



WASCO COUNTY COURT
SPECIAL SESSION
August 6, 2009

Public Works Conference Room
2705 East Second Street
The Dalles, Oregon 97058

PRESENT: Dan Ericksen, County Judge
Bill Lennox, County Commissioner
Lauren Haney, County Court Assistant

ABSENT: Sherry Holliday, County Commissioner
Kathy McBride, Executive Assistant

At 10:08 a.m. Judge Ericksen called the Court to order.

Judge Ericksen reviewed Order #09-150 in the matter of establishing a Petty Cash Fund for the Wasco County Fair in the amount of \$10,000.00.

Commissioner Lennox moved to approve the Order in the matter of establishing a Petty Cash Fund for the Wasco County Fair in the amount of \$10,000.00. Judge Ericksen seconded the motion; it was then passed unanimously.

CONTINUATION OF PUBLIC HEARING for the Wasco County Court to review the decision of the Planning Commission to overturn the decision of the Planning Director on the request by Frank Walker & Associates for a replacement forest dwelling and detached garage in the F-2/EPD-8 Forest/Sensitive Wildlife Habitat Overlay Zone (Big Game Winter Range).

At 10:12 a.m. Judge Ericksen called to order the continued Public Hearing.

Judge Ericksen stated he appreciated Mr. Lilly accommodating the tight schedules for today's Public Hearing.

Judge Ericksen reviewed the format for today's hearing. He went over the rules of evidence.

Judge Ericksen asked if there were any ex parte communications, conflicts of interest, or challenges to the Court or Court members to hear the case. There were none.

Judge Ericksen directed staff to present their staff report.

Senior Planner Gary Nychyk presented the staff report at this time (Attached as Exhibit A).

Judge Ericksen asked Nychyk if he had available the definition of "road".

Nychyk read the definition of road, which is "The entire right-of-way of any public or private way that provides ingress to or egress from property...".

Judge Ericksen asked if there were any questions for staff.

Michael J. Lilly, Attorney at Law, 6600 SW 92nd Avenue, Suite 280, Portland, Oregon, stated he wanted to discuss procedural matters. Lilly said he was aware of individual meetings the Commissioners had with Planning and Development Department personnel. Lilly asked to be informed of the information that was discussed in those meetings. Lilly stated he wanted the chance to rebut what was discussed.

Judge Ericksen said he had communication with Nychyk and their communication consisted of Nychyk making him aware of the decision. Judge Ericksen stated he requested Nychyk to explain what options were available for the County Court to review the decision and the process to go forward if the Court so chose. He said the communication took place before there was a Public Hearing pending. Judge Ericksen informed Lilly that there was no discussion during the Regular Session of August 5, 2009. He said the Court made a motion to review the Planning Commission's decision.

Lilly thanked Judge Ericksen for explaining the contents of his meetings prior to the Hearing. Lilly stated he was very surprised by the staff report. He said there were new facts presented that were not presented by the Planning Commission. Lilly said the only way to respond would be for him to appeal.

Judge Ericksen stated he did not understand what Lilly was indicating.

Lilly said the staff report presented new evidence. He also stated that since there was no discussion of the Planning Commission decision with the motion for review by the County Court, he had no indication as to what specifically to prepare to address for today's Public Hearing.

Judge Ericksen said he did not entirely disagree that the process for County Court review could be better but this was the first occasion to proceed in this manner and that the process is on new ground.

Lilly stated he was not able to come prepared to address all the items that were presented in the staff report. Lilly said he came prepared to discuss two major items that were discussed in prior meetings. Lilly stated the current definition of a private road is in the Ordinance and Wasco County needs to abide by and follow the language that is currently there. Lilly stated the staff report indicated that a road is not a road unless it meets current standards. He said it can be considered a road because it was built in the 1970's before the current standards were in place. Lilly said he was informed by Keith Kohl from the Oregon Department of Fish & Wildlife that Wasco County does not enforce the maintenance on mitigation approvals. Lilly noted the critical ground water area was approximately a mile from the property and there should be no issues with installing a well. He stated that one well would supply the house and the proposed pond for mitigation. He said Wasco County needs to create a new Ordinance that fits what they are trying to enforce. Lilly noted when Parker originally went to the Wasco County Planning and Development Department there was no mention of the Big Game Winter Range. Lilly said there should also be a definition of driveway in the Ordinance.

