

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, April 8, 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 John Lattimer as chief administrative office, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

**PUBLIC COMMENT**

None.

**CONSENT**

BOARD OF COMMISSIONERS

OLCC APPLICATIONS – Recommend Approval

Firehouse Cabaret, Salem  
Last Chance Saloon, Gervais  
Los Temos Taqueria & Mini Market, Salem  
Roth's IGA, Lancaster Drive, Salem  
Roth's IGA, Portland Road, Salem  
Swiss Village, Mehama

PUBLIC WORKS – PLANNING

Receive hearings officer's decision granting conditional use, case #CU08-53, Smith, Clerk's File #5612.

**MOTION:** Commissioner Brentano moved approval of the consent calendar. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

**ACTION**

BOARD OF COMMISSIONERS

1. Consider approval of a proclamation thanking *No Meth: Not in My Neighborhood* for over four years of community activism and education. – Anna Peterson, Dick Withnell, Page Merrill

Anna Peterson, Dick Withnell and Page Merrill were in attendance. Ms. Peterson said she appreciated the opportunity to talk about *No Meth: Not in My Neighborhood* and what volunteers have been able to accomplish. She said she came to the realization that there was a methamphetamine problem in Marion County about five years ago. She didn't know what methamphetamine was and could not spell the word. She knew that from what she was learning that other people like herself needed to learn what methamphetamine was and action needed to be taken. She said this was one of the reasons for *No Meth: Not in My Neighborhood* beginning. Ms. Peterson said that Judge Pamela Abernethy introduced her to Dick Withnell and they created *No Meth: Not in My Neighborhood* on the back of a napkin at a Starbucks. She said this was the beginning and they decided to make it a task force, which would have a beginning, middle and end. She said the thing that was key to their organization was their belief that the business community and the community in general needed to partner with law enforcement, the criminal justice system, elected officials and with community non-profits in the fight against methamphetamine. She said this was the way the organization started and remained until the end, community lead and driven. She added it had been a wonderful public private partnership. This task force has brought awareness throughout the community and through the commissioners' efforts have reopened the work center/jail beds. They also worked with the Blue Ribbon task force on methamphetamine to raise the bail limits and to bring about certain administrative and funding changes so that methamphetamine could be fought more consistently throughout the county. This included holding people accountable and bringing them into the drug court programs and treatment services. She concluded by thanking the commissioners for their support.

Mr. Withnell thanked the commissioners for serving and the hard work they do. He said this was a collaborative effort in this community to fight methamphetamine use. He said they got the City of Keizer, Polk County and the City of Salem to become involved with the strike force. When law enforcement started cracking down it involved children being taken out of these homes and then foster care problems. He said that when the Statesman Journal publicized that three children were taken out of a home due to methamphetamine abuse and there was nowhere for them to be placed, they sat in the Department of Human Services (DHS) worker's office until three o'clock in the morning. The community's reaction was that this was not right. Due to this situation, the receiving home was developed within four weeks. This receiving home gave the children a place to stay until they could be placed in foster homes. This is a result of the community partnerships within the county. The *No Meth: Not in My Neighborhood* movement brought to light the lack of foster homes for these children. They made a call of action to the faith community to come up with extra foster care homes. Mr. Withnell concluded by saying there is a lot of leadership in Marion County and businesses and individuals have come forward and shown what a community can do.

Ms. Merrill said the thing that *No Meth: Not In My Neighborhood* has done exceedingly well was getting individual people involved in the fight against methamphetamine and all drugs. She said this task force had spoken to 57,000 people last year about the dangers of methamphetamine through various booths at fairs in different counties. Ms. Merrill said they also have talked to the business community about ID theft. ID theft continues to be a problem and continues to grow. Methamphetamine and other drug use is the major contributor to ID theft. She said that *No Meth: Not in My Neighborhood* has not gone away, but has been divided into three sections. The section that is carrying the *No Meth* name is working with volunteers. A large amount of those people are people in recovery from methamphetamine abuse and other drug abuse. She said these people are the ones that man the informational booths. She said St. Vincent de Paul

has started a program through the Marion County Re-entry Initiative, which supports individuals coming out of incarceration and helping them get back into the community. She said they are also working with a group of people who are trying to form a collaborative of different organizations in Marion County who work with drug awareness. Ms. Merrill said the volunteer force continues to be strong and is now working out of the SOS club. She felt that this program did a lot of good in the past and will continue to do a lot of good.

Commissioner Milne thanked them all for coming and wanted to thank for all their hard work. She wanted to make sure that people recognize the efforts of these people and getting the entire project going and then turning it over to other organizations to insure the effort lives.

Commissioner Brentano said he hated to see the involvement of these special people who started this task force end. He said this effort has been truly eye opening to so many people. He thanked them for all they had done.

