



Jennifer Orozco

From: Lisa Andrach <lisa@fitchandneary.com>
Sent: Tuesday, October 8, 2024 10:32 AM
To: Plan
Cc: Wendy Smith; Hannah Elliott
Subject: Appeal of 217-24-000047-PLNG
Attachments: Appeal filed 10.08.24.pdf

Follow Up Flag: Follow up
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Attached please find the appeal filed by Mark and Ann Malott concerning Planning File Number 217-24-000047-PLNG.

I can call to pay the fee via credit card or if you prefer to call me to take the payment, my direct line is: 541-526-3063.

Thank you,

Lisa

Lisa Andrach, Attorney



Fitch and Neary, PC
210 SW 5th St, Suite 2
Redmond, OR 97756
Ph: 541-316-1588
Fax: 541-316-1943
www.fitchandneary.com

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RECORD# 217 - _____ PLNG

Crook County Community Development/ Planning Division
300 NE 3rd Street, Room 12, Prineville Oregon 97754
Phone: 541-447-3211
plan@co.crook.or.us
www.co.crook.or.us

APPEAL PETITION TO PLANNING COMMISSION or COUNTY COURT

RECEIVED

Appellant Information

Last Name: Malett First Name: Mark and Ann

OCT 07 2024

Mailing Address: P.O. Box 127 City: Powell Butte State: OR Zip: 97753

**Crook County
Community Development**

Day-time phone: (541) 416-1712 Cell Phone: (_____) Email: _____

If group, name of representative: Lisa Andrach, Fitch and Neary, P.C.

Land Use Application Being Appealed: (file number) 217 - 2 4 -0 0 0 4 7P L N

Property Description: Township 16S Range 14E Section 20 Tax lot(s) 100

Appellant's Signature: _____ Date: 10/7/24

I/We, the undersigned, wish to appeal the decision made by the Crook County Planning Commission regarding application no. 217-24-000047, that a final decision was made on the 26th day of September, 2024

EVERY NOTICE OF APPEAL SHALL INCLUDE:

1. The appeal shall be in writing and shall contain:
 - a. Name, signature, and address of the appellant(s).
 - b. Reference to the application title and case number, if any;
2. A statement of the nature of the decision:
 - a. A statement of the specific grounds for the appeal, setting forth the error(s) and the basis of the error(s) sought to be reviewed; and
 - b. A statement as to the appellant's standing to appeal as an affected party.
3. Proper filing fee in accordance with Section 18.172.050.
4. If the decision appealed from is a decision made without a hearing or without notice to area property owners, written notice of appeal must be filed within twelve (12) calendar days of the date written notice of the decision is mailed to those entitled to such notice. With respect to all other appeals, written notice of appeal must be filed within 10 calendar days of the date written notice of the decision is mailed to those entitled to decision. If the last day



Lisa Andrach
Partner
lisa@fitchandneary.com

Wendy L. Smith
Paralegal
wendy@fitchandneary.com

LAND USE AUTHORIZATION FORM

For: Crook County Community Development

Re: Sunshine Behavioral Health Group, LLC decision appeal
Land Use Decision: Planning File # 217-24-000047-PLNG
T16S-R14E-20 Tax Lot 100 (Tax Account 161420)
14427 SW Alfalfa Rd, Powell Butte, Oregon 97753

Let it be known that the firm of Fitch & Neary PC has been retained to act as my authorized agent to perform all acts for appeal of the decision noted above.

Appellant ~~Mark Malott~~



Mark Malott



date

Appeal Statement

DATE: October 8, 2024

APPELLANT: Mark and Ann Malott

APPELLANTS' ATTORNEY: Fitch & Neary, PC
c/o Lisa Andrach, OSB #040012
210 SW 5th Street, #2
Redmond, OR 97756

APPEAL of the Crook County Community Development, Planning Division:
Findings and Decision, Modification of Conditional Use
Planning File #: 217-24-000047-PLNG
Applicant: Sunshine Behavioral Health Group, LLC
Decision date: September 26, 2024

The appellants are residents of Crook County who own and maintain large tracts of EFU zoned land in agricultural production. They are affected by the decision to allow non-agricultural uses in the EFU zone and received notice of the decision.