Judge Ericksen stated the definition of road in the Ordinance was very clear. He said there is a clear distinction between a private road and a driveway that can be determined by the definition of "road" as defined in the Land Use and Development Ordinance (LUDO); in particular the portion which states that a "road" provides "ingress and egress TO and FROM a property"; (emphasis added by Judge Ericksen). Since a "private road" is described as a "road that is not public", it must first be recognized as a "road" by the Ordinance, which by the LUDO definition provides access "to and from a property". Judge Ericksen stated that in plain English this clearly delineates where a private road ends and a driveway begins. A private road then goes to a property and in turn a driveway begins at the property line and is contained on personal property. Judge Ericksen acknowledged that there was no definition of driveway in the Ordinance. He informed Lilly that the definition of road in the Ordinance does not recognize the drive in question as a "road" and, therefore, cannot be a "private road".

Lilly reiterated Judge Ericksen's explanation of the definition of road. He said it was not a common interpretation. Lilly stated that Judge Ericksen's interpretation of ingress and egress was not an appropriate argument and would not stand in court.

Judge Ericksen gave a hypothetical situation and informed Lilly that if the driveway in question were to be considered a road and his client were applying in the A-1(160) Zone, he would not be allowed to build his garage within 40 feet of his driveway because structures are not allowed within 40 feet of private roads in that Zone.

Lilly stated he thinks differently from Judge Ericksen.

Judge Ericksen requested Lilly to move on to the issues concerning the Big Games Winter Range and proposed mitigation.

Lilly said he had wildlife expert Jim Torland examine the property and supply options for mitigation. He stated Torland had suggested installing a pond on the property and selected a prime location that would offer wild game a new water source. Lilly reviewed other options that were discussed with Torland prior to the decision of the pond and forest management plan for mitigation.

Judge Ericksen questioned whether they had investigated the permits required for the well.

Lilly stated they had and no one suggested the permits for use would be turned down.

Nychyk requested to review the letter from Torland.

Judge Ericksen stated he was going to give everyone a chance to testify and he would return to Nychyk's request to review the letter.

Lilly reminded the County that it was not a time for new evidence.

Keith Kohl, Oregon Department of Fish & Wildlife, stated he had worked with Wasco County for 13 years. Kohl said he was in favor of temporary mitigation; long term mitigation can prove to be a problem. Kohl informed the Court that a property may change hands and the new home owner may not have the same intent to carry on the duties and maintenance of mitigation. Kohl stated the proposed mitigation does not offset the impacts of the dwelling being 800 feet off of the road. He said the ideal place for the home for the property in question is

as close to Wilson Road as possible. Kohl stated the maintenance is high on water sources and there is no guarantee it will be continued in perpetuity. He noted oak woodlands have the biggest concentration of wildlife and the further into the property the dwelling is, the greater the impact to the animals.

Judge Ericksen requested Kohl to describe the potential issues with having a long drive through the property.

Kohl stated wildlife will adapt to the presence of a driveway. He noted it is the potential dogs, heavy traffic, and human disturbance that go along with the installation of the driveway that some animals will avoid.

Judge Ericksen questioned whether the impact would be the full length of the driveway, as well as the area around the house.

Kohl answered it would.

Judge Ericksen questioned if there was another party in opposition who wished to testify.

There was no one.

Nychyk reviewed the first sentence on Page PC-91 of the County Court Packet. He noted the driveway is not currently considered a private road and if the owner would like to apply for it to be a private road, it would be required to meet current road standards. Nychyk reviewed Page PC-12. Nychyk stated his staff report was a reflection of past meeting records. He did not want to mislead anyone and requested to know what new information was included in the staff report.