Commissioner Carlson thanked them all for coming and the work that they have done. She said she looked at all that had been accomplished since the development of *No Meth Not In My Neighborhood* began. She spoke of the supply and demand side. She felt that the business and faith community have much greater engagement and awareness than they did over four years ago. She said that DHS has talked about how supported they feel in Marion County because of the volunteer efforts in recruiting foster parents and to have supports such as respite and other supports for children in foster care. Some of these would include the receiving homes and the Marion County Re-entry Initiative. Commissioner Carlson then asked what the next step is to keep methamphetamine and other drug abuse in the forefront of people's minds. She felt the moment that people get complacent things can move back in the wrong direction. Ms. Peterson said there are a couple factors that will make a big difference in Marion County. One is the solid mobilization through the agencies and departments in the fight against methamphetamine. She felt the messages are still out there and the support services certainly have rallied and are intertwined with the cities and the courts. Ms. Peterson said public awareness does shift from topic to topic, but in this community the tremendous numbers of people that have been concerned about methamphetamine are still concerned. The way this will continue to be the forefront on people's minds is when our public leaders continue to make public safety a priority. She felt this was a very important issue for all. She added that there are still families in crisis and people with addiction. This community is still very active in drug trafficking and there is still a need to focus resources on this problem.

Mr. Withnell said that in Marion County there are two commissions, the Public Safety Coordinating Council and the Children and Families Commission. He felt these were the two mouthpieces to keep drug abuse in the forefront of people's minds. When the two commissions work together the return on investment is significant.

Ms. Merrill commented the community needs to be aware how difficult it is for people in recovery from drug addiction to get jobs, housing and education. She said that when these people come out of incarceration or decide they want to quit drug abuse, they need the support of knowing that are going to be able to obtain a job. When a person has a felony charge against them or a methamphetamine use or methamphetamine trafficking, the chances of getting a job are very, very small. She said that she has worked with enough of these people to know that they are extremely intelligent people who made a very foolish mistake. They pay for it the rest of their lives. She felt the community could probably help in this area and felt it important to look

at people as individuals and assess their abilities. She said that a lot of times people think because a person has a drug charge they are no good. She asked that people give them a chance to move ahead and once these people start succeeding and are given a second chance, the community will realize that these are good people.

Commissioner Milne spoke about the Children and Families Commission and Public Safety Coordinating Council. She said that it has been within the last year that the communication between the Children and Families Commission and the Public Safety Coordinating Council began and the work they do is more compatible. She said it relates more than it has in the past and there is more consciousness. She said the Public Safety Coordinating Council very much wants to keep methamphetamine problems at the forefront, but recognize there are other drugs that are addictive and can totally destroy a life, and particularly the lives of children. She added that there is also the “Striking Out Meth” annual event in Marion County. This also represents the community involvement because they also have a large number of sponsors. She added that people readily step up to sponsor that event. The focus of this event is the education aspect that they can give education materials in a fun family environment. The other focus is making sure that the foster children can get to this event, where they can not only learn, but also have fun just being a kid.

**MOTION:** Commissioner Carlson moved approval of a proclamation thanking the *No Meth: Not in My Neighborhood* organization for over four years of community activism, education and public service. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

The commissioners then read the proclamation.

2. Consider approval of a resolution approving distribution of video lottery receipts to promote economic development in Marion County: Composite Materials Research and Development LLC - \$75,000. – Dan Estes

Dan Estes, senior policy advisor, said he was excited to bring a recommendation from the Economic Development Advisory Board (EDAB) for the approval of a grant for \$75,000 for Composite Materials Research and Development for a new product that is coming on line in Oregon, composite rebar. This project will enable the company to hire 13 employees and retain four existing. He said the base salary for these jobs would be approximately \$40,000 per year. He said this is higher than the average wage in Marion County. Composite rebar is a fiberglass-reinforced polymer that has just been approved for use in bridges and concrete structures. He said that compared to steel it is one quarter of the weight and twice the tensile strength. This is really a green technology because since it is lighter than steel, it costs a lot less in transportation costs to get it to and from a job site. It also lasts longer than steel, which means the structures will not have to be replaced nearly as often. When looking at this long-term he felt that this product would have a place in construction projects taking place in Oregon and around the country. He requested the board’s approval of this resolution.

Commissioner Carlson asked about the balance in lottery funds. Mr. Estes said that there is still \$447,368.23 in unobligated lottery funds after this project is approved.

Commissioner Milne commented that this is another exciting opportunity for Marion County to play a role in economic development and help this company expand.

**MOTION:** Commissioner Brentano moved approval of a resolution approving distribution of video lottery receipts to promote economic development in Marion County for Composite Materials Research and Development, LLC. in the amount of \$75,000. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

### PUBLIC WORKS

3. Consider approval of an intergovernmental agreement with the Oregon Department of Transportation and the City of Aumsville to share in the costs of safety improvements to 1<sup>st</sup> Street in Aumsville as part of the 2010-2011 Pedestrian and Bicycle program. – Cindy Schmitt

Cindy Schmitt, public works, said she was requesting board approval to enter into an intergovernmental agreement with the Oregon Department of Transportation (ODOT), the City of Aumsville and the county. The purpose of the agreement is to construct a project that has been long needed in the City of Aumsville on 1<sup>st</sup> Street. She said the City of Aumsville has applied numerous times for various grants to try to complete this project and it has been a number one safety priority for their community. She said they finally succeeded in getting a bicycle and pedestrian grant. Ms. Schmitt said the county is combining forces with the City of Aumsville to try to get this project completed. She then showed the board some slides to illustrate where the improvements would take place.

Ms. Schmitt said the total project cost is estimated at a little over a million dollars. The state grant amount was \$699,000, which is a substantial grant for this program. She said she is proposing to match that grant with a soft match of staff time for the preliminary engineering, construction engineering and helping the City of Aumsville manage the contract. The City of Aumsville has saved some funds to provide some local cash match to makeup the total project cost.

