

**BOARD OF COMMISSIONERS**

**MINUTES OF THE BOARD SESSION – Regular Session**

Wednesday, February 18, 2009  
Marion County Courthouse Square

9:00 a.m. Board Session  
Senator Hearing Room

**PRESENT:** Commissioner Patti Milne, Commissioner Janet Carlson and Commissioner Sam Brentano. Also present were Jo Stonecipher as legal counsel and Kim Hulett as recorder.

**PUBLIC COMMENT**

None.

**CONSENT**

**BOARD OF COMMISSIONERS**

**OLCC APPLICATIONS – Recommend Approval**

Broadacres Tavern, Aurora  
Emperors Palace, Salem  
Geppetots Restaurant, Salem  
House of Dragon, Salem  
Lancaster Drive Mart, Salem  
Star Market #107, Salem  
TNT Hollywood Tavern, Salem

Approve an order appointing Lieutenant Eric C. Judah of the Oregon State Police to the Marion County Public Safety Coordinating Council to complete Lieutenant Mike Peterson’s term expiring April 6, 2009.

Approve an order reappointing Michael Higgs to the Marion County Parks Commission for a term expiring December 31, 2012.

Approve an order reappointing Archie Brown, Ray Wilson, Gary Heard, and Sue Blayre to the Local Alcohol and Drug Planning Committee for second terms ending June 30, 2010.

Approve an order reappointing Glenn Zimmerman to the Solid Waste Management Advisory Council for a term ending December 31, 2012.

**BUSINESS SERVICES – HUMAN RESOURCES**

Approve an order appointing Debra Hart and reappointing Jerry Bumgarner, Alice Bernston and Lisa Snively to the Marion County Compensation Board for 2009.

## FINANCE

Approve a land sale contract for the sale of tax foreclosed property tax account #R97597.

## PUBLIC WORKS

Approve the renewal agreement with Debra Winger to lease 35 acres of land for grazing purposes.

## PUBLIC WORKS – PLANNING

Receive hearings officer's decision dismissing Administrative Review Revocation, case # 05-46/Johnson and Gilmore, Clerk's File #5609.

Notice of adoption of administrative ordinance granting zone change/comprehensive plan amendment, case #08-07, Krivoshein, Clerk's File #5607. Adoption scheduled for March 4, 2009.

**MOTION:** Commissioner Brentano moved approval of the consent calendar with the correction to the OLCC application of Broadacres Tavern, which is located in Aurora, not Salem. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

## **ACTION**

## BUSINESS SERVICES – HUMAN RESOURCES

1. Consider approval of orders amending the administrative policies for Americans with Disabilities Act and the Family Medical Leave Act. – Pat Donenfeld

Pat Donenfeld, human resources, said there have been changes in the laws at the federal level related to the American with Disabilities Act (ADA) and the Family Medical Leave Act (FMLA). She is proposing changes to county policies to make them compliant with the changes in the federal laws. The change in the law for ADA clarified that the disability the person has doesn't have to be permanent to qualify so the county's policy will be changed to match the federal law. The change in the law for FMLA has added two new military related uses of leave. The law has also now delineated the rights and responsibilities of both the employer and the employee. Ms. Donenfeld requested the board approve the changes in these two policies.

**MOTION:** Commissioner Carlson moved approval of two orders amending the administrative policies for the American with Disabilities Act and the Family Medical Leave Act. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

## PUBLIC WORKS – PLANNING

2. Consider adoption of administrative ordinance granting comprehensive plan amendment/conditional use, case #CP/CU 07-6, Sacher, Clerk's File #5576. – Dave Epling

Dave Epling, planning, said this involves an application to add an aggregate mining and processing operation to Marion County's Mineral and Aggregate Resources Inventory by amending the county's comprehensive plan. The applicant has also requested a conditional use permit to conduct aggregate mining and processing activities on the site.

The subject property consists of 34.4 acres located in a farm and timber zone (FT) at 158 Silver Falls Drive NE, Silverton. The Marion County hearings officer held a hearing on this application on September 5, 2007, at which time the applicant requested a continuance in order to submit additional information. The hearings officer continued the hearing to November 7, 2007, to receive additional testimony. On March 8, 2008, the hearings officer referred the application to the board with the notations that there was insufficient information in the record to substantiate a recommendation for approval of the application.

