

Appeal of Land Use Decision LUD-N-75-24
January 8, 2024
Upper Conference Room, Bartholomew Building
Heppner, Oregon

Present In-Person Chair David Sykes, Commissioner Jeff Wenholz, Commissioner Gus Peterson, Valerie Ballard, Tamra Mabbott; Non-Staff: Mark Patton, Sarah Stauffer Curtiss, Miff Devin, Pete Meenderinck, Tressa Meenderinck, Andrew Martin

Present Via Zoom Stephen Wrechsics, Justin Nelson; Non-staff: Nella Parks, Aaron Palmquist, Michael Campbell, Dan Kearns

Call to Order 1:32 p.m.

Chair Sykes read the following:

Persons who wish to provide testimony may do so orally or in writing. Testimony and evidence must be directed toward the applicable criteria. Failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

Please sign the sheet at the back of the room or make a note in chat (if you are participating via Zoom) if you would like to present testimony. Please speak only when identified by the Chair and begin by giving your name, spelling of your name, and address. If you have exhibits for our consideration, please provide a copy to the Staff.

If you would like to request the Board hold open the record or continue the hearing, you must make that request before the public portion of the hearing is closed.

Commissioner Peterson announced that he consulted with the State Ethics Commission for a potential conflict of interest as his father is a Commissioner with the Port of Morrow (POM). The Ethics Commission advised that it is not a conflict of interest as neither party has potential for financial gain.

Staff Report

Tamra Mabbott, Planning Director

After administrative review conducted by Planning Director, Tamra Mabbott, request for the hearing was filed October 3, with the hearing before the Planning Commission occurring on October 29. The hearing was continued to November 14, when the Planning Commission unanimously approved the application, and adopted findings with conditions of approval. The appeal of the Planning Commission decision was filed on November 29.

While the packet includes the entire record, the Board is presented with two exhibits submitted after the packet was published online: a letter from Sarah Stauffer Curtis, submitted on January 3; and a letter from Drew Martin, submitted January 8.

Commissioner Wenholz motioned to adopt the two documents presented today along with the full record. Commissioner Peterson seconded. Vote: Unanimous approval.

The applicant is requesting wastewater application on the entire 7,300 acre parcel (Farm 6), and notice has been provided to landowners of adjoining properties. The Planning Commission approved the application with the conditional use requirement of a 288 acre buffer to prevent spray drift on neighboring dairy.

Applicant Testimony

Sarah Stauffer Curtiss, Land Use Attorney with Stoel Rives; Mark Patton, POM Chief Resource Officer, Miff Devin, POM Operations Manager

Sarah Stauffer Curtiss, land use attorney with Stoel Rives and representing POM, explained that the appeal focuses on the Planning Commission's decision on a single landowner where the condition prohibits POM from using approximately 288 acres. POM does not believe that County has the authority to impose the buffer under State law and wishes to modify said buffer.

POM is permitted by the Oregon Department of Environmental Quality (DEQ) to accept wastewater from seventeen facilities and specific processes. Wastewater is currently accepted from seventeen facilities, varying from onion and potato wash water, cheese by product and tank wash water, water from steam used to process mint oil, freezer run off, cooling tower wastewater, boiler blowdown, wash water from a natural gas fire power plant, cooling tower wastewater from ethanol plant, and cooling tower blow down from data centers.

Mark Patton, Chief Resource Officer with Port of Morrow, described some of the measures POM has taken to ensure they will not violate any regulations. They began working with DEQ and Oregon Department of Agriculture (ODA) prior to purchasing the property to resolve some pre-existing issues with Farm 6. POM has utilized a team of experts including environmental engineers and hydrologists to conduct a full study of Farm 6. Crews drive around the farm twice daily to ensure everything is operating properly.

Proponent Testimony

Andrew Martin, Intermountain Law PC, representing Meenderinck Dairy; Pete Meenderinck, Tressa Meenderinck

The Meenderinck's dairy operation began when the land now owned by POM was a tree farm and predate development of Farm 6. From the Meenderinck's standpoint, this is not a challenge to the DEQ permit, but there is no part of the permitting process with considerations for land use.

Meenderinck's property is below Farm 6 where without a buffer zone, water from the sprinkler system will get onto Meenderinck's property. According to Mr. Martin, in terms of considerations of appeal, the record is indisputable of the fact the effect the POM water runoff will have on property and an uncontaminated water supply is critical to milk production and the interstate sale of milk.

The dairy houses 80% of its employees and supplies water for cattle, employees, and residents. The Meenderinck's concern is that the smell and taste of water will be unpalatable to not just cattle but will make employees want to move their families off farm due to negative impacts to quality of life.

Commissioner Peterson asked if the sprinkler changes at the end of lines proposed by POM would address the over top drift concerns which Pete Meenderinck said is a good start, but high winds can't be controlled.

Tressa Meenderinck summarized that they do not know the chemical makeup of the wastewater applications nor how the water will affect their cattle. The Meenderincks are not against what POM is doing but trying to be proactive and seeking communication because they do not know how this will affect them.

Directing questioning toward Meenderinck's attorney, Chair Sykes asked if there was case law dictating what a proper response from POM needs to be and if there is a legal definition.

Andrew Martin replied that it was a question best directed to County's legal counsel, and it was a question of reasonableness. In terms of statute, there is no case law defining or answering the question presented.

Aaron Palmquist, City of Irrigon, said from what he understood, County cannot and should not impose additional restrictions. This is a question for Commissioners, staff, and the Planning Commission and if there is precedence for conditions and subsequent conditions. What is the guarantee there will be no blow off with buffers? There is none.

Rebuttal

Sarah Stauffer Curtiss, on behalf of the Applicant, Mark Patton, Miff Devin

POM agrees the buffer is appropriate while unnecessary. However, POM is willing to make the concession and agree to the buffer as shown as black strips around pivots which is a good faith proposal to address concerns. With legislative history and case law research, they feel confident if they take the case to Land Use Board of Appeals.

In regard to proximity to wastewater application locations, POM applies next to two food processing facilities, next to homes, data centers, and farms. While it smells, they have never had an issue with water going onto other properties.

Hearing Closed

3:30 p.m.

Commissioner Wenholz motioned to approve the appeal and affirm the Planning Commission with a modified Condition 5 to reflect the 150 foot buffer offered by POM. Commissioner Peterson seconded. Vote: Unanimous approval.

Adjourned

3:33 p.m.