

## MEETING MINUTES

Benton County Planning Commission  
June 2, 2020

A regular Meeting of the Benton County Planning Commission was called to order at 7:00 p.m. The meeting took place virtually via Go To Webinar. Members of the public were invited to attend.

### I. CALL TO ORDER AND ROLL CALL

#### **COMMISSION MEMBERS:**

##### Present

Ken Kenaston, Chair  
Sean Scorvo  
Nicholas Fowler  
John McEvoy  
Nancy Wyse  
Jennifer Gervais  
David Dowrie

#### **STAFF:**

##### Present

Greg Verret, Community Development Director  
Linsey Godwin, Associate Planner  
Linda Ray, Recorder

### II. ITEMS FROM THE GENERAL PUBLIC: None

### III. PRIORITY ITEMS FROM THE PLANNING COMMISSION: None

- IV. **PUBLIC HEARING:** FILE NUMBERS: LU-20-023, 138-20-000477-AGE | PROPOSED ACTION: A two-story 12,000 square foot Agricultural Exempt Building for sheltering llamas, also for hay and equipment storage, breeding, sale and training of llamas (especially pack llamas), and hay storage. | PROPERTY OWNER/APPLICANT: Stephen Pierce and Anne Minnich | LOCATION: 30473 Baker Ln., Corvallis; Property identified as T13S R5W Section 2 Tax Lots 400 and 401 | CRITERIA: Oregon Revised Statute (ORS) 215.700 to 215.780 and 455.315(2)(a); Benton County Code (BCC) Chapter 55 (Exclusive Farm Use). STAFF CONTACT: Linsey Godwin

#### Materials Provided:

- Agenda
- Public Hearing Packet

### V. **Declaration of Ex Parte Contact or Conflict of Interest:** None

- VI. **Staff Report:** Linsey Godwin, Staff Planner and Greg Verret, Community Development Director were present to explain the staff report and process for this file. As the author of the staff report on LU-20-023, Planner Godwin gave a presentation of her findings and decision to deny the Agricultural Exempt application (AGE). Planner Godwin explained that property in EFU zones can have structures that are for farm use (such as a barns, machine sheds, etc.) There are two ways to obtain a permit for building a structure on a property in EFU zones; the applicant can apply for a commercial structural building permit (which involves submitting building plans and having the structure inspected by the county inspector) or apply for an Agricultural Exemption Permit. Or, they can build a structure that meets the criteria (one of which is being less than 4,000 square feet) for being exempt from both building permits and an AGE. If there is a home on the property, the property owner can apply for an accessory

structure. Planner Godwin explained that the farm lobby requested the ability to have buildings intended for farm use on farm properties exempted from structure building permit inspections to reduce costs and speed up the approval process. One of the main criteria when qualifying for an AGE is that the property is a farm. The Oregon Building Codes Division has delegated the authority for determining if the property is a farm to the local planning department. The way the statute is written, the property is a farm, i.e. must currently be operating as a farm. Due to this, the county has required applicants to submit evidence of income (within the past year) for their farming operations. Planner Godwin explained that the county has used the Assessor's office farm deferral income qualification requirements as the guideline on the yearly income that should be reflected in the application showing that the property is currently a farm. In reviewing the application submitted by Mr. Pierce and Ms. Minnich, Planner Godwin concluded that there was lack of income evidence and denied the application for AGE.

Chair Kenaston began the discussion by noting that the county code does not define the term farm. His research concluded that it is described as "tract of land...devoted to Agricultural uses". Chair Kenaston stated that the code does not say anything about income or an income test when pertaining to farm use and an AGE.

Director Verret responded that the state building code allows for an AGE in EFU zones, but each jurisdiction is allowed to interpret that statute and there is no guidance on how jurisdictions should implement those provisions. For the last 20 years (or more) Benton County planners have interpreted the definition of farm use as "land used for the primary purpose of obtaining profit from farm activities." In this case with LU-20-023, the land is leased by another farmer to operate and the property owner is not making any profit off of the farm use.

## **VII. QUESTIONS FROM THE PLANNING COMMISSION:**

A Commissioner asked what the intent was behind the Agricultural Exemption process and Director Verret responded that it is a means to allow commercial farms to construct structures without going through the building process review.

Planner Godwin responded to the questions regarding:

1. If a new farmer was starting out, they would not have any profit to submit with their application and therefore wouldn't qualify to be able to build on the property. County staff responded that the state statute does show some inconsistency and creates challenges with application reviews. The state code is vague and leaves the interpretation of the code to local planning staff. County staff have historically based application approval on evidence of income, such as farm income tax forms (schedule F) or receipts of income provided by the applicant. In this case, there was no evidence of profit from farm use provided with the application and so the proposed structure does not qualify for AGE.
2. Does the "farm use" run with the property and not the property owner? Director Verret stated that the county defines farm as "making a profit". The applicants are not making a profit at this time which disqualifies them for AGE.
3. Noting that this type of application would normally go through a Ministerial Review, a Commissioner asked why Planner Godwin chose this route for review. Planner Godwin responded that knowing the decision would be appealed, she decided to go with an Administrative Review since the Ministerial Review appeal would be transferred to a circuit court, rather than the county for a public hearing.

