

**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, January 26, 2012**  
**6:30 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, Oregon**

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**COMMISSIONERS**

**PRESENT:** Gary Rhinhart, Frank Kaminski, David Lynde, Clinton Reeder, Randy Randall, David Lee, John Standley, Don Wysocki.

**ABSENT:** Tammie Williams.

**STAFF:** Tamra Mabbott, Richard Jennings, Gina Miller, Connie Hendrickson.

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**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 Rhinhart called the meeting to order at 6:30 p.m. He read the opening statement.

**APPROVAL OF MINUTES:**

Mr. Lynde stated that he had already communicated his corrections to the minutes to staff. The minutes from November 17, 2011 were adopted by consensus.

**NEW HEARING:**

**Co-adopt the I-82/US 730 Interchange Area Management Plan and amend the Umatilla County Transportation System Plan, #P-104-11.** The IAMP is a transportation improvement plan and an access management plan for an area in the vicinity of the interchange of US 730 and Interstate 82. The amendment also includes updates to the Development Code to include transportation impact study and access management requirements. The City of Umatilla adopted the IAMP for lands within the city limits. The County amendment would apply to lands outside city limits.

Chairman Rhinhart called for abstentions or objections to jurisdiction and there were none.

**Staff Report:** Mrs. Mabbott presented the staff report. She stated that Planning staff, Public Works staff, Oregon Department of Transportation (ODOT) and staff from the

city of Umatilla have been working with a consultant, Kittleson & Associates, for two years to study this intersection. The county is involved because the study area expands outside the city into county jurisdiction. The engineer working on the project had called earlier today and indicated that he could not make the hearing, but Theresa Penninger was present representing ODOT with a power point presentation and would try to answer questions from the Planning Commission.

The interchange revisions would mostly apply to inside the city limits of Umatilla but there would be some changes in the county. There are proposed language changes noted in the packets to amend the Development Code (UCDC), Transportation System Plan (TSP) and the Umatilla County Comprehensive Plan (Comp Plan). The only other Interchange Area Management Plan (IAMP) in the county is at Barnhart Road due to access points. Threshold studies were required that applied to both areas. There is also a requirement for a traffic impact analysis under certain conditions in the UCDC, so this will also be included in the TSP and Comp Plan.

Mrs. Mabbott introduced Theresa Penninger, ODOT, to present a power point program that explained this proposal. Chairman Rhinhart asked if the City of Umatilla had already approved this application and Ms. Penninger confirmed that the city of Umatilla had unanimously approved this application.

**Applicant Testimony:** Teresa Penninger, ODOT, 3012 Island Ave, La Grande, OR, 97850. Ms. Penninger described the history of this project, beginning in 2009. She showed a slide show that demonstrated what the IAMP was and why it was necessary. The main problem is inadequate spacing between intersections currently leaves vehicles backed up into other intersections. The Port of Entry (POE) to the Port of Umatilla for weighing and permits also causes backups to traffic flow. Along the I-82 southbound off ramp, there are problems during peak traffic flow times, such as harvest in the summer. ODOT had identified these problems, and wanted to take advantage of a recent federal funding opportunity to correct these problems. ODOT commissioned an engineer, and the city and county became involved to identify land use issues, spacing issues and connectivity to major access points, including Brownell Boulevard, Highway 730 and U.S. 30.

A slide of the study area was displayed, showing most of the area within the Urban Growth Area (UGA). This was followed by an aerial slide of the roads involved. Other slides demonstrating the overall projected area was shown.

Ms. Penninger explained that there were project committees involved in drafting this application; technical advisory committee, public advisory committee and representatives from government agencies on a committee. The initial meeting took place in January 2010, followed by two work sessions and other public meetings. From these meetings, developers developed fifteen ideas to work from. A table slide was shown that summarized the original solution suggestions and what problems were detected in those suggestions through a screening process of standards and criteria's. From this, a refined solution was developed. The original idea was to change the interchange, or a "standard

