

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, July 27, 2023, 6:30pm

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Don Wysocki, Vice Chair, Tammie Williams, Sam Tucker & John Standley

COMMISSIONERS

ABSENT: Tami Green, Emery Gentry & Kim Gillet

PLANNING STAFF: Robert Waldher, Community Development Director, Megan Davchevski, Planning Manager & Tierney Cimmiyotti, Planner

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

CALL TO ORDER

Chair Danforth called the meeting to order at 6:32PM and read the Opening Statement.

NEW HEARING

CONDITIONAL USE REQUEST, PROPANE STORAGE AND TERMINAL, #C-1357-23: SOS FAMILY LLC, APPLICANT/ OWNER. The applicant is requesting a Conditional Use Permit (CUP) to establish a propane railcar unloading and storage yard. The proposed project site is addressed as 30833 Feedville Road, Hermiston and is located on Assessor’s Map 4N2822, Tax Lot 900, north of Feedville Road and west of 1st Street. The applicant proposes the placement of four (4) 80,000-gallon propane tanks for propane storage and distribution. Small empty tanks will be stored on the southern portion of the property in a fenced location adjacent to an existing shop building. The empty tanks will be stored at this location until transported to other locations for placement and installation (e.g. residences). The applicant received tentative approval from the Planning Division and subsequently requested a public hearing. The land use standards applicable to the applicants’ request are found in Umatilla County Development Code (UCDC) Sections 152.322 (A)(6) and 152.616 (FF).

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. There were none. She called for the Staff Report.

STAFF REPORT

Megan Davchevski, Planning Division Manager, stated that the applicant is requesting a CUP to establish a propane railcar unloading and storage yard. The project site is located north of Feedville Road and west of South 1st Street, just outside of Hermiston City Limits. The applicant proposes the placement of four (4) 80,000-gallon propane tanks, to be located on the north side of the property, for propane storage and distribution. She explained that the applicant indicates propane will mainly be shipped from the subject property along the existing Union Pacific Rail Road (UPRR) and utilize a spur for tankers to unload propane into the tanks. Propane will then be loaded

onto trucks and shipped to fueling facilities to various geographical locations. She further explained that, in addition to the 80,000-gallon tanks, the applicant states small empty tanks (size not shared with Planning) will be stored on the southern portion of the property, in a fenced location adjacent to an existing shop building. The empty tanks will be stored at this location until transported to other locations for placement and installation (e.g. residences).

Mrs. Davchevski stated that the proposed use may be established in the Heavy Industrial (HI) Zone with a CUP under § 152.322(A)(6) which states, “any requested use involving the handling or storage of hazardous chemicals or flammable liquids such as fireworks, blasting agents, explosives, corrosive liquids, flammable solids, high toxic materials, oxidizing materials, poisonous gases, unstable chemicals, ammonium nitrate and liquefied petroleum gases as provided in § 152.616 (FF)”.

The Planning Division received a CUP application for the applicant’s request on March 14, 2023 and payment was processed on March 27, 2023. Preliminary staff findings and public notice were mailed on May 1, 2023 and Planning received two informational comments from agencies: Oregon State Fire Marshal and Umatilla County Fire District #1. The comments did not result in additional conditions of approval. Comments and requests for a public hearing were due on May 22, 2023.

On May 23, 2023, Mrs. Davchevski issued tentative approval of the Conditional Use Request with five (5) Precedent Conditions of Approval and nine (9) Subsequent Conditions of Approval. Land use approval is not finalized until a Zoning Permit has been issued, as well as all other State permits, as outlined in Precedent Conditions #4 and #5.

On June 5th, 2023, the applicant’s consultant requested, via email, that the hours of operation limited in Subsequent Condition #2 be modified to allow operation between 5AM and 11PM. Staff responded that the request should have been submitted during the 21-day comment period and clarified that the application did not include proposed hours of operation. The request was made after the 21-day comment period lapsed. Therefore, Planning Division Staff was unable to amend the Findings unless a new application or request for appeal was made.

On June 7th, 2023, the applicant submitted a Notice of Appeal and provided payment for the appeal. Email correspondence and the appeal packet are included in the Planning Commissioner Packets. The scheduling and notice for the July 17, 2023 Planning Commission hearing followed.

The criteria of approval are found in Umatilla County Development Code (UCDC) Sections 152.322, 152.323, 152.325, 152.560-152.562, 152.615 and 152.616 (FF).

