



# PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x 5503  
FAX: (541) 922-3472

**Minutes of the Public Hearing of the  
Morrow County Planning Commission  
Tuesday, January 22, 2013 7:00 p.m.**

**Morrow County Planning Commissioners Members Present:** Gerald Breazeale, Mifflin Devin, John Kilkenny, Russell Seewald, David Sykes, Jeff Wenzholz

**Members Excused:** Pam Docken, John Renfro, Rod Taylor

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner

The Pledge of Allegiance was recited.

Welcome new Planning Commissioner Gerald Breazeale. The County Court received two applications for the Planning Commissioner vacant position, as Commissioner Jim Key did not request to be re-appointed. The Director's recommendation to County Court was to choose Mr. Breazeale. The Planning Director also introduced the new County Surveyor Steve Haddock.

The Planning Commission Elected new Officers for the year. Commissioner Devin moved to keep the officers the same, Chair Sykes and Vice Chair Wenzholz; Commissioner Seewald seconded. The motion carried.

The Minutes of the December 12, 2012, hearing were provided with the Commissioner's packets.

Vice Chair Wenzholz moved to approve the Minutes of December 12, 2012. Commissioner Devin seconded the motion. The motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Land Partition LP-S-434 and Replat R-S-030-12: Morrow County Grain Growers, applicant and Thomas Shear, owner. The property is described as Tax Lot 1002 of Assessor's Map 1S 24. The property is located inside and outside the lone Urban Growth Boundary, and is zoned R-3 and EFU. Request is to partition the property to expand the MCGG operations on the adjacent property. Criteria for approval include Morrow County Subdivision Ordinance (MCSO) Article 5 Land Partitioning.**

The Director stated that this action is both in the UGB of City of lone and in the County, therefore the Joint Management Agreement has been used in this process. The Planning Department will also be working with the City in the near future for a UGB expansion.

Director McLane presented the staff report.

Associate Planner Wolfmueller used the maps provided in the staff report to described to the Commission how the applicant proposed to divide the property and the zoning on the property.

The Director reminded the Commission that the old Union Pacific Rail Road easement does run through this property, and is reserved for future utility infrastructure.

Chair Sykes asked about the potential UGB expansion. The Director answered that the County would manage the process of the UGB expansion, and that there have been about three property owners interested in being included.

Vice Chair Wenzholz asked if the Morrow County Grain Growers (MCGG) had a need for a septic system, and if not why should it be required. The Director answered that they do have a current facility with a septic system and do not need a new septic, but in order to partition the land it must be buildable and therefore will require site suitability whether or not they need one. MCGG has also indicated they would like to pursue annexation, so that they may receive city water services.

Mr. Bill Kuhn said that MCGG would like to submit to the City of Lone an Intent to Annex document.

Opened the Public Hearing.

In favor:

Bill Kuhn, attorney for MCGG. Mr. Kuhn introduced John Ripple who is the MCGG manager and Tom Shear who is the landowner of the property being partitioned. Mr. Kuhn described the MCGG facility which is already located in the city limits. The MCGG has three facilities in Lone now, and would like to move the seed operation furthest out, on this new parcel. The MCGG will probably add two new jobs because of this expansion.

John Ripple, MCGG manager. Mr. Ripple said the current location of the seed plant is near residences and that is just not a good fit. They need the new location for loading and unloading and storage. They will eventually build a warehouse with offices in it.

None in opposition.

In neutral:

Steve Haddock, Morrow County Surveyor. Surveyor Haddock would like to apologize for not looking over this action. He said he was a bit confused on where the partition line would be. The Director directed him to the map which showed the proposed parcel configuration and the map that showed the zoning. Surveyor Haddock was asking if the zoning map was a recorded partition plat. Staff answered that no it was not. The Surveyor was confused as to why this was a replat action because the plot plan did not show that there was a portion of a platted parcel involved. Associate Planner Wolfmueller explained that there was a portion of a partition plat that was included within this parcel due to a previous property line adjustment action. Surveyor Haddock asked staff if the rest of the big parcel had been surveyed at the time it was platted. Staff answered that it probably wasn't since it was more than 80 acres. The Surveyor would have liked to see the whole rest of the plat parcel portion on the map along with the area being partitioned. Staff informed Surveyor Haddock that was not necessary since it was in different ownership. Surveyor Haddock also requested clarification as to which was parcel 1 and which was parcel 2. The Director informed the Surveyor that we do not require a preliminary plat at this time and that a conceptual plot plan is all we do require. The Surveyor said at this time it looks like it should be a boundary adjustment because there are two parcels. The Director replied there are not two parcels. Surveyor Haddock said the map does not make that clear to him. Associate Planner Wolfmueller said that she too had to talk this through with Jud Coppock to understand what was going on with the portion of the plat that shouldn't have been adjusted. At this point in time this action will fix this portion of the mistake of the property line adjustment between those two pieces of land. It will not however fix the other portion of the plat (PP 1994-11). Staff informed Surveyor Haddock that when this is approved we can all talk with Jud to make sure this makes sense on the plat, from a surveying standpoint. Surveyor Haddock asked

staff if at this point of approval, they have this tentative approval. The Director answered that our code does not require a tentative plat for approval. The Morrow County Subdivision Ordinance requires the submittal of a preliminary and final Partition plats as a condition of approval. The Surveyor went on to explain that a boundary line adjustment doesn't actually move platted lines. The Director agreed that the lines are still there and re-iterated that this action will fix this subject piece but does not provide a remedy for the other piece. The Director also described procedurally what the Planning Department, Assessor and Surveyor check for on the plats.

Commissioner Kilkenny confirmed with the Director that there is a condition that they submit a preliminary and that the Planning Department check it before it is finalized. The Director said that yes we do.

Surveyor Haddock asked if the preliminary plat would go back to the Commission, because there could potentially be different decisions made that will show up on the plat. Commissioner Kilkenny answered that the Planning Commission does not see the preliminary or final plat, and that it goes procedurally through staff.

Closed hearing.

Vice Chair Wenzholz moved to approve Land Partition LP-S-434 and Replat R-S-030-12. Commissioner Seewald seconded his motion. The motion carried.

**Conditional Use Permit CUP-S-301: Morrow County Grain Growers, applicant and Thomas Shear, owner. The property is described as Tax Lot 1002 of Assessor's Map 1S 24. The property is located inside and outside the lone Urban Growth Boundary, and is zoned R-3 and EFU. Request is a commercial activity in conjunction with farm use on the portion zoned EFU. Criteria for approval include Morrow County Zoning Ordinance (MCZO) Articles 3 and 6.**

Director McLane presented the staff report. Commissioner Kilkenny asked if we are required to notify the gas company about development near the gas easement. The Director answered that both the gas line easement and the Rail Road easement are protected by deed record.

Opened the Public Hearing.

None spoke in favor, neutral or opposition.

Closed hearing.

Vice Chair Wenzholz moved to approve Conditional Use Permit CUP-S-301. Commissioner Devin seconded the motion. The motion carried.

Commissioner Breazeale asked about the approval of the 2 plot plans. The Director answered that these are just conceptual, just the use is being approved. Commissioner Breazeale asked if the EFU zone allows commercial. The Director informed him that this use is allowed in state statute.

**Conditional Use Permit CUP-S-300: Oregon Department Of Transportation, applicant and owner. The property is described as Tax Lot 1500 of Assessor's Map 2S 29. The property is adjacent to the Highway 74-Lena right of way, between Hisler Road and Little Butter Creek Road and is zoned EFU. Request is to replace an existing snow fence along the highway. Criteria for approval include MCZO Articles 4 and 6.**

Director McLane presented the staff report. Commissioner Kilkenny would like to suggest some

conditions for this action. Commissioner Kilkenny said that ODOT did the same on his property two years ago. Commissioner Kilkenny verbally instructed them to not do any construction in July and August because of the fire hazard, yet they did construction in July and August anyway. They also did not notify the land owner that they were there. Commissioner Kilkenny thinks there should be some restrictions as to what time of year ODOT can construct. He also thinks ODOT should be required to notify the land owner prior to commencement of construction. Associate Planner Wolfmueller replied that it does depend on how the easement was written, and that the Planning Department cannot enforce easements because they are agreements between two parties. The only course of action is civil recourse.

The Director added that we do need to have landowner approval for an action like this, and the permission is granted through the easement document. We can certainly take these concerns to ODOT as staff to staff, but we would be overstepping our bounds to add a condition. We could identify under Section K of the staff report, by adding this concern into that language.

Opened the Public Hearing.

None In favor or opposition.

In neutral:

Art Kegler, Real Estate Agent with American West. Mr. Kegler joked that about ten years down the road they will have new technology with solar powered electric fences to just melt the snow.

Closed hearing.

Commissioner Breazeale moved to approve Conditional Use Permit CUP-S-300 changing letter K to add language concerning fire season. Vice Chair Wenholz seconded the motion. The motion carried.

**Land Partition LP-N-436 and Replat R-N-031-12: Karshan Patel, applicant and Krupa Laxmi, Inc., owner. The property is described as Parcel 3 of Partition Plat 2008-7. Portions of the parcel are located inside Boardman city limits, inside the Boardman Urban Growth Boundary (UGB) and outside the UGB, and is zoned FU/Residential (city), SR-1, and SF-40. Request is to partition the property into 3 parcels. Criteria for approval include MCSO Article 5 Land Partitioning.**

Director McLane presented the staff report. The JMA has also been utilized in this action since there is part of this parcel inside the city limits, inside the UGB and outside the UGB. There was actually a partition done on this land in 2008 where the county was not included in the process. A letter was included from Tony Justus, Watermaster, informing of water rights on the lands to be partitioned. Propose to add the comment letter to the staff report. A discussion ensued about water rights and how they get completed.

Opened the Public Hearing.

In favor:

Art Kegler, real estate agent with American West. Mr. Kegler said that there is a well on parcel 1 that is within the city limits. There are no intended uses except that Parcel 2 is being put in blueberries. Parcel 3 is the only parcel with a residence on it.

Commissioner Breazeale asked if any of the septic system crossed any ownership lines. The Director answered it would be wholly on that piece of land.

None in neutral or opposition.

Closed hearing.

Vice Chair Wenholz, asked about if there is a change in access, does the Planning Department require a condition that an access permit be applied for. The Director said that staff has been trying to get away from putting conditions of approval in the staff reports that lack value. We can inform in the staff report but not necessarily condition something that has to be done anyway.

Vice Chair Wenholz moved to approve Land Partition LP-N-436 and Replat R-N-031-12. Commissioner Devin seconded the motion. The motion carried.

Commissioner Breazeale wanted added into the record that these proposed parcels were essentially already parcels due to their zoning separating them. The Director stated that was in the staff report. The Director informed the Commission that they could amend their motion to adopt an additional finding that states the substandard parcel is recognized and that they have found as a body that it will simply be maintaining its current size and use, in the approval letter and not change the staff report.

Vice Chair Wenholz moved to amend the motion to include the statement that parcel 2 is a substandard size and recognizing its existing use and existing boundaries. Commissioner Devin seconded the amendment. Motion carried.

**Audience Participation:**

Art Kegler says Planning Commission is doing a good job.

**Other Business or Correspondence:**

2013 Planning Commission Roster sent around for the PC to change if needed and verify.

The Director sent some emails about the planning and building bureaucracy that people on the east coast are having to deal with after super storm Sandy.

Planning Basics: Planning staff lead the Planning Commission through the first few chapters of Planning Basics, a packet originally provided for the October Planning Commission meeting.

The Director stated that there is an EFSC meeting on Friday, but that the Director will not be going.

**Adjournment:**

Meeting was adjourned at 9:50 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, February 26, 2013 at 7:00 p.m. at the Port of Morrow Riverfront Center, Boardman, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x.5593  
FAX: (541) 922-3472

### Minutes of the Public Hearing of the Morrow County Planning Commission

**Tuesday, March 26, 2013**  
**Work Session 6:00p.m.**  
**Public Hearings 7:30 p.m.**

**Morrow County Planning Commissioners Members Present:** Gerald Breazeale, John Kilkenny, Russell Seewald, David Sykes, Rod Taylor, Jeff Wenzholz

**Members Excused:** Mifflin Devin, Pam Docken, Kathy Neal

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Ryan Swinburnson, County Counsel; Lori Timmons, Contract Planner (Work Session)

Prior to the Morrow County Planning Commission meeting a joint work session was held with the Morrow County Court to discuss changes to the Morrow County Comprehensive Plan and Zoning Ordinance concerning the siting of aggregate mining operations. The Commission and County Court were provided with the proposed amendments and some background to this project. County Court members present were Judge Terry Tallman and Commissioner Leann Rea. Oregon Department of Transportation applicant Patrick Knight was also present and participated in the discussion.

Director McLane informed the Commission that a number of years ago the Oregon Department of Transportation submitted a request to the Morrow County Planning Department (along with the required fee) to accomplish several actions. The first part was a Comprehensive Plan and Zoning Ordinance amendment to streamline the review and approval process for aggregate sites, including stockpile locations. The secondary request was to identify and list most, if not all, of ODOT's sites as significant and to approve Conditional Use Requests for many of their sites as well. Work started, but has stalled for a number of reasons. A little over a year ago the County entered into a personal services agreement with Lori Timmons, who started this project when she was employed as the Associate Planner, and the project is now again moving towards completion. The following outlines each of the two amendment packets and discussion about these sections :

1. Zoning Ordinance Amendments: Four sections of the Morrow County Zoning Ordinance are impacted by this proposed action.

- Article 1 Section 1.030 Definitions: Identifies a definition for "mining" to be added.
- Article 3 Section 3.010 Exclusive Farm Use C Uses Permitted Outright: Identifies a new use to be added allowing mining in certain situations.
- Article 3 Section 3.200 Significant Resource Overlay Zone: The section needs an overhaul to be better used in the approval of aggregate sites. While this action has focused on aggregate clearly the balance of the section needs work as well.
- Article 6 Section 6.050 Standards Governing Conditional Uses: There is a current section (I) that is not lost in this amendment, but the replacement version is much more robust.

2. Comprehensive Plan Amendments: The Morrow County Comprehensive Plan was adopted in 1980 and acknowledged in 1986 and has never been codified since then. That becomes very evident when working with the Comprehensive Plan with developers and others with projects that the Comprehensive Plan might provide guidance for. A number of current projects, including this one, will hopefully provide the opportunities for Planning staff to accomplish not just some amendments, but an actual codification and maybe even an update to the document. The following outlines the changes that this proposal contains.

- Natural Resources Element/Goal 5 Process: Under Goal 5 a number of natural resources were considered by Morrow County for inclusion as part of the Comprehensive Plan including open space, scenic, historic areas, air, water and land resources. When this work took place in the late 1970s and into the 1980s counties operated under 'division 16' rules which have been replaced by 'division 23' rules. As Morrow County has adopted various aggregate resource sites over the past dozen or so years we have been compelled to move our practice from 'division 16' to 'division 23' and this exercise formalizes that change. This portion of the amendment would delete the old 'division 16' process and incorporate the new 'division 23' process.
- Mineral and Aggregate Resources: The portion of the amendment identified as Part 1, Part 2 and Part 3 provides some brand new language to guide Comprehensive Plan amendments in the future for three different types of aggregate sites - those over 500,000 tons or more to be mined; those less than 500,000 tons to be mined; and mining in zones other than resource zones. This is the heart of the discussion that Planning staff, ODOT staff and others have had - how can the County adequately provide protection for aggregate sites of various types and sizes given current statute, rule and case law.
- Review and Revision Process: This portion of the Comprehensive Plan has not worked for some time and is proposed to be repealed and replaced in its entirety. Currently this section sets forth both the reasons why to amend as well as the how to amend criteria or process. Proposed changes attempt to provide more clarity on both fronts.

Commissioner Breazeale asked if the end goal was to have the amendments codified. Director McLane agreed that at least the portions being amended would be codified, but not the whole Comprehensive Plan.

Chair Sykes asked staff that even though we were narrowly focusing on Aggregate in this amendment process, would there be an opportunity that this process could expand to all other Goal 5 subjects. The Director's reply would be, if someone asked, that this very narrow project is focused on Aggregate based on an application from ODOT and cannot be opened up to other Goal 5 protections or analysis.

Some general comments were made about formatting, typos and grammar. Several areas were identified in the Zoning Ordinance that needed to be looked at as well as what was already provided such as Resource Related Industrial and Space Age Industrial zones.

The Director stated that the department would make the 35 day notice requirements to DLCD for the Aggregate amendments. The next hearing date is April 30, but would they be willing to hold a second hearing in May to accommodate this. The Director asked if we could postpone April 30 to May 7, then still have the second hearing at regularly scheduled May 21. The Commission agreed and the dates were moved.

Chair Sykes called to order the Morrow County Planning Commission Hearing.

The Pledge of Allegiance was recited.

The Minutes of the January 22, 2013, hearing were provided with the Commissioner's packets.

Vice Chair Wenholz moved to approve the Minutes of January 22, 2013. Commissioner Taylor seconded the motion. The motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Conditional Use Permit CUP-N-302: Joe and Donna Rietmann, applicant and owner. The property is described as Tax Lot 702 of Assessor's Map 1N 24. The property is on Dave Rietmann Road approximately 10 miles north of lone and is zoned EFU. Request is to approve an accessory farm dwelling. Criteria for approval include Morrow County Zoning Ordinance Article 3.**

Director McLane presented the staff report.

Opened the Public Hearing.

None in favor, neutral, or in opposition.

Closed hearing.

Commissioner Breazeale moved to approve Conditional Use Permit CUP-N-302 .  
Commissioner Taylor seconded his motion. The motion carried.

**Conditional Use Permit CUP-S-303: Allstott Construction, LLC, applicant and Keven Haguewood, owner. The property is described as Tax Lot 500 of Assessor's Map 1S 23. The property is on McNab Lane approximately 3 miles west of lone and is zoned EFU. Request is to approve an accessory farm dwelling. Criteria for approval include Morrow County Zoning Ordinance Article 3.**

Director McLane presented the staff report.

Opened the Public Hearing.

None spoke in favor, neutral or opposition.

Closed hearing.

Vice Chair Wenholz moved to approve Conditional Use Permit CUP-S-303. Commissioner Seewald seconded the motion. The motion carried.

**Land Partition LP-N-437: Carl and Mary Kelley, applicant and owner. The property is described as Tax Lot 1000 of Assessor's Map 5N 26 25B. The parcel is located inside Irrigon's Urban Growth Boundary (UGB) and is zoned Suburban Residential. Request is to partition the property into 2 parcels. Criteria for approval include Morrow County Subdivision Ordinance Article 5 Land Partitioning.**

Director McLane asked Commissioner Breazeale to recuse himself before the hearing because he made comment to the staff report as Irrigon City Manager. Commissioner Breazeale stated he did make comment to this action and has had ex-parte contact, but didn't feel he should recuse himself from this hearing. Commissioner Breazeale asked County Counsel Swinburnson's opinion on whether he should recuse himself. Counsel Swinburnson felt that since Commissioner Breazeale was making recommendations in his comment letter, that he should recuse himself from this hearing.