diamond”, and the south bound off ramp would be eliminated into a loop ramp. This would consolidate the off-ramp, the Brownell Blvd ramp and the access entry to the Port of Umatilla. The city of Umatilla asked the committee to relocate the POE access through city limits for traffic as it was considered a gateway into their community. There were concerns that this proposal would increase truck traffic and congestion. The POE wanted to be as close as possible to the interchange because of the potential of truck evasion from weighing and permitting. The committee had to go back to the drawing board because they found that their original solution would not work and would not satisfy the city requirements. They found a new design that was part of the original 15 ideas submitted. This new idea would cost less, and would solve the cities’ concerns and provide for the POE for the truck traffic. This new site was located within the Urban Growth Boundary of the city of Umatilla. The committee had to make provisions for the truck traffic on Highway 395, install a truck scale for temporary scaling and include a way station on Hwy 730 that was closer to the east side.

Ms. Penninger described the Transportation Improvement plan, and commented that once the POE was relocated, all the other issues would fall into place. The location is in the UGB, and the zoning is partially residential and Exclusive Farm Use (EFU). This project does not have a specific timeline, as it is contingent upon funding. She showed a slide with more detail of the concept. Once the POE is relocated, the access points of Brownell Blvd will still need to be addressed. The signal will need to be moved to Isley Drive and Brownell Blvd off the interchange. The City of Umatilla had already adopted ordinances to address what types of development would be able to go in this area. The city wants the new interchange to be the gateway to the community and so some types of development will be limited. The yellow lines on the slide show the lining up of the southeast quadrant of Scapplehorn Road and where it will connect.

Commissioner Lynde asked how close the POE would be to the Depot grounds, and Ms. Penninger replied that it would be 3 to 4 miles further to the Depot. Mrs. Mabbott commented that the city didn’t want to lose the POE as it was a huge source of revenue for them, so they plan to annex that area eventually.

Ms. Penninger showed the next slide showing the access management plan. They are working with the existing truck stop and their access point that may have to be closed when the roads are re-aligned. This would stay the same unless the access points were deemed a safety issue or the property was sold and the new owner wanted to develop new access points. The access management plan is a long term plan.

In terms of implementation, Ms. Penninger stated that the county will monitor any future development in the management area boundaries and the county will have to adopt the IAMP as part of the Comp Plan and TSP. The county will then amend their zoning maps and ordinances to include this IAMP management area boundary. Any deviations from approved access points will have to be reviewed.

Ms. Penninger explained that there will be monitoring triggers built into the plan to give the agencies an opportunity to review any future development. There are new

transportation rules pertaining to multi-model mixed use areas. Once the city gets their funding secured, this will start everything falling into place. Following the POE relocation, the state will declare the POE sight as surplus, and it will be sold. Once the re-alignment of Brownell Boulevard is completed the jurisdiction will transfer from the county to the city. The city will also need to ensure the funding mechanism to ensure the construction of realigning Brownell Boulevard, and ODOT will ensure funding for the relocation of the POE. The city has agreed to this responsibility.

Ms. Penninger explained that if this was approved by the Planning Commission, it would move on to be heard by the Board of Commissioners on March 13, 2012 and lastly to ODOT for final adoption.

Commissioner Lynde asked Mrs. Mabbott if the city wanted to take up some of the UGB, would it have to prove that no other places were available in the city currently. Mrs. Mabbott replied that the city would not have to do this, the UGB was there for just this type of development and the Umatilla UGB has plenty of acreage to annex for this. The project will serve to open up and better serve the UGB area for future development. Chairman Rhinhart stated that the cities of Hermiston and Umatilla are very connected by their respective UGA's. at Bensel Road.

Chairman Rhinhart asked about the next step after they voted on the application. Ms. Penninger replied that the application would then be considered by the Board of Commissioners, and if approved there, would go to the state for final adoption. Chairman Rhinhart asked about a past project for Hwy 730 and would it all be done at the same time. Ms. Penninger replied that it would not be done at the same time, as funding was the factor that will determine how it will proceed. It may be a combination of funding from various sources. Mrs. Mabbott explained that they needed a committed plan before they could even begin to seek funding, and this was the stage they were at now. Ms. Penninger pointed out that they were at a point of adoption with the city nearly a year ago, but had to make revisions to include the county at the request of the city.

