

WALLOWA COUNTY PLANNING COMMISSION
7:00 pm September 26, 2023
Wallowa County Courthouse
Agenda

1. **Planning Commission Meeting Minutes** from August 29, 2023
2. **FINDINGS: CUP#23-04 STEWART** – Submitted by Dera and Larz Stewart, the proposed Conditional Use Permit is a request for a Home-based Occupation in the form of a Bed and Breakfast in a Non-resource Use Bunkhouse. The property in question is described as Township 02 South, Range 45E, Section 29, and Tax Lot 1500 in the Exclusive Farm Use (EFU) zone. It is more commonly known as for 64001 Imnaha Highway, Joseph, Oregon 97846 and consists of approximately 8 acres.
3. **FINDINGS: LP#23-04 PEARCE** – Submitted by Bagett, Griffith and Blackman on behalf of Vicky and Parley Pearce, the proposal would split the 4.4-acre parcel into two parcels with the new parcels being 2.34 and 2.09 acres. The subject parcel is described as Township 02 South, Range 45 East, Section 31, Tax Lot 1501 and is zoned Recreation Residential (R-2).
4. **Other Business:**

The next Planning Commission meeting is scheduled for October 31, 2023.

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Planning Commission Minutes August 29, 2023

This meeting of the Wallowa County Planning Commission convened at 7:00 p.m. on August 29, 2023. This meeting was held via Zoom, a video conferencing application, and in the Thornton Conference Room of the Courthouse. The following were present:

COMMISSIONERS (CM):

Georgene Thompson (Chair)
Kim Tippet
Ramona Phillips
Rob DeSpain (via Zoom)
Gay Fregulia (via Zoom)
Chris Bullat

STAFF:

Franz Goebel, Planning Director (PD)
Jean Jancaitis, Department Specialist (DS)

OTHERS PRESENT:

Stephen Tollefson
Dera Stewart
Larz Stewart
Rahn Hostetter

PRESENT via ZOOM:

Garry Zollman

[Please note that draft and adopted findings, staff reports, written testimony, and the official Planning Commission meeting audio records are available for review and/or purchase in the Planning Department.]

Public Hearing Procedure

Ladies and Gentlemen, I call the regular August 29, 2023, hearing session of the Wallowa County Planning Commission to order. My name is Georgene Thompson, and I am the Chair of the Planning Commission for Wallowa County, Oregon. The members of the Planning Commission are appointed by the Wallowa County Board of Commissioners, and we all serve as volunteers.

Now I would like to introduce the current members of the Commission who are present tonight, and the staff of the Planning Commission, who have prepared the materials we will consider. [Introductions of members and staff]

We conduct two types of hearings, legislative and quasi-judicial. Legislative hearings involve the making of rules, either new ones or revisions to existing rules. In these cases, we recommend our conclusions to your elected lawmakers, the County Commissioners, who always take the final action on legislative issues.

Oregon law requires that persons who attend land-use hearings are advised of certain rights and duties before the quasi-judicial hearing begins. We must tell you about approvals criteria, the raise-it-or-waive rule, and the right to have the record left open.

Planning Commission Minutes August 29, 2023

First approval criteria: the law requires the County to list the applicable County and State zoning criteria. A County Planner will do so in a few minutes. The law requires us to identify those standards of which an applicant must satisfy in order for the County to approve an application. Each of the standards must be supported by substantial evidence in the record. Make sure to direct your testimony, claims, or evidence toward the criteria which you believe applies to the application.

Second, the raise-it-or-waive-it rule. The law says that any issue which might be raised in an appeal of the decision after this hearing must be raised before the record of this hearing is closed, you cannot raise the issue on appeal. You must identify the issue clearly enough so that the County and all parties have an opportunity to respond to the issue.

Third, the right to have the record remain open. The law grants the participant the right, upon proper request, to have the record of the hearing remain open for at least seven days. The request must be made before the conclusion of this hearing. The participant is the applicant or anyone who has submitted written or oral testimony regarding the application. The request may be made at any time during the initial hearing but must be made prior to the time the Planning Commission Chair announces that the hearing is closed. Once the hearing is closed, there is no longer a legal right to have the record remain open for additional evidence.

1. Does any commission member wish to disqualify, herself or himself for any personal or financial interest in these matters, or does any commission member wish to report any significant ex parte or pre-hearing contacts and explain/share what you have heard?
[nothing voiced]
2. Does any member of the audience wish to challenge the right of any commissioner to hear these matters? ***[nothing voiced]***
3. Is there any member of the audience who wishes to question the jurisdiction of this body to act on behalf of the County in these matters? ***[nothing voiced]***
4. Oregon Land Use Laws require that any issue to be appealed must be raised during this hearing; failure to raise issues at this hearing will invalidate their further appeal.

CM Thompson opens the quasi-judicial hearing and proceeds to the first agenda item.

