

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, May 7, 2008
Marion County Courthouse Square

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

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

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS

OLCC applications and renewals:

Recommend approval:

Butteville General Store, Aurora
Hitchin Post Tavern, Salem
Roth's IGA Foodliner, Salem
Roth's IGA Foodliner, Salem
The Freeloader Tavern, Salem
Trexler Farm Gifts, Stayton

HEALTH

Approve amendment #36 to receive \$559,167 from the Department of Human Services for the financing of community mental health, developmental disabilities and addiction services.

PUBLIC WORKS

Approve the 2008 Marion County Weed Control District target weed list.

PUBLIC WORKS – PLANNING

Notice of adoption of administrative ordinance granting zone change/comprehensive plan amendment, case #07-04, Manning, Clerk's File #5567. Final adoption scheduled for May 14, 2008.

Receive hearings officer's recommendation to grant zone change, case #ZC 08-02, Satter, Clerk's File #5581.

Receive hearings officer's decision granting conditional use/property line adjustment, case #CU/PLA #07-69, Oregon Department of Aviation, Clerk's File #5580.

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

ACTION

CHILDREN AND FAMILIES

1. Consider approval of a proclamation designating the month of May 2008 as Foster Care Month. – Randy Franke, Dick Withnell, Mike Wilkerson

Randy Franke, chair of Children and Families Commission, introduced Dick Withnell, Mike Wilkerson and Connie Hay (Ms. Hay is staffing the foster care action team).

Dick Withnell said he became involved in the methamphetamine epidemic in Marion County and it was due to the unintended consequence of children coming out of methamphetamine homes. He soon became aware that foster care was a very critical problem within the county. He said that there are about 80 children a month that come into foster care. In 2005, the community was asked to come together to provide additional foster care homes. He said they initially needed 75 additional homes and they zeroed in on the faith community, which did come up with the number needed. He added that the real number of foster homes needed within the community is 250 homes and there are currently 189. He said that Marion County is the number one county in the state of Oregon for adoption out of foster care. Mr. Withnell added that persons interested could reserve a spot for foster parents orientation on June 2, 2008.

Undersheriff Mike Wilkerson commented that he had the opportunity to attend a presentation at Catholic Community Services. They had two presenters, one was Alex and the other was Jennifer. Alex had been in the foster care system for approximately six years. Undersheriff Wilkerson said that Alex, as well as his brother, had been present when law enforcement came in and arrested his parents for illegal use of drugs. He added that this is a repeat pattern that you hear about time and time again, where kids are taken away from the parents because of bad decisions that the parents make. Often times, the parents don't realize the consequences until much later. Undersheriff Wilkerson said he got three things out of the presentation and wanted to share those things with the commissioners. The first point was the partnership between community and government. Both recognize that neither can do this alone to help the people in the system. To make an impact it truly has to be a partnership. The second point is the kids that are going into the foster system need to have a meaningful relationship with an adult. Both presenters talked about having a wonderful adult role model to help guide them through the process in the foster system. The third point was that both of the presenters talked about hope for the future. Both also indicated they wanted to make a career in law enforcement.

Mr. Franke said in closing, that early on in this effort there were three or four foster kids that attended a Marion County Children and Families Commission meeting. He said one of the members asked one kid what he did to end up in foster care. The young boy said he did nothing, but it was his parents that were arrested for drug use and because of their actions he was taken out of the home and put in foster care. Mr. Franke said the system was set up to help the kids

and the kids have done nothing. He added there is no way the kids should be victimized a second time by the fact that the system gets overloaded and can't handle the kids that are in it.

Commissioner Carlson thanked all for coming and bringing the proclamation forward. If she was to think of one word that epitomizes the foster parents in Marion County, it is truly "heroes."

Commissioner Carlson said she had asked the president of the foster parents association what qualifications it would take to be a good foster parent. She said a person must be able to love a child. Commissioner Carlson commented on the importance of keeping siblings together because sometimes their siblings are the only family support each child has.

Commissioner Milne thanked all for coming and sharing the information. She said the main point is that these children really do become victims. She said it reminds her of the striking out meth event that will be in its third year. A new aspect of the event was inviting civic groups to sponsor foster children and their parents. It allowed the parent and the child to enjoy a ball game, get a shirt and hotdog, but most of all just to be a kid. She added these children are in such difficult circumstances and they don't get many opportunities to experience kid activities and enjoy it. It also is a way to thank these foster parents because they don't get enough recognition.