The applicant requested a delay in scheduling a hearing with the board of commissioners in order to prepare additional evidence. The board held a duly noticed public hearing on the subject application on December 10, 2008. At the conclusion of the hearing the board granted the application and notice of adoption occurred on February 11, 2009. The case is now back for final adoption of the ordinance.

**MOTION:** Commissioner Brentano moved approval of the adoption of administrative ordinance granting comprehensive plan amendment/conditional use, case #CP/CU 07-6, Sacher, Clerk's File #5576. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

3. Consider approval of an order establishing the fees for backyard burn permits. – Joe Fennimore

Joe Fennimore, planning, said the proposed order is to establish backyard burn permit and renewal fees. On December 3, 2008, the board of commissioners signed the backyard burning ordinance #1279 to regulate and control specific types of open burning on property located in the Salem/Keizer Urban Growth Boundary. The ordinance allows permitted exceptions to the prohibition of open burning provided that prior to burning a permit is issued by Marion County. Section 7, sub 4 indicates the board has the authority to establish permit and other fees associated with this ordinance. The intent is to process the majority of applications and renewal requests at the time of submittal provided all information is submitted at that time. However, there may be requests or circumstances that require additional staff research, coordination with the fire district or code enforcement. Mr. Fennimore said that staff feels a fee of \$40.00 for the permit and an annual renewal fee of \$25.00 to cover the cost of processing these permits is appropriate. Staff recommends that the board establish a \$40 fee for the backyard burn permit and a \$25.00 fee for annual renewals.

Commissioner Carlson clarified that the permit is for a period of time. Mr. Fennimore said they are working this out with solid waste and are hoping for a year permit or a seasonal permit.

Commissioner Milne asked if the renewal was on an annual basis and Mr. Fennimore stated that was correct. Commissioner Milne said it would be great if the forms could be online. Mr. Fennimore assured her the forms would be online. Commissioner Milne said she was concerned about adding another fee to people who need to maintain their property. She requested that Mr. Fennimore periodically give the board an update and report any issues with the new fees.

Commissioner Brentano said the permits are not a way to punish or for revenue, but the permit itself is a great way to educate. He added that this is for large acreages and they need permits.

**MOTION:** Commissioner Carlson moved approval of the order establishing the fees of \$40 for the initial backyard burn permit and \$25 for an annual renewal. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

4. Consider approval of an order establishing the fees for applications regarding noise variances.  
– Joe Fennimore

Joe Fennimore, planning, said the proposed order is to establish a noise ordinance variance fee. On November 12, 2008, the board of commissioners signed noise ordinance #1273, to regulate excessive noise deemed harmful to the health, safety, welfare and quality of life for citizens of the county. Section 9 of the ordinance outlines a process for a citizen to request a variance from the provisions of the ordinance. Section 9 requires an application be submitted to the planning division including a processing fee of an amount to be established by the board.

The noise variance requires a mandatory public hearing before the board of commissioners with notice to neighboring property owners within a specified distance. In comparison the current fee for a variance to a land use regulation that does not require a public hearing is \$1565.00. Given the cost of mailing notices and staff time preparing the notice report and attending the public hearing, staff believes an application fee of \$500 would be appropriate. This fee also reflects the complexity and legal requirements associated with this type of application. Staff is also suggesting that the board not set a fee for noise variance applications submitted in conjunction with outdoor mass gathering permits. Outdoor mass gathering applications have a current fee of \$2500 for a small gathering and \$5000 for a large gathering. Mr. Fennimore said the majority of research and staff time to process a noise variance application could be done at the same time as a mass gathering application. This would also include a public hearing notice and staff time for the mandatory public hearing.

Mr. Fennimore said that staff recommends that the board establish a \$500 fee for a noise variance application and waive the fee for those applications submitted in conjunction with outdoor mass gathering applications.

Commissioner Carlson said she supports what has been done with the noise ordinance so far, but as she understands it this is a small number of potential cases that would be submitted in conjunction with an outdoor mass gathering application.

**MOTION:** Commissioner Brentano moved approval of an order establishing the fee of \$500 for a noise variance application and waive the fee for those applications submitted in conjunction with an outdoor mass gathering application. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Milne recessed the meeting at 9:21 a.m.  
Commissioner Milne reconvened the meeting at 9:30 a.m.