1. July 25, 2023 Minutes

CM Phillips moves to approve the minutes of the July 25, 2023 Planning Commission meeting with the correction that the meeting Chair was Kim Tippet, not Georgene Thompson.

CM Tippet seconds the motion.

[CM Thompson – Yes;

CM Phillips – Yes;

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CM DeSpain – Yes;
CM Tippet – Yes;
CM Bullat – Yes;
CM Fregulia – Yes;

Motion Passes 6-0-0]

The minutes are approved.

2. STEWART CUP#23-04

PD Goebel presents the Staff Report.

Applicants Dera and Larz Stewart present their application. Ms. Stewart explains that the bunkhouse is primarily for personal guests, but when it is not in use, they would like to be able to earn income. They have 8 acres of low-value farmland, so there are not a lot of income-producing opportunities. The bunkhouse is also clustered with the rest of the development on their property, so it will not change their ability to use the rest of the property for agricultural uses. She believes there is ample precedence with the approval of other bunkhouses that they should be afforded the same opportunity. Mr. Stewart notes that the subject bunkhouse is approximately 20 to 30 feet from their house. Ms. Stewart adds that, since bunkhouses cannot be used as a rental, it is not taking away from rentable housing stock.

CM Bullat asks which building on the map provided will be the bed and breakfast.

Applicant Stewart replies that it is labeled as building “C”.

PD Goebel reads a letter from the applicants into the record.

CM Thompson asks why the House Rules reference “other guests”.

Applicant Stewart replies that it is a typo, but also refers to them.

PD Goebel reads the conditions suggested in the Staff Report.

CM Thompson closes the testimony portion of the hearing.

CM DeSpain expresses concern about the definition of a “rental unit.”

PD Goebel notes that there is not a definition for “rental unit” but reads the “accessory structure” definition again.

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PD Tippet clarifies that this application was submitted prior to the update of the definitions of bunkhouse and bed and breakfast.

CM Phillips notes that, traditionally, bunkhouses were not intended for use as a bed and breakfast, they were intended for temporary farm and forest workers.

CM Thompson states that this application would not be approved under the new definitions, but the Planning Commission needs to decide whether it fits under the old definitions.

CM Tippet adds that the Planning Commission has approved many bunkhouses for bed and breakfast use under the old definitions, even though those decisions are not precedence-setting.

CM DeSpain agrees and believes this application should be approved, noting the lack of a clear definition of a “rental unit”.

CM DeSpain moves to approve the CUP#23-04 with the conditions suggested in the Staff Report, but with the following modifications: 1) the CUP terminates with the conveyance of the property and 2) the permit may not be transferred to another operator.

CM Tippet seconds the motion.

[CM Thompson – Yes;

CM Phillips – No;

CM DeSpain – Yes;

CM Tippet – Yes;

CM Bullat – Yes;

CM Fregulia – Yes;

Motion Passes 5-1-0]

The application is approved.

3. PEARCE LP#23-04

PD Goebel presents the Staff Report.

Applicant Representative Hostetter presents the application. He asserts the applicant checked the zoning with him, and he believes the Planning Department, prior to purchase and it was reported to be R-2. He supports the Planning Director’s recommendations; however, he does not agree with the additional conditions because they are part of the code and apply regardless.

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PD Goebel responds that there is a history of illegal riparian clearing on the property by a previous owner and this is a reminder to him or a subsequent Planning Director to require the additional planning steps.

CM Thompson agrees that the recommended conditions are helpful.

PD Goebel reads a comment from the Oregon Department of Aviation (ODAV) into the record.

Applicant Representative Hostetter believes these conditions do not apply and should not become conditions of the permit. He threatens to appeal a decision where ODAV or Federal Aviation Administration conditions are added.

CM Tippet asks why the parent parcel is already a substandard size for the original M-1 zone.

CM Fregulia explains that many parcels were a sub-standard size when zoning was established. For example, the Exclusive Farm Use zone has a minimum parcel size of 160 acres, but there are many EFU-zoned parcels that are less than 160 acres.

CM Thompson closes the testimony portion of the hearing.

CM Thompson considers the zone of the subject parcel as R-2, and she believes that the landowner should not be punished because the Planning Department did not properly notice the Department of Land Conservation and Development of the rezoning.

CM Phillips moves to approve the LP#23-04 with the conditions suggested in the Staff Report as well as recommending the completion of the R-2 rezone.

CM Bullat seconds the motion.

[**CM Thompson – Yes;**

CM Phillips – Yes;

CM DeSpain – Yes;

CM Tippet – Yes;

CM Bullat – Yes;

CM Fregulia – Yes;

Motion Passes 6-0-0]

CM Thompson closes the quasi-judicial hearing to move on to other business.

4. OTHER BUSINESS

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None

CM Phillips moves to adjourn the meeting.

CM Bullat seconds the motion.