Commissioner Brentano said that here in Marion County we are blessed to have people like Randy Franke, Walt Beglau, Dick Withnell and Mike Wilkerson who are capable and committed to lead the charge.

MOTION: Commissioner Carlson moved approval of a proclamation designating the month of May 2008 as Foster Care Month in Marion County. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

The commissioners then read the proclamation.

HEALTH

2. Consider approval of the Marion County Local Public Health Authority Plan. – Rod Calkins

Rod Calkins and Pam Heilman from the Health Department were present to explain the Marion County Local Public Health Authority Plan. Mr. Calkins said that public health services in Marion County are funded at the level of approximately \$9.8 million. This funding comes from a variety of sources with about 50 percent coming from federal and state sources, 30 percent from the Marion County general fund and the remainder from grant funding and client fees. During the past year, the health department had served 31,000 individuals and received approximately 146,000 client contacts. While those services to individuals are important, the primary focus is really on population and communities. Mr. Calkins said it is important to the individual who gets immunized that he/she is protected from a preventable disease, but it's perhaps more important that the rest of the people in the community are protected because that person isn't going to get sick and pass on a disease to the rest of the people in the community.

Mr. Calkins stated that public health touches most of our lives without us ever realizing it. If there is a birth or a death, those are recorded through the vital statistics program. If you eat in a restaurant, your health has been safeguarded by the educational and inspection services performed in every restaurant at least twice a year by the sanitarian.

Under public health services in Oregon, each county is reviewed on a three-year cycle. The next triennial review is set for December 2008 and January 2009. Therefore, Marion County's triennial plan will actually be presented next year about this same time.

For the intervening year, an annual update plan is produced, which is what is before the board. Mr. Calkins said that in reviewing the plan he felt it important to know that different funding sources come with specific requirements as to what services need to be provided, how they will be documented and how they will be evaluated.

Ms. Heilman added there are several objectives in the plan that represent pieces of what the Health Department does, which is population focused. She stated there are five core functions, which are required by state statute. They are the control of communicable diseases, parent and child health services, health information and referral, environmental health, drinking water systems and the collection and recording of statistics.

Ms. Heilman said they received some additional funding this year for tobacco prevention and education. There are a team of health educators working out in the community with school districts, community colleges, hospitals and multi family housing.

Commissioner Milne thanked them both for providing some of the public health quick facts. One of her major concerns is teen pregnancy and how it continues to increase. When she compares the numbers from previous years it shows progress is not being made in reducing the numbers. She added that the law states that none of the funds appropriated under this title should be allowed in programs where abortion is a method of family planning. When she sees numbers showing girls 14 and under using the "morning after" pill, it goes against her conscious and her faith. She said as she has done in the past, she would not be able to support this plan.

Commissioner Carlson thanked Rod and Pam for coming to present the health plan. She said she appreciated their time and efforts made to this plan. She added that under Title 10, it states projects must provide pregnancy, diagnosis and counseling to all clients in need of this service. If the county did not provide these services there would not be any funding. She said that she is also concerned with the numbers and is pro life, but would support this so the county can get the funding they need for other services.

Commissioner Brentano said he recognizes how important the Health Department is and the work they do in maintaining livability in Marion County. He added that although he agrees with both commissioners, he would support a motion to approve the plan.

MOTION: Commissioner Carlson moved approval of the Marion County Local Public Health Authority Annual Plan FY 2008-2009 annual update of the Triennial Plan approved in 2004-2005. Seconded by Commissioner Brentano; motion carried. A voice vote was 2 for; 1 against. Commissioner Milne voted against.

PUBLIC WORKS – BUILDING INSPECTION

1. Consider approval of fee-for-service intergovernmental agreement with Cascade School District for Marion County to collect the construction tax (CET) as required under Senate Bill #1036 and retain 1% of the CET revenue for administrative costs. – Bill Worcester, Warren Jackson, Scott Norris.

