

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, May 14, 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 John Lattimer as chief administrative officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

PRESENTATION

Willamette MBA Program – PACE (Public, Private and Community Enterprise) project analysis of the Juvenile Department’s Fresh Start Market operations and employee training. – Faye Fagel, Todd Sheldon, PACE Team

Faye Fagel, director of the Marion County Juvenile Department, introduced the presenters from the PACE group, who are Katie Rayfield, Christopher Kenney, and Elizabeth Ross. Ms. Fagel said this group was chosen as the best team to work on this project. She said Commissioner Carlson was very helpful in getting the department connected with PACE.

Katie Rayfield gave a short PowerPoint presentation on the PACE team’s study of the Juvenile Department’s Fresh Start Market. The PACE team consists of 13 MBA students from Willamette University who did the work involved in today’s presentation.

Ms. Rayfield said the Marion County Juvenile Department opened in 1951. It has evolved from its initial mission of providing detention for youth offenders to a larger mission of providing a variety of programs that allow young offenders to build life skills and make positive changes in their lives. She said the mission of the department’s alternative programs is to provide accountability, community service opportunities, restitution to victims, and employment skills to youth. Each year, over 200 youth go through the program. In 2006 alone, the youth earned over \$67,000 and performed over 82,000 hours of work and community service within Marion County.

Ms. Rayfield said that in 2006, the Fresh Start Market was completed. It is the newest of the alterative programs and is the result of hard work by the youth and generous donations and support from the community. She said the youth are involved in all aspects of the business and make all the wood and metalwork sold in the market. They grow and pick

all the produce and plants sold in the market and also perform all customer service and maintenance operations.

Ms. Rayfield said their team was approached through PACE, which offered them the opportunity to enhance the operations of the market. The first area they worked on was developing a training video to help the market in its training. The second was to complete market research that would provide insight into local demographics and allow better advertising for the market. The third item was to complete a pricing plan in order to increase revenues. Ms. Rayfield said the market is required to be self-sustaining in order for the programs to continue to operate.

Ms. Rayfield said she would talk about the training video, with Chris Kenney talking about the marketing efforts and Elizabeth Ross outlining the pricing plan. The team was split into three cohorts, with Ms. Rayfield handling the human resources team, Mr. Kenney handling marketing, and Ms. Ross handling finance.

They decided that a training video would be the best and most effective way to train the youth. Currently, the employees are trained on an individual basis throughout the market, which takes about two hours per employee. With the training video, they will be able to conduct large orientation training sessions that will cut the training time nearly in half. Ms. Rayfield said they worked with human resources professionals in the Salem area who helped them to understand some of the possible issues of the youth, including short attention spans and language issues, including limited English proficiency in some cases. The goal of the video was to empower the youth, and its focus was on customer service, dress codes, merchandising, and other basic business skills. The training video allows the market to decrease training time and provides more consistency and business skills training.

Mr. Kenney spoke about the marketing research component of the project. Their group worked to develop a better understanding of existing and potential Fresh Start Market customers with the ultimate goal of raising the market's profile in the community. Starting with secondary research, they were able to identify local market demographics and general industry averages related to the market. They found that in the local market, there are over 40,000 government employees in Salem, with 15,000 of these employees working within three miles of the Fresh Start Market. He said the three-mile distance is an acceptable commute distance for people to travel from work to get lunches. In the private sector, they found there are over 150 businesses located on Lancaster Drive, which is less than three quarters of a mile away. General industry information showed that the average income of coffeehouse patrons is \$65,000 and the average age is 43 years old. He said the age issue is important because members of this age demographic tend to be more altruistic in their purchasing decisions. This coincides with the Fresh Start Market's mission.

Mr. Kenney said the group undertook in-store observations in a non-intrusive way to watch behavior at various times of day. They observed customer actions and found there was a large standard deviation in the amount of time people spent waiting in line. They were able to make recommendations to the HR team for ideas to put in the training video to improve wait times. They also reviewed employee behavior, store upkeep, and general store layout and efficiencies. Their next step was to conduct a total of 30 customer interviews at the market. They found that 70 percent of the customers were familiar with the market's mission. Only 20 percent of the customers cited the market's mission as their reason for coming there, but they believe that because of the altruistic nature of this age demographic, they may be able to increase that percentage. To their surprise, they found that only 40 percent of the customers were government employees. They also found that 47 percent cited proximity as one of the

main draws of the Fresh Start Market. Their basic recommendations included some pricing and training recommendations. They also were faced with the task of finding a cost-effective way to raise the market's profile in the local community. They did this through providing a flyer/poster for distribution to local business and government agencies. The flyer highlighted the market's mission, its reasonable menu prices and its central location. As a simple way of measuring the value of the flyer, they estimated that if they could use it to attract only 2 percent of the government employees working within two miles of the location, the added business would represent a 9 percent increase in annual revenue.

Ms. Ross talked about the development of a pricing plan. Their two goals were to help the market understand better what it was costing them to make each item they sold, and also to help them know what they should be charging. First, they reviewed 200 recipe variations for items sold at the market. They examined the ingredients going into the recipes to determine a per-unit cost for every item of raw materials used. By combining this, they could determine the gross product by subtracting the cost of goods sold from their revenue. The team went out into the community and reviewed other coffee shops around Salem to see what they were charging for similar items. They found that Fresh Start Market tends to be on the lower end of the pricing scale, which would give them some room to raise their prices. The team combined all this information into an interactive Excel file that the market staff can use in the future to update their coffee shop manager software or to track inventory costs.

