

WASCO COUNTY PLANNING COMMISSION

August 2, 2011

Meeting begins at 3:00p.m.

**Columbia Gorge Discovery Center
Boardroom**

**5000 Discovery Drive
The Dalles, OR 97058**

I. CALL TO ORDER

II. ROLL CALL

COMMISSIONERS PRESENT

Don Hoffman

Vicki Ashley

Ron Archer

Jill Amery

Chip Wood

COMMISSIONERS ABSENT

Russ Hargrave

Mike Omeg

STAFF PRESENT

John Roberts, Planning Director

Dawn Baird, Associate Planner

Brenda Jenkins, Planning Coordinator

III. PUBLIC COMMENT: Maximum 15 minutes, limited to items not being heard or discussed elsewhere on the agenda.

None

**IV. APPROVAL OF PAST MINUTES-
June 7, 2011**

Commissioner Wood moved to approve the minutes as submitted.

Commissioner Amery seconded

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was approved 4 to 0, 2 absent (Commissioners Hargrave and Omeg), and 1 abstain (Vice Chair Ashley). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes

Vice-Chair Ashley – yes

Commissioner Hargrave – yes

Commissioner Wood – yes

Commissioner Omeg – yes

Commissioner Archer – yes

Commissioner Amery – yes

July 5, 2011

Commissioner Archer moved to approve the minutes as submitted.

Commissioner Amery seconded

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was approved 4 to 0, 2 absent (Commissioners Hargrave and Omeg), and 1 abstain (Vice Chair Ashley). A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – yes
Vice-Chair Ashley – abstain
Commissioner Hargrave – absent
Commissioner Wood – yes
Commissioner Omeg – absent
Commissioner Archer – yes
Commissioner Amery – yes

- V. QUASIJUDICIAL HEARING: File # PLAAPL-10-12-0001. Appeal by owners Curt and Anita Ensley to appeal the Planning Director's decision to deny a request for a Conditional Use Permit/Subject to Standards Review to convert an existing unlawfully placed dwelling into a permanent facility for the primary processing of forest products and permanent logging equipment repair and storage, and approve a temporary facility with conditions. The subject property is located on an access road located approximately 1.4 mile west of Ketchum Road, approximately 2.3 miles south of Vensel Rd./Chenowith Creek Rd./Ketchum Rd., approximately 8 miles southwest of The Dalles, Oregon. Review Authority: Chapter 2, Section 2.060.B.13 of the Wasco County Land Use and Development Ordinance (LUDO).

Chair Hoffman opened the hearing as follows:

The procedure for today's hearing is:

- a. Establishment of Party Status
- b. Reading of the Rules of Evidence
- c. Disclosure of Ex Parte Contact
- d. Planning Department Report
- e. Applicant's testimony
- f. Those who wish to speak in favor of the proposal
- g. Those who wish to speak in opposition of the proposal
- h. Applicant's rebuttal
- i. (Staff clarification if necessary?)
- j. Close the hearing for questions, deliberation, and the decision

Party Recognition

Anyone can speak for or against the proposal. However, only those who have party status will be able to appeal a decision reached by this Commission.

A party is defined in Section 1.090 as

- a. The applicant and all owners or contract purchasers of record, as shown in the files of the Wasco County Assessor's Office, of the property which is the subject of the application.
- b. All property owners of record, as provided in (a) above, within the notification area, as described in section 2.080 A.2., of the property which is the subject of the application.
- c. A Citizen Advisory Group pursuant to the Citizen Involvement Program approved pursuant to O.R.S. 197.160.
- d. Any affected unit of local government or public district or state or federal agency.
- e. Any other person, or his representative, who is specifically, personally or adversely affected in the subject matter, as determined by the Approving Authority. (Revised 1/92)

The Rules of Evidence are as follows:

- a. No person shall present irrelevant, immaterial, or unduly repetitious testimony or evidence.

- b. Evidence received shall be of a quality that reasonable persons rely upon in the conduct of their daily affairs.
- c. Testimony and evidence must be directed toward the criteria applicable to the subject hearing.
- d. Failure to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and parties an opportunity to respond to the issue precludes further appeal based on that issue.
- e. Failure to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow Wasco County to respond to the issue precludes an action for damages in circuit court.
- f. Any party of record may request that the record remain open for at least seven (7) days prior to the conclusion of the initial evidentiary hearing.

Disclosure of Interest of Ex Parte Contact:

- a. Does any Planning Commission member wish to disqualify themselves for any personal or financial interest in this matter?
None.
- b. Does any Planning Commission member wish to report any significant ex parte or pre-hearing contacts?
None.
- c. Does any member of the audience wish to challenge the right of any Planning Commission to hear this matter?
None.
- d. Is there any member of the audience who wishes to question the jurisdiction of this body to act on behalf of Wasco County in this matter?
None.