Commissioner Reeder commented on the long term impacts of relocation the POE in terms of how Hwy 730 would be affected. Ms. Penninger referenced a project between Umatilla and Morrow Counties that involved installing a safety corridor in the project boundary area.

Commissioner Wysocki asked how many vehicles would go through the study area in a day. Ms. Penninger replied that she didn't have the exact number, but that during peak seasonal periods, the traffic was backed up all the way to Hwy 395. Mrs. Mabbott commented that there was additional information on pages 56-57 of the traffic study provided to the Planning Commission.

Chairman Rhinhart called for any other questions. Hearing none, he closed the hearing and moved to deliberation.

Commissioner Reeder moved to recommend approval to the Board of Commissioners as presented, including the 3 inserts, and the motion was seconded by Commissioner Standley. Motion carried 8:0.

Commissioner Reeder and Commissioner Standley commented that they appreciated the effort that was put into the project by all parties and complimented the presentation.

### **NEW HEARING:**

**REQUEST FOR A PUBLIC HEARING submitted by ROBERT G. KLAHN on the following applications. LAND USE DECISION REQUEST, #LUD-140-11 submitted by RICK & WYNONA TURNER.** The 21-day comment period on this land use request resulted in a “Request for a Public Hearing” submitted by Mr. Robert G. Klahn. Thus, the details of the land use decision request will be discussed in a public hearing before the County Planning Commission.

Mr. & Mrs. Turner requested to establish a Non-Farm Dwelling. The subject property is located north of Highway 332 approximately ½ mile west of Triangle Station Road. The situs address for this property is 52885 HWY 332, Milton-Freewater, OR 97862 and described as Township 6 North, Range 35 East W.M., Section 21-D and Tax Lot 700.

Chairman Rhinhart called for abstentions or objections to jurisdiction. Commissioner Wysocki and Commissioner Lee recused themselves from this hearing.

**Staff Report:** Richard Jennings, Senior Planner, presented the staff report. Mr. Jennings described the criteria required for a non-farm dwelling according to the Umatilla County Development Code Chapter 152.059. He described the history of this application, the subject parcel and adjacent parcels. There is an existing shop on the subject property. Mr. Jennings commented that the criteria were very straightforward for a non-farm dwelling. In order to qualify for a non-farm dwelling, the parcel must be generally unsuited for farming purposes, and the soil quality qualifies this subject parcel as unsuitable for farming. The property owners had a soil survey completed that showed Class VII (7) soils, or unfarmable soils. The Oregon state legislature has stated that Class 7 or 8 soils are designated as unsuitable for farming. Mr. Jennings clarified that the staff report did not find that the parcel cannot be farmed, but that there are Class 7 soils present on the parcel. He stated that a home would not materially change the profile characteristics of the surrounding area, as there are several homes already established on adjacent parcels. In regards to one of the criterion, Mr. Jennings stated that a non-farm dwelling would not disturb the historical farming practices on the adjacent parcels. One criterion for non-farm dwellings was not considered as this parcel was already at a size smaller than the 160 acre minimum parcel size already.

Mr. Jennings explained that the preliminary administrative decision was to approve the non-farm dwelling application. During the public notice period a request was received to hold a public hearing on the application. He explained that this hearing is not an appeal because no decision has been made; this is a public hearing for this application before the Planning Commission to make the decision. A covenant not to sue would be a typical requirement for this application, and the parcel would have to be disqualified for farm use and taxing purposes.

Chairman Rhinhart asked if the application was approved, would the zoning of the subject parcel change. Mr. Jennings explained that the Exclusive Farm Use (EFU) zoning would remain the same, but the parcel could not be considered for tax deferred status. Chairman Rhinhart asked if the proposed dwelling would have to be sited on one of the pockets of Class 7 soils, and Mr. Jennings confirmed that the dwelling would have to be placed according to the soils survey and the locations of the Class 7 soils. Mr. Jennings explained that a portion of the property would have to be Class 7 soils to qualify for this exemption, not the entire parcel.

Commissioner Standley asked about access to the property from both the north and the south. Mr. Jennings advised that there is an access easement from both Sunquist Road and Hwy 332, but the southern access was not a criterion for approval and should not be discussed in consideration of the application. This should be a discussion for a later civil action or discussion.