[CM Thompson – Yes;

CM Phillips – Yes;

CM DeSpain – Yes;

CM Tippet – Yes;

CM Bullat – Yes;

CM Fregulia – Yes;

Motion Passes 6-0-0]

Meeting adjourns at 7:55 PM

Jean Jancaitis

Date



WALLOWA COUNTY
Planning Department
101 S River Street #105
Enterprise, Oregon 97828
541-426-4543 ext. 1170

FINDINGS

CUP#23-04
Stewart

**IN THE MATTER OF THE REQUEST
 FOR A HOME-BASED OCCUPATION
 IN THE FORM OF A BED AND BREAKFAST IN
 THE EXCLUSIVE FARM USE (EFU) ZONE**

)
) **FINDINGS OF FACT, CONCLUSIONS, AND**
) **DECISION OF THE WALLOWA COUNTY**
) **PLANNING COMMISSION**
)
)

RE: STEWART HBO B&B CUP#23-04

The request was deemed to be complete on July 3, 2023. It was properly advertised in the Chieftain on August 16, 2023, and noticed to landowners within 500 ft and other interested parties on July 6, 2023. The request came before the Wallowa County Planning Commission on August 29, 2023, with a decision on September 26, 2023. The Planning Commission having reviewed the record, the materials introduced in the above-referenced hearing, and having heard and considered oral testimony in the above-referenced hearing, and being fully advised, makes the following findings of fact and decision.

APPLICANT:

Larz & Dera Stewart
 64001 Imnaha Hwy
 Joseph, OR 97846

OWNER:

Same

REQUEST:

To permit a Home-Based Occupation in the form of a Bed and Breakfast, in an existing bunkhouse for a maximum of (2) people and (1) vehicle.

LOCATION:

The property description is Township 02S, Range 45E, Section 29, Tax Lot 1500, Ref#2700, Address: 64001 Imnaha Hwy, Joseph, OR 97846.

PARCEL CHARACTERISTICS:

The parcel contains about 8 acres. The Zoning is Exclusive Farm Use (EFU) and access is from Imnaha Hwy, a state highway. The parcel borders EFU on all sides. There is one dwelling on the parcel, and multiple accessory structures. The soils are predominantly Class 4 soils, but not Prime or Unique and not considered High Value Farmland

FINDINGS

Stewart HBO B&B CUP#23-04
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PREVIOUS LAND USE ACTIONS:

ZP#03-19, Approval for a cover over a manufactured home
ZP#23-25, Approval for two non-resource use bunkhouses

REVIEW CRITERIA:

Article 1, Introductory Provisions
Article 5, Public Hearing Review
Article 9, Conditional Use
Article 15, Exclusive Farm Use
Article 35, Home-based Occupation
Article 36, Salmon Habitat Recovery
Other applicable zoning ordinances or goals of Wallowa County Land Development Ordinance and/or laws of the State of Oregon

ARTICLE 1, GENERAL PROVISIONS

SECTION 1.065, DEFINITIONS: *For the purpose of this ordinance and as used in this ordinance, the following words and phrases are so defined.*

[...]

021. BED AND BREAKFAST – (B&B) *An accessory use within a single family dwelling or accessory structure appropriate for the zone on the same parcel. Accessory structures may be, but not limited to, a second dwelling, a portion of a barn, or a bunkhouse. Accessory structures must be approved as living quarters. Up to five bedrooms may be available for rent. Rooms are rented for less than 30 days. B&Bs must have staff on site overnight. Breakfast is required, however, breakfast is defined by the owner/operator. Other meals are optional. B&Bs must meet the criteria of Articles 33, Signs, 34, Parking, and 25, Flood, Wildfire and Natural Hazards. Incidental use (5% of days the B&B is available for rent) may involve Other Overnight Accommodations.*

B&Bs are Home Based Occupations (HBO) and are allowed in all zones which allow HBOs.

[...]

FINDING 1: The Commission finds that the application meets the definition of B&B and will have staff present overnight while guests are present.

ARTICLE 5, PUBLIC HEARING REVIEW

SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review *requires notice of hearing be given to all owners of property lying within:*

FINDINGS

Stewart HBO B&B CUP#23-04
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[...]

- C. *Five hundred (500) feet of the exterior boundary of the subject property where the subject property is within a farm or forest zone.*

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. *Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.*
03. *Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.*

FINDING 2: The Planning Commission finds the public hearing was properly noticed in the Wallowa County Chieftain, was posted on the Wallowa County Courthouse Public Notice Board, and a notice was sent to all property owners within 500 feet of the subject property as detailed above.

SECTION 5.045, CONDITIONS OF APPROVAL AND PERFORMANCE GUARANTEES:

01. *The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to ensure the use or development complies with the applicable standards and criteria.*

FINDING 3: The Planning Commission has imposed Conditions of Approval to ensure the use or development complies with the applicable standards and criteria and will have minimal impact on adjacent parcels.

