

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 14, 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 officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

PRESENTATION

United Way Presentation – Mikki Trowbridge, Dick Withnell and Jeanette and Brad Moore.

Dick Withnell, former chairman of the United Way campaign and presently on their board, introduced Jeanette and Brad Moore, co-chairs of the United Way campaign this year, and Mikki Trowbridge, community impact director at United Way. Mr. Withnell said the employees of Marion County are absolutely the best employees around for the work that they do. The United Way Campaign with Marion County has been very successful in the last three years. He said that in 2006 the United Way campaign by Marion County employees raised \$18,500, in 2007 it was \$26,000, and last year (2008) it was \$28,000. Mr. Withnell said their goal for 2009 is to get more participation within the entire community. He said if everyone gives just a little bit, it will make a difference. He acknowledged that the economy is down, but they are going to focus on the positiveness of living united, which will make a positive difference in the community.

Ms. Moore said that just an hour a week of a person's time is helpful and it is important to set a good example for children. Brad Moore said he and his wife Jeannette, have been with United Way for a total of 24 years. He shared an incident from the backpacks program at the Boys and Girls Club. He said a young boy remarked that his favorite item contained in his new backpack was the toothbrush because now he had his own and did not have to continue sharing a toothbrush with his brother. Mikki Trowbridge said the volunteers and staff of United Way focus on the building blocks of a good life, which are health, education, and income. The building blocks are to make sure everyone in the community can satisfy those basic needs.

Jolene Kelley, employee campaign coordinator, said the goal for the campaign this year is \$30,000. Because of the economic conditions that presently exist, there is a great need in the community. She said that United Way wants to focus on getting new donors and getting first-time donors. She said they would be doing some incentives for all first-time donations such as raffles and drawings. She said the people that are giving, are giving very generously. Part of their message this year is that they want to focus on what the donated dollar in the community. A lot of the information they will be giving out to employees this year will be about what happens to their donations. She said everyone's contribution makes a difference.

Commissioner Milne thanked each of the local United Way campaign representatives for their presentation and for the work they are doing for the community. She acknowledged the difficulties they face in the present economic climate and said it was going to be a challenge as some of their past donors are now struggling financially this year. She wished them good luck.

Commissioner Carlson asked where employees could go to get questions answered regarding the United Way. Ms. Trowbridge answered there are several ways to become informed and that a lot of the information is on their website, which is www.unitedwaymwv.org. In some workplaces where there is an internal campaign, the employee campaign coordinator can provide the correct information. Ms. Trowbridge said one should never hesitate to call United Way, because they are always happy to answer questions and provide information.

Ms. Trowbridge added that the local United Way has just received an announcement from United Way of America that last year their campaign had seen the greatest yearly increase of any local United Way campaign in the entire country.

Commissioner Brentano thanked all the presenters for their contribution to the community and wished them good luck.

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS

OLCC APPLICATION – Recommend Approval

French Prairie Gardens – St. Paul

CHILDREN & FAMILIES

Approve amendment #3 to add \$119,964 to the contract with Catholic Community Services to provide Healthy Start services and extend the term until November 30, 2009.

HEALTH

Approve amendment #4 to add \$637,355 to the contract with Northwest Human Services Inc. to provide integrated delivery system (IDS) services and extend the term until December 31, 2010.

Approve amendment #1 to receive \$76,000 from Lane County to provide access to online food handler testing for Marion County residents and extend the term through June 30, 2012.

Approve amendment #2 to add \$55,000 to the contract with George R. Suckow, MD to provide medical assessment and supervision for health department consumers.

PUBLIC WORKS – PLANNING

Schedule a public hearing for zone change/comprehensive plan amendment, case #ZC/CPA 09-0001, Phillips. Clerk's File #5625; suggested hearing date is December 16, 2009.

Receive hearings officer's decision denying conditional use, case #CU 09-019, Falls, Clerk's File #5629.

Reschedule public hearing regarding comprehensive plan amendment/ floodplain/greenway development permit, case #09-3, Windsor Rock Products, Inc., Clerk's File #5627 to November 4, 2009.