Chairman Rhinhart asked where there were so many small acreage parcels of EFU in this area. Mr. Jennings replied that these tracts of land were created in a sub-division in 1893, known as the Fruitvale Sub-division for small orchards and a school district.

Commissioner Reeder asked about seeing a photo of the parcel with a shop on it, and the soil survey summary indicated there were no structures on the parcel. Mr. Jennings clarified that there was a fenced area that was reviewed for the soil survey, and that area did not have any structures. There is a shop permitted on the parcel.

**Applicant Testimony:** Rick Turner, 52885 Hwy 332, Milton-Freewater, OR. Mr. Turner spoke about this property being very rocky, and that past farmers have had a hard time growing anything there. He discussed some history to the parcel, and who had owned and farmed it in the past. Mr. Turner bought the parcel, and attempted to grow hay there, with little success even with adequate water and fertilizer. He changed to pasturing horses there. They put the property on the market, but were unable to sell it because of the rocky nature of the soils. Mr. Turner discussed having several local farmers and orchardists look at the parcel and what their opinion was on growing crops there. He cited Ron Brown, Rick Trumbull and Tom Darnell as all saying that the land was too rocky to be very productive for any type of crop. He believes that the best use of the land where it is rockiest is for the non-farm dwelling.

Mr. Turner stated he plowed the parcel last spring and picked up three truck loads of rocks. The land does not hold water very well because of the rock, and stated that the

area must have been the bottom of a river bed thousands of years ago. He stated that having another home there would not adversely affect the surrounding properties, as there were already many homes on small parcels. He can provide a signed petition from neighbors supporting his application and intention to have a non-farm dwelling there, and provided a soil scientist survey to support the statement that the parcel is too rocky and asked that the Planning Commission to approve his application.

Chairman Rhinhart asked what else is on the parcel. Mr. Turner replied that there is a shop with a bathroom and a septic system that was engineered for a home, a well and power. He stated he would site the home next to the existing shop where there is a large Class 7 soils pocket. Mr. Jennings stated that the dwelling north of the subject parcel was approved for a lot of record dwelling, not a non-farm dwelling.

**Proponent Testimony:** John Edson, 52911 Hwy 11, Milton-Freewater, OR. Mr. Edson testified that he had attempted to farm this land in previous years and that his equipment was torn up by the rocks in the soil. He does not believe this parcel is suitable for farming, especially alfalfa.

**Opponent Testimony:** Robert and Bonnie Klahn, 84471 Ringer Rd, Milton-Freewater, OR. Mr. Klahn displayed several large exhibits, including a copy of the original 1894 Fruitvale plat, showing roads and parcel lines. Mrs. Klahn asked to clarify some points, and asked how much acreage on the subject parcel was subject to the Class 7 soils designation. She stated that there is no easement across the property. She stated that there is a 10 foot private road to the south. She described how the access to their property came to be, and displayed a decree stating what the use of that private road should be. The use indicated in the decree was for closest access of the land owners to a county road. The north end of their property is the half-way point between the two county roads in the area. They spent \$10,000 when they bought their property to improve the road to meet the criteria of the development permit on their parcel that was obtained by the previous owner. She stated that the Turners only started using this improved road after they improved it, and sold their parcel to the north.

Mrs. Klahn discussed the issue of the subject parcel being able to be farmed. They can provide testimony from an adjacent land owner on his history of farming the subject parcel. She described the past farming practices on the subject parcel according to discussions with former owners. The subject parcel historically had been in alfalfa hay crops or pasture. Mrs. Klahn stated that the claim by the Turner's that the subject parcel is not suitable for farming is not a result of poor quality soils, but of poor farming practices. The crops must be watered and fertilized.

Mr. Klahn stated that the subject parcel is 10 acres, and has historically been farmed with success. He stated that he submitted an affidavit from Howard Kralman to this effect. He discussed the water, power and well available to the property through a 16 head waterline. Mrs. Klahn commented that the buried mainline runs east and west, and if the dwelling is placed near the shop as proposed, it will interrupt the water main wheel line. The septic drain field would also take additional farm ground out of production. She

believed that the house placement and access roads would take farmable soils on the subject parcel out of use and this would change the complexion of the parcel.