The Court recessed at 11:42 a.m.

The Court reconvened at 11:45 a.m.

Lilly stated the conversations that were brought up in the staff report between Kohl and the Fire Department was new information to him. Lilly said he was unsure why there was question of Torland's letter regarding the proposed home site location. He stated it was clearly not 300 feet from the road. Lilly noted the original proposed home site was 1,200 feet from Wilson Road. He stated Kohl wanted the Ordinance amended and does not agree with mitigation measures. Lilly said Wasco County should amend the Ordinance.

Judge Ericksen stated the mitigation issue with the driveway being 800 feet opposed to the approved 300 feet is the impact to wildlife of the additional 500 feet and the related impacts of human activity from the driveway and the house area. He said it diverts natural migration. Judge Ericksen stated the proposed mitigation seems to provide enhancement of a dissimilar nature.

Lilly stated it was not entirely unrelated. He said the water and extra cover would bring animals into the draw which will reduce the driveway's impact. He said the water and extra cover would simply move the animals to a different location. Lilly stated Wasco County should rely on an expert's opinion. He said Wasco County should not revert back to the home site being required to be within 300 feet from Wilson Road when there is intent to employ mitigation.

Judge Ericksen stated mitigation should directly impact what is being reduced or lost. He said the proposed mitigation is indirect and will not improve the loss of foraging.

Lilly stated the home site would not encompass the entire wooded area. He said the owner had moved the home site location to 800 feet from the original plan of 1,200 feet from Wilson Road.

Judge Ericksen asked if there were any more questions for Lilly.

There were none.

At 11:57 a.m. Judge Ericksen closed the Public Hearing to further testimony and called for deliberation.

Judge Ericksen stated the language in the Ordinance regarding the definition of a road is clear and the drive in question does not meet the criteria to be considered a road. He said the mitigation did not meet the required standard of "equal to or better than" the loss of woodlands resulting from the proposed home site location and length of driveway.

Commissioner Lennox stated the first question to answer is whether the drive in question is in fact a road or driveway. He said the home needs to be constructed according to the guidelines of the Ordinance.

Judge Ericksen stated the mitigation and driveway/private road request should be considered as one. He explained Lilly came prepared with mitigation in case the drive in question was determined a driveway, so they could move forward with the request to build on the proposed home site. Judge Ericksen stated the testimony regarding the mitigation was conflicting. He said the proposed mitigation was the pond installation and forest management plan, but it was not comparable to the loss of trees and foraging.

Commissioner Lennox stated he needed clarification to determine whether the drive in question was a private road or driveway. He said the potential answer impacts the Planning & Development Department for future cases. He stated the mitigation is complex and there needed to be a determination on whether the pond would be maintained and would prove to be beneficial.

Judge Ericksen said he had determined the drive in question was in fact a driveway. Judge Ericksen stated he was searching for a burden of proof regarding the mitigation, and the letter provided did not evaluate what the impact would be from the proposed home site and the lengthening of the driveway. Judge Ericksen stated the issue is determining whether the pond is sufficient to adequately counteract the disturbance to wildlife from the lengthening of the driveway and the loss of woodlands. He said the key is the loss of woodlands, and how that can be adequately compensated. Judge Ericksen stated there was not sufficient information or facts provided to prove that the proposed mitigation would adequately compensate for the loss.

Commissioner Lennox stated he relies on expert's facts and opinions. Kohl said with the proposed mitigation there would still be a great impact to the area surrounding the driveway and home site.

Judge Ericksen moved to overturn the Planning Commission decision to overturn the decision of the Planning Director, and to approve the proposed replacement dwelling and detached garage site location as originally approved by the Planning Director, based on the record and the findings of fact and conclusions as presented by staff and reviewed by the Court; including the clarification of the definition of road, private road, and the line of demarcation between a driveway and road; and, including a determination that the proposed mitigation is inadequate to compensate for the potential disturbance to wildlife in the Big Game Winter Range, including the loss of forage and tree cover. Commissioner Lennox seconded the motion; it was then passed unanimously.