4. A Commissioner asked why Planner Godwin chose to use the Tax Assessor's office criteria for definition of a farm. Planner Godwin responded that she did not use the Assessor's office criteria for "definition", but rather used their income criteria as a threshold for determining the distinction between a commercial farm and a hobby farm. Planner Godwin stated that since this property is located in an EFU zone, it already receives farm tax deferral.
5. Chair Kenaston asked for confirmation that the county's approach to AGE applications is to review historical demonstration of profit on the basis for approval. Planner Godwin responded that the struggle with this application is the confirmation that the building will be used for farming. There is no concrete facts to support this intent. So it is difficult to approve the application based on the potential for profit vs historical documentation of a profit.
6. Commissioner Fowler asked what effect there would be in terms of setting a precedent if the Planning Commission were to arrive at a different decision than staff did on this application. Director Verret said that the Planning Commission should decide this case based on the details of this individual case. A decision by the Planning Commission would not cause staff to discard the methods staff has developed to implement this vaguely worded statute in a fair and consistent manner, but could lead to further consideration of those methods and possible modifications.

**Public Testimony from Applicants:**

Mr. Heilig (attorney representing the applicants) gave some background on how the applicants began this process which was by submitting an application for a building permit. They were advised by Eli Nafzinger (Studio.e Architect), that the barn does not fit the structural code. So the applicants based their decision to apply on the AGE definition by the state of Oregon. Mr. Heilig asserted that the structural code does not apply and therefore the applicants were encouraged to apply for an AGE. Planner Toby Lewis was the first staff member to review the application and, according to Mr. Heilig, told the applicants that they could build the structure if it is the outside the floodplain.<sup>1</sup> So the applicants moved forward with their application for an AGE. Mr. Heilig noted that the AGE use criteria are "prospective" (feeding, managing, selling) and the potential use for llamas as pack animals requires training. So the structure use will be for achieving the criteria in the future. He urged the Planning Commission to not put any further criteria for conditional use due to the need for training. Mr. Heilig referred to county code that defines the use of a farm and noted that it includes "farm preparation" which is what the applicants intends to do.

**Public Testimony:** None

**Rebuttal by Applicant:** None

There being no motion to continue the hearing or hold the record open, Chair Kenaston closed the public hearing at 8:55 pm. Chair Kenaston then opened the discussion for deliberations and a vote on the AGE for LU-20-023. After no further deliberation and discussion, Commissioner Fowler moved to approve the application. The motion was seconded by Commissioner McEvoy.

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<sup>1</sup> In reviewing the email sent to Mr. Nafzinger from Ms. Lewis, it stated "As long as the proposed structure is located more than 50 feet outside of the Special Flood Hazard Area, no additional flood documentation will be required to be submitted and you may submit an application for an Agricultural Exemption so that your proposed structure can be evaluated for compliance with the Ag. Exemption criteria." Page A22 of the Application Packet.

The Planning Commission votes are as follows:

Nancy Wyse – Y  
John McEvoy – Y  
Nicholas Fowler – Y  
Sean Scorvo – Y  
Ken Kenaston – Y  
Jennifer Gervais – Y  
David Dowrie - Y

The MOTION to approve was unanimous.

Chair Kenaston noted that an appeal to the Planning Commission's decision can be made within 14 days.

**VIII. ITEMS FROM THE PLANNING COMMISSION:** It was discussed among staff and the Planning Commissioners to plan for a work session in the future to discuss Agricultural Exemptions and the methods the Planning Department has taken to make decisions.

**IX. ITEMS FROM PLANNING STAFF:** Director Verret informed the Commissioners of Christine Hauser's decision to step down from her position. This leaves two vacancies on the Planning Commission. Director Verret asked the commissioners to send him any referrals they may have for these open positions.

Director Verret shared an update regarding the COVID-19 pandemic and operations within the county. The Avery building in which Community Development resides is now open to the public by appointment only. Staff has made great efforts to continue operations during this time and have been successful in processing planning and building applications. There has been continual numbers coming in on applications and staff have able to work remotely and in the office to see that the work continues.

**X. APPROVAL OF MINUTES:** Chair Kenaston opened the discussion for approval of the April 21<sup>st</sup> minutes. Commissioner Dowrie pointed out a correction stating that his attendance was not reflected but he did attend (and seconded a motion during the meeting). Commissioner Dowrie made a motion to approve the minutes with that change reflected. Commissioner Gervais seconded. Motion to approve the April 21<sup>st</sup> minutes was approved.

**XI. UPCOMING AGENDA ITEMS:** Director Verret updated the commissioners on the public hearing for LU-19-091; First Congregational United Church of Christ; CUP. The public hearing was postponed due to COVID-19 and staff are looking to reschedule the hearing in July. Director Verret stated that the hearing will take place via GoTo Webinar (online) and staff will encourage the public to submit written testimony. More details will be sent when they become available.

**XII. ADJOURNED** at 9:30 pm