Commissioner Milne asked how long the project would take. Ms. Schmitt said she said it would only take a few weeks.

Commissioner Brentano said he was familiar with that road and it has always been trouble. He asked if there was any way to displace the water from the culverts. He said it floods so easy and his concern is when the project is done the culverts are covered. Ms. Schmitt said drainage is an issue and it poses some challenges. She said that she felt they could accommodate most of the drainage issues at this point, particularly with the first phase of the project.

**MOTION:** Commissioner Carlson moved approval of intergovernmental agreement #25328 with the Oregon Department of Transportation and the City of Aumsville for Marion County to provide in-kind preliminary and construction engineering, valued at \$205,000 for the construction of bike lanes and sidewalks on both sides of 1<sup>st</sup> Street, from Main Street to Cleveland Street and on the west side of 1<sup>st</sup> Street, from Cleveland Street to Willamette Drive as part of the 2010-2011 Pedestrian and Bicycle Program. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

## PUBLIC WORKS - PLANNING

4. Consider approval of resolution initiating process for review and concurrence in City of Salem urban area policy amendment to the Salem Area Comprehensive Plan and scheduling a public hearing for April 29, 2009. – Les Sasaki

Les Sasaki, planning, reported the City of Salem is proposing an amendment to an urban area policy of their comprehensive plan. The policy is Industrial Development Policy #12, which addresses the land division of large industrial parcels, those parcels over 40 acres in size. The policy also has provisions that address three parcels in particular that are located in the Marion County portion of the urban growth boundary for the City of Salem. Those provisions deal with the review process and actual parcel requirements for division of those three specific parcels. The intergovernmental coordination procedures between Marion County and the City of Salem in regard to policy amendments of this type require that the county concur in the city's proposed amendment. Mr. Sasaki explained that there is a resolution before the board today that sets the county's concurrence process into motion, as well as sets a public hearing date of April 29, 2009, for the county to consider this concurrence issue.

**MOTION:** Commissioner Brentano moved approval of a resolution initiating process for review and concurrence in City of Salem urban area policy amendment to the Salem Area Comprehensive Plan and scheduling a public hearing for April 29, 2009. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

## **PUBLIC HEARING**

**9:30 a.m.**

## PUBLIC WORKS - PLANNING

A. Continuation of 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, said this is a continuation of a public hearing and there has been further information submitted since the prior hearing. This information includes a modification of the request by Breitenbush to remove three buildings and a bridge along the river, design hydroelectric diversion on Mansfield Creek to Oregon Fish and Wildlife standards and not to plow Forest Service Road 46 beyond where they currently plow between December 1 through April 15.

Mr. Fennimore said based on these modifications we received letters from both the Oregon Department of Fish and Wildlife and the Department of Forestry indicating that their concerns have been addressed. Planning also received a letter from 1000 Friends of Oregon stating that they believe an exception to statewide goal 14 urbanization is required and that the exception to goal 4 has not been justified.

Mr. Fennimore said the applicant also submitted a packet of information discussing the issues raised by the hearings officer in her recommendation.

Commissioner Carlson asked Mr. Fennimore if he thought the information provided by the applicant responds to the hearings officer's request. She wanted to know if there were any areas that were still outstanding. Mr. Fennimore said that the applicant responded to all the issues. Commissioner Carlson confirmed that at the previous hearing the major issue was the testimony from the Oregon Department of Fish and Wildlife regarding big game habitat. Mr. Fennimore confirmed and said the applicant is proposing to satisfy those conditions. He confirmed that the planning department was satisfied with the response.

## TESTIMONY:

### Support:

Mike Swaim, 270 Cottage Street NE, Salem, said he was accompanied by Michael Frazier, 985 Cedarway SE, Salem, who is a member of the Breitenbush resort and the author of the application. Mr. Swaim added that Peter Moore is also accompanying them this morning and is a member and business director of Breitenbush. Mr. Swaim said that what is being proposed is an expansion of the existing retreat and conference center onto an adjoining 67-acre parcel. This involves rezoning 40 acres from timber conservation (TC) to public (P) and a new conditional use permit combining existing and proposed uses on the 86-acre existing resort and retreat. The record is voluminous, probably measured more in feet than inches, but Mr. Frazier has produced an executive summary that has recently been delivered to the board that focuses on the major elements of the evidence in the record to assist the board. He has also submitted a 10-page document specifically addressing the questions raised by the hearings officer whose recommendation is for approval of the application, upon the submission of additional information.

Mr. Frazier, 985 Cedar Way SE, Salem, commented that he wanted to address the questions that the hearings officer posed. The hearings officer cited three areas of major concern. The first was information regarding the energy component that would be employed at Breitenbush. Mr. Frazier said that they are proposing to develop alternative energy sources in order to create the energy they need at Breitenbush. He said they are off the grid and need to produce all of their own energy. He explained what was in the proposal and said that they are looking at a number of alternative pieces of energy, not just to supply what they need, but also to create an educational model because there are a lot of things in the forefront now in terms of small-scale hydroelectric power, solar systems and methane generators. Mr. Frazier said he wanted to be clear that they intend to do each one of these things in the proposal and are asking for that to be included in their conditional use permit. Mr. Frazier said they would be doing this work as a part of developing the essential infrastructure that supports the further development of the area. He said there was one question that came up regarding the energy issue. He said one of the bigger pieces was taking a geothermal well and converting a large amount of that energy into electricity. He said there is the potential that they would be creating a fair amount more of electrical energy than they would be using or need for the resort. He said they looked at the possibility of putting that excess back into the grid by a contract with Portland General Electric to sell as green energy. Mr. Frazier said that planning informed him there was a question as to whether this is an allowable use. Mr. Frazier said he would like to keep this item in the proposal with a condition that would require Breitenbush to show that regulations would allow them to do this. He said they don't want to be considered as a public power supplier.