Warren Jackson, Marion County public works said the legislature adopted Senate Bill 1036, which authorizes school districts to levy a construction excise tax on most new construction and additions to existing structures that require a building permit. The law states that school districts can contract with other governments, such as counties and cities that issue building permits to collect the tax on their behalf. Mr. Jackson said that today they have such an intergovernmental agreement and to offset the cost of collecting the tax on behalf of the school district, the county is allowed to retain one percent of the monies collected.

The commissioners discussed keeping some kind of record to verify that after a year that the one percent is enough to cover the additional staff time. A question was asked regarding how many of the school districts to date have been heard from. Mr. Jackson said that St. Paul, Silver Creek, Monmouth, Gervais and Cascade have contacted him to date.

MOTION: Commissioner Milne moved to approve the fee-for-service intergovernmental agreement with Cascade School District for Marion County to collect the construction tax (CET) as required under Senate Bill #1036 and retain one percent of the CET revenue for administrative costs. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

SHERIFF

1. Consider approval of a proclamation designating the week of May 5-11, 2008, as National Corrections Professional Recognition Week in Marion County. – Jeff Holland

Jeff Holland, Sheriff's Office, said that there are over 160 people in corrections that work for Marion County. They work in a profession that is a noble profession and much of the work is silent and behind the walls of the Marion County Corrections Facility. He requested that the commissioners proclaim the week of May 5–11, 2008, as National Corrections Professional Week in Marion County in recognition of the employees and the fine work they do for the citizens of Marion County including preserving peace, safeguarding lives and property and to keep our criminal justice system honorable.

The commissioners thanked Mr. Holland for bringing this proclamation forward and agreed these are all very tough jobs. Discussion was held on the high level of professionalism inside the jail.

MOTION: Commissioner Carlson moved approval of a proclamation designating the week of May 5-11, 2008, as National Corrections Professional Recognition Week in Marion County. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

The commissioners then read the proclamation.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS – PLANNING

A. Public hearing to consider appeal of hearings officer's denial of administrative review, case #AR07-45, Pir, Clerk's File #5578.

Sterling Anderson, planning manager, reported this hearing involves an application to replace a dwelling that was destroyed by fire on a 110.28-acre parcel zoned special agriculture and is located at 6835 Skyline Road South, Salem. The hearings officer held a public hearing on this application on December 19, 2007, and subsequently the hearings officer issued a decision denying the application due to the failure of the applicant to have a dwelling on the property that met the criteria, which has the standard features of dwelling walls, roof, electrical and sewer system. In this case, the hearings officer found that the primary dwelling on the property was damaged by fire during the 1940's and demolished in July of 1991. There was also a second dwelling on the property, which the hearings officer found was actually removed by prior owners of the property in 2001. As a result, the hearings officer concluded that there was no dwelling on the property and there had not been a dwelling on the property for a minimum of seven years, and therefore, the application did not meet the criteria for replacement.

Commissioner Carlson said they had a conversation about this particular case when the board agreed to take the appeal and asked Mr. Anderson to talk about what the law states with regard to the first dwelling. In addition, she asked if the second dwelling was part of the initial application and if it was the mobile home. Mr. Anderson said that actual policy was developed and adopted prior to a later decision, which was referred to in the appeal as the Ulven decision. At that time, the policy was based on primarily the mobile homes that had come forward for replacement where the owners did not own the mobile home themselves. They owned the property, but either leased or rented the site for the mobile home to be placed there and someone else owned the mobile home as personal property. Mr. Anderson said what had happened in some cases was that when the owner subsequently found out that the owners of the mobile home had removed the mobile home and they didn't have a home there that they could come back and ask for replacement. He said the board has in previous decisions attempted to try and apply the law and it is currently written in present tense that the criteria states there has to be a dwelling on the property, and that the dwelling has to be legal; it has to have those elements that are listed in the state law and in the county zoning code that identify a dwelling. Examples would be a roof, walls, heating system, electrical system, sewer and a sink, those standard elements of a dwelling. There has to be evidence in the record or that can be put in the record that shows that the dwelling was on the property. A one year time period was used for an applicant to attempt to replace it. There's evidence that can be taken from assessor records, photographs or various things that can be submitted into the record to show that there was a dwelling there and that the applicants had made efforts in the past year to replace it. Attempts to replace the dwelling could include contacting your insurance agent to inquire about the cost of insurance to build a new home. Another example would be getting a design put together, acquiring building permits and land use approval as necessary. All these examples show the owners were attempting to replace the dwelling. Following the one-year period what will or will not qualify to meet the criteria becomes more questionable. The intent of the criteria, which is identified in the policy, was that if you had a legitimate legally placed dwelling, the owner should be able to replace it without having to go through too much land use process. He said the policy evolved from several decisions involving situations when dwellings were moved off the property and the owners were not aware of it.

