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4/9/18

GEORGE MURDOCK _____
LARRY GIVENS _____
BILL ELFERING _____

UMATILLA COUNTY BOARD OF COMMISSIONERS
LAND USE HEARING, MINUTES

May 16, 2018

1:30 p.m., Room 130, Umatilla County Courthouse
Pendleton, Oregon

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

Members and Guests Present: Bob Waldher, County Planning Director; Jeremy Christman,
Valley Hay, Harrisburg; Chad Derstine, Milton-Freewater; Tim
Werhan, Milton-Freewater; Gina Miller, County Planning-Code
Enforcement

Commissioner Givens convened the land use hearing before the Board of Commissioners at 1:30 p.m. and opened the public hearing. He asked for the staff report.

Bob Waldher, County Planning Director, gave the staff report and outlined the project. The Conditional Use Permit is due to the applicant, Blue Mountain Hay, LLC, developing a commercial sale business. He gave the background advising notification was properly made; tentative approval was on 2/6/18, which started the 15-day appeal period. A request for hearing was filed by Tim S. Werhan. The Planning Commission hearing was held on 3/22/18. Testimony was taken and the application was approved on a vote of 4-2. Mr. Werhan then appealed the decision to the Board of Commissioners. Items of interest have been added to the Board's packet.

In the appeal letter, Mr. Werhan commented about the process of land use hearings. Mr. Waldher addressed concerns as outlined in Mr. Werhan's letter. Proper notice was given to adjacent property owners as required. Limited land use decisions aren't relevant to this CUP. In addition, ORS applies to land conservation and development conditions in order to consider. The Planning Department found DLCD requirements are not relevant to this CUP. Regarding commercial activity, the Board is being asked to approve or deny the land use.

Commissioner Givens advised any testimony heard today is to be directed to the criteria as outlined for the day's decision. He requested that those who wish to testify to complete a form (including, in favor, against or neutral). The proponent will go first. Either the applicant, his representative or other proponents; then opponents will be called; then comments from any public agencies; then rebuttal by the proponent(s); then he will call for request for continuance or closing, deliberation and then decision.

Proponent(s)

Jeremy Christman, 27 Oak Creek Way, Lebanon OR, on behalf of Applicant: Blue Mountain Hay, LLC, made a PowerPoint presentation to be entered into record. It provided introduction, the project, buildings and purpose, community benefit and a rough site plan. In response to Commissioner Givens' question, Mr. Christman advised it is grass seed. What seed is grown in the area is now trucked to the valley at their large facility. This facility would allow processing at the Milton-Freewater location. Seed cleaning of different types in the future would be considered.

Commissioner Givens asked about chemical spills. Mr. Christman advised chemicals are fungicides (i.e. Roundup weed killers). They would follow DEQ standards (curb heights inside buildings as well as all other standards). They would use the same process used for containment of, e.g., fuel. Regarding traffic and access points, Mr. Christman advised they are looking to cut accesses of six down to only two or maybe three - main traffic in one end, out other and possibly another for office traffic, for example.

In response to Commissioner Givens' question about Appleton Road (will it be fenced off or curbed?), Mr. Christman advised the only request is to plant trees and have bark dust on Highway 11; there are no requirements on the back side. The initial plan is to be fenced off and protected. The dilapidated old house now on the property will be torn down. The fence would be 6-foot high, general cyclone fence and would be sight obscuring. Dust abatement would also be minimized by trees and fence.

The application is for the full 18.43 acres and according to the rules for EFU, they included set-backs.

There were no other proponents.

Opponent(s).

Tim S. Werhan owns lot 1902, Crockett Road and Highway 11, Milton-Freewater. He has owned the property since 1983; he has worked there since the early 1970s and has been very involved with Highway 11 properties. He feels rules and regulations about zoning have been enforced vigorously. Zoning was locked up by DLCD for many years. That area is farming and for commercial. The only business that doesn't fit the criteria is the pottery place (it was grandfathered in?).

Property has to be farm land -- this project does not produce anything. It is very fertile property on the Appleton road strip. He feels project would destroy that property to not be able to grow on it. It would be a commercial operation - he feels it would be a tweak in the window. He feels the CUP was not decided to change from farm to commercial. He feels it would destroy it. He talked about Adams in comparison where Wilbur-Elis and MacGregor chemical companies are located. All things in this development are built away from the community it is not put in the middle. In the Milton-Freewater case, there are 2 mobile home parks for senior citizens, a school is on back side (7th Day Adventist) -- all the families and homes will be directly affected by a commercial operation. Noise, chemicals, smells, trucks movement. He spoke to an ODOT representative - he believes they will run a test count. A bridge will be completed soon - all point to increased traffic. He doesn't believe ODOT is ready to sign off. It is a high risk area. Slow moving trucks pulling onto high speed highway is dangerous.

Regarding DLCD, he spoke to a representative, who advised the county is the decision-maker for this CUP. He doesn't feel it is good to put this facility where it is. Operations like this should be away from densely populated areas - it would not be a good fit.

What is the need? What is the plus? Chemicals can be bought elsewhere - it doesn't need to be put in this spot. Farming and processing are seasonal but this project would be year-round and bring issues with it. He also talked about the law and some ways to get around things.

Commissioner Givens added he lives in the area and knows a lot about the ground there. He asked Bob Waldher to confirm the ground is farm-ground - can it only be used for raising crops? He asked him to explain so that Commissioners Murdock and Elfering understand ramifications. He wanted to be sure all information is accurate.

