

COLUMBIA COUNTY PLANNING COMMISSION MEETING

February 1 2016
Meeting Minutes

Members Present: Claudia Frace, Alta Lynch, Paula Lichatowich, Linda Hooper, Bill DeJager and Jeff VanNatta

Staff Present: Glen Higgins, Robin McIntyre, Deborah Jacob, Ginger Davidson and Kay Clay

Others: Norm Anderson, Shawn Semsch, Kim & Joe Hanousek, John & Judy May, Steve Hammergren, Ryan Neil, Chelsea Strautman Neil, Doug Wilson, Steven Liday, David Wilson and Alex Tardif

Jeff VanNatta called the meeting to order at 6:30pm.

Glen Higgins read the pre hearing statement.

No-exparte were declared for cases MP 16-01 & V 16-02

Alta Lynch spoke with Mike Sheehan (Scappoose CPAC)

Jeff VanNatta over heard a public conversation

Robin McIntyre questioned if there was any new evidence submitted and both said no.

Glen Higgins pointed out that the only applicant tonight is the David Wilson Trust with a continuance of MP 16-02 and V 16-02, originally heard in November.

BACKGROUND:

Glen Higgins gave a brief summary of how we got to where we are. The applications were deemed complete in August 2015, was referred to the Planning Commission for review from a neighboring property owner, the original hearing date was November 2, 2015, at that time the Planning commission agreed to leave the record open for additional oral and written testimony until the next scheduled meeting which would be Jan 4, 2016, that meeting was cancelled due to inclement weather, which caused the courthouse to close. That bringing us up to date to the February 1, 2016 meeting.

Glen Higgins reviewed the criteria :

Columbia County Zoning Ordinance (CCZO)

Section 200- General Provisions

Section 600 - Rural Residential (RR-5) Zone

Section 1504 - Variances

Columbia County Subdivision and Partition Ordinance

Article II, Administrative and General Provisions

Article VII, Minor Land Partitioning

Article X, Subdivision & Partition Requirements

Columbia County Stormwater & Erosion Control Ordinance

The applicant, David Wilson Trust, submitted Minor Partition (MP 16-01) and related Minor Variance (V-16-02) applications which, if approved, will allow the trust to divide an approximate 14.29 acre Rural Residential (RR-5) zoned property into three parcels of 4.76 acres each.

The road and the variance seem to be the main issues. The road is going to be widened not matter if there end up being two or three lots. The widening of the road will happen. If only two lots are created the both of those lots will come off of Blaha Rd. Improvements are needed for emergency vehicles.

The granting of this proposed minor variance to the parcel size should not be injurious to nearby rural residential properties along Blaha Road and Lindsay Lane, nor should it be detrimental to the safety, health or welfare of the general public. As it stands, a majority of the properties along Blaha Road and Lindsay Lane are less than 5 acres. The 4.76 acre lots would fit in the area better then the 14.92 acre parcel.

Most lots around Blaha and Lindsay Lane are approximately two acres. The Wilson's in the past have dedicated more land to the county for public right of way then what they are asking for in the variance. Previously in an RR-5 zone there was a ruling called the "go below" and that meant you could have a 2 acre parcel if you could connect to public water.

In 1998 the County adopted and strict RR2 and RR5 zoning. Water sources would then not be able to mandate the lot sizes as had been done with the "go below". The majority of the land owners do own less the 5 acres and three of those opposing this have less than 5 acre parcels. The 4.76 acre size is consistent with surrounding parcel sizes.

The staff recommends approval with conditions.

STAFF CONCLUSIONS & RECOMMENDATION:

- A. Based on the facts, findings and comments herein, the Planning Director recommends to the Planning Commission **APPROVAL** of **V 16-02** for a minor variance to the 5 acre minimum lot size to allow the partitioning of three parcels of 4.76 acres each, subject to the following conditions:

CONDITIONS OF APPROVAL:

1. The V 16-02 Conditions shall remain valid for one (1) year from the date of the final decision. These permits shall become void unless all conditions and restrictions established herein are satisfied within the one-year validity period.