Director McLane presented the staff report. The City of Irrigon provided a comment letter asking for at least two acre minimum and 30 foot dedicated public right of way. The County cannot make an minimum parcel size bigger, as it is a one acre minimum. We have asked for a 20 foot dedicated public right of way, because there is already a 20 foot easement in place for a neighbor's access, and there is also a setback issue that restrains the width of the dedicated right of way.

Also received was a comment letter from WEID stating some conditions that they will apply for them to divide their land. We already conditioned in the staff report that the applicant coordinate with WEID. Chair Sykes asked for clarification upon which tax lots the WEID letter was talking about. The Director pointed the Commission towards one of the maps in the staff report.

Another comment letter was received from Morrow County Sheriff Ken Matlack.

Commissioner Taylor had a question about WEID irrigation line easement on the map. The Director informed him that when the applicant testifies he can clarify whether that line is proposed or existing.

Commissioner Seewald asked questions about surveying notes on the preliminary plan. The Director informed the Commission that surveyors are required to show certain things on plats, and that the surveyor of record can answer those kinds of questions in depth during testimony.

Opened the Public Hearing.

None in favor or opposition.

In neutral:

Jerry Breazeale, City Manager for Irrigon. Mr. Breazeale wanted the Commission to know that the County and the City are working with planning on UGB issues. Primary concern is that when partitions happen but public right of way isn't dedicated, it hurts the future transportation network. The City would like to ask for 30 feet of dedicated right of way. He feels that having less of a setback is better than blocking future access. The other issue he is concerned with is the parcel size because of the groundwater in Irrigon. The soils in the Irrigon area are not the best for septic systems nor do they adequately treat the effluent well, and that is why they are asking for a larger parcel size. The City is not opposed to the one acre size or the partition. The City is looking at it from the big picture with Wyoming Avenue coming from the east from a straight line to where the dedication is. It's a natural extension of the road.

Sheriff Matlack, Morrow County Sheriff. The Sheriff stated he did not know much about the application or where the location of the subject property was or the lay of the land. But wanted to make comment about public safety. How the public accesses their property is problematic for the Sheriff's Department. His department cannot enforce traffic laws on roads that are private. There are a lot of complaints about people on private roads but there are no speed limits. If this property within the UGB isn't developed properly, when the City of Irrigon inherits it, there can be significant hardships.

Keith Primm, Land Surveyor representing The Kelley's. Mr. Primm answered Commissioner Seewald's question by saying he was showing on the plat the chain of ownership of how the parcels were created. On the question about WEID easement, that easement is proposed. The other easement for access is existing. Mr. Primm said that there will be encroachments if a 30 foot dedication is to be on the plat. Mr. Kelley had some questions about why he needs DEQ permits for the remainder of the parcel.

The Director stated that whenever we authorize the creation of a residential property, we have to show that it is buildable. To do that it needs to show that it can be developed and built and that is by DEQ site suitability. So since it is zoned residential, it has to have site suitability to show that it can support a septic system.

Commissioner Kilkenny asked staff about the concern of the future street, and asked if the easement was a public easement. The Director answered that by the looks of the plat it is identified as a non-exclusive access and utility easement established in 2011. You would have to go back to the easement document to see what was allowed. We have simply identified that would be an appropriate location for the dedication to happen.

Mr. Primm said another issue that was brought to his attention by Mr. Kelley was why does he have to dedicate, whether 20 or 30 feet, when there is already an easement in place. Mr. Primm asked if he could sell the right of way to the County. Mr. Breazeale answered that if he donated it to the public, then he would no longer have to pay taxes on that strip of land. The Director said there are reasons why the County would choose not to purchase the land, public funds are not available, and that is also a cost (to the applicant) of development. When people decide to develop, that is one of the costs involved. The County does not charge system development fees, but when developments occurs in the UGB, certain costs can accrue. The system is not perfect and the County knows there are places that where the roads are planned to be, are not perfect places for roads in some instances. This area is already developed, so it is difficult to deal with future roads and future development. We will continue to have these instances where we will have to figure out how to provide services. We will have to fix it incrementally.

Chair Sykes asked how this will help. It sounds like the County wants the larger easement. The Director said that the County is trying to find the appropriate middle ground.

Mr. Primm wanted to make sure that the Commission knew the difference between an easement and right of way, and stated that this strip will be dedicated as public right of way.

Vice Chair Wenholz asked Mr. Primm if his client was agreeable to the dedication condition. Mr. Kelley said that the County was trying to make an example of him. The Director agreed and also said anybody else too. Chair Sykes informed Mr. Kelley that what we are trying to accomplish is planning for the future roads. The Director said that anybody who comes in and makes this kind of request will be held to the same standard, and that this is not uncommon.

Closed hearing.

Vice Chair Wenholz understands where the Planning Director and Mr. Breazeale are coming from, but its not on the current TSP, and making his building have a non-conforming setback.

Chair Sykes asked how big of a negative is this to Mr. Kelley's property. Chair Sykes doesn't really see the dedication as a negative.

Commissioner Taylor's concern is the impact on his building, since we are asking for dedication.

Commissioner Taylor moved to approve Land Partition LP-N-437. Commissioner Kilkenny seconded the motion. Commissioner Seewald doesn't know what the difference would be if the dedication was either 20 or 30 feet since nothing will happen with the shop until the road is developed. Vice Chair Wenholz wanted to know if there needed to be something said in the staff report that captures the fact that his building will now have a non-conforming setback. The Director said we could capture the statement in the staff report or in the approval letter that we send to the applicant.

Vice Chair Wenholz made an amendment to the original motion that staff indicate in the approval letter recognizing the building set back not as a violation. Commissioner Seewald seconded the amended motion. Both motions carried.

**Audience Participation:**

None

**Other Business or Correspondence:**

The Director had distributed some planning articles to the Commission for their reading pleasure.

Commissioner Docken has resigned and now we need to shuffle some Commissioner positions around. We would like to move Miff again and move him to the Boardman position, then we will have an at-large position open. The Commission agreed.

Irrigon would like to annex some property that is not in the UGB. We would like to make comment on this. You cannot apply City zoning to this property because it was never in the UGB. From an annexation perspective it can be because it is adjacent to City limits. But it is not within the UGB, so it has never been planned or prepared for urban development. The underlying land is not available at this time for urban level development. This will be an action the City is taking, but County Court will determine whether they want to comment.

The two actions we had tonight brought us to some scrutiny of our Zoning Code. We had to look back into the past of how we actually got to approve Accessory Farm Dwellings. Our code was not very clear and out of date. Statute says if your code is not compliant, you can apply Statute directly, but we felt the best way was to apply the same criteria we had been applying in the past to these new actions. We probably put the applicants through more than needed, but that just goes to show our code needs work. Next time we will apply statute directly, and it will probably not come in front of the Commission unless it needs a hearing. We really need to update our code, and more importantly we really need to update how we issue decisions.

**Adjournment:**

Meeting was adjourned at 9:37 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, May 7, 2013 at 7:00 p.m. at Heppner City Hall, Heppner, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x 5503  
FAX: (541) 922-3472

### Minutes of the Public Hearing of the Morrow County Planning Commission

Tuesday, May 7, 2013  
Public Hearings 7:00 p.m.

**Morrow County Planning Commissioners Members Present:** Mifflin Devin, John Kilkenny, Melissa Lindsay, Kathy Neal, David Sykes, Jeff Wenzholz

**Members Excused:** Gerald Breazeale, Russell Seewald, Rod Taylor

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Lori Timmons, Contract Planner

The Pledge of Allegiance was recited.

Welcome New Planning Commissioners Kathy Neal and Melissa Lindsay.

The Minutes of the March 26, 2013, hearing were provided with the Commissioner's packets.

Vice Chair Wenzholz moved to approve the Minutes of March 26, 2013. Commissioner Kilkenny seconded the motion. The motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Hardship Variance HV-N-023-13: Michael J. and Tammy S. Martin, applicant and owner. The property is described as Tax Lot 5300 of Assessor's Map 5N 27 Section 21A. The property is on Rand Road approximately 2 miles east of Irrigon and is zoned Rural Residential. Request is to approve a temporary hardship dwelling to allow the property owner to care for the infirm relative. Criteria for approval include Morrow County Zoning Ordinance Article 4 Section 4.130 Hardship Dwellings.**  
Director McLane presented the staff report.

Opened the Public Hearing.

In favor:

Kelly Henderson. Ms. Henderson's parents are the ones the hardship is being applied for. Ms. Henderson informed the Commission that her sister, which is Tammy Martin the applicant, is an RN and is qualified to take care of them, and be close at hand. Ms. Henderson lives in Colorado and has concerns about her parents.

None in opposition or in neutral.

Closed hearing.

Vice Chair Wenzholz moved to approve Hardship Variance HV-N-023-13. Commissioner Devin seconded his motion. The motion carried.

**Land Partition LP-S-438 and Conditional Use Permit CUP-S-304: Andre and Kathy Meyer, applicants and owners. The property is described as Tax Lot 600 of Assessor's Map 2S 25. The property is located south of Lexington off Meadow Brook Road and is zoned EFU. The request is to partition a 900 acre parcel to create two "non-farm" dwelling parcels and approve two "non-farm" dwellings. Criteria for approval include MCZO Article 3, Section 3.010(F); MCZO Article 6, Sections 6.020 and 6.030, and MCSO Article 5, Land Partitioning.**

Director McLane presented the staff report. Chair Sykes asked staff why the acreage on one of the maps was crossed out and changed. Associate Planner Wolfmueller answered it was an update from the property owners as information was asked for. Director McLane said that through the survey process the actual acreage of the two new parcels will be made clear.

Opened the Public Hearing.

In favor:

Andre Meyer, applicant: Mr. Meyer bought the property and the house was already in disrepair, and there was no value in the house to want to keep it, it would be more beneficial to him to be able to sell it off.

None in opposition or neutral.

Closed hearing.

Director McLane said that one couple had stopped by and had some questions about the action, the law and the process, but no formal comment was made.

Commissioner Neal moved to approve Land Partition LP-S-438 and Conditional Use Permit CUP-S-304. Vice Chair Wenholz seconded the motion. The motion carried.

**Comprehensive Plan Amendment AC-058-13, Comprehensive Plan Map Amendment AC(M)-060-13, Zoning Ordinance Amendment AZ-061-13, and Zoning Map Amendment AZ(M)-062-13: Oregon Department of Transportation, applicant, in cooperation with Morrow County. Request is an update of the Morrow County Comprehensive Plan and Zoning Ordinance relative to aggregate resource protection and extraction.**

Director McLane gave some background on the amendments and answered some questions from the audience and clarified why we are here tonight.

A member of the audience asked if the County was trying to tax aggregate again. Director McLane responded that this is a land use action and that there is no mechanism to be able to tax.

Commissioner Neal informed staff that she received the aggregate property owner letter, and wanted to know if she needs to recuse herself. The Director said that saying that on the record is fine and that other Commissioners should have received the notice also as property owners.

Director McLane presented the staff report and went through the proposed amendments with the Commission.

Opened the Public Hearing.

In favor:

Patrick Knight, ODOT representative, applicant: Mr. Knight informed the Commission that this amendment will be great to streamline this process. Working on this for several years now, but now really getting down to the nitty gritty of the actual process. These amendments will make it easier for ODOT and for the Planning Department to process these aggregate requests.

None in opposition or neutral.

Closed public input portion for tonight.

Vice Chair Wenzholz moved to continue this hearing until May 21, 2013. Commissioner Devin seconded the motion. The motion carried.

**Public Comment:**

None

**Other Business or Correspondence:**

The new list of Commissioner contacts was passed around to make sure it is correct for the new Commissioners.

For the May 21 Agenda, Love's Zoning Permit appeal needs to be heard. The only other item is the Aggregate amendments.

**Adjournment:**

Meeting was adjourned at 9:10 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, May 21, 2013 at 7:00 p.m. at Heppner City Hall, Heppner, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
**Minutes of the Public Hearing of the  
Morrow County Planning Commission**  
Tuesday, May 21, 2013  
Public Hearings 7:00 p.m.

**Morrow County Planning Commissioners Members Present:** Mifflin Devin, John Kilkenny, Melissa Lindsay, Kathy Neal, Russell Seewald, David Sykes

**Members Excused:** Jeff Wenholz, Gerald Breazeale, Rod Taylor

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmuller, Associate Planner; Ryan Swinburnson, County Counsel; Lori Timmons, Contract Planner

The Pledge of Allegiance was recited.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Appeal of the Planning Director Decision related to Zoning Permit ZP# 2238: Appellant: Devin Oil Co, Inc. Zoning Permit ZP #2238 allows for development of a Love's Travel Stops & Country Stores on property described as Tax Lot 133 of Assessor's Map 4N 24 located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial.**

Director McLane presented the memo regarding the pertinent issues at hand, the timeliness of the appeal and the right to notice. Planning staff felt there was no mechanism to appeal as the (zoning permit) action does not require notice and the appeal was received after the appeal deadline. There are statements of fact identified in the memo that support those two components. Staff received this afternoon a letter from Love's counsel, which reflects what was stated in the Planning staff memo. The Director then asked if there were any questions from the Commission for staff or County Counsel Swinburnson, and procedurally some determinations need to be made about how to move forward with this hearing.

Chair Sykes asked what was the date received stamp on the notice of appeal letter. The Director said we received the original by email on April 29; the original with the check enclosed, which would make the application complete was not received until May 9, with a postmarked date of May 7.

Commissioner Neal stated that she had not been through the appeal process before and asked if counsel looks at this and makes a recommendation, or how does this process work. The Director answered that we don't do appeals very often, and we don't get an appeal of a Planning Director's decision very often at all. It's usually Planning Commission decisions that get appealed, then it would go straight to County Court with the appeal. Mr. Swinburnson wanted to clarify that first the Commission must make the decision about whether they want to hear the appeal. The Commission would not be hearing the appeal based on its merits tonight, but simply a procedural decision about whether to move forward with the appeal. Since this is an appeal of the Planning Director's decision it is probably best that the Planning Director not make the recommendation as to how the Commission should rule. This is merely a determination whether you should hear this appeal based on whether they filed their notice of

appeal timely and if they didn't, was it because they were entitled to notice of the action but didn't receive that notice. In Love's letter they determined that Devin did not require notice because of the ministerial decision and they filed the appeal after the deadline. If the Commission agrees with that, then there is no appeal to hear. They (Devin) haven't adequately appealed the decision.

Chair Sykes asked counsel if the Commission's decision can be appealed just like any other. Mr. Swinburnson said yes.

Commissioner Kilkenny asked what the deadline was for the appeal. Counselor Swinburnson said the deadline was not met, the decision was issued on April 12, and the appeal was filed on April 29. The fee for the appeal was not received until May 9. The issue of timeliness is pretty black and white. Mr. Connors might have a different argument, but from the county's perspective, they were not entitled to notice anyway. They did request notice some time back, but the Director said she would try her best with what small staff she has.

Commissioner Lindsay wanted to clarify that on the cover sheet it said "the notice would be mailed to all owners within 250 feet", if that was the notice of decision. The Director said it was the notice of decision.

Mr. Swinburnson informed the Commission that this is not a public hearing, but simply determining whether they should hear this appeal. The intent was if the Commission does decide to hear the appeal on its merits, then this matter would be continued so the parties could have specific arguments prepared for the hearing. The Commission just needs to decide whether Devin has met the procedural requirements for the appeal. The Commission can certainly hear arguments from both sides if they wish, based on the legal procedure aspect. Since Mr. Connors is present, if he wishes to present his side of the argument he should be able to.

Commissioner Kilkenny asked Mr. Swinburnson if they had been timely, would they have the right to appeal the Director's decision? Mr. Swinburnson said yes. Commissioner Kilkenny asked if we had ever had a Planning Director's decision appealed before. The Director said that there have been a few in the past. But that they had all been timely in their appeal.

Chair Sykes asked for testimony from Devin Oil.

Testimony: Mike Connors from the law firm of Hathaway Koback Connors LLC on behalf of appellant Devin Oil Company. Mr. Connors stated that they had a letter with exhibits to submit into the record. They filed the appeal on April 29, and their position is that their appeal is both timely and must be accepted by the County because of procedural errors related to lack of notice that they believe has prejudiced their substantial rights. As a result of that if the appeal was not heard that would be appealable to LUBA, and they would send it right back to you. Some additional factual information is needed for the Commission's decision, it is included in the letter as well as in the attachments. The attachment is a series of emails between Mr. Connors and Director McLane about this application. His client has been involved with this project for quite some time and have participated and submitted comment throughout the process. We specifically asked the County to notify us when any permits were issued or notices related to this project. On this specific application, back in September of 2012, he had sent emails to Ms. McLane asking about the status of the application and to let them know when it was filed. There were emails back and forth, but Ms. McLane stated that there were limited staff and that it would be a burden to have to keep track of that. They felt that legally they were entitled to notice. Every two to four weeks he would send Ms. McLane an email asking what the



status was. She would respond that she didn't have an application yet and didn't know when one would come in. Mr. Connors stated that on March 20 he received a reply from Ms. McLane that an application had not been filed, when in fact an application had been filed. April 23, he inquired on status of the application, on Friday afternoon April 26, he received an email saying that it was approved and received a copy of the approval. April 26 is the appeal deadline date in which the appeal must be filed and the check submitted in order to file a timely appeal. When the notice of decision was provided, it was provided to parties within the notice area and some not within. It wasn't a burden for county staff to provide notice to other parties whom had requested it. They chose not to provide us a copy, because we would raise issues with it.

The first issue is that it is our position that it was timely filed. April 27 is a Saturday and it is not possible to file or for the county to accept an appeal when the offices are closed. The law says you carry it over to the next business day, which was Monday April 29, which is when it was filed. He believes that shortening the appeal period was a procedural error, and precluded them from being able to file an appeal.

The second issue is the appeal deemed filed, as it was by email. The county code doesn't specifically say you must hand in the appeal nor does it prohibit an email filing. It simply says it has to be filed and accepted by the county on the 29<sup>th</sup>. Our position is Monday the 29<sup>th</sup> was the due date, and there is nowhere that says the check has to be in hand. We did photocopy the check before we sent it to let them know we sent the proper amount. Based on those two things, we believe the appeal is timely.

The second thing for the Commission to consider is notice. Notice is in fact required in this case under the county code and under state statute. Section 9.050(k) from the Morrow County Zoning Ordinance, which planning staff has said is applicable, says " The County shall send, by first class mail, a notice of all decisions rendered under this Ordinance to all persons with standing, i.e., the applicant, all others who participated either orally or in writing before the close of the public record and those who specifically requested notice of the decision." We requested notice of the decision. There is an Oregon Statute that says if you render a decision without a public hearing you are required to give the opportunity to appeal to certain parties that would be affected by the decision. That would clearly apply to Mr. Connors client.

