stands on the property. They first leased 48 acres of ground in 1997 or 1999, and were using 92 acres. He referenced how the gun club has grown from a small shooting range to a facility that provides sniper training, and hosts regional shooting events. He discussed testimony that they had made at the last hearing about their family farm and where it sits in proximity to the gun club ranges, using aerial maps. Commissioner Standley asked him to clarify the location. Mr. Rea discussed the gun club's desire to expand in the future, and how the gun club has 800 members, with 70% of them from Washington. He stated that this is not the place for this facility nor will it ever be the place for an industrial firearms training facility. Mr. Rea discussed the aerial photos from the US Geological Survey map and how it shows no sign of activity where the gun club presently sits.

Mr. Rea discussed his affidavit. He took a hunter safety class in 1999 that was taught by Paul Petrie and Andy Millar. The location of the classroom was in a building north of Safeway, and the range field day was held in a field near Umapine, west of Milton-Freewater. He asserted that the range field day was not conducted at the Vonderahe

property where the gun club now sits. He remembered the sporting clay trailer and later saw it at the Vonderahe property. Mr. Rea stated that this raised questions about when the gun club actually was established on the Vonderahe property. He commented that the Oregon Department of Fish & Wildlife (ODFW) classes were conducted by Mr. Millar, and not the gun club, and there was no evidence about this in the record. Mr. Rea discussed the adjacent landowners, and said that five of the seven landowners oppose the gun club facility and displayed their locations on the aerial map. He said that they had never been notified of any gun club activity in the past. Mr. Rea presented a 2009 statement from the Oregon Secretary of State showing their non-profit status, which did not reflect the gun club's physical address on the Vonderahe property. Mr. Rea concluded that the decision made by the Planning Commission would have a lasting impact on the ability of Milton-Freewater to grow, to be attractive to new business and families, industries and continued agricultural production. The noise from the gun club was not going away, and nothing short of them finding a new home would be acceptable.

Mr. Dennis Rea opted to not offer any further testimony.

There was no testimony offered from any agencies; Mrs. Mabbott confirmed that they had been notified. Chairman Randall called for a ten minutes break, to reconvene at 8:30 p.m.

Mr. Robinson stated that he would like to have two rebuttal witnesses offer testimony.

Rebuttal Testimony: Andy Millar P.O. Box 388, Milton-Freewater, OR. Mr. Millar referenced the aerial photo displayed earlier by the opponent, dated May 1994. The photo shows the field north of the house where they started shooting the sporting clays on a portable trailer. They built graveled roads in 2000/2001, but before that it had been base rock. In the spring, the land was impassable due to rain and mud. In 1999, the range was unreachable because the land was too wet. The outdoor class was held at Grant Beauchamp's place on Stateline because he had a student in the class. Later, the club received grants to place gravel on the roadways to make them accessible when wet. The hunter education classes were held in April and September. They had been doing classes since 1993 and 1994, and started the sporting clay trailer in 1994. Commissioner Standley asked if they used indoor facilities for classroom training, and Mr. Millar said they held classes at the American Legion building. Mr. Robinson asked Mr. Millar to clarify what Mr. Rea had testified to in regards to his affidavit. Mr. Millar said that the 1999 spring outdoor class was held at an alternative location due to the gun club range being inaccessible due to rain and wet grounds.

Rebuttal Testimony: Cliff Pease, Lieutenant, WA Department of Corrections. Mr. Pease is certified in basic and advanced sniper and SWAT, basic firearms and certified through the state criminal justice training commission and WA Department of Corrections. He discussed the first training course that he held at the gun club property, and how students attending from other areas got stuck in the mud due to the wet land. He had a release of liability letter from November 2001 to Mr. Millar to continue to hold

training classes at the gun club. They are able to hold confidential tactical training at the gun club due to the remote location. He had also had the Washington State Patrol scheduled for training, but that was cancelled due to their budget. His employees are also members so they can keep current for work. Mr. Pease stated that they have been conducting formal training at the gun club since the 1990's.