B. Based on the evaluations and subsequent findings in this staff report, the Planning Director concurrently recommends to the Planning Commission **APPROVAL of the related MP 16-01** of the approximate 14.29 acres located along the ridge between Blaha Road and Lindsay Lane in the RR-5 Zone subject to the following conditions:

2. This Preliminary Land Partition shall remain valid for one (1) year from the date of the final decision. The approved preliminary plat shall become void unless a surveyed final plat is prepared and submitted to Land Development Services within the one-year validity period. This Final Plat shall conform to 1) the approved preliminary plat as submitted in accordance with the conditions described herein, and 2) the form and content requirements of the Columbia County Subdivision and Partitioning Ordinance and Oregon Revised Statutes. One extension of time of up to six months may be granted by the Planning Director if requested in writing with the appropriate fee before the expiration date.
3. The subject property and all new and/or altered property lines shall be surveyed and filed with the County Surveyor and the Final Plat shall be recorded with the County Clerk.
4. In addition to all County and State requirements, the following shall be included on the Final Plat:
 - a. The area of and number of each parcel.
 - b. The location, dimensions and purpose of all recorded and proposed public and private easements.
 - c. The lots for which adequate water supply or sewage disposal have not yet been proven shall be labeled as such. Prior to issuance of future building permits the property owner(s) will be required to demonstrate that water is available and submit proof of approved septic lot evaluations.
5. Prior to Final Plat approval Blaha Road shall be constructed to County Road Standards with a paved finish of 20 feet wide. In lieu of this construction a surety bond can be secured for the necessary

improvements. This improvement shall be coordinated through a Public Road Construction Permit.

6. No separate development is authorized for the proposed parcels until the Final Partition Plat is surveyed and recorded with the County Surveyor and County Clerk.
7. All future uses and development on the three Parcels shall comply with the applicable provisions of the Rural Residential (RR-5) Zone and the Comprehensive Plan.

Columbia County has not received any information from the applicant, some correspondence from the opponents but ,

Claudia Frace asked about the 2 acre lots, what are they zoned. Glen replied that they too were RR5. Most of the created prior to 1998 when you could create a 2 acre lot if water was available based on the “go below” ruling.

Paula Lichatowich, end of blaha 10' wide driveway, continuation of Blaha, yes it is. (Most of this conversation was hard to hear) Paula wanted to know how many house were on the 10' section, glen replied that 4 houses were on the 10' wide area. Paula, were the lots created prior to road standards.

Glen explained the houses were built in the 70-80's.

An unidentified member from the audience said his house was built 10 years ago. Glen reminded him that he was out of order and Jeff VanNatta explained to him that he would have his chance to talk. The audience member did not know what the rules were.

Glen Higgins, road developed with housing, most road were brought up to standards with the development of new lots.

Paula want to know if the lots were created prior to road standards and Glen explained that there were no road improvements required at that time and the road department did not have road standards unless there was a creation of new lots.

Alta Lynch wanted to know what the fire district required. Glen explained that there had to be turnouts for emergency vehicles could turn around. Road and driveways have different standards but the county and emergency vehicles have basically the same standards. We are going for public road standards in this application.

Paula as the road is now can an emergency vehicle turn around now? Glen did not see a turn around on his site visit he just saw a gate. Paula, Is there a turn around at the end of

the 10' road. Glen said he was not aware of one. Paula wanted to know if that was a standard and Glen said no.

Open the meeting for comments.

In favor of:

Steve Liday representing Miller, Nash, Graham and Dunn on behalf of the Wilson Trust in absence of William Rasmussen.

Two representatives of the estate, Doug and Dave Wilson.