SHERIFF

Approve amendment #4 to extend the term of the contract for the inmate telephone system with FSH Communications on a month-to-month basis through June 30, 2010.

TREASURER

Approve an order for the distribution of timber revenues from the Oregon Department of Forestry pursuant to House Bill #5024-A (2007).

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

ACTION

CHILDREN & FAMILIES

1. Consider approval of a two-year contract for \$497,096 with Family Building Blocks to provide relief nursery services. – Tamra Goettsch

Tamra Goettsch, Children and Families, said this is the standard contract for Family Building Blocks (FBB) to continue services for the relief nursery in Marion County. FBB is responsible for serving children from birth to five years of age and their families who receive core services including therapeutic classroom supports and screening for appropriate development. She explained that as issues are identified in a particular child's development, support for the identified issue gets incorporated into the classroom setting and sometimes results in a referral for additional support for the family. The family also receives home visits within the FBB contract. These visits are done at least monthly. FBB provides education, support classes and access to the Clothing Closet. Unfortunately, FBB does not have the capacity to serve all kids and their needs in our community, so there is a waiting list.

NPC Research, Portland, looked at statewide relief nurseries and determined that 98.4 percent of the families served by relief nurseries had no subsequent involvement with child welfare. They also found that the number of families who read to their children increased from 19 percent at intake to 65 percent after 12 months. They also found that the use of emergency

room services decreased 27 percent for those who participated in the program for at least 12 months. Ms. Goettsch stated the relief nurseries are not only serving the individual needs of these families, but they are also strengthening communities with their supportive networks.

Ms. Goettsch told the board that the Children and Families Commission pulled together a team that looked at services. She said the team's findings and recommendations are a part of this contract today. Core services would be delivered to at least 97 children each year of the contract and then basic outreach services would be provided to 67 families this current fiscal year and at least 90 families next fiscal year. Intensive outreach services will have at least 52 families next year. Mental health supports and partnerships will be explored for these families. Relief nurseries are not in every county across the state; however, they are increasing in number. The legislature allocated the same amount of funding for this year, but Marion County's actual allocation is reduced because it had to be amortized across more counties. This contract goes back to July 1, Ms. Goettsch added, because the previous year's contract was extended through the end of the month. The contract before the board rescinds and replaces that contract. It has all allocations for this current biennium.

Commissioner Carlson commented she had a chance to serve on the small committee that reviewed the contract and thought it was a really good process. She said FBB does a terrific job in Marion and Polk Counties. The money is for two years and is for just under \$250,000 a year. The majority of the funding in a budget that is about \$900,000 a year comes from the community contributions and events such as the annual wine auction.

Commissioner Brentano said he also supported it and that the FBB does some very good things for people in Marion County.

MOTION: Commissioner Brentano moved approval of a two-year contract for \$497,096 with Family Building Blocks in Marion County to provide relief nursery services. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

2. Consider approval of a two-year contract for \$174,713 with CASA of Marion County to provide Court-Appointed Special Advocates to abused and neglected children involved in the juvenile court system. – Tamra Goettsch

Tamra Goettsch, Children and Families, explained that this is another state program that is administered out of the local Children and Families offices across the state. Unlike the FBB and the relief nursery contracts, CASA is a statewide program. Every county in the state has the program administered locally. CASA is responsible for training volunteers who advocate for the best interests of abused, neglected, and dependent children who happen to be in the court system. They work to ensure the child's safety as well as towards obtaining a permanent home for them. CASA functions within national standards. The research shows that children who have CASA, receive more appropriate services, are in fewer foster homes for less time, and are 50 percent less likely to return to foster care. Children unable to return to their parents are more likely to become adopted when they have a CASA. Ms. Goettsch said over the past four years the local CASA has made huge progress with an increased number of volunteers, which results in more

children being served while using the national standards. She said CASA has received increased community investment and support.

Ms. Goettsch said that at least 200 children will be served this current fiscal year and 250 next year. At least 75 volunteers will participate in the program this fiscal year, which will increase to 90 next year. Ms. Goettsch said they will strive to utilize available resources to meet the growing need in the community and to build on the strengths of the CASA volunteer network to ensure a strong system of support for these children in order to meet their educational and health needs.