Commissioner Wysocki asked Mr. Pease if he could train and certify Oregon people as well, and Mr. Pease indicated that he could for both Oregon and Washington. His curriculum can be reviewed and approved by BPSST, and is recognized by the NTOA (National Tactical Officers Association) and the American Sniper Association. Commissioner Wysocki asked if they pay a fee for using the facility. Mr. Pease stated that they paid a minimal fee of \$200, because the range must be shut down when they are using it. They have also paid \$350 for an entire week on the range. He stated that he remembers the roads weren't graveled until somewhere in 2000 and they were training before that at the gun club.

Mr. Robinson stated that he wanted to clarify something that Mr. Rea had testified about. The gun club is not seeking to expand their operation size as originally proposed in their application, and this request has been withdrawn from their application. Mr. Robinson asked the Planning Commission to keep the approval criteria in mind and stated that he disagreed that the Citizen's case wasn't relevant. Mr. Robinson said that that Citizen's was relevant because the ORS 197.770 are not treated as non-conforming uses by the state legislature or the county code. The case also stated that the facility did not have to be lawful when established. The statute does not require this, and the court affirmed this decision. He agreed that the Lane County case was about intent, and that evidence presented has been more than sufficient to meet the burden of proof. There was only one more thing needed about the training and certification, and this was satisfied by the Millar affidavit. The affidavit stated that the training began in 1993, students were certified by ODFW, the gun club hosted 5 stand shooting events on a monthly basis and they held hunter education classes and classes for range safety officers. All of these elements go towards meeting the criteria. Mr. Robinson said that the testimony offered by Mr. Millar goes towards rebutting the affidavit submitted by Mr. Rea, regarding where the hunter education class was held in 1999. He stated that the Planning Commission would be able to impose conditions to meet local concerns, but that they must be relevant to approval criteria. Mr. Gregg testified that there were no certificates showing training that occurred in 1993, and Mr. Robinson stated that the statute did not require that any certificates be produced. He said that the Citizen's case supports this as well. The fact that the property is on high-value farmland is irrelevant to the statute, as is the property being one mile outside the Urban Growth Boundary. Mr. Robinson pointed out that the membership of the gun club being 70% from outside Oregon is also irrelevant and not addressed by statute. He went on to discuss why much of the opponent testimony was not relevant to the statute, such as the non-profit address of the club. Mr. Robinson explained that condition #10 would address the concerns from opponents about communicating with surrounding landowners. He requested that the Planning

Commission approve the application with the recommended conditions, and asked that the hearing remained open to discuss any other conditions.

Planning Commission members discussed on how to proceed, and what questions they had left to address. Chairman Randall asked about membership limits.

Proponent Testimony: Suni Danforth, 225 E Maple Ave, Milton-Freewater, OR. Mrs. Danforth stated that their membership is limited to 1000 because that is the maximum accounts for their card lock gate control system. She stated that the president maintained the computer that tracked and controlled this system. Mr. Presnall said there are approximately 50 people per week that use the range. During weekend events, there are usually 12-15 people, unless there is an event. He said that nearly 300 people joined just to donate their money to the club, and don't actively use the range. Chairman Randall stated that clarified things for him as to the amount of people that are typically there. He had thought it would be closer to 100 people.

Commissioner Wysocki asked Mr. Presnall how many rounds were fired on the average each week. He said there is no way to count actual numbers, but that most regulars are out there 4-5 times a week and shoot approximately 20 rounds per visit. He said there are more rounds shot when law enforcement is there doing training, and they can shoot 200 rounds during a training event. Commissioner Standley asked how it would affect the gun club if they had to limit the shooting times. Mr. Presnall said they have not discussed day closures, but this would affect their membership that helps pay for training events and also in getting grants from ODFW. Their training programs like Women on Target and First Shots happen on the weekends. Mr. Presnall said that many of their members work different schedules and having the range closed certain days would mean that they wouldn't be able to use the range when they had an opportunity.

Mrs. Danforth discussed how she loads her own rounds and takes just 20 rounds to shoot. Commissioner Wysocki commented that it didn't matter how many members there were, it mattered how many rounds were shot in a day. She discussed how many rounds are typically shot during the events like Cowboy Action. People want to be proficient with firearms, and this takes practice to stay safe. Mr. Presnall commented that the Cowboy Action events were sponsored by a nationally recognized organization that promotes target shooting. Commissioner Standley asked Mr. Robinson if these events met the 197.770 statute for a nationally recognized organization. Mr. Robinson said that it did meet the statute and that the legislature wrote this broadly on purpose. This also did not make this a 215.296 use, so the Planning Commission cannot make this a Conditional Use process. Mr. Robinson read the conditions of approval that were recommended by staff, and said that they address most of the concerns raised by opponents.