Mr Liday will not review the application point by point because staff has that in detail. Restricting comments to the area of concern from the opponents. Will focus on the variance application because that is where the contention seems to be. The division of the lots depends on the outcome of the variance application. Mr Liday would like to focus on the fact that this is a minor variance, less than a 5% reduction and not the two or three homes. The discussions should be pertaining to the 5% reduction not the number of houses. Please reference. Normally these applications are reviewed administratively unless referred to the Planning Commission, in this case that is what happened. Mr Liday would like to take a look at Section 1504 - criteria. There appears to be some confusion during last meeting, which variance rules apply here. It was implied that section 210 of the subdivision and partitioning ordinance be used and that is not the correct criteria. The partition variance is not the correct one. If you are seeking a variance of a partitioning rule the zoning ordinance regarding the variance is the correct one to address. Variance code in the zoning ordinance is the one to be used. Section 210 in the zoning ordinance titled "new lot division", which states "It shall be a violation of this ordinance to partition or subdivide land into parcels or lots smaller than the lot size required in the zoning district, **EXCEPT**, under the provisions of the ordinance allowing variances from the minimum lot or parcel size provision." When you are looking at a change in the ordinance requirements you need to use Section 1504. We will go back through the standards in Section 1504. Two areas are actually be challenged ,

1. The granting of the variance will not be detrimental to the public safety, health, or welfare, or injurious to other property; this appears to reference the road issues and
4. Strict compliance with the Zoning Ordinance would create an unnecessary hardship;

The road and traffic issues are not relevant here because whether or not the variance is approved or not the road improvements (widening) will need to be done, the dedication of property has been done. Even with just two lots the road improvements have to be

done. Not relevant to the variance. Increased traffic issues are almost non-existent because of the number of homes that are presently there. One extra house is not going to make that much of an impact on the roads. What is the difference of 3 five-acre parcels compared to 3 parcels of 4.76 acres. One additional parcel is not going to make that much of an impact on traffic.

The other topic that is challenged is the un-necessary hardship. This area was also muddled because of the use of Section 210 which has the wrong standards. One case that was cited was Kelly vs Clackamas County 1999. The opponent citing this was not correct in saying that the Court of Appeals would overturn this because there is no statewide hardship law so this would not be overturned. Each district has the right to create and interpret the language. Each county with the same rule can interpret that rule differently. There is no statewide standard to the variance law. The local district has a very wide discretion to interpret the law. Only under very un-reasonable interpretation could LUBA of the Court of Appeals overturn the decision.

Let's engage in code interpretation, we have to look at the language closely. It says strict compliance with the zoning ordinance would create un-necessary hardship. The important term is un-necessary hardship. The language is different than that used in the subdivision-partitioning ordinance. Section 210 says you have to have extraordinary and particular hardship. Rural code interpretation means that different areas have different meanings. Instead of the county using the language of different and extraordinary they used un-necessary. If there are three smaller lots of 4.76 that would be more consistent than just two lots. This acreage is still larger than most lots in the area.

Less than 5% variance is ideal for this situation, for a minor variance under Columbia County Zoning Ordinance. To summarize this variance meets the size and scope of the area, consistent with the sizes in the area and it will create compatible development of housing in the area.

With all this being said Mr Liday requests that the Planning Commission approve these applications.

Doug Wilson. Representative of the trust. He would like to have the same as everyone else and not necessarily large lots. Not trying to do anything out of the ordinary, Blaha road needs to be widened regardless of there being 2 or 3 homes. It would be done correctly with emergency vehicle turnouts. The consideration of the Planning Commission is appreciated.

Opposition

Shaun Semsch, My property borders the property. I do not know the Wilsons's and I do not have any hard feeling toward them. If it were my land I would probably want to get the upmost out of it for monetary sake, but it's not my land. You guys sent us all this information, this is written in Wilson's handwriting. On the fact sheet we ask that the