Mrs. Davchevski explained that the Planning Commission is tasked with determining if the application satisfies all of the criteria of approval based on the facts in the record. The Planning Commission may affirm the Planning Division Manager’s decision, and agree with the Precedent and Subsequent Conditions of Approval, or the Planning Commission may modify the Conditions of Approval.

Mrs. Davchevski stated that the Planning Commission hearing is a de novo hearing and new issues may be raised. The Planning Commission's decision, including modifications of the Conditions of Approval or a decision of denial, shall be based on findings and facts in the record.

On July 25, 2023 the Planning Division received a letter from the applicant's attorney. The letter was subsequently emailed to the Planning Commissioners the same day. (Mrs. Davchevski distributed paper copies of the email to the Planning Commissioners and asked that it be added to the hearing record as Exhibit A.) Mrs. Davchevski explained that the email claims that the hearing is de novo but does not allow for testimony from anyone other than the applicant. The letter claims Planning Division Staff has created a procedural error by stating that the appeal hearing is de novo. Staff confirmed with County Legal Council that this appeal hearing is de novo. Therefore, the Planning Commission can accept new testimony and evidence as part of the decision record.

Mrs. Davchevski concluded her Staff Report by explaining that the process of approval by the County involves review by the County Planning Commission for a final decision, unless timely appealed to the Board of County Commissioners.

Commissioner Standley, if the applicant had included the request to operate between 5AM and 11PM in their original application, would staff have approved the request and allowed for those operating hours. Mrs. Davchevski replied, yes. She added that she would have likely approved that request, but clarified that the application did not include any specified hours of operation. Commissioner Standley asked if that is the issue and reason they are at the hearing today. Mrs. Davchevski replied, yes that is one issue, but any other issues or questions pertaining to the request may also be raised today.

Commissioner Standley asked for more information about the terminology used for the new hearing. Mrs. Davchevski explained that staff's decision was final, then the applicant appealed the decision. Commissioner Tucker stated that legal arguments are made regarding the meaning of de novo. However, he believes the issue is irrelevant unless somebody decides to bring up new issues at this hearing.

Commissioner Tucker asked staff about the hours of operations they approved in the Preliminary Findings. Mrs. Davchevski stated that she approved operations to occur between 7AM-7PM, seven days a week. Commissioner Tucker asked, if the applicant had requested longer hours of operation, would staff have approved that request? Mrs. Davchevski stated that she would have likely approved more hours, if requested.

Mrs. Davchevski explained that, if the applicant had included hours of operation in their application, those hours would have been included in the the public notice. Because no hours of operations were provided, staff researched similar operations and decided on hours of operation between 7AM-7PM. Commissioner Tucker asked if there would be a risk to the Planning Commission to decide to expand the hours of operation, even though public notice did not include those potential additional hours. Mrs. Davchevski replied, no.

Applicant Testimony (via Zoom): Lani Hickey, Land Use Planner, 24241 Old Malin Highway, Merrill, Oregon. Ms. Hickey stated that she would like to defer her testimony to Christopher Koback because she is travelling and may lose cell coverage.

Applicant Testimony (via Zoom): Christopher Koback, Attorney, 78 NE Kearney Avenue, Bend, Oregon. Mr. Koback stated that he is an attorney representing the applicant. He explained that Ed Staub & Sons has been in operation for more than 60 years, providing propane services to smaller communities in Oregon, Washington and Idaho. They pride themselves in having a history of providing good service and also being good community members.

Mr. Koback stated that in the application there were no hours stated by the applicant, but there was also no place in the application requiring hours of operations be identified as part of the criteria of approval. He does not feel that stating hours of operation is necessary because the way this business works, it can't function fully and serve customers well with hour restrictions in place. There are instances in the winter when customers don't plan ahead and need an emergency propane delivery to keep pipes from freezing in the middle of the night. He explained that that's the kind of service Ed Staub & Sons has provided in the past and wants to continue to provide. They feel this is an essential service to the community; to keep them warm and keep their pipes from freezing. Mr. Koback stated that is the reason no hours of operations were proposed as part of this application, as they didn't want to limit themselves from providing the services customers need in a timely and efficient manner. Mr. Koback stated that he and his client, the applicant, accept all other conditions placed on this request, the only issue is the limited hours of operation.

Mr. Koback stated that he raised a procedural argument questioning the meaning of de novo. He believes in this situation de novo means new testimony can only be presented on the issue raised in the appeal. He pointed out that the UCDC requires persons appealing a decision to identify specifically what they intend to appeal, and testimony can only be received by the applicant or the proponent. He believes since the party appealing the decision is both the applicant and proponent in this case, no one else can raise new issues at the hearing.