## **PUBLIC HEARING**

**9:30 a.m.**

### PUBLIC WORKS - PLANNING

A. Public hearing to consider hearings officer's recommendation approving zone change/comprehensive plan amendment and conditional use, case #ZC/CP/CU07-7, Breitenbush Hot Springs Retreat and Conference Center, Inc., Clerk's File #5602. – Joe Fennimore

Joe Fennimore, planning, reported this is an application to change the zone from timber conservation (TC) to public (P), to amend the comprehensive plan designation from forest land (FL) to (P), with exceptions to statewide planning goal 4, on a 38-acre portion of a 66.47 acre parcel and then for a conditional use to expand the existing recreational retreat on both the 66.47 acre parcel and 81.89 acre parcel in a TC and P zone located at 18 Forest Service Road NE, Detroit, Oregon.

The request involves two pieces of property, the original 81.89-acre parcel on the south side of Breitenbush Road, which contains the retreat and conference center and a 66.47-acre parcel on the north side of Breitenbush Road. The applicant is requesting a zone change because of the desire to expand the existing center onto a portion of the 66.47-acre parcel. Although the TC zone does permit overnight camping, it does not permit intensely developed recreational uses such as pools, stores or conference facilities, which can be approved as a conditional use in the P zone.

On December 12, 2007, the hearings officer conducted a public hearing on the matter and the hearing was continued to January 16, 2008. Upon the applicant's request on March 8, 2008, the hearings officer reopened the record and the application was amended to delete a natural burial site and to increase the area being rezoned to P by 2.25 acres in order to encompass a sauna and hot tub area. On November 21, 2008, the hearings officer issued a recommendation that the zone change and conditional uses be approved if additional information was provided. The hearings officer included a list of conditions to consider if the board approved the proposal.

Mr. Fennimore said in the plan amendment the hearings officer stated that the applicant needs to submit additional information on how the expansion will affect wildlife habitat in the area. The applicant also needs to clarify the status of cabins that they want to relocate and the number of people located on the property year round. In addition, the applicant needs to submit whether snowmobiling is one of the proposed activities and a timeline for implementing the alternative energy resources.

Regarding the conditional use for expanding the facility, the hearings officer found the proposal meets most of the criteria, however, the applicant needs to provide additional information on some items. These include how the proposed new residential units meet fish and wildlife habitat policies in the comprehensive plan. Particularly policy #5, which limits the dwelling density and major habitat areas to no more than one dwelling per 80 acres. The hearings officer also found that additional information regarding the number of tent and RV spaces and a timeline for development of the campground is needed in order to determine the impact on surrounding areas.

Mr. Fennimore stated that the applicant is also proposing to develop additional energy sources including geothermal, hydroelectric and wind. The hearings officer found the applicant did not supply enough detailed information on each of these sources to determine whether the conditional use criteria could be satisfied.

#### TESTIMONY:

##### Support:

Mike Swaim, 270 Cottage Street NE, Salem, legal counsel for the applicant, introduced Michael Frazier, 985 Cedar Way SE, Salem, who is a member of the Breitenbush Community and is the primary author of the application for the comprehensive plan amendment/zone change and conditional use. Mr. Swaim said he received copies of letters from the Oregon Department of Fish and Wildlife, as well as the Willamette National Forest Detroit Ranger District that raised some concerns. Mr. Swaim said that there is need to sit down with those who wrote the letters and learn what their conclusions are being based on. He added that they want to work with these folks to assure a reasonable plan of mitigation to address their concerns. Mr. Swaim said they have not had a chance to meet with these people and request that this hearing be continued to allow Breitenbush to have this discussion. He added that they felt they needed an additional five to six weeks to complete this discussion and suggested the date of April 8, 2009, to continue the public hearing.

Commissioner Carlson said there were a number of other elements in the hearings officer's report where more information was to be provided. She asked Mr. Swaim if they were proposing providing all this information when the hearing is continued. Mr. Swaim stated that some of the information had been provided to staff and the remaining will be completed before the hearing.

The commissioners discussed the constituents that were present at the meeting and it was decided they could all have the opportunity to speak today if they wanted to do so and were more than welcome to come back for the continuance.

Tim Kirsch, 613 River Road, Mill City, said he wanted to voice support for this project development. He felt that the Breitenbush community has a proven track record of being good stewards of the land. A retreat such as this would be an economic value to the North Santiam Canyon, Marion County and the State of Oregon. He felt the entire east end of the county has the potential for being a viable recreation and ecological area.