condition be described as to what is unique about the property. “ Describe the conditions, unique to the property (NOT the owner), over which you have no control, on which you base this variance request (parcel size, shape, location; topography; natural features; etc). In Mr Wilson’s writing he wrote: Bonneville Transmission line easement divides at a point in the property where it makes the best use of the property to divide it into 3 lots. In the pamphlet that was sent to us from Columbia County, Columbia County staff report dated November 2nd, 2015, it states: “While the Bonneville easement is a condition unique to this particular property, it is not a reason to justify the granting of three undersized parcels. The property could just as easily be divided in half creating two parcels above the minimum lot size. Based upon this reasoning Staff finds that V16-02 does not meet the conditions of criterion 1504(A)(2). “ My question is “why are we having this meeting?” Secondly, I am providing my testimony please do not question me, you are a public servant you will listen.” We are the neighbors that will be effected by all of this, when you widen the road, does Lindsay Ln have a turnaround for fire emergencies, it doesn’t. So when you widen the road it does affect us, it will increase traffic there is no way to prove it doesn’t, any wells that are added do potentially decrease our water down the road and when the well runs dry its dry we would then have to tap in to Columbia County PUD and pull water from that. So any new wells that are added, say the 3rd house does make a difference.. I did plenty of research before I purchased my house in Columbia county and my property was zoned RR5 and that meant 5 acres and you guys passed the regulations so they should be upheld. You yourself that the power lines was not a hardship so I rest my case. Thank you. And someone needs to wake him up.

Alta Lynch wanted to know what page he was reading from, can I get the page number. Someone in the audience said page 12.

Norm Anderson, I would like to comment on the same issue that Shaun brought up. I might add that I am one of the five acres by the gate. I have been there since 1980 when Blaha Rd was still a dirt road. The other four houses were there for many years when the road was gravel. The neighbors decided to pave it themselves. All the neighbors chipped in to pave the road to the gate. As it stands now the one lane road is no where near county standards. The road will have to be demolished and brought up to road standards. It was basically blacktop only. As far as the meeting the criteria for a minor variance it states that granting the variance only when all conditions and facts exist. It says “The granting of this proposed minor variance to the parcel size should not be injurious to nearby rural residential properties along Blaha Road and Lindsay Lane, nor should it be detrimental to the safety, health or welfare of the general public”. I suppose that can be left up to interpretation. Obviously by improving the road that will take care of a lot of conditions and Norm is looking forward to having a two lane in front of his property. The other condition “ The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.” As some of the people addressed, the BPA easement is not a unique factor. As Shaun had said the staff even says that does not meet the criteria. The data of this criterion is enough to throw this application out. Further down the staff

has come in and spoke about the uniqueness that a lot of the lots are less the 5 acres and that makes it unique. The key word is that it has to be unique and or be a hardship to the specific property. Historic development in the area which has resulted in parcels on three side and the southern parcel which is less than 5 acres doesn't matter. What's critical is that it has to be unique to the party being divided, not to the surrounding property. When I moved up in 1980 the lots were all bigger tracts of land. Through the years the zoning has changed. There are two owners that wanted to keep the integrity of the county ordinance and maintain their 5 acres. They could have split the acreage but they believe that 5 acres mean 5 acres. That is why so many things have changed because of the zoning changes and Norm doesn't blame the Wilson's for wanting to maximize their development. Norm does not see the hardship, RR5 means five acres. He could have 2 lots of 7 acres instead of 3 parcels. Please stick with the zoning. Concerned about fire issues since this is wild land and abuts to forest land and the tall grass. Another house is increasing fire danger. Fire chief will require turnouts but what did the chief use to calculate fire load and will there be more fire hydrants? Two more houses would be ok but not three.

Paula Lichatowich, is the 10' wide drive a private driveway, **Norm**, No, when 2 acre subdivision came in Settle gave driveway to the public. Its not a public road it's a public right of way. Currently 10', neighbors paid to pave it. Road is paved to gate but not to standards.

Judy May, Confused. Was Lindsay lane ever considered for access since it looks like it runs into the property. If Blaha has to be brought up to the County road standards does Lindsay Ln. Will both road be required to be brought up to code? **Glen**, noting has been said about Lindsay Ln. One of the three lots is proposed to be accessed from Lindsay Ln. Judy, can Lindsay lane serve the other two houses also? If Blaha has to be brought up to code then why not Lindsay Ln.? **Glen**, the road department has not mentioned Lindsay lane and we do not know what the status is on that road. Two of the three lots have frontage on Blaha Rd, the third lot does not have the frontage, Lindsay Ln ends before this lot. Lindsay lane is quite a distance from the third parcel. **Mrs Mays** feels like there are being singled out because this property is wanting to be developed. Lindsay lane should be held to standards also.