Commissioner Milne asked for clarification that the contract was for Marion County only and did not include Polk County. Ms. Goettsch said that was correct because Polk County has their own allocation based on the state's formula.

Commissioner Carlson agreed that this program had grown and is currently much stronger than before. She gave a lot of credit to Pam Sornson, the director of CASA, who she sees at every community event. CASA is progressively getting more grants and doing more community fundraising activities. She was pleased to see the program prospering, thriving and commented it is an important program for children in the child welfare system to assist in finding permanent homes for them. She stated the volunteers were very highly trained and invest many hours on cases that can be technical and complex.

Commissioner Milne announced an upcoming fundraising opportunity, called "In The Bag" for CASA later this month. Interested parties can call the commissioners' office or the CASA office for more information.

Commissioner Brentano remarked he had nothing to add but his support.

MOTION: Commissioner Carlson moved approval of a two-year contract for \$174,713 with CASA of Marion County to provide court-appointed special advocates to abused and neglected children involved in the juvenile court system. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC HEARING
9:30 a.m.

PUBLIC WORKS

A. Public hearing to consider case #CP/ZC 09-6, SMMK Ventures, Clerk's File #5626. – Joe Fennimore

Joe Fennimore, planning, said that this item is a request to change the zoning category from multiple family residential to commercial office (RM to CO) and to change the comprehensive plan designation from RM to CO on a 0.42 acre parcel at 659 36th Avenue NE, which is inside the Salem Urban Growth Boundary.

He said public hearings were held on this application on June 10 and on September 3, 2009. The hearings officer issued a recommendation to grant the application after finding that all necessary criteria for a zone change and a comprehensive change had been satisfied. Because this involves a comprehensive plan amendment, Joe said, the board is required to hold a public hearing and take testimony to consider the request.

TESTIMONY:

Support:

Kennedy Hawkins, 19395 SW Haide Road, Sherwood, said he is the managing partner of SMMK Ventures. Mr. Hawkins stated that this is a simple zone change. He explained that SMMK Ventures owns the real estate for PT Northwest, which is a physical, speech, and occupational therapy provider in the Mid-Willamette Valley. PT Northwest's main location in northeast Salem has expanded to meet the needs of the community. He said one of the things they asked for from SMMK Ventures was for more parking spaces and the ability to house intern students that they get as a clinical instruction site for several universities across America. Mr. Hawkins said in order to do that, they had to come before the planning commission and Marion County commissioners to seek the zone change. He said PT Northwest has been a long-time member of the community and the surrounding neighbors support the zone change.

Robert Croff, 37800 Farris Road, Scio, said he is a general contractor and does construction work for SMMK Ventures/PT Northwest and their seven clinics.

Mr. Croff stated his presence before the board was to answer questions. He added that the purpose of the zone change request was to provide more parking and better access to the PT Northwest clinic.

Commissioner Carlson and Brentano stated they did not have questions because the issue was straightforward and they had the hearings officer's recommendation.

Commissioner Milne thanked Mr. Hawkins and Mr. Croff for testifying. And as there was no one else signed up to testify either for or against, Joe Fennimore returned to answer questions, but there were none.

MOTION: Commissioner Brentano moved to close the public hearing and accept the recommendation of the hearings officer to grant the zone change subject to the conditions that are listed. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

B. Public hearing to consider appeal of the hearings officer's denial of administrative review, Case #AR 09-015, Mt. Angel Telephone Company, Clerk's File #5624. – Joe Fennimore

Joe Fennimore, planning, stated the item before the board is an appeal of the denial by the hearings officer of their application to place a dwelling on a 40.62 acre parcel in a farm timber

(FT) zone located in the 2100 block of Silver Falls Drive SE. In this case, the hearings officer denied the application because it failed to meet all the criteria for a dwelling in an FT zone. Specifically, he stated, the hearings officer found that the dwelling failed to meet the big game habitat dwelling density standard found in the county's comprehensive plan. And since the property is in a major habitat area, the standard is one dwelling per 80 acres. He added that the dwelling density allowed could be doubled if the dwellings could be clustered within 200 feet of each other.

