

**WASCO COUNTY PLANNING COMMISSION**

October 7, 2014

Hearing begins at 3:00 p.m.  
Columbia Gorge Discovery Center  
Lower Level Classroom  
5000 Discovery Drive  
The Dalles, OR 97058

---

**CALL TO ORDER**

**I. ROLL CALL**

**WASCO COUNTY PLANNING COMMISSIONERS PRESENT**

Russell Hargrave  
Chip Wood  
Taner Elliott  
Jill Amery  
Brad DeHart  
Kenneth McBain

**WASCO COUNTY PLANNING COMMISSIONERS ABSENT**

Vicki Ashley  
Andrew Myers  
Jeff Handley

**WASCO COUNTY PLANNING OFFICE STAFF PRESENT**

John Roberts, Planning Director  
Brenda Jenkins, Planning Coordinator

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

**None**

**III. APPROVAL OF PAST MINUTES:  
postponed**

**IV. QUASIJUDICIAL HEARING: File PLAAPL14-08-0002**

**Opening the Hearing:** We will now open the public hearing on agenda item PLAAPL-14-08-0002, an appeal by Tammy & Gerald Tripp, of the Planning Director's decision to approve PLACUP-14-02-0002, a Conditional Use Permit to establish a Farm Ranch R3recreation use to educate people about sustainable ranching, stewardship of open spaces, and organic farming; the use also proposes 10 overnight sleeping units in the conference center, or a mixture of units in the conference center and up to six 20' x 20 x 12' tall self-contained moveable cabins (SCMUs). The number of overnight sleeping units shall not exceed ten.

The property is described as 3S 13E 0, tax lots 2700 and 2800; and 3S 14E 0, tax lot 2300.

The criteria for approval of a land use decision are contained in the Wasco County Land Use and Development Ordinance (LUDO).

The specific criteria applicable to this request are contained in Chapter 2 (Procedures); Chapter 3 (Basic Provisions), Section 3.210 (Exclusive Farm Use zone), Section 3.770, 3.800, 3.910, 3.960 (EPD overlay zones); Chapter 5 (Conditional Use Review), Chapter 10 – Fire Safety Standards, and Chapter 20 – Site Plan Review. The proposed development must comply with applicable provisions contained in the Wasco County Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the LUDO it is considered consistent with the Comprehensive Plan.

**Chair Hargrave** asked if any Commission member wished to disqualify themselves for any personal or financial interest in this matter?

**Brad** stated that he has been involved with the applicant and the project through his employment so he recused himself from the hearing decision.

**Chair Hargrave** asked if any Commission members had visited the site.

**None.**

**Chair Hargrave** asked if any member of the audience wished to challenge the right of any Commission member to hear this matter?

**None.**

**Chair Hargrave** asked if any member of the audience wished to question the jurisdiction of this body to act on behalf of Wasco County in this matter?

**None.**

**Chair Hargrave** called for the staff report.

**Director John Roberts** presented the following staff report:

- 1. Request:** As the Chair indicated, today we will be discussing an appeal by Tammy & Gerald Tripp, to the Planning Director's decision to approve a Conditional Use Permit to establish a Farm Ranch Recreation use to educate people about sustainable ranching, stewardship of open spaces, and organic farming; the use also proposes 10 overnight sleeping units in the conference center, or a mixture of units in the conference center and up to six 20' x 20' x 12' tall self-contained moveable cabins (SCMUs). The number of overnight sleeping units shall not exceed ten.
- 2. Location:** The affected portion of the property is located at the northern terminus of Sherar's Bridge Loop Road, approximately 3/10 mile north of the intersection of Highway 216/Sherar's Bridge Loop Road, approximately 7/10 mile north of the community of Tygh Valley, Oregon; map 3S 13E 0, Tax Lots 2700 & 2800; and 3S 14E 0 2300 (**See page prior to 1-11 for Vicinity Map**).
- 3. 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.
- 4. Why the Request is Before the Planning Commission:**

On July 24, 2014, the Planning Director issued a decision to approve the request of Tygh Ridge Ranch per Chapter 2, Section 2.060.A.1. On August 5, 2014, this decision was appealed by Tammy & Gerald Tripp, adjacent property owners south of Tygh Ridge Ranch. Section 2.060.B.13. of the Wasco County Land Use & Development Ordinance requires the Planning Commission to hear appeals of the Planning Director.
- 5. Stage in the Process:** The appeal was submitted to the Planning Department on August 5<sup>th</sup> 2014, and the request was found to be complete on August 25, 2014, and was scheduled for this public hearing. All required public notice has been given. The Staff Recommendation, with findings, conditions and conclusions, was issued on September 30, 2014. 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**, they will vote to do so today.