Alta Lynch If this application goes through or not does Blaha have to be improved? Glen, any parcel creation has to have 50' of right of way, not matter if its one, two or three. Alta, should this had been done before? Glen, yes and with the creation of new lots it will have to be.

Paula Lichatowich wanted to know if no partition happened would the road have to be brought up to the road standards? **Glen**, previous homes were required to pitch in and upgrade the roads to some extent. If only one house was build they would have to pitch in and pay to go toward the road upkeep. The division of these lots will require that the road be brought up to the current standards.

Steve Hammergren, did pay for some of the road improvements. There are no service up there and there are no hydrants, no attempt has been made to improve the road, its been in total disarray. Lindsay lane has a turn around at the end and it is adequate. The focus seems that you don't want to upset the people on Lindsay lane but you do want to upset the people on Blaha Rd. Someone made an error in selling an easement to BPA and now they want to take advantage of that and now everyone's lives will be disrupted on that road. Access will be limited and difficulty getting to the homes. Everything will be torn up and it could be accessed through Lindsay Ln. The access is there. Not their fault there is an easement, the other persons fault so they should deal with it. Our choice is that we like it like it is and I paid for a road and should be able to use it. The road will be improved and it will cost me in taxes. Steve came in and asked why his taxes were so high when he bought the house and was told that Measure 50 is what caused it. What will happen to the taxes now with these improvements, they are not improvements we will lose some of our property. There is no hardship considered in that. Your focus seems to be to get the Wilson's taken care of because there is money involved. That's my opinion and that's what I have to say.

Joseph Hanousek, new owner on Blaha, have lived the about four years. No one could build there unless there was a minimum of five acres. Its very quiet and am concerned about the construction of new homes. It is going to be totally different if the County allows this. Joseph agrees that Lindsay lane would be a better option. Thank you for hearing me.

Ryan Neil, I am the one that dedicated the 50 x 50' easement to Mr Wilson and utilize the road. I want to go to how this all started to give you a better idea. I was new to the area and fell in love with this property and the fact that it was rural, there was a change in the county maps that happened in the late 90's or 2000 the county was going to a RR2 and RR5, excuse me, the RR2 has been available, but the county was changing it to RR5 and the county everyone ample time to submit an application to prove hardship and justify decrease in the lot size. The Wilson family did not submit an application wanting to decrease their lot during that portion of time when the county would recognize the smaller lots. After the county had changed the zoning to RR5 the Wilson's came back and submitted two applications to reduce the lot sizes to under 5 acres, both of which were denied. The reason that this matters is that when I purchased my property I spoke to four different planners. I said there is a gentlemen that wants access to my parcel so he can subdivide his property, he has 14.+ acres. He wants access to my threshold does he have access to my threshold? Yes he has access to your threshold, he seems to find great value in this. My neighbors told me he would come after me to get access to my threshold. He seems to find great value in this, I don't understand this. What is preventing him from crossing my threshold? They is nothing to prevent him from that according to the planner. What is it that is such a significant value here. The planner did not know because he has access to it. He can build on it or subdivide it. Doug Wilson told him if he did not give him access to the site where Blaha dead ends at my property that he would be a road from Lindsay lane on the east side of his property all the way down to access the lower portion and it will indeed devalue and make my property

unsightly that it will not be worth purchasing anymore. So when I heard that I thought he already has access to my threshold according to all of the county planners, all four of which I had talked to and I was also sent to the surveyor, twice. Other property owners kept coming to me telling me not to do this. There is something not right about it. I went back to the county asking what does he need, he can cross it build on it, what does he need? The county did not see that he needed anything. The county promised Ryan that he could not go smaller than 5 acres. The county continued to reference prior applications that were denied. It's a new standard that he can not go below 5 acres in a RR5 zone. The county had already given him ample time to do that and it was not done. I was sure the county would adhere to the zoning rules. What this doesn't reflect on Lindsay lane is that when you go east of that area you will see the sizes are 5 acres and larger. North is also larger. We need a larger view of the map because it does not show the true picture. RR5 is the standard and when you look at the bigger picture you will see that 5 acres is the smaller of the sizes. There was some degree of bullying put into this. Mr Wilson will build a road along Ryan's property line and cut down the trees, making it unsightly. Mr Wilson was asked why he need this and he said it was a county formality. The county says no because Mr Wilson has access. Now we are sitting here with Mr Wilson wanting to go below the 5 acre minimum which he has previously had and missed that opportunity. Now the county wants to grant this variance. On every level it feels that what we pay with our tax dollars, it feels like an unjust decision that the county's behalf.