Mr. Koback asked the Planning Commission if there is a basis in the decision to add the condition pertaining hours of operation. He states that the condition was imposed under UCDC 152.615 which he interprets to state that additional conditions can be imposed if warranted by the circumstances. He explained that he believes the subsections of the code clarify that those specific circumstances in which additional conditions are warranted are related to issues concerning environmental contamination, noise, odor, pollution, etc. He expressed that, if there were additional impact issues, additional conditions can and should be imposed to protect the neighboring properties from those impacts. However, he believes staff has determined in the Preliminary Findings that those various environmental impacts will not occur as part of this request. Therefore, he does not believe additional conditions should apply. He stated that he believes they do not need restrictions on hours of operations and the business should be allowed

to operate around the clock, as they have for many years, and provide services as needed. He respectfully requested that there be no restrictions on hours of operations.

Mr. Koback stated that there is a mechanism for the Planning Commission to reopen the CUP approval and address any problems, if they present themselves down the line, as part of the operations of the business. Commissioner Tucker asked for more information about the opportunity to reopen the conditions of approval and revise conditions at a later date. Mr. Koback stated that he has experience with other planning agencies and explained that they tend to have this ability, but referred the Planning Commission to County Staff for details about the specific process in Umatilla County. He believes the nature of granting a conditional use allows for review when a problem is identified.

Applicant Testimony: Dustin Oates, Ed Staub & Sons, 3105 Brisbane Street, Walla Walla, WA. Mr. Oates stated that he recently moved to Walla Walla from John Day. His grandfather is Ed Staub. He is hoping to expand propane services in the region and that is one of the reasons they need this additional storage.

Mr. Oates stated that, last year in Central Oregon and Redmond, propane companies in the area did not have any propane to service their customers. Ed Staub & Sons had propane to provide to customers because they had established a relationship with the railroad. Propane was arriving on railcars day and night and they were offloading it as quickly as it arrived. He stated that this is an example of the type of 24/7 service they offer customers in times of need and demonstrates that operating hours are not ideal when they are working to ensure people stay warm in the winter. He added that constraints on hours of operation become particularly problematic when the product is delivered by rail. The railcars arrive whenever they arrive, and Ed Staub & Sons needs to be available to accommodate their unpredictable schedules.

Mr. Oates concluded that he is on the operation side of the business. He reiterated that it is a relatively quiet process because they will just be using a pump to load the propane into a truck for delivery to customers.

Applicant Testimony (via Zoom): Lou Milani, Construction Coordinator, Ed Staub & Sons, 3303 Washburn Way, Klamath Falls, Oregon. Mr. Milani stated that he is in favor of the request. He has nothing to add but is happy to answer any questions. There were none.

Opponents: None

Public Agencies: The Oregon State Fire Marshall provided a comment to reiterate that the applicant will need to have their plan reviewed by the State Fire Marshall. They stated that they were satisfied by the inclusion of Precedent Condition #5.

Applicant Rebuttal: Christopher Koback, Attorney, 78 NE Kearney Avenue, Bend, Oregon and Dustin Oates, Ed Staub & Sons, 3105 Brisbane Street, Walla Walla, Washington. Mr. Koback stated that he does not have anything to add.

Commissioner Wysocki asked if they have set hours of operation, and if they call in additional employees when there is an extra need? He asked for Mr. Oates to describe a standard operating day. Mr. Oates stated that it varies. Right now, they have drivers leaving at 4AM to deliver propane to fuel up farmers for harvest. He added that drivers come in around 8AM during the winter for fuel. During the propane season drivers typically arrive around 6AM. He expressed that he is more concerned with unloading the railcars and transporting the product to various customers in the Enterprise, La Grande, John Day and Burns locations.

Commissioner Wysocki asked if it's accurate to assume that normal operational hours for this type of business is variable. Mr. Oates confirmed, and added that he also takes into consideration his employees schedules and availability.

Chair Danforth called for any requests for the hearing to be continued, or for the record to remain open. There were none.

Chair Danforth closed the hearing and added the letter from Christopher P. Koback, attorney for the applicant, received via email July 25, 2023, to the record as Exhibit A. She called for deliberation and decision.

DELIBERATION & DECISION

Chair Danforth stated that she believes propane businesses should be considered an emergency service. She added that some people rely on propane to heat their homes and recreational vehicles, especially those living remotely. Therefore, she does not think restrictions on hours of operation are needed.

Commissioner Standley stated that he believes staff handled this request appropriately. He added that the applicant responded appropriately as well, by appealing the hours of operation. He supports the request.