Judge Ericksen stated the mitigation provisions needed to be revisited by wildlife personnel and they should be clarified.

At 12:21 p.m. the Public Hearing adjourned.

The Court signed:

- Order in the matter of the Wasco County Court review of the Planning Commission decision to overturn a decision of the Planning Director to approve an alternate location and not the applicant's requested location for a replacement

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dwelling detached garage in the F-2/EPD-8 Forest/Sensitive Wildlife Habitat
Overlay Zone (Big Game Winter Range). File PLAAPL-09-06-0002
(FFD-06-101).

The Court adjourned.

WASCO COUNTY COURT



Dan Ericksen, County Judge



Bill Lennox, County Commissioner

Presentation Word Document for Walker – Lilly appeal hearing by the County Court on August 6, 2009:

Introduction,

Good Morning, My name is Gary Nychyk, I am the Senior Planner for the Wasco County Planning Department.

The Wasco County Court has requested to hear a Decision made by the Wasco County Planning Commission on an appeal of a request for a replacement dwelling in the F-2 (forest) zone.

This process was initiated on March 13, 2006 with the submittal of an application for a replacement dwelling in the Forest Zone. The application was deemed complete on March 26, 2009 and a Staff Report conditionally approving an amended homesite location within 300 feet of Wilson Road was issued on May 28, 2009. The Staff Decision was appealed on June 9, 2009, and the first evidentiary hearing was held before the Wasco County Planning Commission on July 7, 2009.

The Planning Commission voted 4 – 2 to overturn the Planning Department's Decision, and approve the requested replacement dwelling location sited approximately 850 feet from Wilson Road.

The County Court requested to hear the Decision of the Planning Commission on its own motion on July 15, 2009, eight days after the Planning Commission Hearing.

The full staff report was made available to the public on July 28th, which is at least seven days prior to the hearing.

Notice of the County Court Hearing was provided on July 24, 2009, and scheduled for August 5, 2009, when it was continued to today.

The subject parcel is located south of Wilson Road, approximately ½ mile east of its intersection with Huskey Road, approximately 3½ miles southwest of Mosier, Oregon, and is described as Township 2 North, Range 11 East, Section 22, Tax lot 1000.

Criteria: The criteria used to evaluate this request include:

LUDO Provisions

Chapter 1 – Introductory Provisions

Section 1.090 (Definitions)

Chapter 2 – Development Approval Procedures

Section 2.170 (Review of a Decision of the Planning Commission).

Section 2.180 (Review by the County Court)

Section 2.190 (General Conduct of all Hearings)

Chapter 3 – Basic Provisions

Section 3.120 (F-2 – Forest Zone)

Section 3.920 (Division 8 – Sensitive Wildlife Habitat Overlay)

Chapter 21 – Land Division

Section 21.030 (Basic Provisions and Design Standards)

Section 21.300 (Private Road Approval and Recommendation to the Court on Street Dedications)

Section 21.420 (Private Roads)

Section 21.460 (Penalty and Enforcement on Violations)

Findings addressing LUDO provisions begin on page PC-11.

The primary issues and concerns staff have regarding the Planning Commission Decision are:

- Planning Commission Finding that the applicant's amended homesite is in Good Proximity to Public Roads
 - Planning Commission Findings that if a Driveway meets Private Road Design Standards, Then it is a Private Road
 - Planning Commission Conditions that the driveway shall meet Private Road Design Standards
 - Planning Commission Finding that the applicant's amended homesite is consistent with LUDO Section 3.920.F.2.a; and
 - The applicant's definition of "Private Roads", which excluded certain provisions of Chapter 21
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Section 1.090 defines a Private Road as A road which is not public, but which intersects with an existing public road including but not limited to :

- Roads designed primarily for resource use and under the jurisdiction of Bureau of Land Management, US Forest Service, or Oregon State Forestry Department;
- Gateway roads; and
- Statutory ways of necessity

Lets look at these individually:

The applicant's driveway is not designed primarily for resource use **AND** under the jurisdiction of any agency. An agency would need to have some sort of approval from the property owner to access this site, maybe in the form of an easement. Therefore, the subject driveway doesn't meet the initial criteria.