The third thing to consider is the common sense of due process rights, to just recognize under Citizen Involvement Goals, and Comprehensive Planning Goals, that if a party asked to be notified of the status of an application then the County has an obligation to fulfill that request. Especially when we keep asking, they have to honor our request, they cant pick and choose who to include. The public is allowed to participate. I don't think this is the case where there is not enough to staff to notice another person of the same action that other people were being noticed of. They tried to make it impossible for us to file the appeal. That would clearly prejudice our rights to appeal. All we are asking is let us be able to file and for you to hear our appeal.

Chair Sykes would like to start with the timeliness of the appeal, and asked if there are any questions from the Commissioners.

Commissioner Kilkenney asked what the County precedent of the filings is, and does it go the next business day for the filing deadline. Counselor Swinburnson said that in every judicial filing that he has dealt with it would be next business day if the deadline fell on a Saturday. Our code doesn't address that issue, but Mr. Connors is correct in that argument.

Chair Sykes asked if the photocopy of the check came at the same time as the appeal on Monday the 29<sup>th</sup>. Mr. Connors answered that the scanned photocopy of the check had been emailed with the appeal on the 29<sup>th</sup>.

Commissioner Neal asked Mr. Connor to explain why the email came on the 29<sup>th</sup> but the check was not postmarked until the 7<sup>th</sup> of May. Mr. Connors explained that they sent the check to the office address listed on the website, it was returned as not deliverable, then they sent it to the mailing address Post Office box.

Commissioner Kilkenny asked if they had a photocopy of the return envelope for when the check was sent back. Mr. Connors said they do.

Commissioner Seewald asked staff if the notice of appeal is complete without receipt of the check. Director McLane said according to our code, when reviewing an application, a fee does make an application complete. A copy of a check is probably not bankable.

Chair Sykes wanted to move on to the notice part of this hearing, since there were no more questions relating to the timeliness.

Chair Sykes confirmed from Mr. Connors that they have had an interest in this project the whole time. And other than their past participation, whether they have a reason to be noticed of what is still going on. Mr. Connors said that they are not within the notice area, but according to the county code, it doesn't limit notice specifically to distance.

Commissioner Kilkenny asked Mr. Swinburnson how he interprets who is entitled to notice. Mr. Swinburnson wasn't aware of all the correspondence that took place, but thinks it should be argued by counselors the question of notice.

Chair Sykes asked Director McLane if the time line given by Mr. Connors was correct. The Director replied that when you look at the cover page of the Zoning Permit which was dated March 15<sup>th</sup>, which had the signature of the City Manager of the City of Boardman, that was the only page that was received, it was incomplete at that point. We hadn't received anything but a signed cover page. She wasn't sure of the exact date that the rest of the application was received, but it was some time later. What we received on March 15<sup>th</sup> wasn't an application. It was a piece of paper with some signatures on it.

Chair Sykes asked the Director when the date was that the balance of the application was received. The Director said that she could probably figure out when the rest of the application was received if needed. April 12<sup>th</sup> was the date that the Director deemed the zoning permit application complete, and approved it. Then the notice of decision was also mailed out on the 12<sup>th</sup>. There was no inquiry from Mr. Connors from when the Director had the packet to when she mailed the notice of decision, until late in April. Those notices went to the adjoining property owners, the City of Boardman because they are the landowner, Public Works, ODOT and the consultant team members who are listed on the application.

Commissioner Kilkenny asked to hear about right of notice. Mr. Connors reread Article 9 Section 9.050(k) to the Commission.

Commissioner Neal asked if Mr. Connors had correspondence where he specifically asked for notice of decision for this particular action. Mr. Connors said it was for this particular application. He said he wanted to know when the application was filed and when the decision would be made. Legally we are entitled to this. We very clearly made our request.

Commissioner Lindsay asked if the only notice Mr. Connors got was the email on Friday the 26<sup>th</sup> saying that the decision had been made. Mr. Connors said yes, and he was out of the office. Besides it would have been impossible to get the appeal here in less than four hours.

Mr. Swinburnson interjected that there are two ways to read the section 9 part. Whether the entity participated either orally or in writing before the close of the record, and those who specifically request notice. The question is, are those two separate situations or do you need both. Or is the last sentence the catch all, which is the way that Mr. Connors is reading it.

Commissioner Neal asked what is the public record, because the section said "at the close of public record". Was there a public record and when did it close. The Director said there was not a public record because it was a ministerial decision. Commissioner Neal reiterated that there was no open public record with a time period. The Director said that this part of the code (Article 9) has to do with decisions made through the Planning Commission, or County Court process.

Mr. Swinburnson said that the argument on Mr. Connors side would be, if this decision was ministerial then there would be no mechanism to appeal.

Mr. Connors answered that Article 9 states that notice of all decisions rendered under this ordinance, the ordinance being the Zoning Ordinance. And the decision that was made was made under the Zoning Ordinance. Although the county code says that this decision was ministerial, there is also very clear legal precedent that says whether a decision is ministerial or non-discretionary. It doesn't matter what the code calls it, it depends on what's involved in the decision. We feel that this decision was discretionary. There is also a statute that says if it is a permit decision then we are entitled to notice and the opportunity to for a hearing, and the deadline for that is not 15 days.

Chair Sykes said that if you read Article 9 to be all inclusive, then you would have to have standing and request notice.

Commissioner Lindsay wanted to know whether the fee had to be paid with the appeal, or if that point was still up for discussion. Director McLane answered that the portion of the code that talks about completeness of applications, an appeal is defined as an application. We deal with this regularly. We do not move forward without a fee. We did in this case, placing it on the docket, before receiving the fee.

Commissioner Lindsay stated that an email of a check is different than a check. Mr. Connors said it is different, but for purposes of filing the appeal is sufficient. There is nothing in the code that says the appeal is not accepted until the fee is paid. It just says you must file the form. That's why we believe the check doesn't have to be physically there to file the appeal.

The Commission took a few minutes to look through the letter provided by Mr. Connors.

Leslie Ann Hauer, Planning Consultant for Love's. Ms. Hauer said that she has been with Love's throughout all of their processes. Ms. Hauer said that Mr. Connors time line could not be correct because Director McLane could not have told him on March 26 that the application was approved, because Ms. Hauer's recollection was that she dropped it off in Boardman on the 27<sup>th</sup>. In all of her public and private sector planning experience, an application is not complete until a fee is paid. The staff set this for public hearing as a courtesy to Love's, because this has only been going on now for over three years. Mr. Connors said something that was very ludicrous, that we need to honor the process. This has been going on for over three years and has gone all the way to the Supreme Court. Devin has thrown every possible impediment at Love's and has abused this process. The only interest that Devin has is Boardman competition. Not only that but has cost the county in investment and building fees and the jobs that could have been there for the last two years. Love's feelings as expressed in their letter, feels that the appeal was not timely, and was not entitled to notice. The request is that this be dismissed. Please honor the process indeed.

Chair Sykes asked Ms. Hauer what she thought about this decision being ministerial. Ms. Hauer said that the Oregon system allows for ministerial decisions which are decisions that are made with little to no discretion, in the counties case it is made by staff. The second level of decision making, which this county doesn't use much, requires some level of discretion and which has the opportunity for comments and those comments get incorporated into the decision. The third level is more discretionary, and is made by a Planning Commission or a Hearings Officer. In this case the county has characterized this a ministerial decision, as it had little or no discretion involved.

Chair Sykes asked if this is being presented as a whole or two separate issue. Mr. Swinburnson agreed that the parts may need to be analyzed separately, but certainly one decision needs to be made. If you agree that the notice wasn't timely, then that is the only issue. If you think they required notice, then that should go into your timely filed analysis. They definitely do go together. Was it not timely filed because they were entitled to notice, if so then the appeal would go forward. If it was timely, then right to notice doesn't matter.

Commissioner Kilkenny asked if Article 9 language is for ministerial decisions or other types of decisions. Mr. Swinburnson said he has been reading through some of the other code provisions, and it doesn't really specify one decision type from another, it does say all decisions.

Commissioner Neal needed clarification from staff that a timely filing would include the fee. It is not considered a full filing until the fee is paid. Mr. Swinburnson said that the appeal is governed by section 9.030, which doesn't specify anything about fees but does say that appeals should be done in the same manner as applications under this ordinance. Section 9.040 discusses applications and appeals, and all required application fees.

Commissioner Neal asked if there was a time stamp on the email when the appeal was submitted on the 29<sup>th</sup>. The Director said it was at 3:46 p.m.

Mr. Swinburnson read section 9.070 to the Commission, and said that a filing fee, must be due at the time an application or appeal is submitted.

Commissioner Kilkenny asked Mr. Swinburnson if he had more time to digest the right to notice part of this. Mr. Swinburnson replied that this would be a factual determination that needs to be made by the Commission.

Chair Sykes asked how the county has looked at the interpretation of who gets the notice of decision to people in the past. Mr. Swinburnson says it is difficult to say, and under those definitions, for a ministerial decision, no one would get notice. Mr. Swinburnson said that this decision tonight is a procedural question, what ever has happened in the past is completely irrelevant to this decision.

Commissioner Neal made a motion to deny the appeal. Commissioner Devin seconded the motion.

Commissioner Neal stated that the payment portion was not timely, and even though there was distance involved they could have found a way to get the money there. And since there was no open public record there was no right to notice requirement.

The motion went to a vote, and was a tie, 3 ayes, 3 nays. The motion does not pass.

Commissioner Devin agrees with Commissioner Neal's reasons for denial of the appeal.

Chair Sykes said it wasn't clear if the county had accepted applications without money before in the past. Not sure they have been consistent.

Commissioner Neal said that as an individual landowner getting notices of land use processes, she learns about the hearing, but doesn't learn of the outcome automatically, she has to request it. Commissioner Kilkenny said that if he asked to be notified, then he would assume he would be.

Commissioner Seewald agrees that Monday should have been the deadline, but since the fee wasn't received, then the application wasn't complete. He also said the fact that Mr. Connors not being in the office, was irrelevant.

Commissioner Lindsay asked if we have ever accepted applications without the fees before. The Director said that we will work with folks if they say they will bring in the check in the next couple days. We normally wouldn't set it for hearing until we receive a fee. We set this for hearing before the fee because you have to have a hearing within 30 days, and we assumed we would have a check within a working day or two. We shouldn't have set it for hearing.

Chair Sykes said it sounds like you are splitting hairs on breaking the rules. The Director said the dilemma lies in our code, we must hear it within 30 days. Chair Sykes answered that staff has set hearings before as long as the fee is paid before the hearing. The Director said that she misspoke earlier, and said that we will set a hearing as long as they pay before its time for notice, which is 20 days before a hearing.

Chair Sykes stated that if your going to try to get along with some people you should try to get along with them all. You should try to help out all people. The Director said that is difficult with appeals because a decision must be made within 150 days. So an appeal hearing must be set within 30 days.

Commissioner Neal said that her reasoning is based on what is in front of her, not on past practices, whatever they may be. There may need to be clarification at some point in the code.

Commissioner Lindsay agrees that those who specifically request notice should get it, and they requested it multiple times. Commissioner Neal said those two items do go together. Even though it is a ministerial process she thinks it's a little different. If she is a landowner and gets notice for a land use process as an adjacent property owner, that is the person with standing. The applicant and the others that participate like ODOT or ODFW or other people required to be part of the process, are people with standing, they also need to request a notice of decision. She said those all go together and are not separate.

Commissioner Lindsay asked, in this case, why City of Boardman got notice. The Director informed her that they are the landowner. Commissioner Lindsay wanted to know who were not neighboring landowners on that list. The Director said that applicant also had several parties to the application, they are part of the Love's consultant team to the application. Also ODOT was noticed because it is in an interchange area, and Public Works because it is on a county road, and the adjoining landowners. There are about 5 or 6 adjoining landowners.

Commissioner Lindsay asked staff if everyone on the list had standing and they asked for notice. The Director said they would all be either adjoining landowners or fall under the definition of applicant, and ODOT and Public Works fall under affected agencies.

Commissioner Devin asked staff when the notices were sent. The Director said on April 12, the day the decision was signed. Commissioner Devin said that technically they were noticed on Friday the 26<sup>th</sup>. It doesn't state that he gets 15 days, just 15 days from the date of the decision it can be appealed. He was noticed on the 26<sup>th</sup> and had until the 29<sup>th</sup> to appeal. You just have to appeal within 15 days of the decision, regardless of when you were noticed of that decision.

Mr. Swinburnson asked the Commission whether a one line email telling Mr. Connors that it was approved was sufficient notice. Director McLane said that along with that email he was sent the entire application packet. Mr. Connors received more than what the others that received notice did.

The Commissioners all agree that Monday was in time and timely for the appeal, but what about the fee.

Chair Sykes asks the Commission if they should just deal with what is in front of them and forget about precedent. Do we treat everyone the same, or give some a couple extra days.

The Director said that we do accept the fee after the application has been filed, but that application will not be deemed complete until the fee is paid. So this application was not deemed complete until May 9.

Commissioner Neal moved to deny the appeal. The motion was seconded by Commissioner Seewald. The motion failed, 2 ayes and 4 nays. The motion does not pass.

Commissioner Kilkenny moved to accept the appeal and hear it on its merits at the next meeting. Commissioner Lindsay seconded the motion. The motion passed with 4 ayes and 2 nays. Commissioners Neal and Seewald dissented.

Mr. Swinburnson wants it to be clear that this decision was based on the fact that Devin was entitled to notice based on their request, and the appeal was timely filed based on lack of notice.

Commissioner Devin made a motion to continue the appeal to next meeting June 25, 2013. Commissioner Lindsay seconded the motion. The motion passed.

**Comprehensive Plan Amendment AC-058-13, Comprehensive Plan Map Amendment AC(M)-060-13, Zoning Ordinance Amendment AZ-061-13, and Zoning Map Amendment AZ(M)-062-13: Oregon Department of Transportation, applicant, in cooperation with Morrow County. Request is an update of the Morrow County Comprehensive Plan and Zoning Ordinance relative to aggregate resource protection and extraction.**

Director McLane gave some background and answered some general questions and clarified why we are here tonight. Director McLane presented the staff report and went through and discussed the amendments with the Commission. Some changes to the language were identified for the next version.

Opened the Public Hearing.

None in favor, opposition or in neutral.

Closed public input for tonight.

Commissioner Devin moved to continue the hearing to June 25, 2013. Commissioner Seewald seconded the motion. The motion carried.

**Audience Participation:**

Patrick Knight from ODOT and Amanda Punton from DLCD were in the audience for clarification and questions on the amendments.

**Other Business or Correspondence:**

The Commission wants to meet at 5 for the next hearing, since this hearing went so late.

**Adjournment:**

Meeting was adjourned at 11:09 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, June 25, 2013 at 5:00 p.m. at the Port of Morrow Riverfront Center, Boardman, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
**Minutes of the Public Hearing of the  
Morrow County Planning Commission**  
FAX: (541) 922-3472

**Tuesday, June 25, 2013  
Public Hearings 5:00 p.m.**

**Morrow County Planning Commissioners Members Present:** Gerald Breazeale, Mifflin Devin, John Kilkenny, Melissa Lindsay, Kathy Neal, Russell Seewald, David Sykes, Rod Taylor, Jeff Wenzholz

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Ryan Swinburnson, County Counsel; Lori Timmons, Contract Planner

The Pledge of Allegiance was recited.

The Minutes of the May 7, 2013, hearings were provided with the Commissioner's packets.

Commissioner Devin moved to approve the Minutes of May 7, 2013. Commissioner Neal seconded the motion. The motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Comprehensive Plan Amendment AC-058-13, Comprehensive Plan Map Amendment AC(M)-060-13, Zoning Ordinance Amendment AZ-061-13, and Zoning Map Amendment AZ(M)-062-13: Oregon Department of Transportation, applicant, in cooperation with Morrow County. Request is an update of the Morrow County Comprehensive Plan and Zoning Ordinance relative to aggregate resource protection and extraction.**

Director McLane went over the cover memo that was sent out with the packet and posed some policy questions to the Commission based on discussions that were outlined on the memo. They have to do with definitions and threshold limits.

Commissioner Lindsay arrived.

The Director told the Commission that the DOGAMI definition says that mining starts at 5,000 cubic yards. The DLCD definition says that on farmland mining begins at 1,000 cubic yards.

Ms. Timmons informed the Commission that the way it is written in the draft form now, is for simplicity reasons, by not having the two thresholds, simply just one. The Director agreed that would be the easiest for staff. We do need to make findings on why we choose either way.

Commissioner Neal asked staff how often do we currently issue permits for 1000 cu yds or more or 5000 cu yds or more. The Director responded that most times people are coming in for permits to mine at least 100,000 tons. This is really at the lowest end of the spectrum. Commissioner Neal asked if this would change the criteria to get the permit. The Director said that it wouldn't and this change would really be so inconsequential in the whole scheme of things.

Patrick Knight, from ODOT, asked if DLCD wants us to use the DLCD or the DOGAMI definition for mining in our code. The Director said that Amanda Punton from DLCD was leaning towards us using the DOGAMI definition, but more importantly, to be consistent with our definitions throughout the code.



After further discussion the Commission came to a consensus that they did not want to put stricter regulations in our code. They want to have the 1000 cu yds threshold for farmland and 5000 cu yds for all other zones.

The Director posed the next policy question to the Commission. The question is on farmland the optional opportunity to have a lower threshold to have Goal 5 protections, and what should that lower threshold be for the Goal 5 protection under 500,000 tons. In our code amendments we have identified 100,000 tons as the lower limit, but this is somewhat an arbitrary number.

Commissioners Breazeale and Kilkenny arrived.

Ms. Timmons said that anything lower than 100,000 tons might be a problem because the applicant might have a hard time determining significance on a pit that small. DLCD might have issues with a lower number as well.

Mr. Knight said that as ODOT is concerned, at 100,000 tons, a pit starts to be a large site and begins to be a significant site. These pits have been around along time. They want to protect these sites, so people are aware that mining will be happening or ongoing. ODOT is comfortable with the 100,000 limit, anything under that is really not significant enough.

After discussions about the lower limit threshold, The Director stated that at 100,000 tons you could make a significance claim, the number works for ODOT and it would work for DLCD too. The Commission agreed and came to consensus to use the lower limit of 100,000 tons for the optional Goal 5 path.

After the policy discussions Director McLane presented the staff report and went through and discussed the amendments with the Commission. Some minor changes to the language were identified for this version.

At this point the Commission took a break for dinner, and recessed the Aggregate discussion until after the next two hearings.