6. **Criteria:** The criteria used to evaluate this request include:

**LAND USE & DEVELOPMENT ORDINANCE (LUDO) - APPLICABLE STANDARDS**

**a. Chapter 2 – Development Approval Procedures**

Section 2.060.B.13. (Appeals of a Decision of Director)

**b. Chapter 3 – Basic Provisions**

**1) Section 3.210, A-1, Exclusive Farm Use zone**

Section 3.210.E.9 Uses Subject to Conditional Use  
Section 3.210.F Property Development Standards  
Section 3.210.H Agricultural Protection  
Section 3.210.J.7 Additional Standards – Farm Ranch Recreation

**2) Section 3.700, Environmental Protection Districts**

Section 3.770 Division 4 - Cultural, Historic and Archaeological Overlay  
Section 3.800 Division 5 - Mineral and Aggregate Overlay  
Section 3.910 Division 7 - Natural Areas Overlay  
Section 3.960 Division 12 - Sensitive Bird Site Overlay

**c. Chapter 5 – Conditional Use Review**

Section 5.020 Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used  
Section 5.030 Conditions  
Section 5.040 Revocation of Conditional Use Permit

**d. 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

**e. Chapter 20 – Site Plan Review**

Section 20.020 Approval, Rejection & Modification  
Section 20.030 Contents of the Site Plan  
Section 20.040 Approval Standards  
Section 20.050 Off-Street Parking  
Section 20.055 Bicycle Parking Requirements  
Section 20.070 Off-Street Loading  
Section 20.080 General Provisions – Off-Street Parking & Loading

7. **Findings:** The original appeal form did not include any detailed information. Staff prepared the original September 29, 2014, staff summary, prior to receiving the appellants' September 18<sup>th</sup> comments. These comments are listed and addressed by staff in Attachment G beginning on page 1-38. In summary, they include 6 points:

- a.** The application is incomplete and it should have been rejected.

Staff: The application contained adequate information to make a decision in this matter.

- b. The application does not satisfy the LUDO and Oregon law, specifically LUDO Sections 2.060.C., 3.210.E.9., 3.210.J.7, 5.020, and ORS 215.283.
- c. Applicant has not proven that he has legal access to the property. Unless determined otherwise by a judge, the non-exclusive easement is considered to be legal access to the property.
- d. Concerned about the potential increase in traffic generation and its impact on the road surface. Appellant provided her own ADT estimates. Staff enlisted the assistance of ODOT's District Engineer to review the traffic projections. Appellant needs to explain her credentials regarding traffic projects, and why her numbers are more accurate than listed in the report.
- e. The road is not a 2-lane road. At specific locations, cars cannot pass each other, but most of the road allows 2 lanes of traffic.
- f. Believes the applicants' statements are evasive, unspecific, and misleading. The use of the easement for the FRR threatens to turn a road on private property into a public road. Staff believes that the owner has the right to use this road without restrictions.

The options of the Planning Commission are to:

1. **Uphold the decision of the Planning Director** with the findings and conditions recommended by the Planning Department; or
2. **Uphold the decision of the Planning Director** with amended findings and conditions provided by the Planning Commission; or
3. **Overturn the decision of the Planning Director**, and deny the request with amended findings and conditions provided by the Planning Commission; or
4. 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 Staff recommends Option A.

**Chair Hargrave** called for questions from the Commission.  
**None.**

**Chair Hargrave** called for testimony from applicant.

**Dotty DeVaney, Representative for Applicant**

\*\*\* see attachment A for powerpoint presentation by Dotty DeVaney\*\*\*

**Ms DeVaney** summarized her presentation for the Commission.

**Chair Hargrave** called for additional testimony in support of the Applicant.

**Jim Habberstad, Attorney for the Applicant**

**Mr. Habberstad** stated that he was retained by the Applicant (Tygh Ridge Ranch LLC) in regards to the legal access of the parcel, he contends that the access is legal both by deed and by prescriptive use. He further stated that he has made himself available to the Commission for questions.

**Chair Hargrave** called for questions for Ms. DeVaney and Mr. Habberstad.

**Chair Hargrave** asked who pays for the maintenance of the access road.

**Mr. Habberstad** stated that if the access is challenged they are ready to show that Mr. Davis' father and Mr. Davis have maintained the road with their own equipment. **Chair Hargrave** asked for clarification on how the access will be maintained after the increase of use if the request is approved. **Ms. DeVaney** stated that the applicant would agree to a condition of approval requiring him to maintain the access all the way to Hwy 216.