Chair Hoffman called for the staff report.

John Roberts, Wasco County Planning Director

Request: As the Chairman indicated, today we will be discussing an Appeal of the Planning Director's decision to deny a request to convert an existing unlawfully placed dwelling into a permanent facility for the primary processing of forest products, and approve the request as a temporary facility for a period of two years.

Location: The subject property is located on an access road located approximately 1.4 mile west of Ketchum Road, approximately 2.3 miles south of Vensel Rd./Chenowith Creek Rd./Ketchum Rd., approximately 8 miles southwest of The Dalles, Oregon; also described as Township 1 North, Range 11 East Willamette Meridian, Section 13, Tax Lots 100 and 800. A vicinity map showing the property location is shown on Page P5.

Staff Recommendation: The full Staff Recommendation was mailed in the Planning Commission's agenda packets. It was available for review at the counter one week prior to this hearing, and it is considered a part of the record.

Why the Request is Before the Planning Commission:

Chapter 2, Section 2.060.B.13. requires the Planning Commission to hear appeals of the Planning Director pursuant to Section 2.060.A.1., Conditional Use review and make a decision.

Stage in the Process: A decision for the Conditional Use Permit was issued on December 15, 2010, and an appeal of that decision was submitted on December 21, 2010. Two requests were made by the property owners to reschedule the date of the hearing, and ultimately it was scheduled for a public hearing today, August 2, 2011. All required public notice has been given. The Staff Recommendation, with findings, conditions and conclusions, was issued on July 25, 2011. The Staff Recommendation and Summary were

provided to the Planning Commission. If the Planning Commission feels they have all the necessary information to make a decision on this matter, they will vote to do so today.

Criteria: The criteria used to evaluate this request include:

WASCO COUNTY LAND USE & DEVELOPMENT ORDINANCE (LUDO) -
APPLICABLE STANDARDS

1. Chapter 2 – Development Approval Procedures
 - Section 2.060.B.13. (Appeals of Decision of Director made pursuant to Section 2.060.A.1.)
 - Section 2.110.D (Conditions of Approval)
 - Section 2.160 (Appeal from Decision of the Director)

2. Chapter 3 – Basic Provisions
 - a. Section 3.120 - Forest Zone
 - Section 3.120C.2 (Temporary on-site structures which are auxiliary to and used during the term of a particular forest operation)
 - Section 3.120.D.1. (Conditional Uses – Permanent facility for the primary Processing of forest products and permanent logging equipment repair and storage)
 - Section 3.120.F. (Conditional Use Approval Standards)
 - Section 3.120.I. (General Development Standards)
 - Section 3.120.J. (Siting Requirements for Compatibility of New Dwellings and Accessory Structures)

 - b. Section 3.920 - Division 8 - Sensitive Wildlife Habitat Overlay

3. Chapter 5 – Conditional Use Review
 - Section 5.020 (Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used)
 - Section 5.030 (Conditions)

4. Chapter 10 – Fire Safety Standards
 - Section 10.110 (Siting Standards – Locating Structures)
 - Section 10.120 (Defensible Space – Clearing and Maintaining a Fire Fuel Break)
 - Section 10.130 (Construction Standards for Dwellings and Structures – Decreasing the Ignition Risks by Planning for a More Fire-Safe Structure)
 - Section 10.140 (Access Standards – Providing Safe Access to and Escape From Your Home)
 - Section 10.150 (Fire Protection or On-site Water Required – Ensuring Dwellings Have Some Fire Protection Available Through Manned or Unmanned Response)

Wasco County Comprehensive Plan
Goal #4 – Forest Lands
Chapter 15, Goals and Policies, Section D., Goal 4 – Forest Lands,
Policies 3 and 4

Dawn Baird, Wasco County Associate Planner

2. Findings of Fact:

- a. Findings of Fact in the Staff Recommendation support upholding the Planning Director's denial and upholding the decision to deny a request to convert an existing unlawfully placed dwelling into a permanent facility for the primary processing of forest products, due to inconsistencies with Statewide Planning Goal 4 – Forest Lands, the Wasco County Comprehensive Plan, Chapter 15, Goals and Policies, Section D., Goal 4 – Forest Lands, and Chapter 2 – Physical Characteristics, K., Forest Resources, and the Wasco County Land Use & Development Ordinance, Chapter 3 – Basic Provisions, F-2, Forest zone, Sections 3.120.D.1., 3.120.F.1., and Chapter 5, Section 5.020.A.1.

b. Primary Issues:

- 1) Wild fire concerns: David Jacobs, Unit Forester, Central Oregon Division, The Dalles Unit, Oregon Dept. of Forestry submitted written comments dated October 21, 2010. He states that ODF has a responsibility to its landowners to protect their forest lands from wildfire, and to maintain the forest resource base in order to provide a steady source of forest products to the public. Since ODF does not provide structural protection it is incumbent on the local fire district (if one exists) to provide that protection, however, ODF is still responsible for the protection of the forest lands surrounding those structures. Staff notes that this property is not in a structural fire district.