Mrs. Mabbott handed out the conditions of approval that were included in the staff report findings to the Planning Commission, including some newer options for conditions. Chairman Randall asked her to clarify the #10 condition about a land owner meeting. Discussion followed on how best to require an annual meeting between adjacent

landowners and the gun club. Mrs. Mabbott explained that Condition # 11 was based on the OAR that a building cannot be built for more than 100 people. She added that conditions could be put on future expansion and events. Commissioner Rhinhart asked about the trees planted as a noise buffer and mitigation. Mr. Robinson stated that the gun club has already offered to plant this row of trees on the west side for noise buffer.

Proponent Testimony: Charles Danforth, 225 Maple Ave. Milton-Freewater, OR. Mr. Danforth stated that he is a retired fireman, and is a range safety officer at the gun club. He discussed the size and type of ammunition that is typically used at the gun club, and how often he shoots at the club. The majority of guns fired are 9mm pistols and 22 caliber rifles and pistols. These don't make much noise. Some law enforcement officers use 45 caliber weapons. He discussed the impact of the Sandy Hook event on gun ownership nationwide.

Commissioner Standley stated that the Rea family still needs to be able to run a farming operation, and they are trying to find a way for them to be able to get along with the gun club. He suggested days where no shooting is allowed. Mr. Danforth said they are working with NRA specialists to reduce the noise impacts. They already have concrete blocks present to stagger for noise abatement. He said it is the rifle range noise that the Rea's are mostly hearing. He discussed the black flag system where they shut down the range when people are present on adjacent lands. Mr. Danforth also mentioned that Mr. Presnall can also control the gate by the computer card lock system. A phone call is all it would take to shut down the range when farming practices are going on nearby. Mr. Presnall said two adjacent farmers down-range participate with the black flag system already in place.

Opponent Testimony: Patrick Gregg, representing the Rea Family. Mr. Gregg spoke about the proposed conditions from staff. He said that the conditions are all dependent on voluntary cooperation from the gun club, and there were no details in the conditions on how they would be carried out. He spoke about #10, the annual meeting with adjacent landowner's requirement. He asked what happens after this meeting. He also does not understand how the card lock system works.

Opponent Testimony: Nathan Rea. Mr. Rea spoke about the efforts the gun club has made to minimize the noise. He discussed the testimony about how many members the club has and how many rounds are shot each day. He said the noise is heard on their farm 1.3 miles away. There is an existing range towards their farm. Mr. Rea stated that the gun club has not reached out to them, and that there is still a question as to the presence of the gun club in September 1995 and whether or not it met the criteria of the statute.

Commissioner Standley asked if the Planning Commission approved the application, was there any way they could come to an understanding between the two parties. Mr. Gregg said they wanted to see the hours of operation limited in the summer time. He said they were not waiving appeal rights.

Opponent Testimony: Dennis Rea, 84224 Spoffard Road, Milton-Freewater, OR. Mr. Rea spoke about the noise generated by the Cowboy shoot. He stated that it is very noisy, and he likes to sleep in during the winter months. He said that the Cowboy Shoot events will wake him up at 8 a.m., and suggested that the events start at 10 a.m. instead. Mr. Rea said that this is not the place for a commercial gun range, and it would be best to move it to another place.

Chairman Randall called for a 10 minute break to discuss the conditions.

Opponent Testimony: Patrick Gregg, representing the Rea family. Mr. Gregg said that they would like to see the following conditions added; compliance with the noxious weed ordinance, a limit to the number of training and tactical sessions of no more than one every two months, limit of operation hours beginning with 8 a.m. on weekdays and 10 a.m. on weekends, and stopping one half hour before dark or 7 p.m., whichever comes first. They also want to see a safety plan prepared by the club and approved by farmers and landowners within a one mile radius of the club location, stating that the gun club would make a reasonable effort to reach out to new land owners or tenant farmers. Mrs. Mabbott said that the county cannot delegate authority over a condition of approval to a third party. She stated that she had included a condition to address this, and she would be responsible for reviewing it. She suggested that a safety plan could be submitted to the county, with neighboring landowner participation and certification by the NRA. Mr. Rea stated that the area should be larger than one mile. Discussion followed on which third party will review the safety plan. It was decided to move to other conditions and come back to this one, as there was no agreement on what the terms should be.