Mr. Anderson said that the Ulven case then came before the board. In that case, the dwelling was an actual stick built house that was burned. It was more than a year before the applicants actually came and made application, but there was evidence that they had been making efforts

during that first year to replace the dwelling. Mr. Anderson felt that it had been an attempt by the county to try and find some logical applications of the rules where they are written in the present tense, but situations arise that are different.

Commissioner Carlson summarized that there is a statute that governs whether or not you can replace a dwelling that has been burned (dwelling #1). She confirmed that the elements demonstrating a water system, etc. was not shown in the hearing. Mr. Anderson said that was correct. Commissioner Carlson clarified that the reason the appeal was accepted was that the board had some discretion on time. She asked Mr. Anderson if time was the only issue being looked at or is evidence also being looked at that all these other elements existed. She asked if the applicant doesn't show they existed, does the board even have legal authority to be able to approve the replacement of that dwelling?

Mr. Anderson said he believes when it comes to the actual decision from the hearings officer, a straight line legal interpretation is taken. This would require that the dwelling be there and it wasn't. It was rendered uninhabitable by the fire in the 1940's and no effort was made to replace it until the previous owners were going to replace the primary dwelling. The primary dwelling was demolished in 1991, but then it was not replaced because of changes in the owner's circumstances. He added there was a question if it could have even been replaced in 1991, but an application was never made. The hearings officer looked at the strict criteria and said the dwelling isn't there, doesn't have these elements and there is no evidence it had all those elements and concluded that the primary dwelling could not be replaced.

Mr. Anderson said the board has taken a different view, not just the physical existence of the dwelling and the elements, but the board has required some evidence of elements in the record and that during this period of time, the applicant had made an effort to replace the dwelling and evidence of that. Mr. Anderson said it is not just the strict criteria, but also whether the owner had made efforts and intent to replace the dwelling after it was removed or destroyed by fire.

Commissioner Carlson reiterated that the board is looking for all the elements and good faith effort to make progress replacing the dwelling during a time period where the dwelling was destroyed or moved from the property. Mr. Anderson said the other factors only come into play when the dwelling is not there. Commissioner Carlson confirmed that there was not evidence in the record currently, but these elements exist and what the board would be listening for today.

Commissioner Carlson talked about the second dwelling that was not part of the initial application and that came up in prior hearings. In the hearings officer's report she stated that she wouldn't even consider the second dwelling because it wasn't part of the initial application. The applicants would have to make a new application for that second dwelling. Commissioner Carlson asked if the board had latitude with the second dwelling, or should they only be looking at dwelling number one? Mr. Anderson said he would leave that interpretation up to legal counsel as to whether the second dwelling can be incorporated. He added that the hearings officer did mention that the same conclusion could be reached with the second dwelling because it had not been there since 2001 and previous owners removed it. Commissioner Carlson asked if the board should even accept evidence on the second dwelling today because it was not part of the hearing or if the board has latitude, do they accept evidence?

Jo Stoncipher said if the board wants to consider this and then allow, if appropriate as the process goes on, to amend the application they have the discretion to do that. She said it might require a continuation so opponents would be able to respond to the information. Commissioner Carlson reiterated the board did have discretion, however, it would require an

amendment to the application, and any amendment requires additional opportunity for opponents to reply to the new information.

Commissioner Brentano stated for the record the board received one written comment in opposition from Peter Dinsdale.

TESTIMONY:

Support:

Henry Pir, P.O. Box 3772, Salem, OR said the second dwelling was a stick building and recorded on the tax role during 2000-2001. He said he wasn't sure if the first dwelling was part of the second dwelling. The previous owners removed the first dwelling as part of the process of replacing it with a new dwelling. Mr. Pir said the previous owners dug a well. He said that he wasn't sure if the original owners knew about the one-year rule, he wasn't sure if they were that concerned because they had a second dwelling on the property. The second dwelling was in place until 2001. He said all the pictures and square footage had been taken by a county appraiser and is on file.