Mr. Frazier said the other issue was the habitat discussion at the last public hearing. He said they have since met with the Oregon Department of Fish and Wildlife (ODFW) and the Forestry Department and have come up with an alternative. He said they are proposing to avoid any habitat impact and so they agreed that they would not plow Road 46 from December 1 through April 15. He said this was ODFW's primary concern and they are satisfied now with the proposal.

Mr. Frazier said there is another issue in regards to housing. He said a hearings officer raised a question regarding the Marion County Comprehensive Plan Parks and Recreation Policy. In policy #5 it states, "Development density shall be controlled so that significant wildlife habitat would not be adversely affected in the county resource zones". The standards for dwellings density shall be one house in 80 or one house in 40 or it could be doubled if there was a compression of that housing. Mr. Frazier said it seemed to limit the numbers and remained a question as the discussion of habitat was going on. He said he wanted to point out in policy #5 that dealt with habitat, clearly the intent of the policy is to protect the wildlife habitat, not otherwise limit development if there is no impact of significant habitat. He said this was verified by a survey that was done with the state wildlife biologist. He said Ms. Taylor went to Breitenbush and with other staff they transected the property for five hours in an 18 inch snow cover that was undisturbed by later snows. He said they had an adequate record of any animal that had been across the property. What Ms. Taylor concluded at the end of that survey was that there was not significant habitat or animal traffic in that area. He said that Ms. Taylor found one set of cow, calf tracks going across the property and stated that was not adequate reason to look further at the proposal, which is about developing housing, both for staff and guests.

Mr. Frazier pointed out there is other evidence that allows, which is ORS 171.030, recreational resorts and retreats as a conditional use. He added that ORS 171.050, allows new residential dwellings "when accessory to a primary use". He said if the primary use is a retreat and they are allowable in these zones, this ORS would indicate that housing is allowable. He said that ORS 197.435 provides overnight lodging, which is called permanent separately rentable accommodations that are not available for residential use and it includes hotel rooms, cabins, etc. He said there is a distinction between residential use and dwellings. He said he wanted to reiterate there is a distinction. Further, the ORS said that residential uses must be limited to those necessary for the staffing and management of the resort. He said it indicates that staff and management would be residing in dwellings at Breitenbush and that is allowable. He said it treats housing for guests separate and they do not call them residential uses. He said it clearly implies that cabins and lodging are dwellings and not new residential uses. He added that the dwellings in this case are not for sale, they are not owned by private individuals and they are limited in the case of guests to a maximum of a 30-day stay. The cabins and dwellings are an accommodation for staff and there is no rental fee charge to staff. There is no money exchanging in terms of this occupancy.

Mr. Frazier said most of the cabins are small and most of the guest cabins are sleeping quarters for overnight lodging. A few of them do have what is called a half bath, which is a sink and a toilet. He said the things that define a residential use that would accommodate a family are not there. There are no cooking or eating facilities or the complete array of sanitation and bathing facilities. There are no driveways, pet or fences. Mr. Frazier said that through these citations he is attempting to describe what is being done with housing at Breitenbush and the limitation of housing would not apply in this case.

Mr. Frazier said the hearings officer asked for a 15-year breakdown of expansion. He said that he did respond to that and said that in the first few years of the development it was the beginning of the infrastructure work. He said they had to have roads, trails, energy, communication, water and heat lines in order to support any building that is constructed. There is an amount of time and an investment of time and energy over the first five years to even begin to establish enough infrastructures to support the primary use as a retreat center. He said they would in the first years be putting in parts of the guest campground and also a staff summer campground that supports the seasonal staff. He added they would also be building a few dwellings for staff cabins and a few guest cabins. In successive years, five to ten, they would be further developing more of the energy uses discussed earlier to support the rest of the infrastructure and building more of the cabins. They also would be looking towards completion over years ten through fifteen.

Mr. Frazier said in their initial proposal they spoke of a 50-year plan and a 50-year conditional use. We said they propose to reduce the 50-year conditional use to a 15-year conditional use. The hearings officer recommended a five-year conditional use permit, with extensions. Mr. Frazier said that he was requesting this recommendation be modified to a 15-year conditional use. He said the primary and overriding issue is that in order to complete and build this piece over time, they need to know that the later year expansion would not be overtaken by events in the meantime. For example, if rules change over years one through five as they are building and that those rules might restrict further things from happening, they would be left in a position of a huge investment that might have been overbuilt. He said this makes it very difficult to plan and he reiterated requesting a 15-year permit. He also wanted to speak about condition #28. He thought the hearings officer might have been looking at a prior conditional use that was held by the prior owner, who was establishing a campground. In the campground, overnight lodging in tents or recreational vehicles is not allowed December 1 through April 15. He felt that somehow this was forwarded into the timeframe for having overnight guests at Breitenbush. He said he was certain this was not intended because they would not be having tent camping or recreational vehicle camping at that time. He said that conditions #36 and #37 were put into the recommendation to satisfy the meetings with the forestry department and the Oregon Department of Fish and Wildlife. He said this was the conclusion of his responses to the hearings officer.