ARTICLE 9, CONDITIONAL USE PERMIT

SECTION 9.015, REVIEW PROCEDURE: *Application for a Conditional Use Permit shall be subject to the public hearing review process.*

SECTION 9.020, REVIEW CRITERIA: *After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.*

01. *The proposed use will be consistent with the purpose of [and is allowed conditionally in] the zone in which the use proposed.*

FINDING 4: The Planning Commission finds that a Bed and Breakfast is allowed conditionally in the EFU zone and that the use is consistent with the purpose of that zone.

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02. *The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.*
03. *The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.*

FINDING 5: The Planning Commission finds that this Bed and Breakfast will not create an impact great enough to create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.

04. *The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.*
05. *The proposed use will not interfere with uses permitted on adjacent parcels.*
06. *The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.*

FINDING 6: The Planning Commission finds, via evidence presented both orally and in writing, including the narrative and testimony supplied by the applicant that the number of customers and the type of use proposed will not violate the above criteria. The Commission further finds that the application satisfies Article 36 as no habitat is impacted.

ARTICLE 15, EXCLUSIVE FARM USE (EFU)

SECTION 15.010, PURPOSE: *The purpose of the Exclusive Farm Use (EFU) Zone is to protect and maintain agricultural lands for farm use, consistent with existing and future needs for agricultural products. The EFU zone is also intended to allow other uses that are compatible with agricultural activities, to protect forests, scenic resources and fish and wildlife habitat, and to maintain or improve the quality of air, water and land resources of the county. It is also the purpose of the EFU zone to qualify farms for farm use valuation under the provisions of ORS Chapter 308. The intention of the Exclusive Farm Use Zone is to guarantee the preservation of the areas classified as farm use free from conflicting non-farm uses.*

The EFU zone has been applied to lands designated as Agriculture in the Comprehensive Plan. The provisions of the EFU zone reflect the agricultural policies of the Comprehensive Plan as well as the requirements of ORS Chapter 215 and OAR 660-033. The minimum parcel size and other standards established by this zone are intended to promote commercial agricultural operations.

FINDINGS

SECTION 15.020, BUILDINGS AND ACTIVITIES PERMITTED CONDITIONALLY: In the EFU Zone, the following uses and activities and their accessory buildings and uses are permitted subject to the provisions of Article 9 (Public Hearing Review).

04. *Home-based occupations as provided Article 35, Home-based Occupation. Home-based occupations may not be authorized in structures accessory to resource use. A home-based occupation located on high-value farmland may employ only residents of the home.*

FINDING 7: The Planning Commission finds that a Bed and Breakfast is a Home-based Occupation and is a Conditional Use in the EFU zone, and that this application has been properly brought before the Planning Commission as part of the Conditional Use process.

FINDING 8: The Planning Commission finds that the Home-based occupation is not on high value farmland.

ARTICLE 35, HOME BASED OCCUPATION

SECTION 35.020, DEFINITION: Home-Based Occupation shall mean an activity carried on within a residence, within an accessory structure, or on the premise of a residence, which is intended to produce an income. The occupation must be accessory to the primary residential use and in compliance with the applicable requirements of this ordinance.

FINDING 9: The Commission finds that an HBO for a B&B, in this application, is accessory to the primary residential use and is in compliance with the applicable requirements of this ordinance.

SECTION 35.025, REVIEW CRITERIA: Applications for Home-based Occupations shall be found to comply with the following criteria:

01. *AREA: A Home-based Occupation shall be restricted to no more than 25 percent of the gross square feet of the principal residence and 2,000 square feet of accessory buildings normally associated with uses permitted in the zone in which the property is located EXCEPT:*

- A. *Bed and Breakfasts are excluded from the square footage criteria.*
- B. *Other uses that provide overnight accommodations in conjunction with a home-based occupation.*

02. *PARTICIPATION/EMPLOYEES: A Home-based Occupation shall employ, on site, no more than three full-time or part-time persons.*

FINDINGS

FINDING 10: The Commission finds that Bed and Breakfasts are excluded from the square footage criteria and no more than three employees will be used on site, therefore, the requirements of 35.025 have been met.

- 03. *COMPATIBILITY OF ACTIVITY: The residence, accessory buildings, or any new structures or reconstruction approved for use by the Home-based Occupation shall conform to the area and shall not be non-conforming in terms of color, materials, design, construction, lighting, landscaping or the lack of landscaping. Also, the proposed use shall not unreasonably interfere with existing uses on nearby land or with other uses permitted in the zone in which the property is located.*
- 04. *TRAFFIC GENERATION: The permitted activity should not generate a greater volume of vehicular traffic than is usual and customary in the zone where the property is located.*
- 05. *NOISE: The permitted activity shall not generate any noise that is in excess of that which is usual and customary in the zone where this property is located.*

FINDING 11: The Commission finds that as proposed the Bed and Breakfast will not generate any more traffic than customary for a single-family dwelling in this neighborhood. The Commission further finds that the proposed activity is not likely to generate more noise than that which is usual and customary in the zone where this property is located.