Chelsea Strautman Neil, Before starting could the staff please recognize themselves?
Response: Robin McIntyre- Counsel, Debbie Jacob-Planner, Ginger Davidson-Planner, Kay-Clay-Secretary. We have had a lot of emotional testimony and I would like to open my comments by getting back to the basics. What is being charged here for you, what is your responsibility of you as a Planning Commissioner? I would like to start by quoting from the "Introducing guide to Land Use Planning for Small cities and counties in Oregon". Produced by the Oregon Department of Land Conservation and Development. In Chapter 5 it talks about the formalities and procedures of how variances should be handled. A copy has been made for staff so that you can see what needs to be followed. " A request for a variance will be evaluated against the criteria established by the individual city of county. A variance that does not satisfy all of the criteria should not be approved." The next page says " As these criteria imply, a variance should be approved for unusual circumstances." These are just a couple of guiding points to keep in mind as you hear the testimony this evening. This really is not a complex matter for you to decide tonight. Base your decision on the criteria in the staff report and you won't have any trouble making a decision. There is a lot of discontent about what might happen to the road, what must happen to the road. The road is not the issue tonight and we all agree on that. All of us have different opinions about what should happen but again that is not the issue here. And I really regret that your planning director can not answer your questions adequately and site the statues in the ordinances for you to get a direct answer to your questions about the current status of Blaha Rd. As I read the ordinance and statues it is certainly not a county road. It is not in violation of any county status at this point there is a right of way and it is a road, there are other roads that are not up to

standards in the county. The language in the ordinance is what your planning director should be sitting not something off the cuff. I do not know when the road departments chooses what road to improve, when or why. That is not the main issue or relevant to your decision. It should be based on the five criteria. Staff concluded in their report that there is not a basis for approving the application because the simply failed to meet the requirements set forth in the criteria. I am going to quote, reference two of the main criteria that Mr Wilson has in his application. The first one Provision #2 "The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property." Focusing on that section where staff addresses it on page 12 it says "**Finding 10:** In the submitted documentation the applicant stated, "Bonnevillie transmission line easement divides at a point in the property where it makes the best use of the property to divide it into 3 lots. While the Bonneville easement is a condition unique to this particular property, it is not a reason to justify the granting of three undersized parcels. The property could just as easily be divided in half creating two parcels above the minimum lot size. Based upon this reasoning Staff finds that V16-02 does not meet the conditions of criterion. Note that criterion 2 states "The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property". In the staff report staff concludes that the application does not meet the conditions and it states it right there but despite that staff still suggest approval, they elaborate of surrounding properties are of smaller sizes, how historically Mr Wilson has donated property, they draw attention to how much Mr Wilson has done in the neighborhood in the past, staff talks a lot about the smaller lot sizes and other justifications that staff makes up in the staff report, they are not based on the facts presented in Mr Wilson's application. The application is deficient and you are not suppose to consider these made up justifications that the staff report conjures. Is the application approval able or not, the report says it is not yet they want approval it is asinied, how does that happen? Mr Wilson submitted his application stating that the land is separated by BPA easement. Staff says "While the Bonneville easement is a condition unique to this particular property, it is not a reason to justify the granting of three undersized parcels". Staff still recommends approval. What is recommended in the report is contrary to what is required in the ordinance. The fact that Mr Higgins skips right past that and (not able to understand) continues to show his support is a problem for me as a citizen and member of the community. Staff findings show how there is nothing unique that supports a variance being granted. It hard to see how his property is exempt from the criteria. We all have to be treated equally and held to the same standards. Regardless of what the applicants counsel led you to believe, LUBA and the Appellant Courts take variances very seriously. Opposing counsel seems to think there are different standard when considering a minor partition vs major. In the case law that I have been able to find, I would love to hear some contrary case law, now has been presented. No case law has been submitted to support this application. In additions to the cases that were stated in the last meeting I have some additional case I would like review in governing case laws in this area of variances. This information was excerpted from Barbooks, it's like an attorneys handbook if you are referencing land use laws, not just finding cases that meet my arguments. In Godfrey v Marion County, LUBA case 80-104