**Conditional Use Permit CUP-S-305: Philip and Kathryn Carlson, applicants and Treo Ranches Inc., owner. The property is described as Tax Lot 2200 of Assessor's Map 4S 25. The property is on Hardman Ridge Road approximately 4 miles NW of Hardman and is zoned EFU. Request is to approve a Bed and Breakfast. Criteria for approval include MCZO Articles 3 and 6.**

Director McLane presented the staff report. Commissioner Kilkenny asked staff how this came about. Director McLane said that she was in Chair Sykes office when the applicant was there and the applicant and Chair Sykes were discussing the Bed and Breakfast use. Mr. Swinburnson and Director McLane concurred that it would be a good idea if Chair Sykes recused himself from this hearing.

Chair Sykes recused himself from the hearing.

Opened the Public Hearing.

None in favor, opposition or neutral.

Closed the Public Hearing.

Commissioner Taylor moved to approve Conditional Use Permit CUP-S-305. Commissioner Devin seconded the motion. The motion carried

**Appeal of the Planning Director Decision related to Zoning Permit ZP# 2238: Appellant: Devin Oil Co, Inc. Zoning Permit ZP #2238 allows for development of a Love's Travel Stops & Country Stores on property described as Tax Lot 133 of Assessor's Map 4N 24 located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial.**

Mr. Swinburnson started off by going over the appeal procedure with the Commission and with the representative of the appellant Devin Oil Co., Mr. Connors from Hathaway Koback Connors and with the representative of Love's, Carrie Richter from Garvey Schubert Barer. Mr. Swinburnson said that Love's did raise an issue about whether or not Devin can supplement the issue that they raised on appeal. They had specific issues raised on the appeal, then submitted written materials where they raised supplemental issues. Mr. Swinburnson suggested that the Commission hear limited arguments from both parties on this issue, so that the Commission can make the decision whether to hear all issues or just the issues raised in the appeal. Mr. Swinburnson also suggested that the Commission limit who speaks tonight to only the two parties involved in the appeal to make the record as clean as possible.

Commissioner Breazeale asked about the appeal, that if someone provided testimony to the original hearing, do they have standing. Mr. Swinburnson answered that they would have standing to make an appeal, but not standing in this appeal. No other entity has asked to intervene on this matter that Mr. Swinburnson is aware of. Director McLane added that when the packet was mailed out to the Commissioners last Friday, everything was in there except for the email that went out yesterday, which was a follow up letter from Mr. Connors. The Commission has been provided this letter tonight. Chair Sykes wanted to make sure that the Director was referring to the June 24 letter from Hathaway Koback and Connors. The Director also received a letter that will be distributed from Carrie Richter of Garvey Schubert Barer, and that is all the materials.

Commissioner Lindsay asked staff if we would be voting to accept the appeal. Mr. Swinburnson said that what will be decided is whether to affirm the Planning Director's decision or to change portions of the decision or to deny or overrule the Planning Director's decision.

Chair Sykes asked the Commission to get out the original Notice of Appeal out of their packets for reference, and to also look at the June 24 letter.

Chair Sykes asked for testimony on whether or not the Commission should allow additional arguments. Mr. Swinburnson interjected that before that takes place, Chair Sykes should inquire with the parties to see if there are any objections to the procedure laid out by Mr. Swinburnson.

Carrie Richter attorney with Garvey Schubert Barer, representing the applicant Love's. Ms. Richter has no objection to the Commission considering all the issues presented. But wants to be clear that there will be no more issues, than the issues that were presented in the Notice of Appeal and the first June letter. Secondly, the applicant bears the burden of proof, and as such entitled to the last word. She is not comfortable with the appellant going first, then the applicant, then the appellant going last to rebut. If the appellant goes first, then the applicant can go second, which would be appropriate for an appeal, but that's it, unless new evidence is presented. Third thing is that Ms. Richter believes a representative from the City of Boardman is present and would like to give them an opportunity to testify.

Mike Connors from Hathaway Koback Connors representing Devin Oil, appellant. Mr. Connors understanding is that Ms. Richter is not objecting to the Commission limiting the issue to only those raised in the appeal. He had an argument laid out as to why the Commission should hear, but since there is no dispute there is no reason to get in to that issue. Mr. Connors said with respect to Ms. Richter's comment about no new issues being raised beyond what they have already submitted, that is the intent, barring any new information that comes out of these proceedings. Since they have had more time to prepare, they certainly do not anticipate any new issues. Mr. Connors said in regards to the process of who goes first, the way that the County attorney has laid it out is they way that is done. We are the appellant, we will present our case first, then Love's gets the opportunity to respond to that, then we get the opportunity to rebut any issues that come up. Mr. Connors doesn't expect his rebuttal to be very long since those issues were addressed in the letter. With respect to the City of Boardman, he agrees with the County attorney that he should limit to the parties who are participating in the appeal, if you open it up to City of Boardman you could potentially open it up to anybody.

Mr. Swinburnson said it sounds like both parties agree that the issues will be limited to the ones in the written materials, and that it doesn't sound like a dispute. So the Commission needs to figure out the procedure of who goes first and whether you would like to hear any additional testimony from outside parties.

Chair Sykes wants to get a consensus on the position of testifying, and it was suggested from Mr. Swinburnson that this is an appellant type situation and normally it would be Devin first, Love's second, Devin rebuttal. Or as the applicant suggested just Devin then Love's.

Commissioner Breazeale thought that the burden of proof was on the applicant and that they should be able to rebut what the appellant says.

Commissioner Seewald wants to hear all the information that they can so that they can make an informed decision. He doesn't see anything wrong with letting them both testify and letting them each have a rebuttal. He thinks that there should either be two rebuttals, they each should have their opportunity. Commissioner Devin agrees, but would like to hear what Mr. Swinburnson has to say about that. Director McLane said that our code will tell us how to proceed, then she read from the code that outlines the procedure, which states that both parties get a rebuttal opportunity, but the proponent goes first and last. Mr. Swinburnson said that was the way that he had indicated earlier, but thinks that probably Love's thinks that they are the proponent because they bear the burden of proof. But Devin should be proponent because they are proposing the appeal, in his opinion.

Commissioner Kilkenny said that because they were here tonight to hear the appeal it should be Devin, Love's, Devin. The Commission consensus is with Commissioner Kilkenny. Vice Chair Wenzholz added that if the rebuttal addresses something new then Love's should be able to rebut that. The Director said that the code provides both parties the rebuttal opportunity, just that Devin gets to go last and have the final word.

Commissioner Lindsay stated they just need to figure out who is the proponent. The Director said it can be pretty clear if you define the parameters to be the material in the record, and no new testimony or evidence.

The Commission came to the consensus that Devin is the proponent, because without the appeal, they would not be there tonight. The next item is whether they should allow outside or additional testimony. Commissioner Kilkenny said that during the windfarm appeals process

they did not allow additional testimony. Commissioner Breazeale said that typically you don't allow new testimony, the appeal is only on what has been submitted. The Commission asked staff if anybody else had submitted anything with regards to this appeal. The Director said no, not as part of this appeal. The Commission came to a consensus that they would just stick with the two parties testifying, Devin and Love's.

Chair Sykes asked to start with the testimony.

Mike Connors on behalf of the appellant Devin Oil. Mr. Connors said that he hoped the Commission had the opportunity to review the June 24 letter which was given to the Commission yesterday, and that he would like to summarize the issues at hand. The first issue before getting in to the substantive matters is to clarify the record, because unfortunately one of the things that Love's has done in their June 13 response, is make characterizations about the record and how we conducted ourselves are just gross mischaracterizations. The first thing that Love's attempts to do is suggest that throughout this whole project is that Devin files frivolous actions, and make statements that LUBA has continuously affirmed the County decisions. And that Devin have lost all appeals, that is just wrong. Love's had two prior applications and both were appealed to LUBA, in both instances, LUBA ruled in our favor remanding the case back to the County due to legal errors. It is true that on remand the County was able to address those issues, and those applications were approved, clearly LUBA didn't conclude that Devin filed frivolous actions. These were issues raised to the County Court level, and LUBA agreed. Love's also makes the statement that the Court of Appeals thought our cases were so frivolous that they didn't grant us a single hearing, that is absolutely wrong. We have been heard in every Court of Appeals case, we had two lengthy opinions. These were complex legal issues, one of which is whether this use is allowed in the Airport Approach zone, that's a big issue because truck stops are allowed in other zones, but not this zone. Our argument is then, it is prohibited, there is case law that brought that into question. LUBA and the courts clarified that in their decisions. Had we prevailed, that would have determined that the project was not allowed as proposed.

The second thing that Love's gives you the impression of is that there is no basis to object to, and that they have been following the rules and complying all along, and we are just objecting to delay or frustrate the process. The record shows that is not the case. When they came forward with the Amendment, they failed to disclose the fact that the property was in the Airport Approach zone and would require Conditional Use approval. The only reason Devin knew was that a member of the public raised it, and Love's had to admit and go through the Conditional Use process, that is a huge oversight. In the Conditional Use process they also said in their Traffic Impact Analysis, which is part of this record, that this project will make no impact to the transportation system, and therefore no mitigation is needed. As a result of Devin's efforts to challenge that, we hired our own traffic engineer to prove them wrong. The traffic engineer acknowledged there would be traffic impacts. Love's continued to say that no improvements would be needed to mitigate that, but the County Court imposed specific conditions, and now the County is getting transportation improvements it would not have gotten otherwise because Love's was trying to cut corners.

Mr. Connors continues on saying that the whole application shows just a couple of instances of how Devin perceives how Love's conducts themselves and why Devin needs to stay involved. Love's didn't disclose the fact that the Conditional Use Permit is expired, they filed a Groundwater Permit application under the auspice that they had been pursuing a permit, but Devin inquired with Oregon Water Resources confirmed they hadn't received an application.

Devin believes that Love's hasn't followed through on their obligations, and Devin's contributions have been trying to prevent that further, and especially with the transportation part, whether you support this project or not. We just didn't want you perceive that these were just frivolous challenges.

Now Mr. Connors would like to address the substantive issues. The first issue is the undisputed fact that their Conditional Use Permit approval is expired. The code says that is expired within a year of approval, and there is no dispute that the deadline was October 2012. As a result of that, and Love's doesn't dispute our statement, that you can't even process a site plan application, because site plans are for uses allowed outright. Love's and the County planning director made the determination that since Love's already received the Conditional Use Permit, that they could proceed with the application. Devin doesn't dispute that interpretation. But that Conditional Use approval is expired, and under the code is void, so there is no grounds to process the site plan application. They need to go back and get another Conditional Use Permit. What they've said in the new letter is that they couldn't because they've been delayed. There is nothing that Devin has done to prevent them from prior to August 2012 asking for an extension. From October to this date, it has been their choice as to when to file the site plan application and Mr. Connors doesn't know why they delayed as long as they did, but it was nothing that Devin did to frustrate that process. Love's also thinks that you should retroactively extend the CUP. That is not permitted in your code. The code doesn't say that you can retroactively extend it, but also says that it is void. There is a series of LUBA cases that say if you have that kind of language in your code that if construction is not acted upon that it is deemed void, and you can't undo that. Their attempt to ask for a retroactive extension, is not proper nor is it permitted under the code, based on LUBA case law, it will be back here if you approve it and my client chooses to appeal.

Another big issue is the water, storm water and sewer issues. They have to get permits from the Oregon Water Resources Department and from the Oregon DEQ. Since the partition application, they need to show that they can provide these facilities, in particular water. We've been concerned from day one, that Love's has said they will get their water permit, and then try to claim that they are subject to the 5000 gallon a day water exemption. We have submitted evidence that they will be well in excess of that. All along they have said that they will show this later, in this process they purport that this is relevant, but the Planning Director specifically approved the water and sewer. Mr. Connors then read from the decision document. Mr. Connors states to the Commission, if you affirm this decision on the water and waste water systems, even though what you have before you is an application (for water resources) that they filled out, and didn't even file. Love's has said that they will deal with it later, but there is no later. This is the last step in the process. From day one, we have asked why won't they get the permit. Our concern is if it is just put off, and approve without any indication that they can in fact get water, that creates a concern that they just get the exemption. If you do adopt a condition, which Love's has proposed, that requires the permits prior to commencement of operation. They want to be able to construct first, that is unheard of. Nor should you adopt it because your code doesn't support it. What happens if they construct, then they can't get their permits and they cannot operate. Then you have a partially constructed project sitting on that land. That's why you always condition those on commencement of construction.

Mr. Connors continued that the letter filed today from Love's, is essentially an application seeking an extension, which Mr. Connors doesn't believe has properly been put before the Commission. He doesn't think you can show up for the appeal hearing for the site plan and ask to submit the day of the hearing, and ask for approval for an extension.

The next issue is the Transportation Impact Analysis that came from a 2009 study that projects what the conditions would look like in 2010. It's a four year old study that looks at data that is three years old. The site plan approval criteria requires a TIA, and they are relying on this 2009 document. Mr. Connors doesn't think you can do that. You can't rely on a traffic analysis that looks back at data three years ago. Even if you state that there hasn't been any changes, there is natural background growth that the engineers build in and analyze, so even in their own engineering methodology you can use a study that looks back to 2010.

Now getting into the site design criteria, where we see a shifting of positions that they have taken in earlier proceedings and now they want to change them to make it easier. Parking is the first one, they are not accounting for any parking having to do with the fueling component, the most significant component of the use. Mr. Connors eluded to the question earlier of whether the use is even allowed in this zone, because truck stops are not listed in this zone. The way they got around this is to get the county to view them as a retail use, well, parking standards require a certain parking for a retail use. Now they are saying that part is not a retail use, it's something different. You can't have it both ways. Mr. Connors went on to landscaping, which he said throughout the Conditional Use process, consistently the site was the whole site being 49 or 52 acres. Mr. Connors doesn't know why that number changed somewhere in the process. They consistently referred to this whole site as the parcel. Now suddenly the site is only the area they want to develop. They are doing that because the landscape requirements are a percentage of the site. They are trying to limit that, you shouldn't allow them to be inconsistent from their earlier proceedings. The last point is the idea of them demonstrating compliance with earlier conditions and decisions. Or at least imposing those conditions as part of this process. That was the position that Devin took, and in the June 13 response, we said that was unnecessary and redundant. On the CUP approval it said specifically that those conditions would be carried over to this process. If you look at all those issues, hopefully you see that those are not frivolous issues. These are significant, whether they have a valid Conditional Use, whether they can even process the site plan application or if they have even done anything more than fill out the forms for their state permits. That's part of the reason why Devin has been actively involved, we want to make sure they are held accountable throughout this process, and are going to do what they said they are going to do. If we don't do that they will try to slip by.

Carrie Richter attorney from Garvey Schubert Barer representing Love's and Leslie Hauer Planning Consultant. Ms. Richter began by saying that Mr. Connors spent about one third of his presentation rehashing what has already been done. Many of you were part of that, Bill Kabeisman was part of that but Ms. Richter was not. This is a new application that is before you, it is site plan proposal and zoning permit and is subject to different review criteria. This is not a zone change not a Conditional Use Permit, but with all due respect to all the history that has gone in, is a complete waste of time. We are before you with a particular project, and ask that is what you review the criteria against. Ms. Richter would like to talk about what is before the Commission, a zoning permit and site plan review that includes development standards, how the building is located on the site, parking and landscaping design details, how natural resources are dealt with and utilities. This is the world we are dealing with. Interesting enough, Mr. Connors did not cite a single code section to you. Ms. Richter would like to talk about the code and what is actually required. Within the Tourist Commercial zone the development standards include setbacks, lot size and coverage in addition there are design standards such as pedestrian amenities. Love's proposal meets or exceeds many of these standards. For example pedestrian improvements, you need to have one of the following and Love's provides three: extra wide sidewalk, benches near the building and a canopy over the doorway. This does not show someone who is trying to avoid the requirements. The Tourist Commercial zone

imposes landscaping requirements on "all development". In our memo we talk about how "development" is the man made improvements that you put on the property, in other words the 14 acres that we are improving are where the landscaping requirements are imposed. We are landscaping 31% of the 14.85 area that is the development site. Devin's claim that we use the term "site" in the Conditional Use Permit and now we are committed to that term, lawyers use words all the time that have legal meaning, and then they use words to describe things. If you look at material that Devin attached from the Conditional Use Permit application, it is in the narrative where Ms. Hauer describes what was proposed, and she uses the term "site", it doesn't have a legal meaning. This is a new application that is before you, we are proposing a certain development and landscaping standards are keyed into development by the language of the code, and we believe we have satisfied our requirement. Both the Tourist Commercial and the site plan provisions impose off street parking requirements. Using Table 4 of the parking requirements for the various uses which is MCZO 4.040, Love's proposes providing off street parking for the retail area and the restaurant and the tire repair shop. The table does not talk about canopies. The table shouldn't talk about canopies, because people who are getting gas are in their car and they don't need to park their car in order to get gas. In addition to the 77 spaces that they have identified for regular passenger vehicles, which is ten spaces more than they need to have under the code, we have 95 truck parking spaces, that is not required by the code. That is a ton of overflow parking, plenty of parking to accommodate the canopy if in the event as Devin suggested that these cars do go and park after they get gas. But they would be included in the retail spaces. Further, the 95 spaces will accommodate the loading issue, that Mr. Connors raised in his appeal. The zoning permit and the site plan have a number of criteria relating to utilities and transportation facilities. For example in the site plan criteria 4.165(d)(1) requires that the applicant must determine if compliance is required with OWRD and Oregon DEQ. It doesn't say you have to have the permit in hand to file your application, it doesn't say you have to have the permit in your hand before you build the building, it doesn't even say you have to have the permit to get your occupancy. The reason why it doesn't say that is because in order to get these agency permits Love's has to have a Land Use Compatibility Statement, signed by the Director that says we comply with the land use rules. The Director cant sign that LUCS until we get through this process. This process will determine that we comply with the County's land use rules. We couldn't go get these permits if we wanted to. Compliance would be impossible, we are in a circle, because we cant get our approvals from you so we cant get the LUCS from the county.

Ms. Richter went on to inform the Commission regarding the access permit and ODOT spacing requirement, we are amenable to conditions that require that we get the access permits and ODOT permits, we are even amenable to a condition that we get our water and environmental quality permits as well. We have to get them, you cant have a well unless you get them. We certainly submitted some engineering analysis that showed that obtaining a well permit is feasible. Conditions are a valid way to ensure compliance if there are issues that are of concern, Love's is happy to help draft, and the Director and Mr. Swinburnson would help draft conditions if it is in the interest of the Commission, but it is not required.