- 06. *EQUIPMENT/RESTRICTIONS: Any equipment used in the activity and processes shall not create vibrations, glare, fumes, odors, or electrical interference that is detectable to normal sensory perception at the property lines.*
- 07. *HAZARDS: Within a residence; no equipment, process, or materials shall be used which will change the fire-rating or structure separation, fire wall, or ventilation requirements of the building shall be permitted. Attached garages shall not be considered part of the residence for the purpose of this ordinance. Accessory buildings, attached garages, or new structures permitted with the use shall meet all structural and life safety requirements for the use and activity. No hazardous materials shall be stored or used on the premise in quantities greater than customary for residential use unless specified and approved at the time of application. No Home-based Occupation shall be permitted which presents a potential health or safety hazard to the area from discharges into the air, water, or ground; from surface run-off; or from increased need for vector control.*

FINDING 12: The Commission finds that the above criteria are met as the proposed use will not require any out of the ordinary equipment or create hazards outside the normal uses found in a single-family dwelling.

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Stewart HBO B&B CUP#23-04

September 26, 2023

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08. *STORAGE AND USE OF YARD: All storage of materials and equipment associated with the Home-based Occupation shall be enclosed unless specified and approved at the time of the application.*
09. *SIGNS: Signs shall conform to the provisions of Article 34, Signs.*
10. *PARKING: Parking shall be off-street and conform to the provisions of Article 33, Parking, Section 33.015(03).*

NOTE: *The existence of home-based occupations shall not be used as justification for a zone change [ORS 215.448(4)].*

FINDING 13: The Commission finds that the proposed business as presented by the applicant meets the above criteria. If the applicant decides to have a sign, it shall meet the criteria of Article 34, Signs. The property has ample space for parking and no storage or special equipment, outside the normal household supplies, are proposed.

ARTICLE 36, SALMON HABITAT RECOVERY

The application shall satisfy the pertinent criteria of Article 36, Salmon Habitat Restoration.

FINDING 14: As this proposal does not impact any fish bearing waterways or habitat, the Commission finds that a management plan is not necessary.

PUBLIC COMMENTS:

There were no public comments.

CONCLUSION:

All applicable criteria have been met, and the Planning Commission approves this application subject to the Conditions of Approval. Failure to meet these conditions in a timely manner may result in the revocation of this permit by the review authority.

The Conditional Use Permit CUP #23-04 to operate a Home-based Occupation in the form of a Bed and Breakfast has met all criteria and will be valid until the permitted use is discontinued for one full year, or failure to meet the approval conditions require the permit to be revoked.

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Stewart HBO B&B CUP#23-04

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CONDITIONS OF APPROVAL:

The Planning Commission finds that the following conditions can be met as imposed since the applicant is willing and the Commission finds reasonable evidence to support the conclusion that they are feasible.

1. This CUP is not transferable. If the property is conveyed to another entity, or if the applicant no-longer resides on the property, then this CUP is no longer valid.
2. The Bed and Breakfast must have someone present in the residence, overnight, while guests are present.
3. Guests' dogs must be leashed and supervised at all times when outdoors.
4. Because the parcel is in and bordered by the EFU zone, the applicant shall file a Conflict Acknowledgment Statement with the Wallowa County Clerk's office.
5. Guests are limited to two guests and one vehicle (trailers are considered vehicles).

DECISION:

Based upon the information submitted, the comments of interested parties and the findings, the review authority finds this application satisfies all review criteria and is hereby approved as presented and conditioned.

The August 29, 2023 verbal vote to approve the application is 5 in favor and 1 opposed with 0 abstaining.

The September 26, 2023 vote to approve the Findings Report is ___ in favor and ___ opposed with ___ abstaining.

September 26, 2023

DATE OF ACTION

GEORGENE THOMPSON, CHAIR

WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeal. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 pm October 12, 2023.

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WALLOWA COUNTY
Planning Department
101 S River Street #105
Enterprise, Oregon 97828
541-426-4543 ext. 1170

FINDINGS
LP#23-12
Pearce

**IN THE MATTER OF THE REQUEST
FOR A MINOR LAND PARTITION IN THE
RECREATION RESIDENTIAL (R-2) ZONE**

)
) **FINDINGS OF FACT, CONCLUSIONS, AND**
) **DECISION OF THE WALLOWA COUNTY**
) **PLANNING COMMISSION**
)

RE: PEARCE MINOR PARTITION LP#23-12

The request was deemed to be complete on July 3, 2023. It was properly advertised in the Chieftain on August 16, 2023, and noticed to landowners within 250 ft and other interested parties on July 5, 2023. The request came before the Wallowa County Planning Commission on August 29, 2023, with a decision on September 26, 2023. The Planning Commission having reviewed the record, the materials introduced in the above-referenced hearing, and having heard and considered oral testimony in the above-referenced hearing, and being fully advised, makes the following findings of fact and decision.