Mr. Fennimore stated that in determining the density requirement, the planning director took a 640-acre circle, as traditionally prescribed, and centered it upon the proposed home location. He then counted the number of houses that are currently in that circle. Using this method, the planning director determined that with the board's approval of the proposed dwelling site, the dwelling density would be approximately one dwelling per 38 acres.

The applicant argued before the hearings officer that in previous cases the board had determined that the method used by the planning director is a "safe harbor" and that alternative methods can be considered to satisfy the purpose and intent aspects of the policy. The applicant then had a wildlife biologist, Dave Vesely, conduct a study and he proposed an alternative method where 80-acre circles were centered on dwellings in the lots adjacent to the subject property. Using this method, Mr. Vesely concluded that part of the eastern portion of the property would meet the density standard of one dwelling unit per 80 acres.

Mr. Fennimore said the hearings officer argued that the comprehensive plan provides no guidance on how the density is calculated and different approaches have been used. However, the calculation has always been based on a study area of at least 640 acres. In this case the applicant is proposing a much smaller study area of 80 acres. The hearings officer found that because of the difficulty in determining the density and the fact that the applicant is suggesting a smaller study area, it is up to the board to determine whether an alternative interpretation should apply in this case. Subsequently, the hearings officer denied the request.

Mr. Fennimore said that in the appeal the applicant once again argues that nowhere in the county's comprehensive plan or zoning ordinance does it require a 640-acre study area. While such a policy can work in some cases, the applicant felt there are unique cases where the placement of an additional dwelling within an area will not significantly impact the big game within the area and that this is one of those cases. While the application does not meet the density requirement as applied by planning staff, it does comply with the policy and the proposed dwelling site is not located within 80 acres of another dwelling.

The appeal argues that the overriding purpose behind Fish and Wildlife Habitat Policy 5 and the comprehensive plan is to ensure that development density will not adversely affect significant wildlife habitat and that this application satisfies that purpose. He added that the board received the appeal and on September 16, 2009, accepted the appeal and scheduled the hearing for today. Mr. Fennimore concluded he would be happy to answer any questions.

Commissioner Brentano stated the only aspect of the appeal that troubles him was what has really been the practice in the past in Marion County? He wanted to know if the board had

denied applications in the past that have used the same methodology. Mr. Fennimore said he could not recall a time.

TESTIMONY:

Support:

Nathan Boderman, 250 Church Street SE, Salem, said he is the legal counsel for the applicant. Mr. Boderman stated that this is an appeal of a forest template dwelling application request that was denied by the hearings officer. Mr. Boderman stated that it was determined at the planning staff level that they met all applicable criteria and could reasonably meet those criteria through reasonable conditions of approval except for the comprehensive plan criteria. He said that his client did not have any issues with the typical requirements of applications such as centering, orientating and shaping the 160-acre template on the property. He said that here only the comprehensive plan criteria is being dealt with.

Mr. Boderman pointed out the 40-acre property located just outside of Silverton on Silver Falls Drive SE. He said the policy notations and the environmental quality and natural resources portion of the comprehensive plan, specifically, policy number 5, fish and wildlife habitat, states development density shall be controlled so that significant wildlife habitat will not be adversely affected in the county resource zones. Mr. Boderman continued that the standards for dwelling density in big game habitat as identified on the habitat map shall be one dwelling unit per 80 acres in major habitat and one dwelling unit per 40 acres in peripheral habitat.

Mr. Boderman said there were really two elements to the policy. One element sets forth the underlying policy and the next element implements that policy. He said the issue is implementation of the policy as interpreted. The only guidance that is given is that there is one dwelling unit allowed per 80 acres. Mr. Boderman said that unlike the forest template dwelling criteria where you have a bit of guidance because you have 160-acre square, 160-acre rectangle, which is aligned with the road. Here all you have is one dwelling unit per 80 acres in major habitat. He said they proposed one interpretation of one dwelling unit per 80 acres; whereas, staff traditionally uses another interpretation of how to go about calculating the one dwelling unit per 80 acres. Mr. Boderman then showed a GIS map with an overlay of the big game habitat to provide more context with the property outlined in the middle. Mr. Boderman explained the different features illustrated by the map.

