

**BEFORE THE OWYHEE COUNTY PLANNING AND ZONING COMMISSION**

Re: Application for Conditional Use Permit	)	No. Z12-08
	)	
Filed by	)	Memorandum of Decision
	)	
Warren Johns	)	
_____	)	

***Summary***

Warren Johns (hereinafter "Applicant") applied for a conditional use permit requesting permission to establish one single-family residence on his twenty acre parcel. The subject parcel is located in an agricultural zone. The property is located off Wees Road in an agricultural zone approximately 4.5 miles east of Oreana, lying in the northwest quarter of the northeast quarter of Section 23, Township 4 South, Range 1 East, Boise meridian, Owyhee County, Idaho. After a duly noticed hearing conducted on March 1, 2012, the Commission enters the following findings, conclusions, and order:

***Findings***

All statements in this narrative summary of the evidence are findings of fact made by the Commission after the hearing, and considering evidence admitted in the case. The statements of fact contained herein are "Findings of Fact" made by the Commission, even absent the phrase "The Commission finds." The same applies to narrative statements. All facts contained therein are "Findings of Fact."

1. The Commission finds that the Applicant is proposing to build a small residential bunkhouse that may later be replaced by a larger permanent single-family residence. When the bunkhouse is replaced by a permanent single-family residence, the residential use of the bunkhouse will cease, and then shall only be used as an accessory building.
2. The Commission finds that the property is located off Wees Road approximately 4.5 miles east of Oreana in an Agricultural Zone.
3. The Commission finds that the Applicant may use the property to board horses and that he

is aware that such boarding use is currently allowed under County Ordinances.

4. The Commission finds that the subject parcel is located in an area of Owyhee County that has been designated an Agricultural Zone (hereinafter "Zone A"). Owyhee County Code, Title 9, Chapter 5, Article A., Section 9-5A-4 sets forth the uses, which may be permitted under a conditional use permit in Zone A. Contained therein, "uses allowed or permitted in district R", are uses that may be permitted in Zone A after approval of a conditional use permit. In turn, Title 9, Chapter 5, Article C., Section 9-5C-4 (Zone R) sets forth single-family residences as an allowed use.
5. The Commission finds that access to the site is via an existing private drive and does not require crossing over any private property not owned by the Applicant.
6. The Applicant testified, and the Commission finds credible that the proposed access is already constructed, and will be privately maintained.
7. The Commission finds that the subject parcel is not within a herd district. The Applicant understands that boundary fences must be maintained to prevent any livestock from entering Wees Road. Any unwanted livestock must be fenced out of the subject parcel.
8. The Commission finds that the subject property is not in an irrigation district, and that the property has no water rights.
9. The Commission finds credible the testimony of the Applicant that there is a capped artesian well on site that flows at one and a half gallons per minute, but that it could be pumped to provide sufficient water for the proposed use.
10. The Commission finds credible the testimony of the Applicant that he will have the well water tested prior to resuming use of the well.
11. The Commission finds the subject parcel is in the Grand View Fire District, and that the Applicant is aware that access must meet fire access road standards.
12. The Commissions find credible the Applicant's testimony that he is aware of the danger of range fires and intends on maintaining fire breaks as necessary.
13. The Commission finds credible the testimony of the Applicant that he will comply with Southwest District Health regulations, and he will install all necessary utilities.
14. The Commission finds that the Applicant provided a soil classification from the Natural Resources Conservation Service and no evidence was entered which would cause the Commission to question that the geological base is sufficient for the proposed use.

15. There was no evidence entered which would suggest any danger that the proposed use would pose to human health, animal, or plant life.
16. The Commission finds credible the Applicant's testimony that he will maintain the residence and property in good order.
17. The Commission finds that no one appeared in opposition of the proposed use and no evidence was submitted stating that the Applicant's proposed use would create any adverse impact that could not be mitigated.
18. The Commission finds that the Applicant agrees to install a lawn and landscaping on the new home site.
19. The Commission finds the Applicant is aware of the Standard Special Conditions that are imposed to minimize adverse impacts.