Mr. Frazier said he received a letter from Sid Friedman of 1000 Friends of Oregon. He pointed out a number of items in his letter. Mr. Friedman stated in the letter that he believes a goal #14 exception is also required. Mr. Frazier said that they were only required to satisfy one goal exception and if you satisfy one then you can proceed with a comprehensive plan amendment. Mr. Frazier said they were not required to satisfy more than one exception. He said goal 14 directs cities to establish urban growth boundaries to create available spaces for future growth. He said he felt this was not applicable in this case. Item number two of the letter is where Mr. Friedman suggests that the applicant must demonstrate by substantial evidence reasons why other areas will not be satisfactory and that they failed to show this. Mr. Frazier pointed out that in the final opinion of the hearings officer, the applicant did in fact satisfy the questions about other alternatives. Thus, the hearings officer recommended that the county could proceed with the comprehensive plan amendment. Further, Mr. Friedman suggests that the applicant must find an alternative area or show that one does not exist. Mr. Frazier said the hearings officer recommendation quote, "Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding can describe why there are specific

sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with fact to support the assertion that the sites are more reasonable by another party during the local exceptions proceeding.” Mr. Frazier said this was not done and the person did not present this. The prior public hearings were completed and nothing was proposed.

Commissioner Carlson commented that she also received the letter from Sid Friedman. She said she looked at the hearings officer’s report and the reasons exception portion starts on page 16 of her report and ends on page 21. Commissioner Carlson said the hearings officer did a fairly lengthy analysis of the reasons exception for goal #4. Item #36 of this reasons exception portion the hearings officer said, “As previously stated, the proposed uses is dependent upon being located in the forest near a natural hot springs. Other possible sites would require that more land be taken out of timber production. The current parcel has little marketable timber because the prior owner logged the area and began, but never completed the installation of a RV park and parking lot. In addition, the expansion needs to be located near the current site in order to maximize efficiency and share facilities and resources.” She said that on page two of Mr. Friedman’s letter there is a comment that says, “The analysis concludes that the retreat center requires a forested location adjacent to a natural hot springs. The applicant might not be able to find another location containing a natural hot springs surrounded by forest.” There was also a comment by 1000 Friends that says there is no evidence in the record to support a conclusion that a retreat center or a forest resort requires a location next to a natural hot springs in order to be viable. Commissioner Carlson said this was not entirely logical to her because if someone is trying to expand a resort that is a hot springs resort, why would that not be germane to the discussion. Commissioner Carlson said it seems like the letter is criticizing the hearings officer in the hearing for not doing a thorough analysis, and yet this conclusion seems superficial. She said she is not convinced that there is a concern. Commissioner Milne said she agreed with Commissioner Carlson.

Mr. Swaim said it seemed to him that the hearings officer dealt with this rather exhaustively and the evidence is there to support the hearings officer’s conclusions. He said that the hearings officer finds that the goal exception is met and the administrative rule requires any opposition to provide actual factual evidence. He said it is the opposition’s burden to prove that the goal exception is not met and there is no evidence of this in the record.

Commissioner Carlson confirmed that Mr. Swaim was satisfied with all the conditions including the additional two conditions that he added. In addition, he is concerned with condition #28 and wants it to be dealt with. The 50-year conditional use permit as opposed to a 15-year permit with extensions is also a concern that Mr. Swaim raised. Commissioner Carlson clarified that Mr. Swaim wants to have a condition about the energy use. Mr. Frazier said he suggested a condition that Breitenbush would not sell excess electrical output into a public grid by contract or agreement with another public power supplier without first applying for a separate conditional use, if such becomes allowable by changes in existing rules. Mr. Swaim added that the application started off with a request for a 50-year permit, but during the course of discussion and hearings, the request has been reduced to a 15-year permit. He said their concern with the hearings officer’s report was that the recommendation was only for a 5-year permit, with extensions. He said because of the frontloading of the rather expensive energy facilities, a 5-year permit would leave them vulnerable to a change in regulations and then all the infrastructure that has been built to serve a particular use might not be able to be used in the same manner.

Commissioner Milne said that five years goes by quickly and sometimes various permits take longer than expected to obtain. In the current economy funding can have numerous obstacles and delays. She added that the weather could also play a role in delays. She agreed that five years was too short of time period. Mr. Frazier confirmed that they are wanting a 15-year conditional use permit, but with the possibility of extensions. Mr. Frazier said if they were granted the 15-year permit there are some possibilities for extensions.

Mark Hoskins, 53000 Breitenbush Road, Detroit, said he is a member of the Breitenbush community and has been for approximately three years. He said he supports the plan and there is a sense in the community that this piece of land being discussed for expansion is the next step for Breitenbush. He agrees with the 15-year conditional use permit and this will allow them to move forward without delays. He said they are meeting the requirements of ODFW and the forestry department because they want to expand with the least amount of environmental impact.