Mr. Boderman said that in order to come up with the one dwelling unit per 80 acres, they drew from the center an 80-acre circle around the location that they propose for the dwelling. He said they created the map because they wanted to take a look at the other dwellings in the area. The map pinpoints the existing dwellings in the area and puts 80-acre circles around them. This map told them the locations on the property which would be eligible to site a dwelling under their interpretation of the analysis. He pointed out that principally, where there were no areas within any of the circles was the eastern portion of the property. He said they proposed that specific area for the dwelling. He said they located it in a place outside those circles in a place on the map where if you put a red dot on the map where it was located and then drew an 80-acre circle around it, they would not encroach into any existing dwellings.

Mr. Boderman said that as an internal policy he understood that Marion County planning takes 640-acre circles and imposes that over the site of the dwelling and then counts the amount of existing dwellings that fall within that circle. If you divide by eight you end up with 80 acres. If the ratio ends up at or less than one dwelling per 80 acres, it falls within their interpretation of the policy. A finding would have been made that the applicant would have complied with that policy.

Mr. Boderman said his contention is that both methods are correct, but a different result comes about depending upon which interpretation is used. He said there had been past instances of this and felt the board had heard it before. He highlighted an administrative review in 2000 in the matter of the Jones' application. It was a case with very similar facts to what is being presented today. An 80 acre area was proposed in a major big game habitat. He referenced language used for the prior case, "The board finds that nowhere in the Marion County Comprehensive Plan nor in the zoning ordinances are there any requirement as to how the density calculation is to be applied or considered. The board finds that the traditional methods conducted by staff are appropriate and serve as a safe harbor for most applications in determining compliance with standard objectives of policy number 5."

He said the board went on to say that there will be situations and applications where the traditional standard cannot be satisfied, yet a proposed dwelling could still satisfy the purpose and intent aspects as well as an alternative density calculation of Fish and Wildlife policy number 5. Mr. Boderman stated that was where he felt they were at. He said they recognized before submitting the application that they would not be able to meet the traditional standard. The applicant went through the time and expense of hiring a wildlife biologist to specifically analyze the property. In short, the analysis concluded that the wildlife would not be adversely affected based on the proposed location of the dwelling and it could still satisfy the purpose and aspects of the Marion County policy at issue.

Mr. Boderman said that the board at that time recognized that the 80 acres, rather than going back and forth about which standard might be reasonable, not to lose sight of the underlying policy that wildlife should not be adversely affected through the site of a proposed dwelling. He said there is nothing magical about the 80-acre standard or the 640-acre standard. There are many more variables in determining what will or will not adversely affect wildlife in the area, rather than just the location or the proximity of dwellings to each other. However, with any kind of applicable ordinance, you have to have safe harbors to be consistently applied.

Mr. Boderman said they did not rely on assumptions, but had a specific analysis done of the property. Dave Vesely is a specialist on wildlife and forestry. An abridged portion of his resume was contained within the materials submitted to the board. They included Mr. Vesely's report in the application and it is in the record. This found that there would be no adverse impact to wildlife on this property. He said that they have never contended through the process that the policy does not apply or that staff's application is not reasonable. They contend that the board is not stuck with the 640-acre interpretation. They submit their interpretation of the policy is reasonable. He pointed out there was no one present to speak in opposition and there has been no one at the planning or hearings officer level and nothing from the Department of Fish and

Wildlife. He has specific individualized findings to show that the proposed dwelling satisfies the purpose and intent aspects of policy number 5. Mr. Boderman stated that they would ask the board to make findings of such and that the applicant used a reasonable interpretation of the Marion County Comprehensive Plan and policy.

Commissioner Carlson requested to see once again the picture containing the circles. With a pointer she asked what happens when you draw a circle around the proposed dwelling? A piece was missing that she needed to understand. He said if they were to draw an 80-acre circle they would not hit any of the red dots which are those proposed dwellings. He thought it was more user friendly that way. Commissioner Milne said then he was doing it from the reverse, which Commissioner Carlson thought was confusing.