Gwen Healy did not comment, but was in support.

Tom Robinson, Detroit, did not comment, but was in support.

Laurie Beamer, 2076 Davis Road S, Salem, said she was here to support the expansion of Breitenbush Hot Springs. She felt this was a wonderful benefit to the community for educational, environmental, social and economic values to the North Santiam Canyon. She said she was completely optimistic that Breitenbush would work with the county, forest service and fish and wildlife to meet expected standards.

Gerald Longton, 5336 Anderson Road, SE, Sublimity. Mr. Longton said he was a guest at Breitenbush in the 80's and that it was a very positive enlightening experience and changed his

life in many ways. He felt this was a perfect location for Oregon to have a showplace to display to the world that it is green. Breitenbush uses solar, wind, geothermal and hydropower, which are all green sources.

Tim Holman, 1345 Rees Hill Road SE, Salem, said he was a general contractor and he has had the opportunity to work with the Breitenbush community on a few projects. He said they have changed his ways with regard to building perspective and one of the most conscientious groups of people that he has every worked with.

#### Opposition:

Nancy Taylor, 7118 NE Vandenberg Avenue, Corvallis, said she is the district wildlife biologist with the Oregon Department of Fish and Wildlife. She stated that she is very familiar with Breitenbush and it is a very beautiful setting. The community does a good job with development and all the structures have a very small footprint. In addition, all the proposed structures have a very small footprint. Ms. Taylor said she has been working with Michael Frazier in terms of deleting some of the smaller problematic elements, particularly on the south side of the structure.

Ms. Taylor said that Breitenbush has agreed to work with the Department of Fish and Wildlife on several elements, including a hydroelectric facility and some fish passage issues. She said the only remaining issue, which is very important is the big game habitat. Big game habitat in this territory is typically low elevation areas that are south facing habitats that during the spring are the first to warm up and therefore, are the gathering grounds for the wildlife in the area. This isn't just the resident animals, the resident deer and elk, but also any in the general territory. This has been deemed to be important big game winter habitat since the 1970's or earlier. There are two areas that have been designated the most important big game habitat in the area. One is the Breitenbush corridor and the other is the Humbug flat, which is downstream of the corridor. Ms. Taylor said that because this was deemed so important and because the Forest Service has been cutting so much less timber in the past decades, many, many cooperators have put a lot of energy into augmenting the big game winter range through the power line area.

Ms. Taylor said that since 2001, through the power line area, 120 acres have been augmented for big game winter habitat. The concern with this project is that the primary access point that is best for developing the north parcel is right through the area that has been augmented for the big game winter range. Ms. Taylor said that 39 acres of the 120 acres that have been augmented specifically for big game winter range would be impacted by the primary road that Breitenbush wishes to utilize to access this parcel. It is a cumulative impact not a direct impact of the additional structures, tents and resorts. It's an accumulative regional impact of the north access road that Breitenbush would like to use. Ideally, the existing roads that come in from the south would be used or the employee access road that bisects the property on the north side of the road. If the existing roads were used and augmented there wouldn't be any significant issues with this project. It is March and April that is extremely critical for those animals and that is when there is the significant impact to fish and wildlife.

Ms. Taylor said that the quantity of volunteer work and staff time that goes into maintaining these 120 acres of big game habitat is fairly substantial. To pass off the mitigation to a volunteer organization for 39 acres of impact is unreasonable and probably not the best choice in this kind of manner. Ms. Taylor said that from the Department of Fish and Wildlife's standpoint, the development, especially with some of the tweaks that they have been discussing, is actually

something they could support. Mitigation for some of the fish issues and some of the development in the meadows of the north side of the property will need to be done. She reiterated they are gravely concerned about the plowing of Highway 46 in the winter and that the 39 acres of big game habitat mitigation would not be conducted and maintained adequately through time.

Commissioner Milne discussed the letter that Ms. Taylor submitted approximately a week ago and wanted to know when the area was designated. Ms. Taylor said it was designated in the 1970's and the corridor was augmented for big game winter range since 2001 until present.