APPLICANT: Parley and Vicky Pearce
615 Abbott, Rd
Walla Walla, WA 99362

OWNER: Same

REQUEST: To permit a Minor Land Partition in the Recreation Residential (R-2) Zone. One parcel shall be divided into two parcels.

LOCATION: The property description is Township 02S, Range 45, Section 31, Tax Lot 1501, Ref#9351, Address: 83795 Airport Ln, Joseph, OR 97846.

PARCEL CHARACTERISTICS: The property is approximately 4.4 acres and is zoned R-2, Recreation Residential. It is accessed via Hurricane Creek Market Rd (Airport Ln), a county road. It is bounded on the west and south by EFU (Exclusive Farm Use), to the north by M-1 Industrial zone, and to the east by M-1 and EFU zones. The Wallowa River, a fish-bearing stream, traverses the northern boundary of the site. The proposed parcels are approximately 2.34 acres and 2.09 acres.

PREVIOUS LAND USE ACTIONS:

ZC#12-02, Zone Change from M-1 Industrial to R-2 Recreation Residential

REVIEW CRITERIA:

- Article 4, Administrative Review
- Article 18, Recreational Residential (R-2)
- Article 22, Industrial (M-1)
- Article 30, Land Partition
- Article 36, Salmon Habitat Restoration
- and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon

STAFF COMMENT: This application is for a Minor Land Partition to a property that is zoned R-2 (Recreation Residential). The prescriptive review for a minor partition is administrative; notice sent to surrounding properties with a decision by the Planning Director (PD). The PD has forwarded this application to the Planning Commission (PC) because there is a potential conflict with a previous Planning Commission approval to rezone the subject property. The property was re-zoned from M-1 (Industrial) to R-2 in 2013 at the County level. However, the state Department of Land Conservation and Development (DLCD) was not notified of the final decision, which is a requirement for Comprehensive Plan amendments.

ARTICLE 4, ADMINISTRATIVE REVIEW

SECTION 4.010, PURPOSE: The purpose of this article is to provide the procedural guidelines for reviewing applications for uses and developments which may impact neighboring properties and developments but not to the extent of requiring a public hearing review. The Administrative Review authority has some discretion regarding the applicant's compliance by applicable review standards and criteria, setting forth conditions of approval, and requiring performance guarantees.

SECTION 4.015, RESPONSIBLE REVIEW AUTHORITY: Unless specified otherwise, the Planning Director is the review authority for all applications requiring Administrative Review.

SECTION 4.020, NOTICE OF REVIEW: ORS 197.763

SECTION 4.045, REFERRAL BY REVIEW AUTHORITY: Review of an application under the provisions of Administrative Review will be referred to the Planning Commission by the review authority should the review authority be unable to provide a fair or unbiased review due to conflict of interest, bias, or other substantial cause. An application so referred to the Commission is to be reviewed pursuant to the public hearing review procedures of Article 5, Public Hearing. An application shall be accompanied by an explanation of the conflict of interest, bias, or other

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Pearce LP#23-12
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substantial cause for rejection of Administrative Review.

FINDING 1: The Planning Commission finds that the Planning Director appropriately referred the application to the commission with substantial cause, that being the lack of notice to the state of the zone change in 2013, and that public hearing review procedures of Article 5, Public Hearing, apply. The Commission further finds that the cure for the lack of notice is an approval of an Order and notice to DLCD of the zone change.

ARTICLE 5, PUBLIC HEARING REVIEW

SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:

[...]

B. Two hundred fifty (250) feet of the exterior boundary of the subject property where the subject property is outside an urban growth boundary and not within a farm or forest zone;

[...]

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.

03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

FINDING 2: The Planning Commission finds the public hearing was properly noticed in the Wallowa County Chieftain, was posted on the Wallowa County Courthouse Public Notice Board, and a notice was sent to all property owners within 250 feet of the subject property as detailed above.

SECTION 5.035, REVIEW PROCESS AND DECISION:

01. Upon receipt of a filed application, the Public Hearing Review authority shall conduct at least one public hearing to review the application for compliance with all applicable standards and criteria. The review authority shall consider all comments received which are pertinent to the application and which address applicable review standards and criteria.

02. The final decision of the review authority should be rendered no later than 150 days

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following the filing date of the application.

03. The final decision of the review authority is to be placed in writing and shall set forth the findings and conclusions used to reach the decision. Each applicable review standard and criterion shall be addressed by the review authority.

04. The decision of the review authority shall specify each condition of approval and required performance guarantees imposed on the permit.

05. The final decision order shall be signed by the review authority and provided to the applicant as well as all parties to the review and to those other parties requesting notice of action be provided. The document shall be mailed or delivered by other means no later than five days following the date of final action.

FINDING 3: The commission finds that the above criteria have been met.