Mr. Pir said the photos back to the 1990's show it was a homesite with house, shop and barn. He said it does have a mailing address. He said he has submitted the well log to the record and there were two wells in place. He said the tax record shows that it was on the tax roles from 1965 and you can track that. When the dwelling burned, the property sat idle.

Mr. Pir said this parcel is 110 acres and is under special agriculture (SA) zoning. Based on Chapter 137 of the Marion County Rural Zoning Ordinances, subsection 10, states "special agriculture (SA) zone is applied in areas characterized by small farm operations or areas with a mixture of good and poor farm soil." Mr. Pir said his property has very bad soil, with some areas you can't even walk on and is designated as forest area.

Mr. Pir said that the existing land use pattern is a mixture of large and small farm units and some acreage home sites. The purpose of Chapter 137 is to allow the landowner to have a home onsite as well. He stated it was quite different than exclusive farm use. Special agriculture zoning adopted by Marion County allows or recognizes that it is a hobby farming area for the person and is not 100 percent agricultural land. The zone allows the flexibility in management and that flexibility rests in the board's hands. He said the board makes the interpretation out of the Oregon Revised Statutes 215 for this purpose and it is for exclusive farm use only, not special agriculture. He said that although special agriculture zoning is being dedicated for this purpose and the county allows some criteria, he felt it looked like there were some strings attached. He said subsection E, under dwelling alteration and replacement, there are a number of items where it says "the dwelling should be intact, all walls, roofs, etc." He said he was in a professional in laws and rules, but it didn't make sense to him that when the dwelling burns, how they were going to show it as intact. He said that the laws also say that in order for a farmer to have a primary home and to live there, he/she has to produce \$80,000 gross income for a few consecutive years.

Mr. Pir asked how is the system going to take some of the tools from your hand and expect you to be very proficient in your job? How is a farmer going to function on his farm without having efficient tools in his hand? He said once he lives there, he concentrates and has to supervise the tools, the shop, the equipment, and any aspect of the farm, that is his job seven days a week. He said this is the only job he has and to operate efficiently he should be

primarily living on the property. Mr. Pir said throughout this process there were a number of times the application had been denied based on interpretation of Marion County Rural Zoning Ordinance 137, section 30, subsection E, or from ORS 215, section 283, subsection S. Again, that is referring to intact walls and roofs, which he mentioned earlier. He spoke of the hearings officer quoting the case *Bradley vs. Washington County*, in one of his denials. He said this case was in reference to the applicant looking for a permit on one acre exclusive farm use zoning land, which is much more strict. He reiterated his property was 110 acres and special agriculture, which is a lot different the exclusive farm use. He said the amount of \$80,000 per year did not make any sense to him. He contacted some other associations to see if he could change the line of farming to produce \$80,000. He also contacted a number of farmers and Alan McKee of Alan McKee Farms who visited the property and his conclusion was the same as others. First, there is no indication of water and a very steep slope, which is hard for equipment to work. He then showed pictures of the slope and how hard it is to keep equipment on the slope. Another problem is there isn't enough top soil. He has talked to grape and blueberry growers to see if these would work, but they all suggest the same thing, that there is not enough water, nor top soil and too much of a slope.

Commissioner Carlson confirmed there was no effort to replace dwelling one because dwelling two was already on the property. She asked if there was any design work or work to replace the home between the time it was burned and the time when Mr. Pir purchased the property. Mr. Pir said that in 1990, Dr. Williams purchased the property and he pursued to conduct a replacement on the original homesite. He added that Dr. Williams did a site study, removed the demolished debris, hired a contractor, and removed all the debris. He said Dr. Williams primary home in Santa Barbara burned, so the process of their effort on the property slowed down. He added that there was a second dwelling in place.