Mr. Gregg talked about the black flag system, and how if the farmer provides notice to the gun club, they will cease operations on the range until the farmer is done. Commissioner Thorne asked if this was for line of sight, and Mr. Gregg replied that it should be line of fire.

Mr. Gregg said that their remaining conditions were; the club should be fully staffed with a range officer at all times when open for operation, a cap on membership through attrition, no shooting after dark, the club must meet the county noise ordinance, there can be no large, commercially sponsored events, and no alcohol or food service at the facility.

Commissioner Standley asked if they felt they had adequate time to consider these conditions. Mr. Gregg said they were not waiving their right to appeal.

Mrs. Mabbott asked for clarification on the "no food service and alcohol" condition. Discussion followed on what was intended by this condition. Mr. Rea said that they didn't want to see an onsite restaurant. Further discussion followed on the difference between a mobile food vendor and commercial food service vendor. Mr. Robinson asked if the gun club would have to get a Zoning Permit for a commercial food event. Mrs. Mabbott said it would depend on the circumstances.

Proponent Testimony: Mike Robinson, representing the applicant. Mr. Robinson stated that the conditions of approval went from the 11 suggested by staff to 22 with the additions suggested by the opponent. He said it would be a mistake to make the conditions of approval so complex that this case ended up back in front of the Planning Commission. He stated that any conditions of approval have to be relevant to the approval criteria. This is not a Conditional Use Permit, and the applicant cannot agree to conditions of approval that would limit their function under the statute, which was to provide training and certification. Mr. Robinson said that they would prefer there not be any limitations to days for shooting, as the membership has a right to grow. They do agree to a clarification of the hours of operation condition. He said that it is not necessary to impose the county noise ordinance as a condition. As a county ordinance, it is already applicable. They agree to use best efforts to reduce noise based on current NRA recommendations. For hours of operation, they agree to open the gun club no earlier than 8 a.m. in winter and summer, and end at 9 p.m. in the summer except for 6 special events per year when the end time would be extended to 11 p.m. The gun club agrees to give written notice in advance to the same group of people that received notice of this hearing. During the winter, the gun club agrees to operate within 8 a.m. and 5 p.m., with the exception for Condition #8, when training certification for law enforcement personnel doing night exercises is going on. Mr. Robinson said that the condition pertaining to adherence to the county noxious weed ordinance is not relevant to the statute, and should not be imposed. He stated that the gun club cannot agree to any conditions that limit training sessions or memberships. They are reluctant to agree to a condition for a safety plan, as it is subjective and may end up back in front of the Planning Commission. Mr. Robinson said that he didn't see the need for a safety plan, as there has never been any injuries at the gun club. He said they agree with having to comply with the county noise ordinance, and will follow the NRA recommendations on noise. They agree to impose some limitations on noise, as long as they have the ability to conduct six special events per year. This condition should not exclude necessary law enforcement training. Mr. Robinson said that the additional conditions of approval proposed by the opponent are too restrictive, and if the legislature had wanted to have such constraints on firearms training facilities, they would have made this a Conditional Use Permit.

Commissioner Wysocki asked about enforcement of the conditions, as some were already ordinances for the county. Commissioner Standley stated that there was probably not enough information to satisfy both parties. Chairman Randall said that he thought the staff recommendations were sufficient plus the two additional conditions added at this hearing.

Commissioner Standley moved to close the hearing and move to deliberation. Commissioner Marlatt seconded the motion. Motion passed by consensus. Commissioner Standley stated that he was satisfied that the gun club had been present in 1994 and asked to move forward from there. Chairman Randall said that he believed the

conditions in ORS 197.770 have been satisfied. Discussion followed on the conditions proposed by staff.

Condition #1 - Obtain access permit from Public Works: Chairman Randall stated that this was a given and already accomplished.