Chapter 21, Section 21.030.G.2 clearly indicates that a statutory way of necessity or gateway road can only be approved by order of the County Court, I'll show you this text from the LUDO in just a moment. Therefore, staff finds that the subject driveway is not a Gateway Road, or a Statutory way of necessity.

Actually, nowhere in this definition does it explicitly state that Driveways or accessways are Private Roads. Under the Appellant's argument, driveways, (of which there are over 12,000 of them in Wasco County) must therefore fall into the "including but not limited to" portion of this regulation.

With more driveways in the County than Public Roads, Private Roads, statutory ways of necessity, and gateway roads combined, I have to ask why something so prolific, would be excluded from the explicit definition of Private Road, and could only be implied through the "including but not limited to" portion of the regulation.

Maybe "including but not limited to" does not necessarily include everything.

To answer this question, Staff researched other portions of the LUDO. Specifically, Chapters 3, and 21.

It may be asked how staff can include criteria from Chapter 21, when no land division is requested.

The answer is actually pretty simple: We only require the creation of a Private Road during land divisions. Additionally, if a property owner requests to create a Private Road, they too must go through the process set out in Chapter 21.

Now we move into Chapter three of the ordinance, where we find a difference in opinion between Planning Staff and the Planning Commission is the proximity to public roads.

Section 3.120.J.4 indicates that keeping new development close to **Public Roads** is generally preferable and may be required.

This regulation really seems to cooperate well with a regulation pertaining specifically to the Sensitive Wildlife Habitat Overlay

which indicates that where a conflict between regulations occurs, the provisions of the Sensitive Wildlife Habitat Overlay shall govern.

The Planning Commission found that

"The owner's proposed home site is sited 800' from the public road. When improvements are made to the private road serving the proposed development, it will meet Private Road standards and will have good access to Wilson Road."

With the information presented at the Planning Commission hearing, Staff still cannot find that the applicant's proposed replacement dwelling is sited in good proximity to public roads.

One other point needs to be made here. The Planning Commission Finding indicates that once improvements are made to the access drive, then it *will* meet Private Road Standards. This is very important to remember, because subsequent sections of the LUDO require that the Private Road had to exist prior to October 22, 1997.

So, now we move in to the Fire Safety Standards found in in the Forest Zone (chapter 3) of the ordinance. Here, we find that "All dwellings, and other structures shall institute the following safety measures for protection of the development and surrounding forest areas: As required, Staff did evaluate the proposal in accordance with these regulations.

You will see that Access drives (driveways) get their own special section here. There are several criteria listed that the access drive or driveway must meet. BUT, clearly different criteria are included for Public Roads and Private Roads.

If all driveways, trails, etcetera that intersect with a Public Road are indeed Private Roads, then there would not be a distinction between Access Drives on the one hand, and Public Roads and Private Roads on the other.

This also brings up another point of disagreement with the Planning Commission Report, where the Commission required the applicant to meet Private Road Design Standards. Wasco County Planning Staff has not typically required applicants to meet private road standards without 1) a land division, and 2) going through the process outlined in Chapter 21.

Section 3.920... This section of the LUDO is really the crux of the matter.

- Planning Staff has and continues to interpret that when this provision speaks of Private Roads, it refers to the very specific roads as defined in Chapter 21. In practice, these are roads that are being traveled by more than just one home owner.
- Maybe they are resource roads that access other farm or forest properties.
- Maybe they grant access to resource areas for BLM, US Forest Service, or other agencies.
- But the subject driveway, starts and ends on the subject property.
- There is no easement to other property owners, and there is no easement to an agency.
- There doesn't need to be an easement, because this driveway only provides access to the property for the owner.