### *Conclusions*

Based on these facts, the Commission concludes as follows:

1. The Zoning ordinance allows for the proposed use upon the approval of a conditional use permit.
2. There is legal access to the subject property via an existing private drive.
3. The property is not in a herd district, so unwanted livestock must be fenced out, and boundary fences must be maintained on all four sides of the property to prevent any livestock from entering Wees Road.
4. The property is not in an irrigation district and has no water rights to this site.
5. There is an existing domestic well on site that may prove to be sufficient for the proposed use.
6. The Applicant will ensure that the access to the parcel meets fire access road standards.
7. The Applicant is aware of range fire danger and testified that he will maintain fire breaks as necessary.
8. Necessary permits will be obtained from Southwest District Health.
9. The proposed use should not create any danger to human health, animal life, or plant life.
10. The Applicant will maintain the residence in good order and will not be taking any farmed ground out of agricultural production.

11. No one appeared in opposition to this proposed use and no evidence was entered that suggested any adverse impact would be created. The Applicant has met the burden of proof in showing that the proposed use is compatible with the surrounding area and land uses, and consistent with the Comprehensive Plan.
12. No adverse impact is created which cannot be mitigated or minimized by the imposition of special conditions. Special conditions will minimize adverse impacts to the environment, surrounding land or the public. The Applicant is aware of the special conditions placed on all conditional use permits and agrees to the imposition of these conditions.
13. This use should not negatively impact public services, public health, or safety, or create a burden on public funds.
14. The Commission concludes this use should not endanger human health, animal, plant life or their habitats.
15. A geological soils report submitted in the application indicates that the geological base supports the proposed use.
16. The conditional use permit should be granted with the following special conditions:

### ***Special Conditions***

1. The access to the new residence must be constructed with an all weather driving surface twenty (20) feet wide with a six (6) inch gravel base, graded and compacted, and a turnaround space must be provided pursuant to the 2003 International Fire Code (Attachment A). Written approval of the access from the local fire district must be provided in writing prior to the issuance of a building permit. If subject property is not within the boundaries of a fire district, the access shall be constructed as previously stated and written approval of the access by the Building Official must be provided prior to the issuance of a building permit.
2. Applicants must recognize and any future occupant or purchaser of subject parcel must be advised, through recorded marketing disclosure and /or deed restrictions, that any agricultural activity which is in existence on lands adjoining or in the vicinity of the subject property may not be considered a nuisance pursuant to the Idaho Right to Farm Act. A copy of the recorded disclosure or recorded deed restriction must be provided to

the Building Department prior to the issuance of a building permit.

3. Approval by Southwest District Health of the septic system and well site prior to the issuance of a certificate of occupancy for the new residence.
4. This decision will be recorded by the administrator prior to the issuance of a certificate of compliance, recording fee having been included in the application fee.
5. Compliance with all applicable laws and regulations.
6. All structures, improvements, and construction must be developed according to the presentation given under oath at the public hearing for which conditional use permit was approved.
7. Exterior lighting of the residence and appurtenances must be shielded. The bulb shall not be visible below a horizontal plane running through the lowest point of the fixture, and no light shall be emitted from the sides of the fixture.
8. Abandoned and/or junk vehicles will not be allowed to accumulate on the property.
9. A containment area for trashcans must be constructed to minimize the occurrence of wind, animals, or other uncontrollable sources spreading trash to surrounding areas.
10. Applicant will control weeds and pests (including, but not limited to, gophers) on the parcel for which the permit is granted.
11. This conditional use permit will expire twenty-four (24) months from the date the written decision is signed if substantial progress toward development of the use permitted by the conditional use permit has not been accomplished or an extension of the life of the permit has been requested prior to the expiration of the permit.
12. The Applicant agrees to install landscaping around their proposed residence.

**Order**

Conditional use permit Z12-08 is granted to Warren Johns, subject to the special conditions set forth in the Conclusions above.

Issued: This 1st day of March 2012.

Yes:

No:

Connie Brandau  
Connie Brandau - Chairman

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Connie Brandau - Chairman

Clay Atkins  
Clay Atkins

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Clay Atkins

Chad Nettleton  
Chad Nettleton

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Chad Nettleton

Attest: Ally Hupp

Appeal Deadline: March 21, 2012

**Instrument # 276898**  
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Ex-Officio Recorder Deputy Metersm  
Index to: MEMORANDUM