The appellants assign the following errors on appeal:

1. The proposed use does not qualify as a community center authorized in the EFU zone or pursuant to ORS 215.283(2)(e), ORS 215.441, and CCC 18.24.020(7).
2. The substantial change in use from a RLUIPA exempt accessory religious use for religious gatherings and retreats to a non-church or religious affiliated commercial residential facility for long-term in-patient clinical treatment does not qualify for a CUP modification pursuant to CCC 18.172.100 et seq., because the approved conditional use is terminating, and an entirely new use which is substantially different from the approved CUP is proposed. Therefore, the proposal requires a new application for a conditional use permit – not a modification of an existing, unrelated CUP.
3. The change in use from temporary, removable RV housing (camping) to permanent commercial residential in-patient dwellings for long-term use does not qualify for a modification pursuant to CCC 18.172.100 et seq., but requires a new conditional use permit approval.

4. The applicant is not a non-profit organization as required by CCC 18.24.020 and ORS 215.283(2)(e) to qualify for an exception for such organization to maintain a “community center” use in the state’s agricultural lands for the local rural community.
5. The applicant is relying upon CCC 18.172.100(3) to apply the 2007 County Code to this new use, however, even if the 2007 CCC 18.24.020(7) did not include language prohibiting substance abuse treatment services in community centers, the term “community center” is derived from state law, and applying an analysis of the text, context, and legislative history of the legislation, the proposed use is clearly not within the intended permissible uses of such a “center” for the “local rural community.”
6. Denying the requested use, which is prohibited by state law, does not violate federal law or constitute “discriminatory zoning practice.”
7. The proposal does not qualify for the Federal Fair Housing Amendments Act (the “FHAA”) accommodations or the Americans with Disabilities Act (the “ADA”) accommodations. Most notably, this is not a “housing discrimination” issue because “dwellings and housing” and “residential” uses in the EFU zone are an extremely limited exceptions to the uses allowed in the zone, and if it is a “housing/residential/dwelling” issue or use, then it is admittedly not a “community center” use. In addition, the requested accommodations were not a part of the original CUP, so this proposal is again not properly a modification application, but constitutes a new use requiring a new CUP application.
8. There is no substantial evidence that the “clinic” will be “operated primarily by and for residents of the local rural community.” The requirement that the use be to support the “local rural community” has been widely interpreted by the Oregon appellate courts. The proposal as a commercial residential treatment facility for hundreds of in-patient clients and a plethora of full-time around the clock employees does not fit into the limited permissible uses which uses must be directly linked to supporting and promoting the local rural *agricultural* community pursuant to the state’s Goal 3 preservation of agricultural lands law and applicable local agricultural zoning law.
9. The traffic study is inadequate to address the intensity of the proposed commercial use of the proposed community center and/or residential housing (whichever it is) on a commercial scale which must account for residents, employees, visitor trips and increased on-road pedestrian use in the EFU zone. The rural traffic infrastructure is not designed or intended to support the commercial use.

10. The domestic well and on-site septic are not approved for the intensity of the commercial in-patient long-term residential use.
11. The access must be permitted for commercial use and constructed to commercial standards.
12. The commercial use similar to a nursing home facility is not authorized in the EFU zone.
13. The proposed use will significantly impact farm practices, a result that the state legislature intended to prohibit by adopting the state regulation regarding the same (*Stop the Dump Coalition v. Yamhill County*, 299 Or 432 (2019)).

DATED this 8th day of October, 2024

FITCH & NEARY PC



LISA ANDRACH, OSB #040012
Of Attorneys for Appellant
210 SW 5th St, Suite 2
Redmond, OR 97756
P: 541.316.1588 F: 541.316.1943
Email: lisa@fitchandneary.com