Commissioner Carlson asked Mr. Pir when he purchased the property? Mr. Pir said he purchased the property in 2005. Commissioner Carlson said that Dr. Williams wrote a letter that was in the file stating when he purchased the property it had a dilapidated house, some outbuildings and the remnants of a swimming pool. These uninhabitable structures were repeatedly vandalized, vacant and had been substantially destroyed by fire. They were beyond repair and represented a liability. She asked when Dr. Williams purchased the property? Mr. Pir said the purchase was in 1990. Commissioner Carlson stated it was in the 1940's when these happenings occurred. She confirmed that dwelling two was not part of Mr. Pir's original application and that would have to be amended to consider rebuilding two. She asked Mr. Pir if this was something he wanted to do, if the board found it impossible under the law to rebuild dwelling one? Mr. Pir said he was willing to do anything because he needs to be on the property to be a productive farmer.

Commissioner Carlson clarified that Mr. Pir would be able to provide evidence if he were to amend the application to show that dwelling two had the elements of intact exterior walls, roof, plumbing, wiring, heating, etc. and that there were efforts from 2001 of intent. Mr. Pir said what he has on file is what the county has as well. Mr. Pir said he could talk to the neighbors and see who lived there and possibly get their testimony.

Ms. Stonecipher said what the board had done in extending the idea of the one year that is non-conforming use and other standards that the board has used in determining that it's appropriate to look at what process people have gone through from the time it was removed or within one year of the time it was removed and what efforts were made to replace it. Commissioner Carlson clarified that the commencement of those efforts really predate Mr. Pir

purchasing the property for dwelling one in 2005 since that first dwelling burned down so many years ago. Ms. Stonecipher said that was correct and she is a little concerned because Mr. Pir's statements were that the owners of the property after they removed the structures in 2001 had the assessor come out to note they were gone and wanted them off the tax rolls, rather than looking at it as an ongoing effort to replace what had been a dwelling on the property. Commissioner Carlson said she was trying to ascertain if it was even in the best interest of Mr. Pir to continue these efforts or whether the board actually can under the law find that either one of these dwellings really meets the standards.

Mr. Pir said he has some comments dated from May 31, 2001, square footage of the dwelling and a picture of the house as well as the barn. Commissioner Carlson said that doesn't show what is inside the house. Mr. Pir agreed the picture didn't show the inside of the dwelling.

Commissioner Milne said there should be some other information from the assessors office that shows what is inside dwelling two. There was nothing in the record.

Anne Marie Pir, P.O. Box 3772, Salem, OR said about one-quarter mile south of their property is another property in the special agriculture zoning, consisting of 4.85 acres and two dwellings. She said two years ago this property was purchased and last summer a third dwelling was put on that property. In addition, approximately three months ago another dwelling consisting of approximately 3,000 square feet was added. This property now has four dwellings on 4.85 acres and zoned special agriculture. Ms. Pir said that she didn't believe these people were farmers as she and her husband are. She asked how this can be justified when they are not even allowed one dwelling on their property.

James Cartwright, 6774 Skyline Road, Salem, OR, said he lives directly across the road from the Pir's place and has lived there for 75 years. He said he was onsite when the original dwelling burned and the parcel has stayed the same all these years since the fire. Mr. Cartwright said there were three houses before. He said there was the original dwelling that burned, a caretaker's house and another house down further on the property. He said the Williams then bought the property and they drilled a well. When the Pirs bought the property they then started cleaning up the place. Mr. Pirs wants to put a house up on the hills where there is no rock. He testified that there is hardly any soil and that most of the property is rock.

Opposition:

None.

Commissioner Brentano then offered Mr. Pir a chance for rebuttal. Mr. Pir concluded by saying his 110 acres consists of 40 acres forest and 70 acres crop. He said he cannot produce \$80,000 per year on this land and many farmers have told him the same, but he needs to live on this property to make money.

Commissioner Milne asked Mr. Anderson how they could make this work. Mr. Anderson said that is the problem they have had from the very beginning in trying to assist Mr. Pir. Mr. Anderson said his staff offered Mr. Pir the available options such as the income test and the non-farm dwelling test, but the soils are predominantly class 3 & 4 soils and are too good for a non-farm dwelling. Mr. Anderson tried to make it very clear from the very beginning that things were not in his favor. It is difficult when you have 110 acres and you can't put a dwelling on it. If nothing else works, he is hoping something will come out of our

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statewide land use planning program. He said it is one of those cases that every avenue researched comes up short of meeting the criteria.