Gwen Healy, 53000 Breitenbush Road, said she is in favor of this expansion and has been involved in the planning process. She added that she is a member of the board of directors for Breitenbush and has been with the community for about six years. Ms. Healy said she sees herself as playing an important role to insure that they meet the state planning goals, Marion County rules and regulations and doing what is right in regard to the environment. Ms. Healy said there is real cost associated in building an infrastructure. She said the real outcome is for a broader community. She talked about how important it was to the members of Breitenbush to have a small footprint. Their houses are less than 200 square feet and bathrooms and kitchens are shared. Ms. Healy said she heard comments that the members were trying to build a big city at Breitenbush and she clarified that Breitenbush is actually a village. She reiterated that they are not looking to build a huge facility, but are stewards there to make the resources available to everyone. She commented that through this entire process she had learned a lot about Marion County and she feels it is an amazing county. The land resources and benefits are incredible.

#### Opposition:

Shelley Wiles, 5155 Cultus Court SE, Salem, said since she found out about the magnitude of this expansion she has been trying to attend as many hearings as she can. She said she wanted to relay some history of the area. The U.S. Forest Service established the Cascade National Forest on March 2, 1907. The Santiam National Forest was established on July 1, 1911. The Willamette National Forest was established when the two were consolidated in 1933. Per the Forest Service website, Congress established the Forest Service in 1905 to provide quality water and timber for the nation's benefit. Over the years, the public has expanded the list of what they want from national forests and grasslands. Congress responded by directing the Forest Service to manage national forests for additional multiple uses and benefits and for the sustained yield of renewable resources such as water, forage, wildlife, wood and recreation. Land use was started in Portland in 1918. She said Oregon was one of the first states to move in the direction of land use. It was upheld in a court of law in 1925. In 1969, a senate bill passed and although it was challenged multiple times, land use was held up in court. In 1983, Marion County's comprehensive plan was adopted. She said land use regulation was designed so the lands best suited for specific needs would be preserved for that use. For an example flat fertile lands would be for farms and heavily wooded areas would be for timber. Urban development was restricted to those areas already developed adjacent to developed lands or of little other use. Development was to be done in controlled areas in a controlled manner. In 1904 the Forest Service strongly

objected to the homesteading of Breitenbush, but it was allowed. This was the first step on this very slippery slope of development in an area where there shouldn't be development. Because of this homestead, the Breitenbush parcel is not included in the National Forest or in either of the Cascade, Santiam or Willamette forests. The resort was established before Marion County's land use plan was adopted, so the next step down the slippery slope was done before there was any regulation.

In 1985, however, the community purchased the land from Alex Beemer. Land use was in effect then and they knew what the zoning was when they purchased it. In 1999, they purchased the additional 67 acres, which is much of what is being developed. The community knew what they were purchasing and knew what the zoning was. They also knew they were going to work to change the land use. On their website, Alex Beemer is quoted as saying, "During the late 1970's in what we call the pioneer period, I remember one vision meeting where we asked the question, what will Breitenbush be like at the turn of the millennium. My answer was, this is going to be a world-class center for consciousness. Because of the beauty, because of the number of people that can be here and because of the intentions of the people who will choose to visit, great teachers, living teachers will come." Ms. Wiles said they knew they were going to increase the population in that area. The area in question is surrounded by National Forests. The land use in this area that surrounds the Breitenbush hot springs is the same as it was a hundred years ago; it's National Forest. She said it would be the same probably in a hundred years depending on what happens to the National Forests. Even the area that surrounds the National Forests hasn't changed that much in a hundred years. There is no urban sprawl except what the community is bringing in. The closest city is Detroit and there is little change that Detroit will start bumping up against the edges of the National Forests and can't bump up against the edges of this community. There is no manufacturing except what the community is bringing in. There is some logging in certain areas and there were a couple of gravel pits that she didn't think functioned any longer. The closest manufacturing would probably be the timber mill in Idanha.

Ms. Wiles said the reason the application lists this kind of development, in the middle of our National Forest, is because the uses are suited to this location because of the proximity of the applicant's existing retreat and conference center, and are planned as a continuation and expansion of the retreat and conference center. Because they built a resort on this land, they should be able to expand that resort there. She said that is a self-justifying argument. Because it's there, they should be able to expand it. Regardless of the surrounding use, which is National Forests, they consider the best use to be a continuation of the resort. Ms. Wiles said that if you look at the history of the land use in the area, the best use would be what has been there the longest, National Forest and timber conservation. There really is no reason to merit this land use change, other than it is what the community wants. She added that this is a money making venture and they are asking to make these changes to make more money.