Condition #2 - Obtain a Zoning Permit for all existing buildings and cargo containers: This was also a given and would be done following approval of the application.

Condition #3 - Make improvements to the roadway: Chairman Randall asked if there wasn't already adequate roadways present at the site. Mrs. Mabbott said that there were plans to add gravel, and this condition could be eliminated. There is also knowledge that the roads wash out in the spring and it is being addressed. It was decided to remove this condition.

Condition #5 - Outdoor lighting: Commissioner Standley commented that they operated during daylight hours, so why would they need outdoor lighting. Mrs. Mabbott had discussed this with Mr. Presnall. Mr. Robinson suggested that if the club installed lighting, that it be done to minimize glare. They may want to have a safety light on one of the buildings for security. Mrs. Mabbott said this one of the boiler plate standards that is typically imposed. Chairman Randall noted that the word "if" could be added to this condition.

Condition #4 (skipped): Mrs. Mabbott asked to review #4. Chairman Randall said the gun club has demonstrated that they can manage their parking on their own, so this condition could be eliminated.

Condition #6 - Subject to annual review by Code Enforcement: Mrs. Mabbott said this condition was boiler plate language, and they should keep the annual review condition as part of the approval. This annual review includes a site visit to ensure that the applicant is adhering to the conditions of their approval.

Condition #7 - Chairman Randall said this should be removed, as the gun club can decide if they want cameras or not.

Condition #8 - Commissioner Standley said he agreed with this condition. Chairman Randall suggested coming back to this one later.

Condition #9 - Mrs. Mabbott said this was added to address safety concerns. Commissioner Wysocki asked if there as any NRA certification for range safety. Mr. Presnall said that they adhere to NRA range standards, and they meet these standards: They are working on getting this documentation from the NRA. Mrs. Mabbott suggested adding "NRA safety standards" to the condition. Mr. Presnall said the NRA representatives would be visiting the gun club range within the next two weeks to inspect the facility.

Condition #10 - Meeting with adjacent land owners: Mrs. Mabbott said they could mail a letter to all property owners that were noticed about this hearing. Discussion followed on what should be accomplished by the meeting, who should attend and what needs to be done. Mrs. Mabbott said that any serious problems that arise can always be brought to the county attention. Commissioner Standley asked how problems would be enforced. Mrs. Mabbott said that the county would notify the landowner if they were out of compliance with any conditions, and give them 30 days to bring the property into compliance. If this is not done, the county can revoke the permit. Chairman Randall said he thought the annual meeting was impractical for both parties. Mrs. Mabbott said the purpose of the meetings could be educational and to establish a protocol for adjacent land owners to notify the gun club of their presence.

Condition #11 - This is already limited by statute, and is typical boiler plate language. Mrs. Mabbott said they try to be consistent when writing conditions for future reference.

Condition #12 - Plant trees as a noise reduction effort: Discussion about planting trees, and whether this will help or not. It was suggested that straw bales be used instead of trees. Chairman Randall suggested that this condition say, "to implement noise abatement measures". He said the NRA might have suggestions, and the club can add them over time as they have the funding. Mrs. Mabbott said there is always the county noise ordinance to fall back on. She suggested putting this in the findings instead of the conditions.

Condition #13 - No single event shall allow more than (x) persons: it was decided to strike this condition.

Condition #14 - Membership limited to 1000: Commissioner Standley said he would like to see this condition remain, to protect the gun club.

Condition #15 - Noxious weed control: This ordinance is already in place in the county code, and this condition is unnecessary in this permit.

Condition #16 - Limit numbers of training sessions: Discussion of what constituted a training session. Mrs. Mabbott said that the night time tactical training sessions would be limited to four per year.

Condition #17 - Farmers provide notice of proximity on adjacent lands: Mrs. Mabbott said that the gun club already has the black flag system. Chairman Randall said it was his understanding that this protocol was already in place and didn't need to be a condition. Mr. Presnall said even if the farmer doesn't contact the gun club, they raise the black flag if they see someone working on adjacent land. Discussion on how this system works and what should be the area covered, including down range areas. Mrs. Mabbott said this could be added, even though it's already in place, to memorialize the protocol for future gun club participants.