- I brought this up a little earlier, and I want to address it again. Planning Staff has some trouble with the Planning Commission Finding that states "When improvements are made to the private road serving the proposed development, it **will** meet Private Road standards and will have good access to Wilson Road."
 - This section of the LUDO does not give any provisions to New Private Roads. Only to those that existed prior to October 22, 1997. Therefore, unless the access drive in question met private roads standards since this October of 1997 date, it still does not comply Section 3.920.
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- Therefore, Staff made the finding that the proposed resource dwelling has to be located within 300 feet of Wilson Road, a public road, not 850 feet from the public road as proposed.
 - Utilizing a driveway (or Private Road as the applicant has argued) to access a new dwelling 850 feet from actively utilized roads extends the regular occurring impacts deeper into the Sensitive Wildlife Habitat Overlay by creating new Average Daily Trips on a regular, and recurring basis.
 -)
 - Exceptions to requiring the new dwelling to be located within 300 feet of a public road or private road are available if the applicant can show that habitat values are offered equal or greater protection through a different development pattern or the siting within 300 feet of such roads or easements would force the dwelling to be located on irrigated land.
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 - The applicant offered that even though he did not need to show that habitat values are afforded equal or greater protection through a different development pattern, he would include the construction of a pond across a seasonal creek to provide a year-round water source for deer, elk, and other big game. The applicant also indicated that a well would be drilled to ensure water was in the pond at all times during the year.
 - Planning staff finds that if a new dwelling is to be sited more than 300 feet from Wilson Road, then mitigation **will** be necessary.
 - After speaking with ODFW Staff, it is Planning Staff's understanding that requiring new development to be located within 300 feet of actively used roads concentrates impacts that could affect movement and migration routes of big game toward areas that have already been impacted. It is these movement patterns that we are protecting.
 - - Planning Staff and ODFW staff have genuine concerns that the current, and more importantly, future owners may not be able to maintain a year-round water source.
 - We cannot guarantee that the seasonal creek will keep the pond filled. Comments from the Wasco County Water Master indicate that we cannot guarantee a water right to fill the pond will be available. We cannot guarantee that if the water right is granted, it will not be suspended during future droughts. We cannot guarantee that the pond will be maintained in perpetuity, and we cannot guarantee that the owner will continue to fill the pond.
 - -Finally, even if the pond does function as advertized into the future, we cannot guarantee that the regular and recurring use of the driveway accessing the new dwelling will not negatively affect the movement and migration routs of Deer, Elk, and other big game species.

- With this in mind, Planning staff find that the proposed mitigation does not provide equal or greater protection
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- This aerial photograph of the subject property shows the applicant's proposed, and the staff amended building locations. You can see the driveway here.
 - The applicant's proposed building location is within an area that is characterized by varying densities of Oak Woodlands, whereas Staff's proposed building envelope is located within a stand of fir trees.
 - Staff researched The Oregon Conservation Strategy, published by the Oregon Dept. of Fish & Wildlife, in February, 2006 for further information. This document provides a blueprint and action plan for the long-term conservation of Oregon's native fish and wildlife and their habitats through a non-regulatory, statewide approach to conservation. The Oregon Conservation Strategy, Page 183 (Conservation Opportunity Area Profiles), EC-2, Wasco Oaks, identifies the key habitat in the area containing the subject parcel as **Oak Woodlands**. Recommended Conservation Actions in the Wasco Oaks include limiting development in oak habitats and maintaining and restoring oak woodlands. Staff drew the approximate boundary identifying oak woodlands on this aerial photograph. According to Keith Kohl, Wildlife Biologist for the local ODFW office, the area containing the oak woodlands contains sparser vegetation. This area, along with the heavily wooded fringe around the area, should be protected for wildlife habitat. In the Big Game Winter Range Area, the goal is to create the least impact for deer and elk. Elk prefer solitude and will move to avoid disturbances. Staff's proposed location leaves a vegetative buffer – trees – between all development and Oak Woodlands wildlife habitat. Staff finds that this location will provide less disruption to the movement patterns of big game in the area during the winter.
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- Now, we will move into Chapter 21... Section 21.030.G allows access to a parcel in a few ways.
 - Number one is: The unit of land abuts on the street.
 - Typically, this is where the Planning Department stops. Because the unit of land in most cases (including this one) abuts the street (Wilson Road in this case).
 - It should be noted that if all driveways are Private Roads, then there is no basis or need for this criteria because all developments would be accessed by their own, individual private roads.)
 - I brought this second criteria in for a couple of reasons. One is to express what the Planning Department considers a Private Road:
 - "an express grant or reservation of an easement in a document recorded with the County Clerk."
 - Planning Staff has not found any reference to an easement of this nature, and the applicant has not provided such information either.