Ms. Wiles said the bottom line is that they have wrapped it up in recyclable wrapping paper and put a pretty green bow on it, but it is a lot of smoke and mirrors. She said she does like the fact that the community is trying to be sustainable and she likes a lot of what they have done. However, if you step back, you are looking at a resort that is trying to expand in the middle of the National Forest. She said this is what the community wants, but that doesn't mean it is for the best. The application also states, "The applicant focuses on preserving the environment and being environmentally friendly." She said there is no indication that the applicant has any intention of developing a strip mall. She asked what would happen if the community went bankrupt or into foreclosure or what if they sold it. She asked what if the controlling group

changes their mind. The application later states, “one of the guiding principles of the applicant is to be as environmentally friendly as possible.” She asked everyone to please note the last two words “as possible.” She said this means that the environment is a lower priority to their wants and they may say them as needs, but they are wants. Ms. Wiles said their website states, “first we bought an antique well driller and learned to use the thing by drilling geothermal wells, a time consuming and dangerous enterprise. We hit spectacularly on two of them, complete with boiling 60 foot geysers.” She said because they wanted heat in their cabins, they purchased an old piece of equipment they didn’t know how to use and learned how to use it by drilling in a fairly pristine forest area in the middle of a National Forest. At the very least, it is irresponsible, but it definitely shows that the environment was secondary to their wants. She said this attitude continues in the application. She asked what the term environmentally friendly really means. She has tried to find out by looking through paper and online definitions. What she has figured out that environmentally friendly is a comparative term. She agreed that they are more eco friendly than Walmart and more eco friendly than clear cutting, but they are not more environmentally friendly than leaving the forest as forest, rather than putting in buildings, parking lots, pathways, roads and RV spaces.

Ms. Wiles said the listing that was sent out in the application of the proposed buildings removes over 95,000 additional square feet from where wildlife can walk. She said that is over two acres and that is just in buildings. Some of these small buildings might be two story and are a smaller footprint, but her calculations didn’t take in to account the many pathways that lead to those very small buildings, the roads that lead to the expanded parking lots of those many small buildings or the camping sites and RV spaces. The community is actually removing much more land from the forest for wildlife use than just two acres. She said this isn’t just a step on a slippery slope to development in the middle of our protected National Forest; it is a broad jump to the bottom. She said she heard they were off the grid. She said there isn’t a grid up there and the term only becomes impressive and wonderful when you talk about large developments and a lot of people. She said that in the middle of the forest, large developments and a lot of people are not appropriate. As pointed out, this development affects areas where resident and transitory elk go to feed and water. With the influx of people that this development will bring, whether in two years or fifty, animals will move out as people come in. She said the scavengers will stay, but the others will move even further away. She said that one of the things that frightens her is that granting this request would open a huge land use door. She said if this change is approved she could see where any land use change request in Marion County can be justified. If this parcel of land that is entirely surround by static land use for the past hundred years and how many more years in the future, is approved, then what change can’t be justified.

Ms. Wiles said if she and a hundred of her closest friends want to put in a solar powered multi-family housing development in the middle of Oregon’s richest farmland three miles outside of Salem, that land use request would have greater merit than this one. She said at least it would be closer to a population center and it would be green. The community is a collection of like minded people who want to develop multi-family housing in an old growth forest. If a religious organization wanted to put in a large camp off of Parrish Gap Road, on land that is currently zoned exclusive farm use, Marion County should probably let them do it. Strong parallels can be drawn between a religious camp and this development request by the community. The community does espouse a specific ideology and frequently teaches courses on how to be closer to what they refer to as spirit, or the sacred other. This development includes two temples and other religious buildings. She said this sounds like a religious organization to her and she does use Parrish Gap Road and a religious camp specifically because a couple years ago, a faith based

organization wanted to site a youth camp on Parrish Gap Road. She said that land use request didn't get approved.

Ms. Wiles said the fact that the community is trying to make as little impact on the land is a wonderful thing and should be encouraged, however, where they want to develop it is not acceptable and should not be encouraged. A city in the middle of the National Forest is not what Marion County should be encouraging. She said the difference in Oregon between a city and a town is that a city is an incorporated and provides services and a town is not incorporated and accepts services for their governmental services. The business manager of Breitenbush has stated that they operate an entire small town in the middle of the wilderness, including making their own electricity and heating their buildings with hot springs. He also stated that they maintain enormously complex technical systems and govern themselves through an enthusiastic democratic process in which the power structure is circular, not pyramidal. The community still has to accept services from other governmental authorities such as access and road maintenance, but they are well on their way to becoming a city. Ms. Wiles said they have an acknowledged governmental structure, buildings dedicated to the administration of their city and they have admitted they are a town. She said they also provide services to their residents such as waste management and power generation. Ms. Wiles said she drove up to Breitenbush a few days prior and between the City of Detroit and Humburg she counted 10 places in the road where you can see the ripples in the pavement as it's starting to sink. She added that right after Humburg you could see a sign that says, "Caution, sunken areas one mile." She said there is an entire mile of road that is sliding because what's under the pavement is gone. Ms. Wiles said now there would be more cars added on these roads, as well as RVs and in the winter months with chains and studded tires. She said Highway 46 is in terrible shape and should be completely repaved. This is only a band-aid on a gaping wound.

Ms. Wiles said the community also likes to talk about the number of jobs they will be bringing to the area. An article in the Statesman Journal reported an additional 45 full-time jobs and 22 seasonal jobs. She said these jobs would go to community members, not Mill City or Detroit. She again reiterated that the reasons in the application are to make this community good are self fulfilling. She said they want to expand because they are already there and that doesn't make it right. She said she is asking the commissioners to truly look at what is right and what are the benefits to that area and the National Forest. She didn't feel that expanded energy production is it for a larger resort.