The big elephant in the room is the question on the validity of the Conditional Use Permit, and Ms. Richter appreciates Mr. Connors point that this is not the proceeding to evaluate the extension request, that's true and that is why Ms. Richter did not supply Mr. Connors with a copy in advance, because notice will go out and there will be a proceeding for that. It was included so that the Commission could see that it has been requested. Love's doesn't think its required because these cases were in appellant proceedings before LUBA for over a year, we believe the time line does not run until the appeals are expired or completed which is August 29, 2012. In the event that we do have to get an extension, if you look at the code language, it

says that the Planning Commission may extend authorization for an additional period not to exceed one year upon request. It does not say that Planning Commission has to make that extension before expiration of the one year period. Mr. Connors says that there is case law that supports his position which he cited in the June 24 letter; Painter vs. City of Redmond deals with completeness review under state law, which is not relevant here, Michael vs. Douglas County deals with a local code provision that said like parallel code provisions the extension must be requested prior to the expiration of approval, but that's not what this code provision before you says, the third case is Willhoff vs. City of Gold Beach which is another local code case, but you get the privilege to interpret your own code, what we are asking for is two years from the date of the remand hearing, and LUBA seems to say in that case that is an acceptable interpretation. Ms. Richter thinks they can support that interpretation, that they don't have to request the extension prior to the expiration of the previous approval. That is why we are going to be back before you during another hearing to talk about this. If the Planning Commission would like the applicant will accept a condition of approval that says we will have a valid Conditional Use Permit, we have to have a valid Conditional Use Permit anyway.

Ms. Richter wanted to talk about the conditions of approval for the Conditional Use Permit being incorporated, Love's has to comply with those conditions anyway. We think it would be unnecessary to incorporate those conditions of approval. Ms. Richter wanted to say that Mr. Connors has suggested that Devin is merely trying to ensure that Love's is required to comply with the code. Devin is just looking out for the County and making sure its doing its job, and holding Love's feet to the fire. It would be interesting to ask Ms. McLane how many site plan approvals get appealed every year, and how many site plan appeals does the Commission hear? How many of those site plan appeals have no natural resource or hazards on them? This is a perfectly flat piece of property, no natural resources. How often does Devin appeal site plan approvals out of concern that any applicant isn't complying with the code. This isn't about giving special treatment to Love's, this is about holding Love's to a higher standard than the County does to other applicants because we have an opponent who is over complicating the process, and not focusing on the plain language of the code, but creating hoops that are inconsistent with the simple and non-complicated and straight forward design review standards that are at issue in this appeal. Ms. Richter asked Ms. Hauer if she had anything to add.

Ms. Hauer said that there was one question that come up was that Mr. Connors was unsure why the site went from 49 to 52 acres. The answer is that nobody really knew how much the site encompassed exactly until the partition survey was filed, there are some odd angles out there and once the partition was surveyed and finalized the answer is that the entire parcel that was divided off was 49.09 acres.

Chair Sykes asked Ms. Hauer to please tell the Commission what her title and expertise is. Ms. Hauer informed the Commission that she is a land use planner and prepared the applications and have been working with the attorneys and is sort of in the position of expert witness, she is not an attorney but looks at code and site plans. As she writes applications she helps the applicant by telling them that the requirement is "x", but you are showing "y" on your plan, you've got to show "x". Her role is in the private sector working with a private applicant, to do Carla's job so that she can look at something and say yes.

#### Rebuttal Testimony:

Mr. Connors wanted to start with one of the last points that Ms. Richter talked about which is the suggestion that Devin is holding itself out as county do-gooders, that Devin just goes around to make sure everybody complies. We never said that, we said from the beginning that



Devin has a personal stake in this. Devin doesn't like the fact that the city is selling property to a competitor when they have agreed to certain improvements, taxes in the city base, and now we have a competitor that is being allowed to site completely outside of that and not funding any sources. In addition to that we wanted to make sure that Love's is held to right standards, we have a personal stake in this, but the question is are we just blowing smoke, are we just making stuff up and throwing out frivolous arguments that make no sense. That's what we were responding to, and as we demonstrated previously that is not the case in the issues that we have raised here today. The Commission was asked the question, how many site plan approvals have you heard appealed. You have to put that question in context, how many occasions have you had when somebody asked to be notified and were deliberately not notified of events. It wasn't just the County who did that, it was Love's. Mr. Connors thinks it is Love's who is telling the County that they don't need to notify them. That's why Devin didn't get notified about the Conditional Use application and the Comprehensive Plan Amendment application, we had to find out on our own, that why we didn't get notified of this one. How many times has that come up, Mr. Connors is guessing zero. How many times does it come up that you realize that an approval which is the foundation for even filing the application has expired. Mr. Connors is guessing none. The reason why you don't see many of these appeals is because you don't have some of the issues involved in this case. They are not just issues from us trying to complicate things, they are significant issues such as the CUP expiration. Regardless of what you do with the extension for the CUP, Love's has now acknowledged that they can't bootstrap that extension request as part of this process and they haven't taken the position that you can approve the site plan without a valid Conditional Use, which means that you can't do anything tonight. You can't do anything until that issue is decided. In the event you should go into the substance, if you look at your code, what Love's is asking you to do is not in your code. There is nothing there that says you can ask for an extension after the approval has expired, and by your code deemed void. We stand by what those LUBA cases say, all those cases include the term "void". That was the significant reason why LUBA determined the local jurisdictions had the ability to retroactively extend. Love's is also asking you to approve an extension that is two years from the remand, your code doesn't allow that, it is a one year extension period. There are LUBA cases that say, if your code says one year extension, you can't go beyond that. Love's could have done some things to avoid this situation, Ms. Richter said that there was an appeal and Devin was complicating things, but that wasn't the case at all. The County had approved the Conditional Use and Zone Map amendment on remand, those are valid decisions until appealed. They could have easily come in for an extension. Mr. Connors said that Ms. Richter referenced this deception that there were pending appeals. Mr. Connors law partner had the same situation happen where there was an approval with pending appeals, and that the time period doesn't apply during those pending appeals. The Court of Appeals said that is not consistent with the law. There is nothing in the code that says the time is suspended during an appeal, and that will not survive legal review. Mr. Connors thinks that Love's didn't realize there was a time frame, and now there is this issue to deal with.

Mr. Connors went on to the argument of Ms. Richter's on the subject of water quality and DEQ permits saying that they couldn't go through this permit process until they went through the other process because the County needed to sign a LUCS. Mr. Connors said they had a LUCS for ODOT in the record, part of the decision. They used this to get their ODOT access permits started, so the idea that they couldn't start without a LUCS is not consistent. Love's has said that the code doesn't specifically require it. They say that Love's is reading that code provision as rendering it meaningless and irrelevant. Why did they submit groundwater and DEQ permits, why did the Director specifically approve the water and wastewater systems. Before, they hadn't really begun to process those applications, but now they say they are irrelevant. Your code specifically requires it.

On the parking issue, the parking is not based on buildings or canopies, it is based on the types of uses. Both retail use and wholesale use have specific parking requirements. The truck stop and service station were approved as a retail and wholesale use. If that's how they classify their use, then how is the parking standard not obligate them to address that. Mr. Connors fully understands somebody pulling up to a service station and not needing to park, but if you accept their answer, then a 7-11 or a Plaid Pantry would get the same amount of traffic. You are going to get traffic that will fuel and need to park. So there is a logical reason why you should interpret your code that way.

Mr. Connors wanted to comment briefly on rehashing the past and Ms. Richter's comment about it being a complete waste of time, and he agrees. Devin never intended to get into that other stuff, but Love's did, so now Devin has to defend itself so that the Commission doesn't get the improper impression of how Devin conducted itself. If Love's agrees to stop talking about that stuff, then so do we. The only connection about what has happened in the past and what is happening now that is relevant is that they have taken positions in earlier proceedings and they are now attempting to say that they want to take a different approach, and Devin doesn't think that is permissible.

Commissioner Breazeale asked exactly which Planning Commission action is being appealed. Mr. Connors replied that the appeal that was filed was an appeal of the Planning Director's approval of the Zoning Permit and Site Plan approval.

Commissioner Breazeale asked Mr. Connors how does the extension apply to that appeal. Mr. Connors answered that it has been described best in the June 3 letter. Mr. Connors went on to say that a site plan approval is a process that requires you to demonstrate that you have a permitted use. Love's and the Planning Director took the position that it qualifies although it is a conditional use, a Conditional Use Permit has been obtained. But since the Conditional Use Permit has expired and is now void, there is no basis for them to rely on that, so this is not a permitted use and there is no valid conditional use approval in play. It is Devin's position that Love's got the Conditional Use Permit approval first then the site plan, because they knew they had to get the conditional use first. Now that that approval is expired, there is no basis for the site plan.

Ms. Richter stated to the Commission that the key issue to decide is what to do with the Conditional Use Permit. Devin says you can't process a site plan review without a valid Conditional Use Permit, Ms. Richter doesn't think that is what the code says. The code says that site plan review only applies to less complex developments and land uses that do not require site development or conditional use review approval through a public hearing. That doesn't say anything about the validity of the Conditional Use Permit, it just says you have to have one. Love's has a Conditional Use Permit, and it is still within the two year window that it can exist. We have filed an application for the extension, and that will come before you in a public proceeding. Whether you want to delay this, or wait for the other one, or make a condition that requires us to get a valid Conditional Use Permit, Ms. Richter has no doubt they are going before the County Court and LUBA and the Court of Appeals and no doubt we will be going in front of the Oregon Supreme Court. Ms. Richter would suggest that it is in everyone's best interest to consolidate this the best we can. The further along we could get tonight would be appreciated.

As a segway to consolidating, Devin said that it was Love's choice not to go get the groundwater permits and storm water permits. If you look at the fact that it took three years for Love's to get their Conditional Use and Zone Change permit given all the appeals, you can

understand why Love's does not invest a lot of money in starting construction when they know where this case is headed. Those are choices related to cost that Love's made, not withstanding the fact that they could have proceeded, but believes they were authorized to make that choice. Ms. Richter thinks that the letters speak for themselves, and asks the Commission to affirm staff's decision and all the work that has been put into evaluating the application is appreciated.

Mr. Connors asked to make a point about Ms. Richter's comment about interpreting that provision that requires a Conditional Use Permit, they are OK because they have a Conditional Use Permit. But they don't, the one that they had expired. And according to the code is void. So Devin thinks that there is no other way to interpret it. Mr. Connors thinks that the parties agree that you can't just consolidate that into this process. Now Love's is acknowledging that they do have to file an separate extension request. Devin raised that issue June 3<sup>rd</sup>. Ms. Richter said that they did raise that issue June 13. Mr. Connors said that a separate application was not filed. Mr. Connors thinks that Commission needs to decide the issue around the CUP first, otherwise the Commission has no authority to approve the site plan.

Chair Sykes asked how the Commission should proceed at this point. There is a lot of information and wants some discussion around if the Commission is ready to decide on this tonight. Mr. Swinburnson advised Chair Sykes to ask the parties whether they want the record left open. Mr. Connors and Ms. Richter both said no.

Commissioner Breazeale thought that the record should be closed then the Commission can ask staff and County Counsel some questions.

Mr. Swinburnson said that once you close the record you cannot inquire with the two parties, if you want to still ask questions then the record must remain open.

Commissioner Kilkenny would like to come to a conclusion tonight.

Chair Sykes closed the record. There was discussion about what will be included in the record. The record includes these documents: LUBA No. 2013-039, Memorandum prepared by Director McLane dated May 10, May 21 dated letter from Mr. Connors, May 21 dated letter from Ms. Richter, June 6 dated letter from Mr. Connors, June 13 dated letter from Ms. Richter, June 24 dated letter from Mr. Connors. The question is if the last letter dated June 24 from Ms. Richter, whether this one should be in the record.

Ms. Richter said that she did intend for the letter to be in the record, but she did not intend for the Commission to take action on it tonight. It was intended to support the claim in the June 13 letter that if Love's need an extension, they will get it.

Staff would identify the record as the Planning Commission packet plus the two new June 24 letters.

Commissioner Kilkenny said it doesn't look like they will address the extension issue tonight. The Director said that June 24 letter from Ms. Richter was put before you as a decision making body, you could also choose to not include it.

Chair Sykes would like for Mr. Swinburnson to address procedurally what the three options are. Which would be to deny, approve, or approve with changes. Mr. Swinburnson said that was correct. Mr. Swinburnson said that it sounds to him like the letter submitted from Ms. Richter is essentially an Exhibit, not a request to take action.

Chair Sykes stated that they will have to address a justification for the Commission's decision. Mr. Swinburnson agreed and that the Commission should use the items on appeal as a framework for the discussion.

Mr. Swinburnson said that the most time spent was on the Conditional Use aspect, that might be a good place to start.

Commissioner Neal said that there has been a lot of comment about "void" tonight, and meaning that it is no longer valid and cannot be extended. But when you read the Morrow County Ordinance, there is a provision for extending that permit, so Commissioner Neal believes there is a way to extend that permit beyond a one year period.

Commissioner Kilkenny asked staff if they would have asked for the extension a year ago, wouldn't that be about to expire. Director McLane said yes, unless they asked for something longer. The code also doesn't say how long the extension could be granted for. Chair Sykes stated that the code does say one year.

Commissioner Kilkenny said its punitive to ask for the extension too soon if you don't think you will get to the end of the process. He stated he was sympathetic to the thought of the clock not starting, because you may not know when the end point is.

Commissioner Breazeale asked if you file an appeal doesn't that stop the process and the clock. What can you do when the appeal is there? Director McLane said that she tried to argue that point from a staff perspective, that why the Director brought all the binders from the previous hearings with her, because the item that he's referring to was further appealed that wasn't resolved until about 8 months ago. But Mr. Connors also cites a case, maybe Folland, that says the clock is still going. So the clock started in 2011.

Commissioner Kilkenny wants to know the purpose of getting hung up on the CUP extension tonight if the Commission will hear it at a later date. Chair Sykes asked if he means if the Commission doesn't make a decision at all tonight. Commissioner Kilkenny said with regards to the extension.

Commissioner Lindsay commented that it would still expire this August, nothing would happen by this August even if the extension was granted. Chair Sykes said only if it figures into your decision tonight. They aren't asking us to address the extension tonight.

Commissioner Kilkenny asked if the discussion is whether the CUP is void. Chair Sykes said that does seem to be a big part of the decision. Commissioner Kilkenny asked whether it is void or just expired, that's the question.

Commissioner Neal said there are three things to do - either affirm, deny or modify. Can we say the site plan review stands but with the modification that it has to have a valid Conditional Use Permit? Commissioner Kilkenny liked that idea, but says that he doesn't fully understand the issue with the parking, could you also modify the site plan so we could address that issue too.

The Director answered that if the Commission doesn't think that the site plan was adequate. Commissioner Kilkenny said he's not ready to say its not adequate, but that is what he is asking. He also asked if you could amend only the parking aspect of it or condition it so that it may get resolved. The Director said unless you tell her what is not correct, then she doesn't

know what to tell them to resolve. If you think there is a deficiency, then we need to get to the bottom of what that deficiency is. We need direction from the Commission of what to fix.

Chair Sykes said the issue with the parking was whether someone using the canopy when re-fueling would also go into the store. And also the issue was brought up about truck parking, and whether or not that could be counted.

Commissioner Taylor asked if they had covered the parking, 95 truck parking spaces seems adequate. Commissioner Kilkenny posed the question to the Commission about whether they think the truck parking is OK or is it inadequate. Commissioner Taylor said he thinks its adequate.

Commissioner Neal said the argument that the cars parked under the canopy also need additional parking for the retail operation is not right, they are there to fuel. Vice Chair Wenzholz agreed that people pulling up to fuel use the fueling island as parking spaces.

Commissioner Taylor agreed and said that they haven't seen anything that has changed what the Commission saw since they approved the process.

Commissioner Seewald said that before the Commission gets into the individual points, the Commission should decide whether they will look at the zoning permit independent of the CUP issue. They are two separate issues. If we agree to accept or deny the zoning permit, that is separate from the conditional use which will come later. Commissioner Kilkenny asked if they should move forward without ruling on the Conditional Use Permit. Commissioner Seewald thinks that is just a totally separate issue. If the zoning permit is determined later, that it is not valid without a valid Conditional Use Permit, then so be it. Then the zoning permit is approved or denied and its over.

Chair Sykes asked the Commission what they thought about what Commissioner Seewald said. Commissioner Devin agreed. Commissioner Breazeale asked whether the appeal was against the zoning permit, and also asked when did the time expire on the Conditional Use.

The Director stated that the issue raised on the Conditional Use Permit is not an issue on appeal. It has already been appealed and has gone through that process, the issue raised is that it is void because it is expired. So the question before you is can you approve the site plan review if the CUP is void. You have a couple of paths and Commissioner Seewald was getting to them. Commissioner Kilkenny said that Commissioner Seewald's idea was to move forward and then address the extension of the CUP later, if everyone is agreeable.

Commissioner Kilkenny wanted to talk about the point of the traffic analysis. Commissioner Seewald reiterated what Commissioner Taylor said being is there anything different here than what we saw in the initial approval, and has anything changed, then that's what we should focus on. Maybe if something has changed we should address that, but if nothing has, then there is nothing to address.

In Commissioner Taylor's opinion those items were addressed such as parking and traffic analysis and nothing has changed since then. Vice Chair Wenzholz agreed and said that we haven't seen any new developments out on Tower Road that would appreciably increase traffic counts on Tower Road, you could assume the status quo and is comfortable with that. Any increase on Tower Road would be so marginal that it wouldn't make a substantial difference in the traffic.

Chair Sykes asked if everyone who was here when it was first approved or those that read the record if there is anything different from the original site plan that warrant taking a look at and talking about.

Commissioner Taylor wanted to talk about the acreage piece. He doesn't think they were going to use the whole spot to begin with, the landscaping was just around the facility. Chair Sykes asked if the Commission had already adjusted that last time around and there was a lot of discussion.

Commissioner Neal thinks the explanation of the survey to get the exact figure on the acreage makes sense.

Chair Sykes asked if they were ready for a motion, but Commissioner Kilkenny didn't think they were ready yet. The Commission does have a consensus that the CUP is a separate issue, and there seems to be consensus that there is no major deviation from the original approval.

Vice Chair Wenholtz wanted to address the Water Resources Department and DEQ issue, because we should have some findings of fact. He would like to relate some personal experience within the last couple weeks because he is replacing a mobile home with a new one, before he could get his Notice of Authorization from DEQ he had to get his Zoning Permit from Carla, and before he could get his Building Permit he had to get his Notice of Authorization from DEQ. That's pretty standard throughout the state, you won't get a building permit until you get these state authorizations.

Commissioner Kilkenny said that from a business point of view, they will not want to invest millions of dollars into a project if there are not sure it will be completed.