SECTION 5.040, APPLICABLE REVIEW CRITERIA:

01. SALMON HABITAT RESTORATION: Applications must satisfy any applicable criteria of Article 36, Salmon Habitat Restoration.

FINDING 4: The commission finds that the site is adjacent to a fish-bearing stream and is therefore subject to the requirements of Article 36, Salmon Habitat Restoration and that criteria can be met with conditions of approval.

SECTION 5.045, CONDITIONS OF APPROVAL AND PERFORMANCE GUARANTEES:

01. The Public Hearing Review authority may impose such conditions of approval upon a permit as are deemed necessary to ensure the use or development complies with the applicable standards and criteria.

FINDING 6: The Planning Commission has imposed Conditions of Approval.

Article 18, RECREATION RESIDENTIAL (R-2)

SECTION 18.010, PURPOSE: *The purpose of the Recreation Residential Zone is to provide minimum standards for residential development and recreational uses in areas of Wallowa County that visitors from outside the County are attracted to for natural and man-made amenities. The minimum standards of this Article are intended to:*

01. Stabilize and improve property values.

02. Preserve and enhance an area=s attractiveness to visitors and residents of Wallowa

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County.

- 03. Foster civic pride in natural and man-made amenities.
- 04. Strengthen the economy of Wallowa County.

SECTION 18.035, PROPERTY DEVELOPMENT STANDARDS:

01. PARCEL SIZE:

For Existing Parcels: Where community water and sewer are available for purchase at the time of permit approval, the minimum parcel size for development on an existing parcel is 7,500 square feet. Where either or both community water and sewer are not available or slope of a lot is greater than 10%, application review for building construction or creation of new lots shall be based on recommendations by a registered licensed engineer or geologist and the ability of the site to accommodate on-site sewage disposal and the use, but in no case shall the lot be smaller than 7,500 square feet.

For New Parcels: Per OAR 660-004-0400, for any lands not included within unincorporated community or Goal 14 exception areas, no new parcel of land under two acres may be created from lands zoned Recreation Residential, R-2.

Where either or both community water and sewer are not available or slope of a lot is greater than 10%, application review for building construction shall be based on recommendations by a registered licensed engineer or geologist and the ability of the site to accommodate on-site sewage disposal and the use, but in no case shall the lot be smaller than 2 acres.

FINDING 7: The Planning Commission finds that the site is in within a Goal 14 Exception Area, and that the slope of the lot is less than 10%, but neither community water nor sewer is available. The proposed parcels are larger than the two-acre minimum, and therefore meet the criteria above.

ARTICLE 30, LAND PARTITION

SECTION 30.010, PURPOSE: *The purpose of the land partitions procedure is to ensure that the division of lands into parcels or subsequent use and development is conducted in an orderly manner and in compliance with this ordinance.*

SECTION 30.015, REVIEW PROCEDURE: *Application for the review or a tentative plan of a partition shall be subject to Administrative Review unless specified otherwise by requirements of the zone in which the partition is proposed.*

SECTION 30.020, REVIEW CRITERIA: *Application for the review of a tentative plan for a partition may be approved only if the reviewing authority shall find that it satisfies the following criteria.*

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01. *The proposed tentative plan is in conformance with all applicable provisions of this ordinance.*
02. *The proposed partitioning of land does not land lock or prevent access to adjacent properties or prohibit the extension of dedicated streets or roads.*
03. *The proposed partitioning will not conflict with easements or access within or adjacent to the proposed land partition.*
04. *The parcels are located and laid out to properly relate to adjoining or nearby lot or parcel lines, utilities, streets, or other existing or planned facilities.*
05. *The proposed partition size meets the minimum lot size of the zone in which it is located.*

SECTION 30.025, PROCESSING: *In processing a land partition, the following procedures shall be followed:*

01. *INITIATION: An application for land partition shall be initiated by the owner of the property for which the partition is sought or by the representative of the owner. The authorization of said agent shall be in writing and filed with the application.*
02. *FILING: An application for a land partition shall be filed on forms provided by the Planning Department and shall set forth in detail all the information requested and include an assessor's map indicating the proposed partition boundaries and any required road improvements.*

FINDING 8: The commission finds that the proposal was initiated and filed correctly.