it states “the hardship must arise out of conditions inherent in the that distinguish it from other land in the general neighborhood”. Another one is Chou v City of Keizer LUBA 87-017, state that the “hardship must be attached to the real property not to the owner”. I am going to turn to Criteria 4, stating “Strict compliance with the Zoning Ordinance would create an unnecessary hardship”. So a variance would be approved only if there unnecessary hardship created from the strict compliance of the zoning ordinance. There is no hardship on the Wilson property in wanting to develop the parcel in to two parcels. From a developers view it is always better to have more lots to sell. We need to look at current laws and a two lots are attainable. A hardship would grow the more the applicant wants to stray from the zoning codes. What if he wanted more lots created. The fact that Mr Wilson can legally develop two lots rather than three is not a hardship. In Corbett v City of Portland LUBA 89-018 it states that ““these are demanding standards that require more than a showing that in this case I won’t get in to, it deals with parking spaces. It deals with the person wanted to get more parking spaces like Wilson’s wanting more lots. In case Sokol v City of Lake Oswego LUBA 88-087 it states “ LUBA and the appellate courts have interpreted this criterion to allow the variance only if (1)the subject property will be virtually useless without the variance and (2) the hardship arises from conditions inherent in the land which distinguish it from other land in the neighborhood. A more liberal interpretation of the criterion is allowed only of there is some authority in the local government’s ordinance to support more liberal interpretation. Dispite the applicants council insinuating that the standards are less in this case the criterion is what your decision should be made on. In Bowman Park v City of Albany LUBA 84-010 it state “Variance relief is not available merely to facilitate site plans or development. Patzkowsky v Klamath County LUBA 82-115 states “Extraordinary circumstances must arise out of the land itself, not the applicant’s desire for a particular lot configuration or number of lots” In Jarvis v Wallowa County LUBA 87-005 it states that “A finding that without the Variance the applicant will incur an expense does not satisfy the “special circumstances or conditions” criterion, particularly where there is nothing about the property that makes compliance with road standards impossible or impractical.” The applicant finds it more convenient or less expensive to find an exception. To allow the applicant to develop the land is not a basis for extraordinary circumstances. In Wentland v City of Portland LUBA 91-054 it states “ The desire to maximize allowable uses or to accommodate a landowners particular development desires is not a basis for finding that the exceptional or extraordinary circumstance criterion has been met. The last one I will address is says that “ A variance is not warranted simply because the property owner wished to pursue a development that requires a variance, even though the property can be developed without the need for the variance.” Also the ability to use a lot more profitably or to expand profits is not a practical difficulty on which a variance may be granted. This is a lot of case law but this is very important. Its not just that it a 5% change its your job to enforce the ordinance and codes. The application is deficient, the road issue is something that we as Blaha Rd residents will have to address with the road department. The road issue is not what is important here it is that you make your decision based on facts and the evidence here before you. Based on the comments from everyone I would like to see you deny these applications.