Mr. Boderman said the map was done with the wildlife biologist who worked with Marion County GIS for that data. She said that she and Commissioner Brentano were not on the board in 2000. She came in 2003 and that is when she remembers the wildlife habitat agenda item and that was her first and only experience with big game habitat. She stated it was remanded. She recalls that you could squish the circle or you could make it a rectangle or any number of things, but the standard was that there had to be 80 acres around it in order for it to pass muster. Her concern with the reverse view is it looked like it could hit others. She said then it would not comply with the standard as they created it. Commissioner Carlson stated she is not convinced that it has to be a circle, or you could not use alternative analysis, but wants to make sure they are not setting themselves up to be allowing something that by a reverse methodology, it would not pass the opposite methodology.

Mr. Boderman clarified and stated the reverse methodology is not really what they are proposing. It was just the way he chose to illustrate it on the board. He said to pinpoint a location and then draw an 80-acre circle around it and none of these dwellings are within 80 acres of this area in here (indicated on map) which does not touch any of the circles, then anywhere that they place a dwelling in that area, if they draw a circle around there, it would not touch any of the proposed dwellings. Commissioner Carlson commented that did not make logical sense to her. She said it was possible to hit one of those other dwellings within the circle, because the part in the middle creates the buffer for everyone else. She said she would need to look at this further.

Commissioner Brentano said he wanted to make sure that he understood. He said if you draw a circle it would catch other circles, but were they talking about the houses? Commissioner Carlson confirmed that was correct. Commissioner Brentano said his comment would be it was pretty close because of farms and houses in the area. He felt that it was not a major habitat area anyway. Commissioner Brentano asked by choosing to approve this would they preclude anybody else in the area and would they literally be taking up the one spot that might be available. Mr. Boderman stated he thought there was some latitude and if someone came in with another application they would take a look at their analysis. It is clear that there needs to be one dwelling per 80 acres anywhere. He said it looked like the eastern portion of the property is about the only place to have the proposed dwelling.

Commissioner Brentano said that this brought up another question. If they were to approve the application, it should be site-specific because you would need to identify where the home was

going to be and not just anywhere on this acreage. Mr. Boderman stated that was correct. The wildlife biologist actually proposed a specific location on the property. He said that because of development standards such as the driveway length, the proximity to Silver Falls Drive and wetlands on the property there is really only a small area where a dwelling could realistically be sited, which is the specific area analyzed in the wildlife biologist report in the file.

Mr. Boderman stated that in Exhibit I of the applicant's statement there is a soil map where the dwelling was roughly located, down towards the south-central portion of the property. Commissioner Milne wanted to be directed by Mr. Boderman to a specific point in the report. Mr. Boderman stated the existing number of homes exceeded the dwelling-density standard and they could have been grandfathered in. Commissioner Milne said the report contained information about the wildlife in the area.

Commissioner Milne asked Mr. Fennimore if the planning director's 640-acre-circle method of determination was in the packet. She had not seen the alternative and wanted to compare it. Mr. Fennimore confirmed it was in the packet. Commissioner Milne asked Mr. Fennimore to comment on the circle done by the staff. He said it was done by GIS and a spot was put where the proposed home site is and then draws a 640-acre circle around that spot and then they look at a map set up with the aerial photograph and mark where the current dwellings are on the properties around it.

Commissioner Carlson said it looks like there are a lot of homes clustered in the bottom left side of the circle. By putting that 640-acre circle in the center is probably what drove the density found. She confirmed there was nothing in the law that said the circle has to be centered? Mr. Fennimore said that was correct. She asked if there were homes outside the circle that were not marked. Mr. Fennimore said that was correct.