ODF has concerns with any new dwellings or structures in the forest zone. People and their activities start fires and regardless of the amount of prevention and good intentions, the more people and structures in the forest zone the harder it is for ODF to suppress fires.

Because of the history of people and their activities starting fires, staff finds that this is a statistic that occurs not merely by chance, and the approval of the building will significantly increase fire suppression costs and risks to fire suppression personnel.

2) Permanent v. Temporary Facility:

According to the owners, the existing uses on the land include:

- Milling of diseased and windfallen pine trees and other standing trees
- Reforestation
- Harvesting of fire damaged oak firewood for personal use and sale
- Clearing slash
- Recreation
- Wildlife habitation by the creation of a pond pending inspection of the area by the Soil & Conservation District and the Watermaster

Staff appreciates the efforts of the property owners and wishes that all owners were as conscientious about fire concerns, wildlife, and working towards making the property as healthy as it can be. However, state law does not permit buildings in conjunction with any of these uses except processing of the lumber.

The existing building was constructed as a 2-story recreational cabin. It is larger than necessary for the proposed use and has a lot of empty space in it.

As discussed in the staff recommendation, the amount of timber on the property to be harvested could be done in a single season. ODF does not support a permanent facility. Staff approved a temporary facility for a period of 2 years, which should be sufficient time to harvest the timber on the property. The owners are choosing to harvest/process trees for a maximum

of 4-6 days per month. Just because they choose to harvest their timber slowly does not provide justification for a permanent facility.

- c. The State does not provide a definition of a permanent processing facility or a temporary processing facility. If the Planning Commission votes to overturn the decision of the Director and approve a permanent facility, please provide new findings with an interpretation of "permanent" processing facility and "temporary" processing facility.
- d. Findings of Fact in the Staff Recommendation support approval of a temporary facility for two years for the primary processing of forest products, with proposed conditions of approval. (Pages P-2/3).

A new bill defining agricultural buildings in forest zones may be introduced and passed in 2012 allowing the use of buildings for forest use. If passed, the new law may allow the retention of the existing buildings. In the interim, a temporary facility will meet the needs of the property owner. If the bill or law was delayed in some way, the County would consider renewing the temporary processing facility.

- e. If the request is approved for a permanent facility, in addition to the conditions proposed in the Summary, staff has the following additional recommended condition:

Fill out a Restrictive Covenant and file it with the Wasco County Clerk. This covenant shall state the approved use of the building. By recording the Restrictive Covenant, the property agree, and bind future property owners, to use the building for its intended use, and agree that if any other use of the building is proposed, they will notify the Planning Department.

The options of the Planning Commission are to:

- a. Uphold the decision of the Director, and deny the request to convert an existing unlawfully placed dwelling into a permanent facility for the primary processing of forest products, and approve the request as a temporary facility for a period of two years, with the findings, conclusions and conditions recommended by the Planning Department; or
- b. Uphold the decision of the Planning Director to deny the permanent facility, but and approve a temporary facility for two years with amended findings, conclusions and conditions provided by the Planning Commission; or
- c. Overturn the decision of the Director, and approve the request to convert an existing unlawfully placed dwelling into a permanent facility for the primary processing of forest products, with amended findings and conclusions, and conditions proposed by staff or new conditions identified by the Planning Commission; or
- d. If additional information is needed, continue the hearing to a date and time certain to allow the submittal of additional information.

Staff believes that the Planning Commission has sufficient information to make a decision on this request, and we recommend Option A. If the Planning Commission decides to amend this condition of approval, please provide the updated wording for the conditions and the findings.

Chair Hoffman called for testimony from the applicant/appellant.

Curt Ensley, Applicant/Appellant – (See record for submitted documents)

Mr. Ensley stated that he believes that the structure in question does not meet the definition of a dwelling, he further stated that the structure is temporary in nature and meets the state statute definition of a temporary structure. He then submitted signed letters of support to the Commission. Mr. Ensley then read prepared comments into the record (see record for copy of comments)

Vice Chair Ashley asked Mr. Ensley if they used mechanical equipment on the property (other than to spray). Mr. Ensley stated that they do not.

Commissioner Wood asked when they registered the tree farm. Mrs. Ensley replied that the tree farm was registered on June 15, 2010.

Chair Hoffman asked for clarification on the commercial aspects of the operation, specifically where the product is sold. Mr. Ensley stated that the product is sold on Craigslist and some firewood.

Chair Hoffman asked if they had employees. Mr. Ensley stated that they did not have employees, however occasionally they bring some people up to the property to assist them. Chair Hoffman asked for clarification on what portions of the decision they were appealing. Mrs. Ensley stated that they were appealing the removal of the road.