Commissioner Kaminski asked if Mrs. Klahn was the owner of Tax Lot 801. She confirmed that they do own Tax Lot 801 and the residence on this tax lot was a lot of record dwelling, and it is occupied by her retired parents.

Mr. Klahn stated that application does not meet the definition of “generally unsuitable for farming” because of the historical success of farming. He discussed the soil survey and how the results would be different if the subject parcel was irrigated. He contended that the subject parcel has adequate irrigation and could be farmed. They do not believe that the parcel meets the criteria for a non-farm dwelling. He cited a case from Baker County.

Commissioner Standley asked if the zoning would remain EFU, and could the applicant still attempt to farm the subject parcel if they approved the application. Mr. Klahn confirmed that the zoning would not change with the application. Discussion followed on the criteria and how it was applied in the Baker County case he cited. Commissioner Lynde commented that if the Planning Commission did not have the same materials that Mr. Klahn was reading from, they could not consider this in their deliberation. Commissioner Standley replied that if the criteria were not the same, it should not be considered at all.

Mrs. Klahn discussed the placement of the non-farm dwelling and how it would interrupt more areas of farmable soils and take more ground out of use than just the Class 7 soils areas. Mr. Klahn referred to the Baker County case, and commented that the subject property did have a well and could be irrigated.

Mr. Klahn stated that this non-farm dwelling will materially alter the landscape of the area, and if allowed, will lead to more homes in the area. Mrs. Klahn talked about the soil types containing less topsoil proceeding north to the stateline area, and if decisions were based solely on soil types, then more people will be able to establish more non-farm dwellings throughout the immediate area. She described the crops that are grown in the area.

Chairman Rhinhart summarized the Klahn’s testimony by saying that the subject parcel has been successfully farmed in the past and they feel that the application for a non-farm dwelling should not be approved. Mr. Klahn agreed with the summary, and stated that they paid much more for their adjoining parcel because it came with a development permit to build a dwelling ( lot-of-record ). Mrs. Klahn explained how they were able to purchase their parcel with a lot-of-record development permit on it.

Mrs. Klahn stated that the subject parcel has been successfully farmed in the past, has adequate water supply and if a non-farm dwelling was allowed, it would take even more farmable soils land out of production.



Chairman Rhinhart asked about raising orchards on the subject property. Mr. Klahn described the other crops that are grown on adjacent parcels. He also commented that they are concerned about the increased amount of traffic on the road. Discussion followed on the road easement on their property that was granted by the Schmerer family. Mr. Klahn contends that they farm crops and graze cattle on their parcel, and that the Turner parcel is similar to their parcel and can be farmed as well.

**Opponent Testimony:** Howard Kralman, 84862 Triangle Station Road, Milton-Freewater, OR. Mr. Kralman stated that he had signed an affidavit that he had farmed alfalfa on the subject parcel in the past for Delbert Sams, but had never plowed the ground. Mr. Kralman discussed how the subject parcel was watered. He stated the soil was very rocky in some spots, and that a person could not make a living on farming alfalfa on 10 acres. Mr. Kralman stated that he could typically get 4 cuttings from the subject parcel each year. If the land was fertilized, he could get an average of 6-8 tons of alfalfa hay each year.

**Rebuttal Testimony:** Mr. Turner stated that Delbert Sams had told him that he was never able to get more than 3 cuttings from the subject parcel because of the soils. He commented that the difference between his property and the Klahn's property was like night and day. Mr. Turner stated that his son-in-law helped him seed the parcel for grass, and could not use the seed drill because the rocks in the soil would have damaged the equipment. Their home would be sited on the Class 7 soils pocket next to the shop, and since there is already a road to the shop, it will not take any more farmable soils out of production. He also discussed how the temperature of the area would prohibit some types of crops, like grapes or orchards. He stated that the soil analysis was a scientific statement showing that the subject parcel contained Class 7 soils. Mr. Turner closed by asking the Planning Commission to approve their application for a non-farm dwelling.