Commissioner Milne asked everyone if they had any additional comments. Commissioner Carlson asked Mr. Fennimore that when they agreed to schedule the hearing, she had a conversation with Sterling about the 2000 case and the case in the 2003. She asked him if this happened (the 640 acre idea) after the 2003 case and she thought he said yes. How many cases has the board had in between? Mr. Fennimore said that between 2003 and now, maybe a couple a year. Commissioner Carlson asked specifically what the "safe harbor" idea is. Mr. Fennimore said the 640-acre map centered on the home site is for those to see when they apply and can feel safe it will meet that specific criterion. Commissioner Milne asked if alternative analysis is considered in the planning department now. Is the "safe harbor" the only standards that planning will look at or do they leave it up to the hearings officer to look at alternatives? Mr. Fennimore said they leave it up to the hearings officer. No interpretation is done at the planning level, it goes to hearings officer.

Commissioner Milne said the board does have some flexibility on this and the discretion is up to the board to a great extent. She asked about the geographical terrain such as gullies, hillsides and habitat patterns. Mr. Boderman said the one dominant feature is vacant land that is heavily timbered. He said there are two wetlands, one is on the eastern side and the other is in the northwest side, which contributes to sustaining wildlife activity on the property.

Commissioner Carlson read from the Pacific Wildlife researcher's report, which said, "my inspection and analysis also leads me to the conclusion that if a new single family dwelling were to be constructed too close to an existing home to satisfy the dwelling density standard, the effect would not decrease the current habitat capability," and the report names deer, elk and bear. In addition, the report states that the increased level of human activity associated with the proposed single family dwelling is likely to affect wildlife use of existing habitat on the subject property, but the effect will be limited to within close proximity of the dwelling and could be mitigated by the actions he described above. The mitigating actions include constructing the home as close as possible to Highway 214, the applicant or builder should consult with a professional arborist or botanist on landscaping and plants, avoid constructing an extensive network of trails or other permanent developments within the wetlands or alder stands and prepare a forest stewardship plan for long-term management of the property, such as tree planting. She asked if the applicant was considering doing these mitigating actions suggested by the wildlife researcher. Mr. Boderman answered that a timber stock report has already been completed on the property, something typically required in a forest template dwelling application. Mr. Boderman said activities could be discussed at the time specific development plans are proposed. This is the entitlement process.

Commissioner Milne asked if she understood correctly that close to existing homes, any adverse effect would be right around the new structure and if the mitigating actions were followed on the remainder of the property, then there would be no adverse effect in whole. Mr. Boderman stated that was his understanding as well. He said when dwellings are clustered within 200 feet of each other; the development dwelling density standard can actually be doubled. He said they did not meet this because of being just outside the 200 feet and were not eligible to double, he said. Commissioner Milne said that she sees nothing that jumps out to her that says the board cannot do this. She thought that part of the approval would be to have a proposal of pretty much the same mitigating actions delineated in the researcher's report, which would be a conscious response to issues that may be of concern.

Commissioner Carlson asked Mr. Fennimore if the hearings officer's report is written to deny the application. There are a number of conditions that would satisfy ordinances and if the board were to approve the application today, would the planning staff pull out those conditions or would it be better to remand it so the hearings officer can specifically list the conditions. Mr. Fennimore replied if you get through the standard conditions, such as the building permit and septic approval, the development standards would normally be attached as conditions. Commissioner Milne asked about mitigating actions and asked if those should be in the development application. Mr. Fennimore said that could be a condition prior to issuance of the building permit. Commissioner Carlson said that would make her more comfortable than a back-and-forth recommendation.

Commissioner Brentano said if the conditions include being site-specific and if the mitigating actions were done prior to issuance of the building permits and all the conditions were incorporated into the agreement, then he would be in support.

Commissioner Carlson added that a safe harbor process is important. The protocols developed by planning make sense and the board does not want to dilute the Fish and Wildlife standards.

MOTION: Commissioner Carlson moved to close the public hearing on Case #AR 09-015, Mt. Angel Telephone Company, Clerk's File #5624 and approve the administrative review to place a forest template dwelling on the parcel on Silver Falls Drive SE and direct staff to identify the conditions that are listed in the hearings officer's report including the mitigation actions that were put forth in wildlife specialist/biologist Dave Vesely's report of April 10, 2009. This is a unique site and the alternative analysis would be appropriate here. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Milne then read the calendar.

Commissioner Milne adjourned the meeting at 10:50 a.m.

Attachments:

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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.usnnn