Clayton Seaton, 10645 Parrish Gap Road SE, Turner, said he is in opposition to this expansion for several reasons. He has seen Breitenbush grow for over fifty years. The Breitenbush community in 1951 was not to the extent it is now. He said it is not a large parcel of ground and now they're adding cars, buildings and more people. Mr. Seaton said he has problems with them putting in buildings to expand Breitenbush in the National Forest. On any summer holiday, the campgrounds are full. He said the road system is looking very sad and with this additional traffic it is only going to get sadder. Mr. Seaton said the community has good people in it, but it doesn't change the fact that they should not be allowed to expand.

Mr. Swain and Mr. Frazier came back to the table for rebuttal. Mr. Frazier said that he would like to talk about the goal #14 exception again. He clarified that a goal 14 speaks to urban issues and uses and urban density. He said they are not in an urban setting up at Breitenbush. He said what they are proposing to do is in a rural setting. In rural settings there is adequate language throughout the processes they have been dealing with that speaks to overdoing. For example, he

said the community was not a parallel or a direct comparable to the Elkhorn development. He said the parallel is that resorts and retreats are built next to or in an area that supports what they do. He said these things are listed in the rules and laws. Hot springs is a listing in the rules as well as trail skiing areas, so goal 14 does not apply.

Mr. Swaim stated one of the most important resources up in the Santiam Canyon is the human resources. He said that Breitenbush has become a real gemstone in the Santiam Canyon as an economic asset during some very, very difficult economic times for those people in the canyon. He said the plans that are being proposed today would allow Breitenbush to remain a viable economic contributor to the economy of that community. He said the organizational ethic of the Breitenbush community resort and retreat is to provide information about appreciation of and protection for the natural resources that are held in public trust. He said this is a very unique organization and a very unique ethic of organization. He said Breitenbush came on the scene, didn't clear-cut any property, but acquired an existing retreat. The proposal for expansion doesn't seek to cut any timber, but seeks to rehabilitate a site, which had been bulldozed and dumped upon by a prior owner. To clean it up and put it in product use in terms of making it available to people who want to come to not only relax, but to learn about sustainable development and to learn about what the public forest is all about by being able to see and to walk through and appreciate the surroundings. He said this is all about meeting a demand that is underserved by the very fact of what they see in the way of reservations and to really engage the public in a conversation about how to build a sustainable future and protect the public's interest in the timberlands that are in close proximity.

Commissioner Carlson asked Mr. Fennimore to comment on what the department's recommendation would be regarding the energy language. She also asked him to comment on the 15-year permit with two five-year extensions and the request to take out the language "or lodging" out of condition #28. Mr. Fennimore stated that condition #7 and #13 are the same and one of those should be removed. He said the department sees no problem with the conditional use being granted for 15 years with two five-year extensions. Commissioner Brentano asked what the grounds would be for an extension. Mr. Fennimore said he would review to insure the community is progressing as they proposed in their original application. If certain things were not completed Mr. Fennimore would need an explanation and reason. Commissioner Brentano said he didn't care what the reasons might be, but wanted some clear definition of what would or would not be grounds for an extension.

Commissioner Carlson asked what happens at the end of the 25 years if what was proposed is only partially done or completely done. She asked if the proposal would be grandfathered in as what it was originally. Mr. Fennimore said that at a certain point the proposal is grandfathered in. After the 25 years it will be reviewed as to what is on the property at that time.

Commissioner Carlson asked Mr. Fennimore to address what happens in the future if someone buys the property. Mr. Fennimore said that if a new owner bought the property they would have to abide by the conditions in this proposal or reapply for additional uses.

Mr. Fennimore said that he had no problem removing the language "or lodging" under condition #28. He said the wording that Mr. Frazier suggested regarding hooking back into the power grid was good language and he would like to use it. He added that he would like to add the two

recommended conditions to satisfy the fish and wildlife habitat items. Mr. Fennimore said there is an additional condition that he would like to see if this is approved and that would be a final site plan. This is because there have been areas added and removed and buildings added and removed through this two year process. He said the planning director would review this final site plan and insure it is consistent with the changes that have been made throughout the process.

Commissioner Brentano said he was satisfied with the conditions, but there has been a lot of discussion. He requested that some findings be written up by the applicants and approved by the county's planning and legal staff.

**MOTIONS:** Commissioner Carlson moved to close the public hearing and uphold the hearing officers recommendation approving the 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 and direct staff to draft an ordinance with the following changes in conditions: 1) remove the condition that is duplicated; 2) add in the language that Mr. Frazier proposed regarding hooking back into the power grid; 3) ask that the applicant work with planning staff to come up with some language that further address goal #14 and #4; 4) approve the 15 year conditional use permit with two five year extensions; 5) edit condition #28 to remove the language "or lodging"; 6) add a requirement for the final site plan; and, 7) add two additional conditions #35 and #36 for big game habitat and trout species and their habitat. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Carlson thanked everyone that has taken such an interest in this proposal for coming. She also thanked the applicants for working so diligently with fish and wildlife and the U.S. Forest Service. She said it is certainly not an easy process to make a land use change in the state of Oregon. She said that state law very tightly governs Marion County. She said it is a set of standards that are required that the applicant needs to provide evidence for. If the evidence is provided then the commissioners allow the land use change to happen.

Commissioner Milne said she always appreciates people that come and voice their opinions.

Commissioner Milne adjourned the meeting at 11:23 a.m.

**Attachments:**

ABOVE MINUTES APPROVED

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
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)