The Director asked the Commission that to help staff from a findings perspective to determine if the record is sufficient. Did what Love's submit meet the criteria and do you find what they submitted adequate. You have already made some statements that it hasn't changed much, but we need the Commission to dig a little deeper to help us out with the findings statement. The one with the LUBA cover sheet is the packet that they submitted that shows the site plan application for this approval. The Director's decision is the cover letter and the zoning permit. A lot of that information looks familiar because you saw something similar to this at the CUP hearing or the Zone Change part, but you've never seen this as submitted because that is what was submitted to the Director, the site design criteria. Conceptually you have seen all this, but this is specific now.

Commissioner Breazeale finds that the staff findings are correct and that the appellant has not proven his case.

The Director showed the Commission that on page 9 is where the parking requirements are addressed. That is where they identify how many spaces will be provided. Did they adequately address the criteria.

Commissioner Neal said this was the first time she's reviewed this information and felt it was complete and met all the required criteria.

Commissioner Neal made a motion to affirm the County Planning Director's approval of the Love's Travel Stop and Country Stores Inc. Site Plan Review Application and Zoning Permit #2238. Commissioner Breazeale seconded the motion.

Vice Chair Wenzholz asked staff if they have provided enough for the findings of fact. Mr. Swinburnson said based on the motion he was confused what they want to do with the Conditional Use Permit. He is stating that the motion is an approval of all aspects of it. There is no qualification with it.

Commissioner Neal would like to know what is needed in the motion. The Director said there is probably not a problem with that motion as long as you don't lose the previous commentary.

Commissioner Seewald said how he understands it is that we are just dealing with the appeal now, and that later we will deal with the CUP as separate issue. Mr. Swinburnson agrees with that. But what the Commission talked about earlier was that there was no issue with regards to the CUP, right now there was no discussion whether it is in place or relevant.

Commissioner Kilkenny said the Commission all agrees that the issue of the CUP will come before them at a later time. Commissioner Lindsay said its not even mentioned in what they are dealing with. Mr. Swinburnson agrees that the extension is not part of this, but the argument is what is the current state of the CUP, the argument is that it is void. The argument is the site plan cant be approved because the CUP is void. It is raised in the letters.

Commissioner Kilkenny asked staff if the Commission can determine that its expired but not void. Mr. Swinburnson just wanted to make sure that everybody understood the approval of that motion affirms the decision and is not sure there is enough discussion for findings. If we don't have adequate findings to support the decision, it will come back.

The Director said that the Commission should talk about how to deal with the CUP as you continue to discuss the motion. Mr. Swinburnson feels the Commission has discussed all the aspects of the case that have been high lighted tonight. The Commission has also discussed how to deal with the extension, but Mr. Swinburnson want the Commission to discuss how the motion on the table jives with the issue of the CUP.

Chair Sykes said if you believe the clock didn't start on the CUP until after the appeals were finished in August 2012, that is one argument. Commissioner Breazeale agreed that is the proper approach that all appeals stop the time line. The other thing is that the CUP does not dictate the site plan, the site plan is based on strict code. The CUP is whether the use is allowed in the zone, two different issues. The only question is whether it expired or not, and does it matter, and can County Court go back and say it is retro-active. The Commissioners haven't found anything in the case law about the time expiration.

Commissioner Kilkenny asked staff about what the county says on this. Commissioner Neal answered that MCZO 6.070 says the Planning Commission may extend authorization for the CUP, but it doesn't give any time frame for that. It just says they can do it.

Vice Chair Wenzholz agrees with Commissioner Breazeale that they had a CUP, but couldn't act on it. If they could of they would been starting on everything else.

The Commission reheard the motion. Vice Chair Wenzholz called for the question. The motion passed unanimously.

Staff will bring back findings for your approval, which night would be good for the Commission. You will need to review and approve the findings. July 9<sup>th</sup> was set aside just in case for this. The

proposed findings can be sent to all the parties. Mr. Connors asked for Notice of the extension of the CUP hearing. The Director agreed.

**Aggregate Amendments continuance of hearing:**

Planning Director McLane continued review of the proposed amendments, focusing at this point on the Comprehensive Plan components. No substantive changes have been proposed since our last discussion of these components on May 21. Being to further questions Chair Sykes asked for public comment.

Opened the Public Hearing.

None in favor, opposition or in neutral.

Closed the Public hearing.

Commissioner Wenzholz moved to forward the package as presented, except for Exhibit A which will continue to be modified as new information arrives, for approval to the County Court. Commissioner Taylor seconded the motion. The motion carried.

**Other Business or Correspondence:**

Due to the late hour this was discussion was mostly tabled. Staff did ask the Commission to bring three documents included with this meeting packet to the meeting on July 9. There was also a request for Commissioners to attend an Open House Monday, August 12, starting at about 5:00 p.m. at the Stafford Hansell Government Center in Hermiston.

**Adjournment:**

Meeting was adjourned at 10:09 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, July 9, 2013 at 7:00 p.m. at the Port of Morrow Riverfront Center, Boardman, Oregon.

Respectfully Submitted,  
Layne Wolfmueller





## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x 5503  
FAX: (541) 922-3472

### Minutes of the Public Hearing of the Morrow County Planning Commission

**Tuesday, July 9, 2013**  
**Public Hearings 7:00 p.m.**

**Morrow County Planning Commissioners Members Present:** Chair David Sykes, Gerald Breazeale, Mifflin Devin, Melissa Lindsay, Kathy Neal, Russell Seewald

**Members Excused:** John Kilkenny, Rod Taylor, Vice Chair Jeff Wenzel

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Ryan Swinburnson, County Counsel

The Pledge of Allegiance was recited.

The Minutes of the May 21, 2013 and June 25, 2013, hearings were provided with the Commissioner's packets.

Commissioner Neal moved to approve the Minutes of May 21 and June 25. Commissioner Devin seconded the motion. The motion carried.

**Appeal of the Planning Director Decision related to Zoning Permit ZP# 2238:** Appellant: Devin Oil Co, Inc. Zoning Permit ZP #2238 allows for development of a Love's Travel Stops & Country Stores on property described as Tax Lot 133 of Assessor's Map 4N 24 located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial.

Before getting into the Site Plan Review findings, Director McLane presented to the Commission a letter from Mr. Connors. Commissioner Seewald inquired of staff, did the Commission, at the last hearing, ask both counsels if they would be available. The Director answered yes. The counsel for Love's didn't object to this letter being presented. In Mr. Connors letter, his item number one addresses the findings for tonight, and his item number two addresses what hasn't even happened yet. Mr. Connors did ask when the CUP extension hearing would be, and he was told by staff it would be during the next scheduled meeting on July 30, but was not happy with that. Mr. Connors sent an email along with the letter which Director McLane responded to indicating that the next meeting is scheduled for July 30, public notice has already been initiated, there are other items on the agenda and we will not change that hearing date. If Mr. Connors needs to exercise his rights to ask for a continuance or to leave the record open, he can. We can anticipate, based on Mr. Connors letter, what he will be asking for. The Director stated to the Commission that she is not asking them to change the hearing date.

Commissioner Neal had a concern about rolling the hearing into August as one of the expiration dates for the CUP is in August. She wants to be careful not to miss that date or schedule a hearing after that August date.

Commissioner Lindsay asked that since public notice has already been initiated, could it be changed to a later date. The Director and Mr. Swinburnson said it looked like he wants to go out into August. We have to give 20 days for our public notice and we do have other applicants in the queue at this point. The Commission will be hearing 3 distinct CUP actions on July 30.

The Commission and the Director discussed some possible dates that the hearing could be held, and the legal requirements if Mr. Connors asks for the record to remain open or requests a continuance for the CUP extension hearing.

Director McLane presented the preliminary findings to the Commission. The Director wants comments on it, and then we can bring it back for a final signature at the next meeting. That way this decision can be consolidated together with the CUP extension decision when they are both appealed to County Court as we anticipate.

Mr. Swinburnson also commented that if the Commission signs these findings tonight but at the next meeting doesn't grant the extension, then this would be moot. So it does make sense to make the final decisions at the same time.

The Director explained that these preliminary findings were written by the Love's consultant and attorneys since Love's did prevail based on the Commission's decision. The Director did say that she made some very minor changes to their document. Commissioner Lindsay said that the findings sounded a bit condescending. Commissioners Neal and Lindsay agreed that it sounded like a lawyer wrote the findings, not the Director.

Chair Sykes stated the point is how this will be used in the future. Whether or not the findings were favorable to Love's or not. Mr. Swinburnson stated that when LUBA looks at a matter they will look at all the different points that were brought up. There needs to be a sufficient basis on each point that was founded, otherwise they will send it back here seeking to know how the Commission arrived at their decisions. Chair Sykes commented that we should keep our eye on the ball, so to speak, and look at it how LUBA would look at it. Mr. Swinburnson agrees, but would add that the findings do need to represent the Commission's collective voice.

The Director said that these findings do work because they touched on each of the points. As a body, the Commission at the last meeting worked your way through the points but didn't dig into the details. Love's took the Commission discussion from last meeting and made some assumptions based on the Commission's deliberation. And since you found in favor, you found in favor on each point. The Commission didn't call any points out and amend them, so therefore the findings address every point and provide evidence to why the Commission found that way. In some cases you had conversation about a point and some you didn't, and when you didn't have conversation they relied on the application because your decision relied on the application. Mr. Swinburnson said that if you didn't touch on it then you simply adopted it.

Commissioner Neal said that it needs to be fact based and not commentary. Simply statements of fact and not the interjections that Love's has included.

Chair Sykes thinks that if Mr. Swinburnson has some issues with the findings then they should be addressed. Chair Sykes said that the Commission did group all these together, that they approved the original request and didn't see the need to change since nothing had changed. Mr. Swinburnson said that even though you didn't go point by point and discuss each, you still

considered their entire presentation and by doing that you considered it point by point. You essentially adopted Love's argument on those points. The Commission should probably still go through the document and not change substance, but tone or presentation.

Commissioner Breazeale asked if the Commission could send this back to counsel to go through the whole thing and remove some of those comments. Mr. Swinburnson said if the Commission was satisfied with the substance of what is in there. Commissioner Breazeale said that the Commission found all these points when they heard the appeal and denied the appeal based on all the points unless they discussed them specifically. Commissioner Breazeale thinks this document is appropriate.

Commissioner Lindsay doesn't feel that the last paragraph and the first paragraph on page one and two is what the Commission said. It leads to them making a determination to set the CUP completely aside. She is not sure that this document is completely accurate. She doesn't remember the Commission making the statement that the Conditional Use Permit will be granted upon request. Mr. Swinburnson requests that the Commission leave the language about the CUP extension being requested, but that the Commission made no decision about the CUP. If the CUP is extended then that issue is a moot point.

Commissioner Neal said that the Commission did discuss this point quite a bit until deciding to table it, that is where the findings are trying to get to. Director McLane agreed and directed the Commission to look at the first couple paragraphs of the findings where there is good factual substance, but thinks the Commission gets uncomfortable with the part when the commentary starts to reflect on how the Commission feels, and that may not be what the Commission felt. Maybe it could be amended to more accurately reflect the discussion. The Director said that she and Mr. Swinburnson will work through those paragraphs and make them smoother.

As to issue number two, which included the bulk of the findings, Director McLane asked for input from the Commission. There was some discussion as to the format of the document. The Commission requested some cleanup of the language on number nine. The same was requested of number 13, to take out some language that denotes a list, as well as on another part of the document. The Commission made numerous changes to the document which took out most of the pointed and extraneous language. The Commission asked the Director to remove the duplicate conditions listed in the findings, as they were listed on previous approvals. The Commission wanted to simply state at the end of the findings document that the Commission affirmed the Planning Director's decision, with no extra conditions.

The Director advised the Commission that will receive the revised version in their July 30 Planning Commission packet. There will be three public hearings and this will be the fourth item, not a public hearing, but simply an approval and signing of the findings.

Mr. Swinburnson still doesn't feel very comfortable with how issue number one was written. Commissioner Seewald said that the CUP was a separate issue than the appeal, and it should be dealt with separately. Mr. Swinburnson said that issue number one will be worded differently to reflect that sentiment.

The Commission and staff discussed the process for the next hearing where they will be hearing the CUP extension request from Love's.

Chair Sykes would like staff to make note of the gravity of this to the members of the Commission which were not present for this meeting.

**Other Business or Correspondence:**

The Director provided a Memo dated May 6 from Angelo Planning concerning the Army Depot and includes two maps which depict how the Zoning and Comp Plan maps will probably look. Both counties will look at the entire Army Depot as one unit. The uses in the same zones in both counties will be the same. This is a process which the counties have been moving quickly through and getting to the point where work will begin soon with the two planning commissions. The first aspect of that will be the open house on Monday, August 12 at the Stafford Hansell Government Center in Hermiston. This is designed to be a joint planning commission workshop. There will be opportunities to hear from the people involved. The May 9<sup>th</sup> Memo describes how we will apply our Port Industrial zoning to our portions within the depot. Based on this memo and discussion with the Port change will be initiated soon to the Port Industrial use zone.

The Director had sent the Bylaws to the Commission for review. They are old (2007), but do not necessarily need any amendments. It was requested that the Commissioners put it in their binders for reference.

The Director had forwarded the EFSC 90 day outlook for the Commission to review.

The Director provided an APA Planning Magazine article about Oregon's statewide land use program turning 40.

We will have to resend the Planning Basics because the copies were wrong. We can go over that next time, time allowing.

The Director asked the Commission if they want to hold the August 13<sup>th</sup> date open as a just in case hearing date. Commissioner Neal said she would prefer August 6<sup>th</sup>. The other Commissioners had no preference.

**Adjournment:** The meeting was adjourned at 9:01 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, July 30, 2013 at 7:00 p.m. at Heppner City Hall, Heppner, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844

(541) 922-4624 or (541) 676-9061 x 5503

FAX: (541) 922-3477

### Minutes of the Public Hearing of the Morrow County Planning Commission

Tuesday, July 30, 2013

Public Hearings 7:00 p.m.

**Morrow County Planning Commissioners Present:** Gerald Breazeale, John Kilkenny, Melissa Lindsay, Kathy Neal, Russell Seewald, David Sykes, Rod Taylor, Jeff Wenholz

**Members Excused:** Mifflin Devin

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Ryan Swinburnson, County Counsel

The Pledge of Allegiance was recited.

The Minutes of the July 9, 2013, hearing was provided with the Commissioner's packets.

Commissioner Breazeale moved to approve the Minutes of July 9, 2013. Commissioner Seewald seconded the motion. The motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Conditional Use Permit CUP-S-306: Dan Heading, applicant and owner. The property is described as Tax Lot 904 of Assessor's Map 4S 28 11. The property is located at Blake Ranch and is zoned Forest Use. Request is to approve a Forest Template Dwelling. Criteria for approval include MCZO Articles 3 and 6.**

Associate Planner Wolfmueller presented the staff report. One item of note is that Blake Ranch subdivision was recently annexed into the Heppner Rural Fire Protection District, making the response to the standards with regards to fire protection different than what we usually see for a Forest Template Dwelling.

Chair Sykes asked if this was normally what we do for Blake Ranch dwellings. Chair Sykes asked if staff would explain why we do these template dwellings this way for the new Commissioners. Associate Planner Wolfmueller explained that the minimum acreage for a house in the Forest Use zone is 240 acres, but Blake Ranch consists of one to five acre parcels that were subdivided back in the 1960's and 1970's. The Conditional Use Permit process allows them to get a dwelling on these small parcels due to soil productivity, how many houses are pre-existing within a 160 acre square centered on the subject property. This is to show that the existing houses are already impacting the Forest Use zone. Director McLane explained that there are three areas in the Forest Use zone that we use this Forest Template Dwelling criteria: Blake Ranch, Penland Lake, and Cutsforth Park. They are all pre-existing, non-conforming lots from the size perspective, but they all have development that predates 1993, so these lots can have new development if they meet the criteria. We have had landowners that are on the outskirts of these developments ask to divide or use the Forest Template Dwelling to get a home, but this is not available to them because there is no mechanism for them to divide and create smaller parcels. These landowners could go through the zone change process but neighbors are usually unwilling to go through the process with them because they already have

their dwellings.

Commissioner Breazeale asked if there was a stream on the property and that there were references to streams in the staff report. The Director said that there are criteria that have to do with streams but that there are no streams on the property. There are setback requirements for streams in the Forest Use zone, and at Penland Lake there are some parcels that cannot be developed because of that. Commissioner Breazeale also asked about the driveway that comes off the public road and wanted to know if it went through to another property. Associate Planner Wolfmueller said it was just a driveway for the parcel. The Director showed the Commission the plot plan map and pointed out where the driveway came off Meadowlark. The Director also mentioned that there was a shop that had been sited on the parcel last year.

Commissioner Seewald asked prior to Heppner Rural if there was any self-contained fire suppression. The Director said the shop was either sited during the process of annexation or shortly thereafter.

Opened the Public Hearing.

None in favor, opposition or neutral.

Closed the Public Hearing.

Vice Chair Wenzholz moved to approve Conditional Use Permit CUP-S-306. Commissioner Taylor seconded the motion. The motion carried

Commissioner Kilkenny arrived late.

**Amendment of Conditional Use Permit CUP-N-290-A: Mariah Wind LLC and Orem Family Wind LLC, applicants and Christopher K Mason, Janet Switzer, and Eric and Brandi Orem, owners. The property is described as Tax Lots 4300 and 4400 of Assessor's Map 1N 26. The property is located south of Highway 207 between Sand Hollow and Kilkenny Roads and is zoned Exclusive Farm Use. Request is to amend Conditional Use Permit CUP-N-290 to allow for turbine site layout options, confirm the CUP of December 6, 2011 and allow an extension, and confirm project ownership within the permit for FERC and related purposes. Criteria for approval include MCZO Articles 3 and 6.**

The Director provided the Commission with three documents. An email from Commissioner Kilkenny, a letter from Todd Lindsay and an email from Chris Mason, applicant. Chris Mason's email was a request to continue the hearing to the August 27 meeting. The Director thinks if the Commission would be willing to grant the continuance, she would suggest that they ask the audience if anyone wanted to comment on this to save them a trip back on August 27. Staff would encourage the Commission to continue this hearing to August 27.

Opened the Public Hearing.

Chair Sykes asked the audience if there was anyone who wanted to comment on this application. There were none.

Vice Chair Wenzholz moved that they continue the hearing to August 27, 2013 in Boardman at the Port of Morrow at 7pm. Commissioner Neal seconded the motion.

Commissioner Lindsay asked if she should vote on this motion. The Director said that Commissioner Lindsay and Commissioner Kilkenny should not vote on the continuance.

Commissioners Lindsay and Kilkenny recused themselves and did not vote. The motion carried. The Director confirmed that the record will stay open and if anyone wants to make comment or submit testimony then they can. There will be further amendments to the staff report and, if the applicant makes further changes, the Commissioners will receive that in their next packets.