Rebuttal

Steven Liday, attorney for the applicant. There are a lot of things here and I understand the emotions. Having land developed next to you can be difficult but that is not a reason to deny good healthy development. I will address a couple of things that were repeated by more than one person. It was stated that the basis of the decision should be limited to the information on the application. That is simply not true. If that was the rule we would just be throwing away applications and filling out new one, the way to address issues is to have hearings like this. You are able to offer comments and information until the record is closed. The applicant is not limited to what was in the application. A lot of individuals insist that zoning ordinances are intended for strict enforcement, they should be treated like a criminal code, that is not the case. Land use law is based on flexible criteria and the positive development of land. This instance we are talking about a 5% minor variance, very small change and no one has explained the 5% reduction is going to impact the land. There was a comment made that the property sizes around the applicants land has been represented as 5 acre tracts and that is not the case. Reading the current GIS maps the parcels range from 2+ acres to 5 acres. So the parcels vary and most are smaller than 5 acres on average. That was great language that was sited regarding variances but that language was pertinent to the ordinance at issue so it is specific to the jurisdiction and specific to the ordinance. One of the cases that was sited last time involved the City of Independence and they have a very strict zoning ordinance and the court of appeals said that if you want to make general statements and findings and offer a variance then you should change your laws. They did change it. Now in the City of Independence you can get a variance under easier standards. It is dependent on the particular language. In Columbia County there are three types of variance: Subdivision-Partitions, Major and Minor, of which the minor variance has the lowest standards. Just the un-necessary hardship, one is the history of the land and two the history of the zoning. There are a collection of lots around here that are about 3 acres. With strict enforcement we will end up with lots of 7+ acres, the 4.76 acres will be more consistent with the current sizes of the other lots. The history is relevant. The staff found that the property owner has dedicated his land for a public road in the past. That is a specific unique circumstance that give rise to a hardship and staff has found that the hardship is un-necessary because the proposed variance is very small and it will keep the lots a lot closer in size as to what the others are.

David Wilson, I wasn't going to speak but I did get emotional when the Neil's attacked my brother, talking about how we acquired the right of way which was not exactly true. My family has been in the county for a lot of years and I can get emotional, have had the property since the 1960's well before any of these folks lived there. I have seen lots of changes, Lindsay lane was once a sledding hill as well as Blaha Rd. My dad was not the only one to develop the property up there, Blaha's, Settle and Wilson's. Change is inevitable to happen and this a case of not in my back yard. It is difficult the it is understood. I had a dog kennel go in next to me, I didn't want it but the county approved it.

Doug Wilson, Just wants to clarify that it was a mutual agreement regarding the right of way property, I did not and do not bully anyone. Mr Neil is not one to be bullied anyway. They both agreed on the deal and some trees were cut. If they started up on Lindsay and went up around the lot end of parcel one and back to Blaha we would lose over an acre of land. There is no way putting a lane next to Neil's property, it could be done and we would not be here now but a lot of land would be lost.

Hearing closed.

Jeff VanNatta wanted to know if the commission wanted to make a motion or table it.

Linda Hooper said it has been drawn out and to be fair to all parties we should make a decision. Linda wanted to know if we were missing anything. Are we missing anything that would prevent us from making a decision.

Paula Lichatowich, How many houses can you have on a private road without a variance. **Robin McIntyre** clarified that this is not a private road. Fairly positive it is a public road. Not sure if it is a county road, end of tape. **Paula**, The road needs to be dedicated to a public road and built to county road standards. **Jeff** stated that if it not up to standards the county will not accept it. **Robin** clarified that there is a difference between a county road and local access road county roads are higher standards for a right of way.

Claudia Frace questioned were the RR2 parcels zoned RR5, did they get variances? Glen stated there were all RR5 and no they did not get variances. At the time they were RR5 but if you could get water service then you could have 2 acres. Parcel one will have a private well the other will be on McNulty.

Linda Hooper - road doesn't appear to be an issue, just the variance. We are looking at a minor variance and it is pretty cut and dry.

Alta Lynch, there are a lot of emotions on both sides, the commissions are not the experts it is a volunteered position, they receive a lot of information and read through it, including the comments received today. Its time to make a motion. If it has to go to LUBA then let the experts make the decision.

Alta Lynch made a motion to approve V16-02 & MP 16-01 based on staffs conclusions and recommendations and there fore if it has to go to LUBA let the experts decide or let it go to the Board of Commissioners. Linda Hooper seconded.

All in favor V 16-02 & MP 16-01 of accepting them based on staffs findings and conclusions and recommendations say aye - 5 opposed - 1

Motion carried.

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Other business:

Approval of 11/2/15 minutes. Minutes approved with one correction.

Meeting Adjourned 8:10 pm