Mr. Waldher advised within the EFU zoning, the State allows for commercial activity in conjunction with farming. He read the rule and what qualifies and what is compatible. In this case, not only is operation supporting the applicant's operation, but also the local agriculture economy. "Farm Use"

definition is on page 5 of the Findings: preparation, storage, disposal by marketing or otherwise ... of the products for human or animal use – supporting the local agriculture economy. The criteria is met. In addition, he and Planning staff have reviewed other similar projects.

Commissioner Elfering asked if the product being processed needs to be raised on the same premises? Mr. Werhan pointed out the ORS that says “raised on such land”. Commissioner Givens reiterated his request to Mr. Waldher to explain. Mr. Waldher noted that “farm use” EFU land implies it is a crop raised on such land. He also commented on Clay in Motion, which was before his time in Count Planning. That was rezoned from agri- business to under state rules to industrial (probably in the 1970s). Mr. Werhan commented that DLCOD overrode their own rule, and it has had a detrimental impact on Highway 11. He also commented about other developments/possible business attraction that “fell through” because of zoning.

Commissioner Givens commented when he reads the rule, it doesn't say “on subject property”. Mr. Waldher talked about other LUBA cases. In this case, it comes back to supporting the agriculture in the region.

Mr. Werhan went back to his comments that the facility as proposed is among a lot of homes – he feels it is all negative. And, he feels there would be devaluation of properties.

Commissioner Murdock went back to the ODOT – in talking earlier, he believed ODOT had approved it. Mr. Waldher advised ODOT advised the applicant has worked with them. ODOT has jurisdiction over the road as to approval or denial of access. Discussion included history of the road (i.e. 60's, 70's), access over time, intent of use, etc. He will double check about the ODOT piece. Commissioner Murdock pointed out if ODOT doesn't sign off, there is no development. Mr. Waldher agreed that it would be a condition of approval required before development.

Commissioner Givens talked about present conditions – there are 9 conditions that have to be done. ODOT approval is access points related to one of those, as well as site plan, dust control, set back, Planning Department Code, must coordinate with Department of Agriculture, OSHA and DEQ for required permits, OWRD permits for any water use. Subsequent conditions need to be addressed as well – hours of operation, lighting, landscaping, security cameras, compliance with Oregon Department of Ag, OSHA and DEQ.

Mr. Werhan asked to submit a letter to the record from the school as well as a water report about the water table. He handed the letter to Mr. Waldher. He also asked about current property owners' rights as compared to the rights of this one entity for this project. In response to Mr. Werhan's question about quorum, Commissioner Givens advised 3 is the total – a quorum is present.

Commissioner Givens asked for comments from public agencies. There were none.

Commissioner Murdock moved to add the opponent's letter* to the record, which would be items 2 and 3 (per Mr. Waldher). Seconded by Commissioner Elfering. (*The title is a letter from Milton Stateline School, also a petition attached, signed by parents of students at the school.) Carried, 3-0. Mr. Waldher clarified, item 1 is the first presentation. Commissioner Givens also asked for a motion to add proponent's PowerPoint as item 1. It was so moved by Commissioner Elfering. Seconded by Commissioner Murdock. Carried, 3-0.

He asked for rebuttal on comments.

Jeremy Christman noted action today is for a Conditional Use Permit, which he believes would “trump” the zoning request. He noted there would be no airborne sprays so there would be no smell. All other things would fall specifically into compliance of requirements. It is not a commercial entity and it would support ag business.

Commissioner Elfering asked about processing of seed or hay compression. Mr. Christman noted in seed processing, there is a dust collector at the ejection point. In almost all new presses there is an eject hole that is controlled by capture with a dust collector. On seed warehouses, dust mediation can be contained and they are in compliance. OSHA requirements are met with testing. Equipment is placed at the back of property for a natural buffer. Regarding Commissioner Elfering question about odors, Mr. Christman advised in his operation in the Willamette Valley there is some airborne dust. There would not be odor since they don't let hay rot - they strive to use all the product.

Regarding presses, that would be a way down the road -- they have capacity at presses in the valley available, so they wouldn't use it here -- that might be a phase 3. They are trying to first get through this process with agreement as to how to proceed to follow.

Cleaning of equipment is air blown out within the buildings - they wouldn't use water to clean out.

Regarding Commissioner Givens' question about jobs creation, Mr. Christman noted the press at full operation would be 15. The seed processing piece would be about 5-6 and office administration would be about 4 and, with growth for sales at some point, there may be a few more. Therefore, about 25-30 new jobs.

Commissioner Givens closed the public hearing at 2:35 p.m.

Deliberation

Commissioner Elfering commented pertaining to objections, i.e. chemicals, he would be more concerned if it was in bulk. He doesn't see danger or problems coming out of chemicals any more so with apple orchards and spraying. With wheat would be dust too. It is farm use mixed with commercial. He is not sure it is any more intrusive than operations there now.

Commissioner Murdock talked about trucking, noting Highway 11 is a trucking corridor (freight). He would be more concerned if it was moved to the "back country" -- this road is built for trucks.

Commissioner Elfering moved to support the Planning Commission's decision and deny the appeal. Commissioner Murdock seconded. Carried, 3-0.

Commissioner Givens thanked all for coming.

The meeting adjourned at 2:38 p.m.

Respectfully Submitted,

Melinda Slatt

Executive Secretary to Board of Commissioners