Commissioner Tucker stated that this is one of the easier decisions the Planning Commission has been tasked with making. He made a motion to approve Conditional Use Request #C-1357-23 to establish a propane railcar unloading and storage yard, SOS Family LLC, applicant/owners, with the omission of Subsequent Condition #2, which limited the hours of operation. Commissioner Wysocki seconded the motion. Motion carried with a vote of 5:0.

MINUTES

Chair Danforth called for any corrections or additions to the April 27, 2023 & May 18, 2023 meeting minutes. Commissioner Standley stated that he had a correction to the April 27, 2023

minutes. On page 2 of the Draft Minutes, last paragraph, it states that, “Commissioner Standley stated that he is familiar with the family and has known Mr. Pearson’s father-in-law, Monty Hixson, for fifty years.” Commissioner Standley stated that he was not actually referring to Monty Hixson. The sentence should be changed to, “Commissioner Standley stated that he is familiar with the family and has known Mr. Pearson’s father-in-law, Lowell Van Dorn, for fifty years.” Ms. Cimmiyotti agreed to make that change in the final minutes.

Commissioner Standley moved to approve the amended minutes from the April 27, 2023 hearing as well as the May 18, 2023 meetings minutes, as presented. Commissioner Tucker seconded the motion. Motion carried by consensus.

OTHER BUSINESS

Mr. Waldher provided an update on the Boardman to Hemingway (B2H) Transmission Line Project. He stated that the project has received their site certificate and are moving forward with a second amendment of the project. Umatilla County plans to provide a comment as part of the second amendment process. The applicant indicates they plan to have a multiuse area (similar to a laydown yard) on high-value, prime farmland near Hermiston zoned for Exclusive Farm Use. They previously proposed another location in an industrial area for this activity. Although the multiuse laydown yard will be considered temporary, Mr. Waldher explained that Planning Division Staff feels the first proposed site is more appropriate for this activity. Therefore, Umatilla County will provide a comment expressing concern about the proposed location change.

Mr. Waldher stated that the B2H applicant has started submitting mitigation plans to the Department of Energy (DOE) and they are being routed to local planning offices for review and comment. Mr. Waldher explained that the Planning Division received a copy of mitigation plans last week. One of the mitigation plans received pertains to fire prevention and Mr. Waldher stated that Sage DeLong, Umatilla County Emergency Manager, has reviewed the plans and provided additional comments. Mr. DeLong identified areas of concern, specifically regarding fire protection. Comments provided by the County include a recommendation that the applicant should be required to hire their own fire protection personnel to be onsite during construction, for areas in Umatilla County. Mr. Waldher explained that many of our fire districts are comprised of rural volunteer staff and therefore there are limitations on how responsive they are able to be.

Mr. Waldher stated that Umatilla County will also provide comment on the B2H Transmission Line Project requesting that the County receive a more ‘county specific’ plan. As of now, the plans for the project are presented as a whole which includes an approximately 300 mile (275 miles in Oregon) electrical transmission line that crosses five counties in Oregon; Morrow, Umatilla, Union, Baker and Malheur. Construction is scheduled to commence this fall.

Mr. Waldher stated that Umatilla County provided comments on the revised Preliminary Application for a Site Certificate (pASC) for the Nolin Hills Wind Power Project which stated, “The project does not comply with Umatilla County’s standard for two-mile setback from rural

residences outside the project area. The county’s two-mile setback for rural residences was adopted by Umatilla County through Ordinance 2012-13. The original intent of the standard was to mitigate noise and visual impacts to rural residences caused by wind towers. Umatilla County requests that the applicant adjust the location of the turbines in order to meet the required standard.”

Mr. Waldher stated that the Council sided with the Administrative Law Judges decision on the Contested Case Order and denied Umatilla County’s Amended Motion for Summary Determination for the Nolin Hills Wind Power Project. He explained that the next step, if we choose to continue, is for the Board of County Commissioners (BCC) to decide if they want to file an appeal to the Oregon Supreme Court. The BCC plan to meet with legal counsel in the coming weeks to discuss how best to move forward. Discussion continued about the Nolan Hills project and the 2-mile setback issue.

Mrs. Davchevski stated that the County was awarded a \$5.6 million grant for Phase One of the Umatilla River Trail Project. She explained that this first segment will start at Nugent Park in Umatilla and cross the river to Bensel Road in Hermiston. Discussion continued about the Umatilla River Trail Project.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:34PM.

Respectfully submitted,

Tierney Cimmiyotti,

Planner/ GIS

Minutes adopted by the Planning Commission on October 26, 2023