**Chair Hargrave** called for testimony in support of the Applicant.

**George Marsh, Adjacent Property Owner**

**Mr. Marsh** testified that he was witness to maintenance and grading of the road by Mr. Davis. He further testified that he lives on the next road over from the access road in question.

**Chair Hargrave** called for additional testimony in support of the Applicant.

**None.**

**Chair Hargrave** called for testimony from the Appellant.

**Isa Silver, Attorney for Appellant**

**Ms. Silver** stated that she believed that the applicant's representative did not address the lack of findings in the Director's Decision and Staff Report. She stated that the applicant has the burden of showing they meet every single applicable criteria. She further stated that findings of fact were required for these criteria and if they can't make a finding of fact, then the request must be denied. **Ms. Silver** gave a brief overview of the allowed uses within the Exclusive Farm Use Zone (EFU). She then went on to contend that the proposed use does not meet these allowed uses, she stated that they did not believe there was a major farm use on the property therefore the farm ranch recreation should not be allowed. She further stated that there was no finding that the proposed use is subordinate to the commercial farm use. **Ms. Silver** ascertains that Staff did not provide findings that the request is consistent with this criteria. She also stated that the Appellants believe there was no farm management plan associated with the use.

**Chair Hargrave** called for questions from the Commission.

**Commissioner Elliott** as for clarification on the minimum cow/calf required to be a commercial farm use. **Ms. Silver** stated that it is an interpretation that the Commission will need to make. She stated that there is no minimum amount or profit required, but the Commission will need to make an interpretation on what is a substantial contribution, and will need to make a finding to support that interpretation.

**Chair Hargrave** asked Ms. Silver if she was not considering CRP as a commercial farm use. **Ms. Silver** responded by referencing Wasco County LUDO, Section 1.090 (Definitions) which state that a *Commercial Agricultural Enterprise consists of farm operations that will contribute in a substantial way to the area's existing agricultural economy; and help maintain agricultural processors and established farm markets*. She stated that if the Conservation Program meets that definition then the Commission must make a finding stating that it is consistent.

**Commissioner McBain** stated that his understanding of Ms. Silver's contention is that the 100 cow/calf pair operation does not contribute significantly to the local economy. He then asked if she had information on acceptable feasible stocking rates or grazing land in this part of the State. **Ms. Silver** state that she did not.

**Chair Hargrave** state that the applicant can respond to that in their rebuttal testimony.

**Commissioner Amery** asked how the Appellant accesses their property. **Ms. Tripp** stated that they use the access road and cross over 1 property. **Commissioner Handley** asked for clarification on the number of properties which are served by the approach to Hwy 216. **Ms. Tripp** replied that there were 5 properties for a total of 7 households.

**Chair Hargrave** called for additional testimony in opposition to the request.

**None.**

**Chair Hargrave** called for rebuttal testimony from the applicant.

**Ms. DeVaney** submitted a rebuttal handout (Attachment B) to the Commission. She stated that she would address the same issues that the appellant addressed in their original submittals. She further stated that findings have been made in the staff report to address the issues mentioned by Ms. Smith. **Ms. DeVaney** then referred to the staff report and read the findings aloud to the Commission.

See tape

(left room check tape)

**Commissioner Wood** asked if there were any irrigation on the property. **Mr. Davis** replied that there was a small amount of irrigation. He further explained that the irrigation portion was mainly on the orchard property and not part of the ranch operation.

**Commissioner Wood** asked for the anticipated cost of building the lodge. **Mr. Davis** stated that the plan was to utilize what they currently have as much as possible. He further stated that the initial cost will be with the commercial kitchen. He estimates that cost to be \$60,000 to \$100,000.

**Chair Hargrave** called for additional questions for Ms. DeVaney or Mr. Davis.

**Commissioner Wood** asked how long they have been running cattle on the land. **Mr. Davis** responded that they have had cattle for generations, probably 100 years.

**Chair Hargrave** called for additional rebuttal testimony.

**Chair Hargrave called for additional rebuttal testimony.**

**None.**

**Ms. Silver** requested party status for the Appellant and requested that the hearing remain open for 7 days.

**Chair Hargrave** closed the hearing for deliberation.

\*\*\*Break 5:05, Reconvened 5:10\*\*\*

**The Commission** granted the request to leave the record open for 7 days.

**The Commission** also recognized that the Appellant already has party status.

**Ms. DeVaney** asked if the Applicant would have rebuttal time to address any new information which might come in. **Chair Hargrave** replied that there would be rebuttal time.

**Commissioner Wood** stated that CRP and Cattle Use are both definitely farm uses. He stated that he sees the recreation use currently is subordinate to the farm use, however if prices on cattle drop back to historical levels he questions whether the recreational use would remain subordinate. Closing out CRP – this would reduce income by \$55K +/- . He further stated that he has concerns about some farm use going away and whether the FRR would still be subordinant.