Commissioner Standley asked about access to the property and the easements mentioned in earlier testimony. He was concerned about the road access from the south. Mr. Turner stated that he has access also to the north. He discussed the lot of records dwellings that were developed by Myron Schmerer, and the platted road mentioned in the application for that lot of record application on the Klahn's property. His deed shows that he does have access to that road from Sunquist Road to Umapine Hwy 332. Discussion followed on who would be using this access road.

Chairman Rhinhart closed the hearing and moved to deliberation.

**Deliberation:** Commissioner Reeder commented that he found the soils survey to be credible data, and based on this data does not find that the subject parcel is not as farmable as it has been portrayed. Approving the non-farming dwelling would not mean that the applicant could not continue to farm the parcel. He agrees with the staff report that the dwelling won't change the character of the area. He does not see a reason to deny the application.

Commissioner Randall stated that he lived on Sunnyside Road years ago, and understands how dramatically different the soils can be from parcel to parcel. He stated that he did not feel the application would change the neighborhood and does not see a reason to deny the application either.

Commissioner Standley asked to discuss the access easement, and wanted to see the applicant offer to use the north road access instead of using the south access to appease the opponents.

Commissioner Lynde asked if the road in question was a private road. Mr. Jennings explained that the 1893 plat showed platted roads, but it does not show how wide they were meant to be. If the road was meant to serve the sub-division it does not state that on the plat. Commissioner Lynde stated that he also agrees with the staff report, but would prefer to see something different done about the access.

Commissioner Reeder said that it was pertinent to talk about the south access and that this will need to be clarified in the future. It will not affect his decision on the application, as access is available to the north.

Commissioner Lynde stated that they needed to follow their previous decisions regarding the 10-acre parcels in the Milton-Freewater area.

Commissioner Standley moved to approve the application with the recommended precedent and subsequent conditions as presented, and Commissioner Lynde seconded the motion. Motion carried 6:0 with 2 abstentions.

#### **OTHER BUSINESS:**

**1. Election of Officer for the Planning Commission:** Commissioner Reeder moved to accept Randy Randall as the new Chairman and Frank Kaminski as the Vice-Chairman of the Planning Commission, and Commissioner Lynde seconded the motion. Motion carried by consensus.

**2. Update of LUBA appeal:** Mrs. Mabbott updated the Planning Commission on the status of the LUBA appeal. LUBA remanded the appeal back to the county, and a hearing for that material has been scheduled before the Board of Commissioners for February 28, 2012. The Board of Commissioners will only consider the three issues remanded by LUBA. She commented that the county fared well as this was a very complicated decision. LUBA confirmed the two-mile setback, but questioned the waiver to the set-back. The county can leave it as a two-mile setback, or can appeal the waiver remand. Discussion followed on what options are open to the board. Mrs. Mabbott commented that the variance option is also available to developers. The Walla Walla Watershed overlay was also remanded by LUBA. Will the county want to do more Goal 5 analysis to justify the watershed overlay? Doug Olsen will be working with a land use attorney from Portland on that piece. The third piece was that there were 4

Comprehensive Plan policies that did not have findings adopted to show how those siting standards are consistent with the policies. Discussion followed on the highly erodible soils section of the overlay.

Mrs. Mabbott explained that the remanded pieces will not go back to the Planning Commission, but will be considered by the Board of Commissioners.

Commissioner Lynde asked about the status of the Critical Winter Range (CWR) overlay zone. Mrs. Mabbott explained that she spoke with Mr. Germonde from the Oregon Department of Fish and Wildlife, and he has authorized his staff to work with the county on developing the ESE analysis to adopt the CWR map. This will be a difficult issue to process.

Chairman Rhinhart asked if the old standard for wind siting now applied. Mrs. Mabbott explained that the prior standards are in effect as all three ordinances were remanded back to the county. There are no new applications currently pending. Mrs. Mabbott stated she would forward a link to the Planning Commission about a study on human health impact analysis. Discussion followed on health issues related to wind power.

**3. Project List for 2012:** Mrs. Mabbott stated that this was not ready. The staff has been very busy just keeping up with current applications and hearing.

#### **ADJOURNMENT:**

Chairman Rhinhart adjourned the meeting at 9:06 p.m.

Respectfully submitted,

Gina Miller  
Secretary

(Adopted by the Planning Commission February 23, 2012)