The Director asked the Chair Sykes for a 7 minute recess to wait for County Counsel to arrive. Chair Sykes suggested that we could discuss some other business while waiting for County Counsel to arrive. The Director agreed and discussed other business.

**Other Business:**

The Director wanted to talk about the UMADRA Open House with the Umatilla County and Morrow County Planning Commissions Joint meeting on August 12 in Hermiston. It is not required you show, but would be nice to hear the information and ask questions. The Director let the Commission know what this will encompass in the future and the work that will need to be done to accomplish the planning and zoning of the Army Depot.

The Director informed the Commission that the Cascade Crossing transmission line project has been suspended and officially have withdrawn their application. Idaho Power's B2H project still moving forward, but a concern with the Longhorn alternative.

Carty gas plant permit meeting was held and site certificate has been granted, but they need to acquire all the local permits now. These will be issued over the next several months.

The Director gave the Commission some background on the Enterprise Zone and an update of current activities.

County Counsel arrived.

**Extension of Conditional Use Permit CUP-N-274-E: Love's Travel Stops & Country Stores, applicant and City of Boardman, owner. The property is described as Tax Lot 133 of Assessor's Map 4N 24. The property is located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial. Criteria for approval include MCZO Article 6.**

Commissioner Breazeale asked whether an administrative action would not require a public hearing. Commissioner Breazeale doesn't want to set the precedent that all extensions would require a public hearing. Mr. Swinburnson said that there is no spelled out procedure and we are erring on the side of caution by having this public hearing. This will be one piece of the appeal that will be heard by County Court and then LUBA. So we have already broached the subject in the appeal hearing of the Zoning Permit, which was a public hearing. This wouldn't necessarily be precedent setting on future extensions. That being said, we don't have a process in our code, and the Commission has the discretion to handle it how they see fit.

Commissioner Kilkenny thinks it is a good idea to have testimony or a record of the Commissions thoughts on this. Mr. Swinburnson agrees that since this is part of that appeal and having findings on that specifically would be appropriate. Because this decision will more than likely be merged with that other decision.

Commissioner Breazeale doesn't want the record held open and extend the time frame on that decision which would possibly create more problems with the time frame.

Chair Sykes asked staff if the Commission needs to decide first if they need to have a public hearing and then decide whether to continue it or not. Mr. Swinburnson replied that it has been advertised as a public hearing so it would be difficult to unwind that. The Director said our code is minimal on this subject, and in her time has never used that portion of the code. Statute says

that when your code is out of date, on resource land, statute prevails. But this code provision is for commercial and industrial CUP's which we do not do that many of. And rarely are they appealed. It is your code, you the Commission needs to decide what this means.

Commissioner Neal appreciates what Commissioner Breazeale is saying but when you look at the one paragraph that is specific about extension of an additional period, it does say "Planning Commission". Commissioner Breazeale said the Planning Commission can do that administratively, it is not a judicial hearing. Commissioner Breazeale said he would be ok with going ahead with this particular hearing, based on the fact it was referenced in the appeal, but without setting a precedent for future extensions. He would like the Planning Commission to do extensions in the future administratively. Since this has been advertised as a public hearing, they should go ahead and hear it.

Chair Sykes asked Commissioner Breazeale that if another one is part of an appeal, then it would also be treated this way. Commissioner Breazeale just doesn't want the extension in a public hearing although it would still be appealable.

Vice Chair Wenzholz stated that we are doing this one this way because of the circumstances. The Director said we could certainly build something into the findings on this request that says as much.

Commissioner Breazeale moved that extension requests are handled administratively by the Planning Commission and we are only doing this because it is a special case. Vice Chair Wenzholz seconded the motion. Motion carried.

Director McLane asked the Commission to look at the 18 page letter sent last Friday from Mr. Connors representing Devin Oil. The fourth page of the letter, Devin requests that the July 30 hearing be continued. There are two options based on that request, either rescheduled to one of two possible dates, or simply leave the record open for an additional seven days with the opportunity for Love's and then Devin to each provide responses, then with the applicant having final word. Then you could hold the decision making hearing on August 27.

Commissioner Neal asked if the record is left open, is it an indefinite time frame. The Director said no it is seven days. But you should give the opportunity to the parties to respond and work through the process. You would have to then render your decision. Commissioner Neal asked if that was at the end of the seven days or the next meeting.

The Director said that the opponent has a statutory right to either be granted a continuance or have the record left open. Commissioner Seewald asked if they continue the hearing to another date, and if that date is not acceptable, do they have a statutory right to request another date or hold the record open. The Director said they can ask, but the Commission will have met its requirement by choosing one of the options tonight. The Director said she does have a room tentatively reserved at the port either one week from tonight or two weeks from tonight, or you can choose to continue it to August 27.

Commissioner Breazeale made a motion to continue the hearing and leave the record open to the August 27 meeting with the understanding that the clock is stopped during all appeals and during the time extension.

Chair Sykes asked if that was within the Commissions authority to do that. Commissioner Kilkenny asked when the date was a year ago. Commissioner Breazeale said without going into all those dates, the Planning Commissions intent is to hold that the time during the appeal didn't count against the clock. Chair Sykes agreed but doesn't think the Commission has the authority to do that. Commissioner Breazeale thinks they do.



Mr. Swinburnson asked which clock we are talking about. Commissioner Breazeale said the one year time frame and the one year extension. Theoretically you could have a CUP for one year but it could be in appeals for more than one year, which the time would run out. Even if they extended the time from the one year, there is no provision to extend again.

Mr. Swinburnson asked if the CUP is expired, or is that the decision that the Commission is still making. The Director said that they have not come to that decision yet.

Mr. Swinburnson does not think the Commission can just unilaterally say that the next thirty days do not count. You can interpret what the County Court said when they made their findings. But that is not necessary in your motion but will be resolved in your decision.

Commissioners Neal and Kilkenny both agreed that August 29<sup>th</sup> was the date in question.

Mr. Swinburnson said that there is still a motion on the floor, and the motion needs to be clarified.

Commissioner Breazeale made a motion to continue the hearing to August 27 and leave the record open so we can get testimony from both sides and the time between now and then does not count against the time of the extension.

Mr. Swinburnson said that is the part that needs clarification because Commissioner Breazeale said to continue and leave the record open. The record hasn't even been opened yet. If we continue, it is a new hearing date. If you want to leave the record open, you will hear testimony tonight and then leave it open.

Commissioner Breazeale said he wanted a continuance.

The Director said the second part about suspending the clock is not necessary because a decision hasn't been made yet. Commissioner Breazeale doesn't want to influence the decision by extending the time frame.

Commissioner Breazeale will remove the second part from the motion. Vice Chair Wenholz seconded the motion.

Commissioner Lindsay asked if that means no testimony tonight versus testimony tonight with the record being left open for seven days. The Planning Commission would still make its decision on the 27<sup>th</sup>.

Commissioner Kilkenny is opposed to giving them 30 more days in this process. He thinks we already have a lot of information.

Commissioner Breazeale has a problem with having a meeting just for that issue.

Commissioner Breazeale withdrew his motion and Vice Chair Wenholz withdrew the second.

The Commission will continue with the public hearing scheduled for tonight.

Planning Director McLane presented the staff report. The Director also presented to the Commission an additional letter from Garvey Schubert Barer representing Love's requesting a continuation of the CUP. In addition a letter date July 25<sup>th</sup> from Mr. Connors requesting the continuance of this hearing. This evening an additional letter from Garvey Schubert Barer responding to the July 25<sup>th</sup> letter from Mr. Connors. The Commission now has an opportunity to

review the code provision and have some discussion about what you think it means.

Opened the Public Hearing.

In favor:

Leslie Ann Hauer, planning consultant representing Love's. Ms. Hauer said that since Mr. Connors has requested a continuance she doesn't want to take a lot of their time. Ms. Hauer was there to make sure the Commission got the letter and emphasize that the provision in the code is simple and in Morrow County's code, not a provision of state law. It is up to the Planning Commission to interpret, and there are no standards so that makes it even more up in the air. With regard to writing codes, Planning Commissions cannot take an administrative action. Anything you do has to be in a public setting. If there are any questions about the letter, Ms. Hauer can go back with them to Carrie Richter. The position of Love's, is to close the record and have the rest of the testimony in written form. Easy to ask questions at the next meeting. Which ever is most convenient for the Commission.

Sandy Toms, City of Boardman Mayor. Ms. Toms said that she and the City of Boardman are behind Love's 100 percent. The City of Boardman is hoping that Love's will continue to have their due diligence, and the City is behind them.

Opposition:

Chris Koback, on behalf of his partner Mr. Connors. Mr. Koback wanted to talk about the continuance first and review the request. Mr. Koback said that Mr. Connors on July 9<sup>th</sup> said he wouldn't be here. Mr. Koback said that this is a complicated case, and that he just read the letter for the first time on the drive from Portland. There are issues about Condition #2 in 2010, but he doesn't know anything about it. Mr. Connors himself would be able to answer any question better. He and his client deserve the continuance so that Mr. Connors can make his presentation and represent his client.

Chair Sykes told Mr. Koback that the Commission was not ready to make the decision of the continuance and to please speak on the topic of the extension itself.

Mr. Koback said the first issue on the CUP is whether it expired. The decision is dated October 26, 2011. County Court said it was effective immediately, that's what the plain language of the decision said. It didn't say, except if there was an appeal. There was some language in a prior decision that talked about unless it was appealed, that's not the decision you are concerned with. There is not one term in the October decision that says it can be tolled during appeal. Mr. Connors has said that it never was intended to be tolled during an appeal, it was intended to say that you cannot act upon the CUP until the Zone Change is finished. According to state law a final decision is final and doesn't get tolled by an appeal unless the local code specifically says it does. Mr. Connors has cited some cases as to this. Your code has to say this if you want it in your code. Based upon the record, your code and state law, this decision the CUP approval expired October 26, 2012. State law and LUBA has also said that when a decision is void, it cannot be extended. This is different from voidable. If it is void, it no longer exists. In order to extend an authorization, that authorization has to be not void. An extension request cannot revive that void action. We think based on the law, you have to declare it void and deny the extension.

Mr. Koback went on to state that if the continuance was not granted then under ORS 197.763 we should be granted an open record period where both parties submit, then rebuttal, then the applicant would get seven days to respond. That would be the alternative to requesting the continuance.

Chair Sykes asked Mr. Koback about the rebuttal that he was talking about. Mr. Koback answered as he understood the code typically both parties submit, then there are rebuttals then

the applicant gets to submit the last word. Its pretty common. That is what we request.

Director McLane said that is not how we typically do it, at this point it would all be written responses and rebuttals. The Commission will receive a packet of everything that was submitted in the course of those 21 or so days.

Mr. Koback had a question for staff about the next item on the agenda and wondered if it was the site plan review. The Director answered that it was, but that the Commission has already had hearings and deliberated and is just simply signing the findings tonight.

Neutral: None

Ms. Hauer didn't really have anything else to add, just wanted to state that Mr. Koback is clearly following Mr. Connors lead and is making his arguments very plainly. We will just leave the rest to the open record period.

Closed the Public testimony.

The Director stated to the Commission that there is a clear request in front of them and they should figure out how they want to respond to the request for a continuance. You have in front of you path A or B.

Chair Sykes asked if they could hold any discussions or if they should wait until the final meeting. Mr. Swinburnson said that deliberation would have to wait until the record is closed. The Director said the discussion should be limited to the continuance or what information is lacking at this point.

Mr. Swinburnson said it looks to be that this comes down to a fairly specific legal issue that is either spelled out by LUBA cases or it isn't. The only advantage to a continuance as opposed to leaving the record open is that nobody has read the cases. The crux may be what does void mean. Mr. Swinburnson doesn't necessarily want to be the one that says what the cases mean. Mr. Connors and Ms. Richter will have the arguments.

Commissioner Kilkenny asked staff if you can still ask questions after reading the letters without testimony. The Director said that the Commission could ask questions.

Chair Sykes wanted to know from the Love's representatives about 6.070 and said that there is two parts to it, and asked if Love's felt it was blocked by the appeal. The option of substantial construction was not even open to them.

Commissioner Kilkenny thinks that even if there was a request in October, when Mr. Connors thinks it expired, that means one year to start construction, they would be starting construction in three months and that's not possible. That would be a question he would want answered. Its not something that Love's did that prevented the construction.

Commissioner Taylor moved to have a continuance to the next meeting.

Chair Sykes asked if he wanted a continuance or to just leave the record open.

Commissioner Taylor said he thought it needed a continuance.

Commissioner Breazeale seconded the motion. He then asked staff if the continuance is granted and we have the next public hearing, is there an opportunity for another request to have the record left open. The Director said no, the statutory obligation has been met.

Mr. Swinburnson asked Mr. Koback if the continuance is granted would there be another request to leave it open for another seven days. Mr. Koback answered that if the applicant came in with a whole new bunch of stuff at the next hearing we would be in a bad spot. If nothing changed in the record and a decision could be made that day, we wouldn't ask for more time.

Ms. Hauer said that both parties should commit to a date specific to have any new information in by. Mr. Koback said that made a lot of sense. We could agree that everything new in by two weeks from now. And then no open record request at the next hearing.

Chair Sykes asked for the two week date.

Staff said it would be August 13. Both parties agreed that would be fine.

Commissioner Taylor made an addition to the motion on the table that the parties agree on August 13 as the date which both parties will submit information to lead to discussion on August 27, and no more testimony after August 13. Commissioner Breazeale seconded the amended motion. The amended motion carried. Commissioner Seewald and Lindsay abstaining from voting.

Vote on the original motion. Motion carried. Commissioners Seewald and Lindsay dissenting.

### **Final Review and Approval**

Findings of Fact in the matter of the Appeal of the Planning Director Decision related to Zoning Permit ZP# 2238: Appellant: Devin Oil Co, Inc. Zoning Permit ZP #2238 allows for development of a Love's Travel Stops & Country Stores on property described as Tax Lot 133 of Assessor's Map 4N 24 located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial.

Mr. Swinburnson said we should have added all the requests. He is satisfied with it. The expectation was that the decision that we just continued was going to be done contemporaneously with the signing of these findings and was going to render it moot one way or the other as far as the appeal went. That was one aspect that staff hadn't really discussed with the continuance.

Ms. Hauer asked if it would complicate things with the anticipated appeal of the extension if the Commission approves the Zoning Permit appeal findings tonight. Mr. Swinburnson said that the issue that was just continued, whichever way that the Commission rules will be dispositive of issue number one in the appeal.

The Director said it is staff's recommendation that the Commission ask staff to bring the findings back at the next hearing to sign, the same night that you issue a decision on the other action. The only problem is that we will need to have findings drafted for the other decision and there is no way to anticipate what the Commission's deliberation will be. Staff could make some assumptions into writing the findings based on the discussions so far and the letters on the 13<sup>th</sup>.

Mr. Swinburnson asked the Commission if he needed to read and interpret the cases and come up with an opinion about them. The Commission said he did need to.

Staff requested of the applicant a 150 day waiver.

Commissioner Neal made a motion to bring back the Zoning Permit Appeal Findings to the next

meeting on August 27. Commissioner Breazeale seconded the motion. Motion carried.

**Audience Participation:**

None.

**Other Business or Correspondence:**

Discussion about CUP time limits, and CUP revocation, and when it runs with the land and when it is runs with the applicant.

**Adjournment:**

Meeting was adjourned at 9:01 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, August 27, 2013 at 7:00 p.m. at the Port of Morrow Riverfront Center, Boardman, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
**Minutes of the Public Hearing of the**  
**Morrow County Planning Commission**  
Tuesday, August 27, 2013  
Public Hearings 7:00 p.m.

**Morrow County Planning Commissioners Members Present:** Gerald Breazeale, Mifflin Devin, Melissa Lindsay, Russell Seewald, David Sykes, Rod Taylor, Jeff Wenholz

**Members Excused:** John Kilkenny, Kathy Neal

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Ryan Swinburnson, County Counsel

The Pledge of Allegiance was recited.

The Minutes of the July 30, 2013, hearing was provided with the Commissioner's packets.

Commissioner Devin moved to approve the corrected Minutes of July 30, 2013. Vice Chair Wenholz seconded the motion. The motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Extension of Conditional Use Permit CUP-N-274-E: Love's Travel Stops & Country Stores, applicant and City of Boardman, owner. The property is described as Tax Lot 133 of Assessor's Map 4N 24. The property is located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial. Criteria for approval include MCZO Article 6.**

Planning Director McLane presented the staff report. Chair Sykes asked Mr. Swinburnson about the rebuttal procedure. Mr. Swinburnson said we will just do it like a standard request.

Opened the Public Hearing.

In favor:

Cary Richter, of Garvey Schubert Barer representing Love's. Ms. Richter quoted the July 30<sup>th</sup> memo to the Commission reading MCZO 6.070. Ms. Richter asked the Commission the question of whether Love's is entitled to an extension of its Conditional Use approval for an additional year. Ms. Richter said this is the only criteria and that the Commission needs to interpret the code whether Love's is entitled to extend the authorization for an additional year. Whether this allows the granting of an extension after October 26, 2012, the date the opponents claim the CUP expired, or whether you insert an additional limitation requiring that the extension be requested prior to the expiration of the approval period, is the question before the Commission. Love's did not seek an extension prior to October 26, 2012, Love's is seeking it now. The opponents claim that the term "void" means that Love's cannot seek it now. Love's believes that by prohibiting us from seeking it now would impose a "prior to" the one year expiration period that does not appear in Section 6.070. If the Commission compares Section 6.070 with Section 1.050 which is the section that deals with when zoning permits expire, it does say you have to seek an extension prior to the expiration of the approval period. We don't have that "prior to" language in Section 6.070. The opponents claim that the term "void", based on LUBA case law, conclusively controls this inquiry and prohibits the granting of an extension

statutes and ordinances, and that says that you can't add new terms. What Love's is really asking the Commission to do is add substantial language; they want the Commission to interpret the provision such that you qualify the first part with the second part. Love's interpretation is that the authorization is void unless substantial construction has commenced or the use is implemented, or within a 12 month period or a second 12 month period when the applicant requests an extension. Love's wants you to add significant language under the guise of an interpretation to save this application. You shouldn't add language. The Commission needs to ask themselves if this is plausible. Love's interpretation is that something becomes void unless one of these things happen: After it becomes void somebody requests that it be extended. That is not a reasonable interpretation. If something can be extended after it is void it is not like beginning construction after it is authorized, it's like taking void right out of your code. We have talked about cases where they interpret the term "void" and they are significant. In the Painter case, they talk about what does void mean in the context of a land use authorization, and LUBA went right to Black's Legal Dictionary and concluded that void meant "of no legal effect". Going back to the Morrow County code provision where it says "however, the authorization can be extended for an additional one year period if somebody makes the request". Mr. Koback asked the Commission to ask themselves if it is plausible to interpret your code to allow something that has no legal effect, it doesn't exist, to be extended. The word "extended" is really significant. Love's interpretation requires that you take the word "extend" out, and you have to put another word in there, and it has to be "revive". However, an authorization formerly void, can be revived if somebody makes the request after it has become void. That is the interpretation that Love's wants the Commission to make. Would LUBA, given that they found a void authorization doesn't exist, find it plausible to interpret a code to allow somebody to extend something that doesn't exist. Mr. Koback doesn't believe that a reviewing body would find that to be a plausible interpretation. The Morrow County code doesn't say what Love's attributes to it, you can only have a two year period of time. The code provision says that it can be extended for an additional period, not to exceed a year, based upon the request. If you interpret the code to allow Love's to do what they want to do, and Love's doesn't think this is a problem because they only want an extension until October, so they will never go beyond the two years. Mr. Koback asked the Commission what about the next applicant, what if they think the one starts at the date of their request. This is also plausible, you could have the applicant come in on the 364<sup>th</sup> day of the second year and ask to extend their void authorization, and get up to a year. The Commission has to interpret their code plausibly to say the one year runs from the request. The Commission should focus on Love's explanation, this is the first time there was an explanation for why they should wait. Love's put the Commission in a position to have to do this extraordinary interpretation in basically re-writing your code, to write "void" out, has no legal meaning, ignoring what LUBA has said, and ignoring what Black's Law Dictionary defines "void" as. Love's has asked you to do this for them, but they have never before said why they didn't just file the extension request on October 25. You can't blame the appeal because if you know there is an appeal and a delay in appeal, your need for an extension is paramount, it has to be forefront in your mind. This needs to be extended, and do we file after the appeal is over or do we file it now. Maybe that is their explanation, but Mr. Koback said that he didn't hear that today. Mr. Koback heard the explanation that they were waiting for the appeal, but the appeal was over in August of 2012. They waited until June of 2013 to file for the extension. That is an excuse that was contrived on the way over here. There is no reasonable explanation for putting everyone in this position except for they just didn't file for an extension. Now Love's want the Commission to contort the code to say its ok. The language in your code is only susceptible to one plausible interpretation and that is if something is void, it can't be extended. It has to be re-applied for.