Condition #18 - Shooting range shall be fully staffed during operating hours: This means that there should be a range safety officer present during open hours. Mr. Presnall stated that state regulations do not require the presence of a range safety officer. He said that they do have range safety officers present during all organized shooting and educational events. All members are required to go through orientation training before they get access to the range. Mr. Shafer said that all 4-H training is accompanied by a range safety officer. Mrs. Danforth said that all current members also have to go through the orientation each year when they renew their membership. Mrs. Mabbott asked if they had statutory reference for these guidelines, and Mr. Presnall said they adhere to the ODFW range guidelines to be able to apply for grants. Chairman Randall said he didn't know the difference between a range safety officer and a club member that has gone through orientation. He said he was happy that the gun club recertified their members every year, and he was satisfied with that. He suggested striking this condition. Mrs. Mabbott said the findings would reflect that they require recertification each year of all members.

Condition #19 - No shooting after dark: Mrs. Mabbott said this one could be stricken because it was addressed in an earlier condition #8.

Condition #20 - Comply with county noise ordinance: Mrs. Mabbott suggested that this could be addressed in the findings, since there is already an ordinance in place. They can add a condition to "use best management practices and follow NRA recommendations for noise abatement".

Condition #21 - No alcohol or commercial food service: Discussion followed on what constituted commercial food service. It was decided that catering would be allowable but no permanent onsite food service would be allowed. Mrs. Mabbott said she would include this in the findings, so it doesn't have to be a condition.

Condition #22 - Safety plan: This was addressed in Condition #9, so this can be stricken.

Discussion followed on hours of operation. The existing language was read by Mrs. Mabbott. Mr. Standley suggested 8 a.m. to 7 p.m. for weekdays, and 10 a.m. to 7 p.m. on weekends. Mrs. Mabbott said the 10 a.m. starting time on weekends was problematic for formal training events. The weather during the summer has impact on the training. Chairman Randall suggested 9 a.m. to ½ hour before sunset on weekends during the summer months. Mrs. Mabbott said the club could open earlier for these events to do set up and registration, but no shooting until after 9 a.m. There is an exclusion for the nighttime law enforcement sessions. Mr. Robinson said that they had offered 6 special events per year, with some running until 11 p.m. for night shooting. Mrs. Mabbott read the suggested language for Condition #8, which will be a longer condition. The hours of operation will be limited to daylight hours, except for training and certification of law enforcement personnel. Discharge of firearms is allowed from 8 a.m. during the

weekdays, and 9 a.m. on weekends and shooting will end at 7 p.m. or one half hour before sunset, whichever comes first. The exception will be 6 nighttime tactical trainings during the year. Commissioner Standley said he couldn't support this, and the landowners needed protection. Discussion followed on what type of firearms produced the most noise. Chairman Randall suggested dropping the 7 p.m. stop time and just go with one half hour before sunset as the end of shooting time, and 6 special events for nighttime shooting. He also suggested adding that the special events should not be on consecutive weekends, no more than 2 per month.

Mr. Robinson asked Mrs. Mabbott to re-read Condition #8. Mrs. Mabbott read the following condition; the hours of operation shall be limited to daylight hours except for training and certification for law enforcement personnel. Discharge of firearms shall be limited from 8 a.m. during weekdays and 9 a.m. on weekends. There will be 6 special nighttime events allowed per year for after daylight hours, not to be on consecutive weekends. The ending time will be one half hour before sunset. Discussion followed on the ending time.

Conditions 3, 4 and 7 were removed. Mrs. Mabbott suggested that she draft the new amended conditions and then have the parties review what was written for final approval.

Commissioner Standley moved to accept the precedent conditions as determined at this hearing, and adopt findings and subsequent conditions and approve the application as presented. Commissioner Wysocki seconded the motion. Motion passed 5:1.

Mrs. Mabbott asked the Planning Commission to review the proposed work plan for 2014 for the Planning Department and the Planning Commission. These are projects that the department will be working. Elections of officers for the Planning Commission will be conducted at the next hearing.

Chairman Randall adjourned the meeting at 10:59 p.m.

Respectfully submitted,



Gina Miller
Secretary

Adopted by Planning Commission on March 27, 2014