03. *CONDITIONS: The tentative plan for a partition may be approved subject to conditions.*
04. *SURVEY OF PARCELS: Following the approval of a tentative plan for partition, the partitioner shall cause the parcels created to be accurately surveyed and monumented in accordance with standards established in ORS 209.250, as revised, unless the review authority waives the requirement for a survey requirement for some or all of the parcels created only if it makes one of the following findings.*
 - A. *Given the size, number, and proposed use of the parcels created; the requirement for the survey would impose an undue financial burden on the partitioner.*
 - B. *An accurate property description, acceptable to the Wallowa County Surveyor, as evidenced by his written statement to this effect, can be provided.*
05. *SUBMISSION OF FINAL MAP: Within six months of the date of approval of a tentative plan, the partitioner shall prepare and submit a final map which conforms with the approved tentative plan.*

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06. *EXTENSION OF TIME LIMIT: Prior to the expiration date of the time limit for the submission of a final map, a partitioner may request a time extension. A maximum of one such extension for six months may be granted by the Planning Director upon a written finding that the facts upon which the approval of the tentative plan was based have not changed to an extent sufficient to warrant refiling of the tentative plan and after a finding that no other development approval would be affected. If a final map is not submitted within the time limit, as it may be extended, the partitioner shall file a new application for review of the tentative plan.*
07. *APPROVAL OF COUNTY SURVEYOR: Upon its receipt, the Wallowa County Planning Director shall transmit the final map and other related information to the Wallowa County Surveyor who shall review the final map and information to determine that there has been full compliance with all applicable statutes and provisions that the map is technically correct and in conformance with the approved tentative plan.*
08. *FILING OF FINAL MAP: After obtaining approval of the Wallowa County Surveyor, the partitioner shall file the final map with the Wallowa County Clerk. Approval of the final map shall be null and void if the map is not filed within 30 days after the Wallowa County Surveyor's approval.*
09. *APPEAL: The applicant or any interested deed holder or contract vendee of property within 250 feet of the property affected by decisions pursuant to this section may, within ten days from the date of the decision regarding approval or denial of a tentative plan, appeal the decision pursuant to the provisions of Article 7, Appeals.*

FINDING 9: The commission finds that the above conditions apply, and that the requirement for a survey has not been waived.

ARTICLE 36, SALMON HABITAT RESTORATION

SECTION 36.010, PURPOSE: *The purpose of this article is to create a system for plans on lands within Wallowa County that will restore and maintain habitat for Chinook salmon and, potentially, other salmonoid fish. The goals for salmon recovery are to provide spawning, rearing, and migration habitat within Wallowa County to assist in the recovery of Snake River salmonoids. Wallowa County recognizes that suitable in-stream habitat for salmon is dependent upon conditions throughout the watershed from the stream itself to the crests of ridges. For example, adequate crown density in forests contributes to the buildup of snowpack and the slower snowmelt needed to maintain streamflows beyond the spring runoff. Without healthy vegetation, soils can erode and fine sediment can flow into streams to suffocate fish eggs and small fry. Wallowa County finds that the salmonoid ecosystem includes the entire watershed not just the in-stream habitat.*

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SECTION 36.015, MANAGEMENT PLANS: Management plans shall be required prior to approval of watershed, streambank, and in-stream project applications. Plans shall conform to the requirements as provided by the Planning Department for this purpose.

SECTION 36.020, DEVELOPMENT PLANS: Development plans shall be required as provided for in this ordinance and shall include consideration of the following:

- 01. Provisions for protection of water quantity including:*
 - A. Roads shall be maintained and designed to avoid quick runoff and improve infiltration.*
 - B. Roads shall be relocated outside riparian areas and placed on less compactable soils.*
 - C. Healthy riparian plant communities shall be developed and/or maintained.*
 - D. In forested areas, protect the shaded snowpack (tree spacing)*

FINDING 10: The commission finds that the criteria apply and that management and development plans will be a condition of approval, and required for further development.

CONDITIONS OF APPROVAL:

The Planning Commission finds that the following conditions can be met as imposed since the applicant is willing and the Commission finds reasonable evidence to support the conclusion that they are feasible.

- 1. Any future development (land use permits) will require a Salmon Restoration Management Plan per Article 36, Section 36.015, MANAGEMENT PLANS, and a Development Plan per Section 36.020, DEVELOPMENT PLANS.*
- 2. Salmon Habitat and Development Plans shall be reviewed by the NRAC Technical Committee, and incorporate NRAC recommendations, prior to approval of any development land-use permits.*
- 3. No temporary use activities can occur within a 50' riparian setback from the highwater line of the Wallowa River.*
- 4. No vegetation removal shall occur within the 50' riparian setback from the high-water line, without a proposal that has been reviewed by the NRAC Technical Committee.*

DECISION:

Based upon the information submitted, the comments of interested parties and the findings, the review authority finds this application satisfies all review criteria and is hereby approved as presented and conditioned.

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The August 29, 2023 verbal vote to approve the application is 6 in favor and 0 opposed with 0 abstaining.

The September 26, 2023 vote to approve the Findings Report is ___ in favor and ___ opposed with ___ abstaining.

September 26, 2023

DATE OF ACTION

GEORGENE THOMPSON, CHAIR

WALLOWA COUNTY PLANNING COMMISSION

This decision may be appealed to the Wallowa County Board of Commissioners pursuant to Article 7, Appeal. The provisions of Notice of Intent to Appeal accompanied by the appeal fee must be received by the Wallowa County Planning Department by 5:00 pm October 12, 2023.

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