- Secondly, I would like to reinforce and reference what I discussed earlier regarding a statutory way of necessity or a gateway road. You can see here that both of these Private Road types require an Order by the County Court. No Order has been provided by the applicant, or found by staff.
 - Going back to the Sensitive Wildlife Habitat Overlay, Staff finds that **if the private road did not** meet this type of legal access prior to October 22, 1997, then we cannot consider it a Private Road, and therefore, we cannot support the applicant's
 - proposed location.
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- This section sets forth the **process** by which an access drive must go through to become a private road.
 - It states that a person desiring to create a private road **SHALL** make written application to the Planning Director.
 - Subsection A requires an application for a tentative plan , and
 - Subsection B sets forth the information required in the Tentative Plan.
 - No application for a Private road was received.
 - Subsection E states that the County **Roadmaster** shall determine if the private road meets improvement standards and shall submit his findings as a written recommendation to the approving authority.
 - Then the approving authority shall approve a private road if it finds that the private road meets the basic provisions and design standards of Section 21.030.
 - This regulation does not allow for the Planning Commission to determine if an access drive is a Private Road without an application and the Roadmaster's Determination. Furthermore, the approving authority can only approve the Private Road **if it finds that the private road meets the basic provisions.** Meets, as in currently meets, today.
 - It is the opinion of Planning Staff that the Planning Commission does not have the authority to accept a Private Road without an Application for a Tentative Plan, or without meeting Private Road Standards prior to acceptance.
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- So we have defined the process of how a private road comes into being, now lets discuss the road itself.
- Section 21.420 ...entitled "Private Roads" ... states that Private Roads **shall** conform to the requirements outlined in Table 2 of this Chapter.

- Table 2 includes the requirements of being maintained by the property owners, having a road improvement standard with a minimum of four inches of Base Rock, a minimum access **easement width of 30 feet**, and a 12-foot travel surface.
 - As I previously stated, there is no access easement that Planning Staff has found, and there is no information provided indicating that the current access drive meets the other design standards.
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 - Other design criteria include a finished top surface, all weather surface requirements, turnouts, General and Specific Considerations, signage, and others.
 - This access drive does not meet any of these criteria.
 - Therefore, Staff can only conclude that it **IS NOT** a private road.
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Finally, we have to look at the effect of the Planning Commission's Decision

Section 21.460 explicitly sets forth enforcement procedures for violations of the ordinance.

() If all driveways and paths are Private Roads, then the County will need to look at pursuing some violations.

() This is an aerial photograph of the area around the subject property. You will notice that there are a few "Private Driveways" denoted in yellow, but you will notice that there are no "Private Roads". You will also find several access drives and pathways that are also **not** denoted as Private Roads.

Are these to be considered violations? -No... There is no reason to require every new development, and every new partition in the county that results in a new access drive or driveway, going through the process set forth in Section 21.300 because the County approves access to its road through the Road Approach Permits issued by the Public Works Department for new driveways.

() On a larger scale, we can look at this map of addresses in Wasco County. There are approximately 399 Public and Private Roads. There are about 12,000 addresses. If each driveway is a private road, then each of these addresses needs its own Private Road. Each property owner would need to go through the process of developing their own private road, or they could face enforcement actions.

This is not what the Planning Department wants. More importantly... it is not necessary, because driveways, access drives, path ways, hunting trails, etc. **are not private roads** as defined in the LUDO.