Chair Hoffman called for testimony in support of the applicant/appellant
None

Chair Hoffman called for testimony in opposition of the applicant/appellant

Jeremy Thompson, Oregon Department of Fish and Wildlife

Mr. Thompson testified on the impacts to the big game winter range. He also testified on the purpose for the request to remove the road and switching the access point on the property.

Chair Hoffman asked for clarification on whether the relocation of the road was one step to improving habitat, and removing the gravel would be another step. Mr. Thompson stated that yes, relocation would be one step to improving the habitat, but there are concerns that if the gravel remains then the road will still be utilized.

Chair Hoffman called for rebuttal from the applicant/appellant

Curt Ensley, Applicant/Appellant

Mr. Ensley stated that they were willing to close off the road, however he wants to retain it in order to access the well and the trees which are planted along the road. He also stated that it would be detrimental to spend time scraping up the gravel.

Commissioner Amery asked for clarification, asking Mr. Thompson if the road was left and still used, would it make a difference if the gravel was still there. Mr. Thompson stated they were trying to focus the disturbance, he is unsure if there is a benefit to removing the gravel.

Vice Chair Ashley asked Mr. Thompson if the grave could be allowed to recede and revegetate. Mr. Thompson stated that decommissioning it and not using it would probably be fine.

Chair Hoffman called for rebuttal from Staff.
None.

Chair Hoffman closed the hearing for deliberation.

Chair Hoffman asked the Commission felt the operation meets the threshold of commercial processing of forest products.

Commissioner Archer thinks it is a viable forest operation.

Commissioner Wood feels it is hobby timber, not commercial timber. He feels that the structure was an illegal recreational cabin and they are now trying to find a way to correct the illegality of the structure.

Commissioner Archer stated that the Commission needs to separate the fact that the structure was constructed illegally and focus on what the applicants want to do now. Commissioner Amery stated that there is no definition of commercial, however she doesn't believe it is commercial forestry, she feels it is more of a hobby forest and she hesitates to do anything permanent. Vice Chair Ashley agrees that it should be temporary in use. She believes it is a hobby forest rather than a commercial forest operation and she referred to the fact that he sells his product on the internet piece by piece rather than as a commercial timber. Chair Hoffman stated that the Commission could deny the appeal and the applicants would have a 2 year permit with no prejudice against coming back to ask for an extension of the use. He also agrees that the mechanical equipment should be allowed to be stored in a legal structure. He feels the applicants have a commercial forest operation with possibly hobby forest processing.

Chair Hoffman stated that the Commission's choices were to: 1) deny the appeal or 2) uphold the appeal based on the commercial use, and make the use permanent.

Vice Chair Ashley moved to uphold the Director's Decision and deny the appeal, approving a temporary use with the one additional condition recommended by staff; and to remove the condition regarding the road.

Commissioner Wood seconded.

Chair Hoffman called for discussion

None.

Chair Hoffman called for the vote

The motion was approved 3 to 2, 2 absent (Commissioners Hargrave and Omeg. A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hoffman – no

Vice-Chair Ashley – yes

Commissioner Hargrave – absent

Commissioner Wood – yes

Commissioner Omeg – absent

Commissioner Archer – no

Commissioner Amery – yes

VI. FUTURE AGENDA ITEMS:

- September 6, 2011 Eckert - PLASAR-11-06-0011

VII. Other business

Planning Director gave a brief overview of the following items:

- Site visit with the Board of Commissioners conducted by Iberdola to wind energy sites.
- Energy Updates timing – Tentatively could be before the Board of Commissioners sometime in late September or early October.
- Mailing out of the Planning Commission Agenda Packets – An effort was made to mail the early and the department is still open for suggestions on the mail-out procedures can be improved or facilitated.
- Training opportunities – There is a possible upcoming opportunity for training with FEMA in early October, we are still looking for additional opportunities for training of Fire or possibly Visual Subordination.
- It was noted that thank you notes for applicants for Commission vacancies that were interviewed and did not get selected will be sent in the future.
- Joint meeting scheduled with The City of The Dalles regarding the expansion of the City Urban Growth Boundary will be held when a better time is set. Planning director also led a brief discussion on the Expansion of the UGB and the Annexation process.
- Hiring of the new Associate Planner – Joey Shearer will be starting approximately August 16, 2011.
- Discussed how the Director is trying to get out in the community and become more visible and more accessible.

- Strategic Plan for the Planning Office – He explained that the office is looking to improve processes. He explained that the Planning Office hopes to get feedback from the development community, he also asked for feedback from the Planning Commissioners.

VIII. ADJOURNMENT
Adjourned at 4:48 pm

Respectfully submitted,

Donald Hoffman, Chair
Wasco County Planning Commission

John Roberts, Planning Director
Wasco County Planning & Development