Commissioner Milne asked what kind of discussions had taken place with Breitenbush. Ms. Taylor said the state was not aware of the earlier hearings. She became involved at approximately Christmas time. This was the time they began discussing the issues and she obtained the map of the proposed infrastructure and the 50-year plan. She said they did a site visit shortly thereafter where they actually walked the northern part of the property. While walking this property she noted deer, bobcat and cougar tracks and tracks from approximately five elk. She has been in coordination with the Forest Service, both to find out more information through their maps as well as finding out from the ranger whether or not it would be feasible to conduct wildlife mitigation on their property. Breitenbush does not have enough property to do adequate mitigation. Ms. Taylor said the letter from the ranger said it would be feasible to do mitigation on their property.

Commissioner Milne said according to Ms. Taylor's letter her concern is the plowing of the additional mile. Ms. Taylor said the issue is because that additional mile is right in the middle of the same location as the augmented big game winter range habitat, which was designated back in the '70s and has been augmented since the early 2000's. She added the mitigation for any impact on site with the structures could easily be dealt with. It is really the mitigation for 39 acres of impact of the roadway that is of grave concern.

Commissioner Brentano said he wasn't clear on her letter and asked her to further explain.

Ms. Taylor said to imagine that this site has always been a refuge. There is so much snow and so little access to this that there is an elk herd there every March. This is the only spot that is sunny and has seeps and grass. She said now imagine that someone opens the gate and plows and what the elk thought of their favorite refuge to eat in March and all of sudden there is car traffic and snow mobiles. The elk are not going to stay there and will not return the following March.

Commissioner Brentano said he has watched deer and elk and cars and the animals get used to it. He then asked what the spring Chinook impact was. Ms. Taylor said that is pertaining to the hydroelectric facility because there is resident cutthroat trout that would be sucked up into the hydroelectric facility. She said the spring Chinook occur in the Breitenbush river.

Commissioner Brentano commented for the record that this was absurd.

Alex Berlin, no address, said he had been to Breitenbush a few years back. He said the community numbers are growing constantly. He felt there was no need for a development in the tree lines or woods because someone said it was economic development. He asked what the definition of economic development was and said it implies better. He spoke of the word "footprint." When a cabin is built in the area and people use it animals disappear. When a

cougar comes along someone will shoot it and this is the cougar's territory. He felt the people of Breitenbush should be moved to Detroit, it was built for recreation.

Clayton Seaton, 10645 Parrish Gap Road SE, Turner, said his family has been in the Breitenbush area since 1953 he and they have had a cabin there. Mr. Seaton said he has seen the progression from that point in time to now. In 1953 there were just a few people there and now areas such as Humbug, Elk Lake and other areas have all been developed to a certain degree allowing more people to come into the area. This impacts the highway system and now Breitenbush wants to add quite a few tents, cabins and RV spaces. He added that this is going to add an influx of people and there is already extreme traffic during the good weather. If Breitenbush is allowed to develop their area to the degree they want it will create a city there bringing more people, traffic and other things that will develop with the progression. He asked who was going to pay for the highway system in the area. To maintain the roads it takes money and the economy is in a very bad situation. In order for the forest service to maintain the roads they will have to increase fees and this will affect the people. He said he was very much opposed to the expansion of Breitenbush.

Ms. Stonecipher suggested that the article that was in the Statesman Journal today be included into the record.

Commissioner Milne said that Mr. Swaim suggested an extension of this hearing to April 8, 2009. Mr. Fennimore agreed with the date.

Commissioner Carlson asked why Fish and Wildlife didn't hear about the land use application until such a late time. Mr. Fennimore said that Fish and Wildlife are notified of all county land use applications. She asked what they do if they don't hear from such an important agency as Oregon Fish and Wildlife. Mr. Fennimore said that until he received the hearings officer's recommendation he wasn't aware that Fish and Wildlife didn't receive the notice or that there was a problem. Commissioner Carlson requested they check the process they use so this doesn't happen in the future.

Commissioner Milne said what they have is a request to continue this hearing to April 8, 2009.

**MOTION:** Commissioner Carlson moved that the board continue this public hearing on April 8, 2009, at 9:30 a.m. in the Senator Hearing Room at Courthouse Square. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Milne read the calendar.

Commissioner Milne adjourned the meeting at 10:28 a.m.

**Attachments:** Agenda

ABOVE MINUTES APPROVED

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CHAIR

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COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

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If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168.

Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: [www.co.marion.or.us](http://www.co.marion.or.us)