To recap on the Primary Issues and Concerns expressed earlier:

The Planning Commission Found that the applicant's amended homesite is in Good Proximity to Public Roads.

Staff maintains that 800' from a Public Road is not necessarily in Good Proximity to Public Roads.

The Planning Commission found that if a Driveway meets Private Road Design Standards, Then it is a Private Road.

Staff maintains that the Planning Commission does not have the Authority to designate Private Roads without an appropriate application. Staff maintains that the current access drive does not currently meet Private Road Standards. Staff maintains that if the subject access drive was made a Private Road today, it still would not meet the pre-October 22, 1997 deadline.

The Planning Commission Conditioned that the driveway shall meet Private Road Design Standards

Staff maintains that access drives and driveways do not need to meet Private Road Standards. They need to obtain Road Approach Permits.

The Planning Commission Found that the applicant's amended homesite is consistent with LUDO Section 3.920.F.2.a

Staff maintains that driveways and access drives are not Private Roads, and therefore, the applicant's proposed home location does not meet the maximum setback of 300'.

Finally, the applicant indicated that the definition of Private Road in Chapter 1 is all inclusive, and includes driveways and accessways in the "included but not limited to" portion of the regulation.

Staff maintains that "including but not limited to" does not necessarily mean everything else. The definition **does not** explicitly include driveways or accessways as Private Roads. Through **Wasco County** Planning Staff's interpretation and application of **Wasco County's** Land Use and Development Ordinance, we have regularly found that driveways are indeed not Private Roads. Otherwise, we would have been requiring Applications for Tentative Plans, Private Road easements, and Private Road design standards on nearly every Land Use Decision we have made, instead of issuing Road Approach Permits.

This is not just an oversight. This is Planning Staff implementing the Ordinance that we are required to implement.

After reviewing the **entire** ordinance, Staff maintains that driveways and accessways are **not** Private Roads until they meet the requirements of Chapter 21. Therefore, Section 3.920 requires that the replacement dwelling is located within 300 feet of Wilson Road.

I have to apologize for hopping around the entire Ordinance the way I did.

BUT, that is what we have to work with. The entire ordinance.

The Chapter 1 definition of Private Road may indeed be vague. If that were the only location in the LUDO where Private Roads were defined and described, then yes... there would be difficulty in interpreting driveways and pathways as anything besides Private Roads.

However, there are so many other sources that staff must consider when speaking of Driveways verses Private Roads.

- There are Fire Safety Standards that clearly set forth different requirements for Access Drives and Driveways compared to Public Roads and Private Roads
- There is a specific process that requires a tentative plan, and preliminary approval by the RoadMaster before the Planning Commission or Court can hear a request for a Private Road.
- There are specific Design and Construction Requirements that pertain specifically to Private Roads.
- In short, Private roads have very specific design and structural requirements, they have a specified **minimum** easement width of 30 feet. They have a specified process for being created.

None of these criteria have been met.

Therefore, Staff can only find that the driveway is not a Private Road.

The County Court has five options:

Option one is to uphold the decision of the Wasco County Planning Commission to overturn the Planning Department's Decision with the Findings, Conclusions, and Conditions found in the Planning Commission Report. This will allow the applicant to construct the dwelling approximately 800 feet from Wilson Road as proposed subject to conditions.

Option two is to uphold the Planning Commission's decision to overturn the Planning Department's Decision with amended findings, conclusions, and conditions.

Option three is to overturn the Planning Commission Decision and adopt the findings, conclusions, and conditions found in the Planning Department's Amended Staff Report. This will approve the replacement dwelling with conditions in the Planning Staff's proposed location within 300 feet of Wilson Road.

Option four is to overturn the Planning Commission Decision and adopt new findings, conclusions, and conditions.

Option five is to deny the requested replacement dwelling with amended findings, conclusions, and conditions.

Staff believes that the record contains sufficient information to fully review the request, and

Staff recommends Option three, to overturn the Planning Commission Decision and adopt the findings, conclusions, and conditions found in the Planning Department's Decision.

This concludes my presentation, and I am open for any questions.