Commissioner Milne asked if there were any opportunity for Mr. Pir to partition. Mr. Anderson said that to partition, the applicant has to have an 80-acre minimum and a total of 160 acres. He stated there might be a possibility for a property line adjustment. If Mr. Pir could maintain enough ground then he might get the \$80,000 income.

Commissioner Carlson said if there were anyway to help Mr. Pir, it would be with dwelling two because dwelling one was in the 1940's. She said if Mr. Cartwright could testify that the dwelling was a house that had all the elements of a house and the letter from Mr. Williams that stated it was always his intent to build a home on the property and be able to connect that to replacing the home that was removed in 2001, maybe that could work. Mr. William did dig a well and if it commenced sometime during the same timeframe of when the house was removed, perhaps you could get to the point you want. This would again include amending the application and the board would have to continue this hearing. Commissioner Carlson said she didn't think the applicants could get where they want with dwelling one.

Commissioner Brentano added that Mr. Anderson didn't know if the justification could be made in 1991 or 1992 to allow them to build.

Commissioner Carlson stated that dwelling two was not removed until 2001. Mr. Anderson said that looking back today at the second dwelling, he still felt it was a difficult justification to get it rebuilt. He added that the Williams letter shows intent of the property owner at that time up until at least when the fire occurred. It appears that at that point in time they dropped the proposal and eventually sold the property to the applicant, but that didn't occur until 2005 and that creates another gap.

Commissioner Carlson said the law states you have to commence the intent, but does it have to be an ongoing intent until the present or just that something is commenced within the first year. Mr. Anderson said he felt that was up to the board to decide. Commissioner Carlson thought maybe there was a way that something happened immediately after by the prior owner that could be picked up again by the present owner. She read from the planning report, a change in ownership shall be permitted, and must be replaced within one year as stated in ORS 215.136, but 215.136 states commenced within one year. She said she is trying to understand whether the dwelling must be replaced within the year or the effort must be commenced within the year. Mr. Anderson said that in the past the "commenced approach" has been used. He added that he thought there were two breaks in time, one with the Williams deciding not to proceed to when Mr. Pir purchased the property and the time between Mr. Pir's purchase and when he made the application. He felt that Mr. Pir had explained part of that and from his purchase until today he has been showing intent, either by trying to farm and get the \$80,000 or trying to now replace a dwelling that's actually not there anymore. Mr. Anderson thought that gap was covered by some evidence in the record that it was his intent and desire, but the other gap would have to be dealt with.

Commissioner Carlson asked if the board was interested in pursuing this it would require an amendment of the application to be looking at dwelling number two, a continuation of this hearing, an opportunity for people to be noticed all over again. Mr. Anderson said that they would have to give new notice, modify the notice to indicate it is a modified notice and a continued hearing. Mr. Anderson said that at this point there would also need to be an Page -11-

extension of 90 days granted by Mr. Pir. Mr. Anderson recommended that the board not schedule a hearing today because notice has to be given first.

Commissioner Carlson stated Mrs. Pir asked about the other property in the adjacent area and wanted to know if Mr. Anderson knew anything about it? Mr. Anderson said that if Mrs. Pir could submit the address for the property he would research it.

Commissioner Milne said she is absolutely supportive of this and thinks it is important to try and solve a problem here. She added it sounds like the Pirs were given some guidance, but it's not always known the course that these cases are going to take. She added that it was her hope that in continuing the public hearing there would be more information submitted and the application could be amended to show the second dwelling.

Ms. Stonecipher asked if we could get Mr. Pir to state on the record what his desire is and also that he will grant an extension of time until August 8, 2008, so he can gather more information and allow the board to hold another hearing. Mr. Pir stated for the record that he agreed to the 150 day limitation for the issuance of the final decision in this case and extend the date to August 8, 2008.

MOTION: Commissioner Milne moved to continue the public hearing to a future date knowing the extension of time is until August 8, 2008, and to allow amendment of the application and gathering of new evidence for presentation to the board at that later date. Seconded by Commissioner Carlson; motion carried. Voice vote was 2 for; 1 opposed. Commissioner Brentano voted against.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 11:45 a.m.

Attachments: Agenda

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.us**