**Chair Hargrave** stated that there were two issues, the first was whether the CRP and Cattle were farm use; the second issue is if it is farm use, would the recreational use be subordinate to the farm use.

**Commissioner Wood** added that he takes issue with whether or not the recreational use would remain subordinate.

**Commissioner Amery** stated that the permit limits the recreational use to 10 units, she sees that as being subordinate.

**Commissioner McBain** asked if it was within the Commission's purview to second guess what might happen in the future as far as the farm use.

**Chair Hargrave** stated that in the past the Commission has not tried to predict the future.

**Commissioner McBain** stated that all the Commission can reasonably do is decide based on facts today.

**Commissioner Elliott** stated that the property will remain in CRP for the next decade.

**Commissioner Wood** stated that the easement is a non-exclusive easement which is open so anything can go up and down the road (according to staff). He further stated that the definition of a non-exclusive easement possibly was different in 1922.

**Chair Hargrave** stated that it was hard for the Commission to make a decision on the easement – only a court can make the decision. This is not the Commission's decision. Staff has done their due diligence in researching this. It could be taken to a court for decision.

**Chair Hargrave** polled the Commission on whether they see the CRP and Cattle operation as a farm use:

**Chair Hargrave** yes it's a farm use

**Commissioner Wood** agrees it is a farm use

**Commissioner McBain** agrees it is a farm use

**Commissioner Elliott** agrees it is a farm use

**Commissioner DeHart** agrees it is a farm use

**Commissioner Amery** agrees it is a farm use

**Chair Hargrave** then directed the Commission to determine if the proposed use would be subordinate to the farm use.

**Commissioner Wood** stated that he believes it is subordinate now, but he does not believe it will stay subordinate.

**Chair Hargrave** stated that with only 10 units he doesn't see how the proposed use would surpass the farm use as a primary use. Ten units would not take over the ranch. Can't predict cow prices in the future so it's hard to address the money. Look at the footprint – over 3,000 acres – 10 units – hard to imagine the 10 units will dominate the farm.

**Commissioner McBain** stated that he agrees with Chair Hargrave.

**Commissioner Elliott** also agrees with Chair Hargrave

**Commissioner Wood** stated that he disagrees. If approve this use and it is created, it's harder for Department to make sure it stays within the guidelines.

**Chair Hargrave** stated that the approval has conditions that requires it to stay consistent with what was approved.

**Commissioner Amery** asked if the Commission should add conditions on the road maintenance.

**Chair Hargrave** recommended a condition requiring Tygh Ridge Ranch maintain the road all the way to Hwy 216.

**Commissioner DeHart** questioned whether we had the authority to make a condition requiring someone other than the land owner to maintain the road.

**Commissioner McBain** questioned how the level of maintenance would be measured.

**Director Roberts** read language for the new condition. "Maintain the driveway from Highway 216 to the guest parking area with enough gravel on the running surface to cover the dirt base and minimize the amount of airborne dust."

**Commissioner McBain** moved to accept the decision by the Planning Director and deny the appeal, with the addition of the road condition and rewriting of the findings as discussed by the Commission.

**Commissioner Elliott** seconded.

**Chair Hargrave** called for discussion

**Commissioner Wood** stated that he feels like the Commission isn't protecting the Tripps rights to the land they purchased.

**Commissioner McBain** stated that he is sympathetic with the Tripps, however the language of the easement is clear in it's ambiguity, and there is no way to make a judgment that the easement is anything but nonexclusive and unrestricted.

**Commissioner Elliott** stated that it appears that the parcel could be accessed from another location.

**Director Roberts** stated that every property can, in theory, be accessed from a different point. He referred to the Schechtel Hearing to illustrate that alternatives are not necessarily practical. He further stated that the issue was addressed in the staff report.

**Chair Hargrave** called for a vote

**The motion was approved 4 to 1, 1 abstained, 3 absent.** A listing of the vote, as required by Oregon Revised Statutes 192.650.c., is as follows:

Chair Hargrave – yes  
Vice-Chair McBain – yes  
Commissioner Ashley – absent  
Commissioner Wood - no  
Commissioner Myers – absent  
Commissioner Elliott – yes  
Commissioner Amery – yes  
Alternate Commissioner DeHart – abstained  
Alternate Commissioner Handley – absent

**Adjourned at 5:35**

Respectfully submitted,

---

**Russell Hargrave, Chair**  
Wasco County Planning Commission

---

Angie Brewer, Interim Planning Director  
Wasco County Planning & Development