Ms. Richter addressed the Commission by saying that Mr. Koback started his presentation by saying that Love's interpretation is not reasonable. But "reasonable" is not a standard, but "plausible" is. It is a lower standard, and there is more flexibility, there is more opportunity to read into your code and determine what the intent was. Mr. Koback says that Ms. Richter is reading the term "void" out of the provision. Mr. Koback is inserting the language "prior to the

Commissioner Breazeale agrees with Vice Chair Wenholtz and that with a maximum of two years an opponent could easily run out the clock by keeping an action tied up in appeals. Commissioner Breazeale does not think that was the intention of the zoning code, to have the clock run out on somebody because they have been legally challenged. As long as they have been making progress and working toward the project, that is sufficient. The time when an appeal was filed, until the resolution of that appeal has been worked out should not count. Without allowing an extension when the clock has been run down would be wrong.

Commissioner Seewald thinks when the CUP was approved on February 23, 2010, the intention was that until the land partition and zoning approval were out of appeals that this could move forward. Its not reasonable that a company would spend money without the certainty that the project could move forward. The Commission at that time planned for an appeal and discussed it at that time. In the City of Redmond case, that application wasn't even complete and was the key to the case. That case was a totally different animal. The other cases that were mentioned, there was no expectation of appeal, and is not sure that those even apply. Commissioner Taylor would like to concur with the other Commissioner that they kept the ball rolling and the condition did say until everything was done.

Commissioner Devin agrees with the others but thinks that Commissioner Seewald hit the nail on the head with the CUP and the timeliness of the appeal holding up the land partition and zone change. That does change the date quite a bit.

Chair Sykes said that a CUP is a permit, in which you are permitted to do something. However, there was a big caveat (the appeals) hanging over it, so did they really have permission to do anything at that time.

Commissioner Lindsay thinks it falls to the word "authorization". If there is still something restricting the project, then it shouldn't be authorized until the appeals are done.

All in favor. The motion carried.

The Director passed out final findings to the Commission. It is staff's intent to have the Commission go through the findings and make them final. Staff did not get the anticipated date correct on the findings. Changes will be made based on the motion and discussion above.

Commissioner Seewald made a motion to approve the final findings. Commissioner Devin seconded. Motion carried.

### **Final Review and Approval**

Findings of Fact in the matter of the Appeal of the Planning Director Decision related to Zoning Permit ZP# 2238: Appellant: Devin Oil Co, Inc. Zoning Permit ZP #2238 allows for development of a Love's Travel Stops & Country Stores on property described as Tax Lot 133 of Assessor's Map 4N 24 located approximately 5 miles west of Boardman at the Tower Road interchange on Interstate 84. The property is zoned Tourist Commercial.

The document hasn't changed from two meetings ago. We have just delayed the signing so that the last two could be signed at the same time.

Commissioner Breazeale moved to approve the Final Findings of Fact in the matter of the Appeal of the Planning Director Decision related to Zoning Permit ZP# 2238. Commissioner Devin seconded. Motion carried.

### **Audience Participation:**

None





## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x 5503  
FAX: (541) 922-3472

**Minutes of the Public Hearing of the  
Morrow County Planning Commission  
Tuesday, September 24, 2013  
Public Hearings 7:00 p.m.**

**Morrow County Planning Commissioners Members Present:** Chair David Sykes, Vice Chair Jeff Wenholz, Gerald Breazeale, Mifflin Devin, John Kilkenny, Melissa Lindsay, Kathy Neal, Russell Seewald, Rod Taylor

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner; Ryan Swinburnson, County Counsel

The Pledge of Allegiance was recited.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Replat R-S-032-13: Ron McKinnis, applicant and Marvin Padberg and John VandenBrink, owners. The property is described as Tax Lots 3500 and 3503 of Assessor's Map 1S 24. The property is located south of lone off Rhea Creek Road and Morter Lane and is zoned Exclusive Farm Use. Request is to reconfigure Partition Plat 2011-14. Criteria for approval include Morrow County Subdivision Ordinance (MCSO) Article 5.**

Planning Director McLane presented the staff report. Vice Chair Wenholz asked staff where the line was moving. The Director pointed out to the Commission on the map that was provided with the staff report.

Opened the Public Hearing.

In favor:

Ron McKinnis, surveyor for the Padbergs and VandenBrinks. Mr. McKinnis informed the Commission that this replat is based on easements and the use of easements as outlined in the arbitration decision.

Commissioner Breazeale asked Mr. McKinnis if he was the original surveyor. Mr. McKinnis said that he was. Chair Sykes asked where does the replat go after this. Mr. McKinnis explained the staff and surveyor procedure of the replat after the hearing process.

Michael Collins, attorney representing the VandenBrinks. Mr. Collins said that the plat must be done in accordance with the arbitrators decision. It will be approved once the final plat is made.

Mr. McKinnis said that the measurements are done, just that the radius will change in the legal description.

In neutral:

Mike Gray, neighbor. Mr. Gray said that there were no monuments set just used his fence. Since that time Mr. Vandenbrink has moved the fence.

Chair Sykes asked Mr. Gray how this relates to the replat. Mr. Gray said if they are going to use the fence in the survey, and the fence has moved, that is his concern.

**Amendment of Conditional Use Permit CUP-N-67-A: Wesley Wise, applicant and Max Hellberg, owner. The property is described as Tax Lot 203 Assessor's Map 5N 26 26. The property is located south of Idaho Lane off Sixth Road and is zoned Exclusive Farm Use. Request is to amend Conditional Use Permit CUP-N-67 to expand the boundary of the aggregate pit and change the operating hours. Criteria for approval include Morrow County Zoning Ordinance Articles 3 and 6.**

Planning Director McLane presented the staff report. Chair Sykes asked if there have been any problems with any of the Conditions in the past. Staff answered that there have not been, there were some resolved complaints. Commissioner Neal asked about the operating hours, and what is the reasoning behind wanting it for 365 days a year. Staff answered that it is not to change the current operating practice, but to be proactive and have the opportunity to mine when Mr. Wise has orders to fill. Commissioner Neal said since this is a CUP, she would rather the applicant come before the Commission when that needs to change. Chair Sykes asked what kind of control would be given up by approving this. The length of time would be the control given up in this instance, because before it was asked for 5 weeks at a time. The operator still has to comply with all the requirements. Staff would encourage the Commission to ask the applicant all these pertinent questions. Commissioner Lindsay asked if CUP's are attached to the land. Staff said that they are.

Opened the Public Hearing.

In favor:

Wes Wise, applicant. Mr. Wise thought they were good neighbors, just wanted the opportunity in place. They don't have enough work to actually run 24 hours a day. In the summer months, they would like to be able to work later in to the evening because it is so hot in the afternoon.

Commissioner Taylor asked Mr. Wise if most of the 24/7 jobs are state or county jobs. Mr. Wise said yes those are the public jobs. Most are highway jobs. Mr. Wise would like to have the opportunity to be able to run the jobs early in the day, in the summer, or late in the evening. But we don't have a job, we are not running rock.

Commissioner Breazeale asked if Mr. Wise has done this in the past, crushing in the morning. Mr. Wise said no he can't because his permit does not allow him. His current operating hours are 7 to 5. We can do everything else outside of those hours, we just can't crush or screen.

Commissioner Kilkenny asked if 5 to 5 would help. Mr. Wise said that he attached this to his pit expansion request to see if he could get something. Even if he was able to get 24 hours a day for June July and August, that would help.

Chair Sykes said that if this is approved, the extended hours wouldn't be based on a particular job, it would be based on the hot time of the year. Mr. Wise said that is what he was looking for when he made this request.

In opposition:

Wade and Deborah Aylett, Irrigon residents. Mr. Aylett said they live right next to this pit. Mrs. Aylett read a prepared statement to the Commission. The Aylett's asked that their statement and map be part of the record.

Chair Sykes asked where exactly they live. Mr. and Mrs. Aylett said they live on Washington Street, about one block over, or maybe two blocks over. Chair Sykes asked how long they have lived there and if they were there at the time Mr. Wise had a 24 hour operation. Mrs. Aylett said they have been there since 2000. Mr. Aylett said they were there during one of the operations and saw dust. Chair Sykes asked for a summary of their main opposition points. Mr. Aylett said the amount of tonnage, the hours are ridiculous, and he doesn't agree with how he is operating. Mr. Aylett said that Mr. Wise is all mined out.

**Transportation System Plan (TSP) Minor Update ATSP-063-13: Morrow County, applicant. Amendment to the TSP Appendix B Project List to include Frontage Lane/Pole Line Road intersection improvements. Criteria for approval include the Morrow County Comprehensive Plan and the TSP.**

Planning Director McLane presented the staff report.

Opened the Public Hearing.

None in favor, neutral, or opposition.

Closed the public testimony portion of the hearing.

Commissioner Neal moved to amend the Transportation System Plan Appendix B Table B-1 adding the Frontage Lane/Pole Line Road project to the High Priority Recommended Roadway System Projects list. Commissioner Devin seconded the motion. The motion carried.

**Audience Participation:**

None.

**Other Business or Correspondence:**

Both Love's decisions have been appealed to County Court.

**Adjournment:**

Meeting was adjourned at 9:36 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, October 29, 2013 at 7:00 p.m. at the Port of Morrow Riverfront Center, Boardman, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844

(541) 922-4624 or (541) 676-9061 x 5503

FAX: (541) 922-3472

**Minutes of the Public Hearing of the  
Morrow County Planning Commission  
Tuesday, October 29, 2013  
Public Hearings 7:00 p.m.**

**Morrow County Planning Commissioners Members Present:** Chair David Sykes, Vice Chair Jeff Wenholz, Mifflin Devin, John Kilkenny, Melissa Lindsay, Kathy Neal, Russell Seewald, Rod Taylor

**Members Excused:** Gerald Breazeale

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmueller, Associate Planner

The Pledge of Allegiance was recited.

The Minutes from August 27, 2013 and September 24, 2013 were provided to the Commissioners for review.

Commissioner Taylor moved to approve the Minutes from August 27, 2013. Commissioner Devin seconded the motion. Motion carried.

Vice Chair Wenholz arrived late to the meeting.

Commissioner Neal moved to approve with changes the Minutes of September 24, 2013. Commissioner Seewald seconded the motion. Motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Hardship Variance HV-N-024-13: Janell Bailey, applicant and owner. The property is described as Tax Lot 105 of Assessor's Map 4N 25 14C. The property is on Jerry Lane approximately 2 miles east of Boardman and is zoned Farm Residential. Request is to approve a temporary hardship dwelling to allow the property owner to care for the infirm relative. Criteria for approval include Morrow County Zoning Ordinance Article 4 Section 4.130 Hardship Dwellings.**

Planning Director McLane presented the staff report. The Director passed out a letter from WEID commenting on the action, and informing the Commission that the letter states that the applicant is within the district and that there is no anticipated impact on water delivery. Commissioner Devin pointed out a grammatical error in the staff report.

Opened the Public Hearing.

In favor: Janell Bailey, applicant. Ms. Bailey addressed the Commission stating that she has developed some health problems that are not urgent at this moment but will be someday. Her daughter and son-in-law want to move to Boardman and this would be convenient for them. They thought that this would be a good working solution to get her kids moved to Boardman. This situation is not an emergency right now.

None in neutral or in opposition.

Closed the public testimony portion of the hearing.

Vice Chair Wenholz moved to approve Hardship Variance HV-N-024-13 . Commissioner Lindsay seconded the motion. Motion carried.

**Public Comment:**

None

**Other Business or Correspondence:**

- The Planning Commission approved the Planning Commission Meeting Dates Calendar for next year.
- Love's saga again here at the Port tomorrow. The Director stated that Love's has also applied for a CUP extension that can be granted by the Director under the new code.
- No Planning Basics because the Director informed the Planning Commission that she would be going on vacation until November 12<sup>th</sup>.

**Adjournment:**

Meeting was adjourned at 7:59 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, December 3, 2013 at 7:00 p.m. at Heppner City Hall, Heppner, Oregon.

Respectfully Submitted,  
Layne Wolfmueller



## PLANNING DEPARTMENT

P. O. Box 40 • Irrigon, Oregon 97844  
(541) 922-4624 or (541) 676-9061 x 5503  
FAX: (541) 922-3472

**Minutes of the Public Hearing of the  
Morrow County Planning Commission  
Tuesday, December 3, 2013  
Public Hearings 7:00 p.m.**

**Morrow County Planning Commissioners Members Present:** Chair David Sykes, Gerald Breazeale, Mifflin Devin, John Kilkenny, Melissa Lindsay, Kathy Neal, Russell Seewald

**Members Excused:** Vice Chair Jeff Wenzholz, Rod Taylor

**Morrow County Staff Present:** Carla McLane, Planning Director; Layne Wolfmuller, Associate Planner

The Pledge of Allegiance was recited.

The Minutes of October 29, 2013 were included with the Commissioner's packets. Commissioner Devin moved to approve the Minutes of October 29, 2013. Commissioner Neal seconded. Motion carried.

Planning Commission Chair Sykes read the Planning Commission Hearing Procedures.

**Zoning Ordinance Amendment AZ-064-13: Morrow County, applicant. Request is an update of the Morrow County Zoning Ordinance Article 3 Section 3.073 Port Industrial use zone. The proposed changes are to more clearly describe the purpose, allowed uses, rail dependent uses, water dependent uses, to remove the requirement for a Port Master Plan and to amend the transportation impacts section providing reference to requirements in recently adopted and anticipated Interchange Area Management Plans. This Planning Commission hearing will be followed by at least one County Court public hearing.**

Planning Director McLane provided some background information to this action and then presented the staff report focusing on the proposed language changes of the Port Industrial use zone to the Commission.

Commissioner Breazeale asked the Director why aerospace uses were removed from the Port Industrial Use zone. The Director said we also have other use zones that are specifically for air or airport uses. One is the Space Age Industrial zone, which was specifically written and zoned for intense aerospace uses back in the 1960's when Morrow County was in competition for one of the Nation's aerospace intense areas like Houston or Cape Canaveral.

Chair Sykes asked about the 250 feet notice on the solid waste portion of Section E. Commissioner Neal also asked about the temporary use language in the same section and whether everything in that section was supposed to be for a temporary use. The Director said that this was written years ago for a certain issue. To clarify, in Section E, it is either number 1 or number 2, not both; they are separate and discreet. In the case of number 1, there was an action that fell under number one, and notice was sent which was an interpretation letter of the proposed use. The number 2 is the Solid Waste section. It was determined that the addition of an "or" would be sufficient to clarify in the text of what was actually meant. Commissioner Kilkenny asked when this would be used. The Director replied that this is when DEQ permits something which is unique or a one-time event on the environmental side and are looking for a concurrent land use authorization. It has only happened once in 11 years that a non-typical barge has come through the port.

Opened the Public Hearing.

In favor: Gary Neal, Port of Morrow Manager. Mr. Neal would like to say the Port would support this amendment to the Port Industrial use zone. He also appreciates the Commission's consideration of the amendment.

None in neutral.

None in opposition.

Closed the public testimony portion of the hearing.

Commissioner Devin declared that he works for the Port of Morrow. Commissioner Neal declared that she is married to the Port of Morrow Manager.

Commissioner Seewald moved that Planning Commission recommend approval of Zoning Ordinance Amendment AZ-064-13 to the Morrow County Court. Commissioner Breazeale seconded the motion. Motion carried.

**Audience Participation:**

None.

**Other Business or Correspondence:**

Director McLane passed out the new schedule for Planning Commission meeting dates and informed Commissioners Devin, Neal, and Taylor they will be getting letters because their terms are expiring at the end of the year.

The County Court finished deliberations today and overturned the Planning Commissions decision on the Love's appeal. They didn't feel comfortable agreeing with the Conditional Use Permit decision. They did affirm the site plan findings, but did condition that Love's come back and obtain a valid CUP.

Commissioner Lindsay arrived at 7:50 p.m.

The Planning Director explained the next steps for the appeals, and explained the differences between the decisions that the Planning Commission makes and the County Court makes and what they mean for LUBA.

The Director passed out the new sections of the Zoning Ordinance that have been adopted recently for the Commissioner's to put in their binders.

Commissioner Lindsay asked Director McLane about how the recent Aggregate Amendment changes affected the CUP process and how other CUP actions are reviewed. The Director explained to the Commission that any changes made under Article 6 of the Morrow County Zoning Ordinance will be applied to any CUP.

Planning Commission made comments about not knowing about certain projects going on in the county and asked the Director to provide more information.

**Adjournment:**

Meeting was adjourned at 9:25 p.m.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, January 21, 2014 at 7:00 p.m. at the Port of Morrow Riverfront Center, Boardman, Oregon.

Respectfully Submitted,  
Layne Wolfmueller