Ms. Ross said the group took the information from the Excel file and made recommendations for each item. They suggested a \$.25 cents per item increase across the board. By applying their recommendations to the figures for 2007 sales, they were able to determine the value the project would add if the pricing recommendations were taken. This figure showed that revenues would be increased by 10 percent. Ms. Ross said that all three teams were careful to make sure they were furthering Fresh Start Market's mission, which involves providing youth accountability, community service, restitution to victims, and employment skills for the youth. She thanked the Juvenile Department for allowing the teams to take on this project.

Commissioner Carlson said Dick Withnell of Withnell Auto served on the team of judges last year for the PACE program. Some of the teams do studies of for-profit businesses, while others look at non-profit business. Mr. Withnell commented that most of the nonprofit businesses that get studied are in Portland, and Commissioner Carlson was sure there had to be non-profits in Salem that the Willamette students could study. She and Mr. Withnell contacted the people in charge of the program at Willamette and had a meeting with them. At that time, they proposed Fresh Start Market, the Marion County Dog Shelter, and the St. Vincent De Paul store as possible subjects for study. The St. Vincent de Paul store was selected as a project this year, and Commissioner Carlson said she hoped the Dog Shelter would be chosen for a study next year. She said that the money earned by the youth working at the store is used to pay restitution to victims, which helps hold the youth accountable. They also learn valuable work skills in the program. She said the board had been somewhat skeptical about the ability of the Juvenile Department to run a business, so it was an excellent match to have the Willamette MBA students available to help improve the business efficiency and carry out the market's mission.

Commissioner Milne said she had been skeptical at first but has been very impressed with how the Fresh Start Market has worked out. She said the restitution is the primary reason for having the market. She thanked the Willamette students for their excellent work on the project. She said the cost breakdowns and market research on customers are especially helpful.

Commissioner Brentano thanked the Willamette students for their excellent work on this project.

Mr. Lattimer thanked the Atkinson Graduate School of Management, which offers the MBA program at Willamette University, for putting this project together. He remarked on the high quality of their students and hoped there would be more of these projects carried out in the future.

CONSENT

BOARD OF COMMISSIONERS

OLCC applications and renewals:

Recommend approval:
Columbia Aviation, Aurora

Approve an order appointing Michael J. Hansen as a back-up/on call hearings officer and establishing hearings officer's jurisdiction.

BUSINESS SERVICES

Approve a five-year contract for \$117,000 with BenefitHelp Solutions to provide administration of FSA, CERA, COBRA and retiree accounts for employee benefit services.

FINANCE

Approve amendment #4 to the fee-for-service contract with Aramark Correctional Services, Inc. to increase the per meal costs by 5% for the correctional facility through December 31, 2008.

PUBLIC WORKS – PLANNING

Receive hearing officer's decision granting conditional use, case #CU 07-81, Herberger, Clerk's File #5581.

TREASURER

Approve an order distributing revenues from ORS Chapter 530 timberlands.

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

ACTION

BOARD OF COMMISSIONERS

1. Consider approval of a resolution urging the legislature to make immediate changes to ORS 244.050, to revise ethics reporting requirements for local government officials. – Dan Estes

Dan Estes, senior policy advisor, reported that the Oregon Legislature's 2007 session passed sweeping ethics reforms that have had significant impacts on local government. It soon became clear that the ethics laws were going to have a negative impact on volunteers, city councils, planning commissions and similar groups. The League of Oregon Cities, Association of Oregon Counties, and other similar groups have banded together to urge the legislature to do something about this situation. The Governor convened an ethics reform review team that has asked for comments to be received by their May 20 meeting. The Board of

Commissioners asked Mr. Estes to draft a resolution expressing their views on the new ethics law and the negative impact it has had across Oregon and in Marion County in particular. Mr. Estes said the county has lost members of its Planning Commission. Statewide, over 180 local officials, both elected and appointed, have resigned from city councils and commissions because of the new requirements. He said it is a major loss when this many dedicated volunteers are lost, but many have decided to quit because the information being collected under the ethics reform law might not be secure and could put their families at risk as targets for harassment.

Commissioner Milne said Mr. Estes described the situation well. She said that as elected officials, county commissioners and state legislators have filled out these forms in the past. This allows them to supply reasonable levels of information and make sure there are no conflicts of interest. She said this is a reasonable practice, but the new rules overstep the boundaries and get into people's lives in an unreasonable way. This has had very adverse effects on volunteering statewide. For example, the new rules require the applicants to identify all their relatives and provide further information about these relatives. She said this practice steps over the line, and she felt legislators who voted for this should feel ashamed of themselves. She said the rules need to be changed, but the damage has already been done in many cases. Those who have refused to comply are subject to fines and to possible legal action. She hoped this resolution and the recent letter on the same subject by Commissioner Brentano would help to get the rules changed.

Commissioner Carlson thanked Mr. Estes for bringing this resolution forward. She said this topic is a double-edged sword. She said that anyone who believes in good, transparent government can see the importance of preventing undue influence on people holding political office. She said that when a group of elected officials says they are unhappy with the ethics law, this might raise some questions among members of the public unless they have been informed about some of the problematic aspects of these rules. She pointed out the differences between state legislators and county commissioners, since county commissioners are approached by far fewer interest groups trying to exert influence. She said that other than land use groups, the Board of Commissioners does not have many interest groups following and trying to influence their activities.

Commissioner Carlson said her understanding was that the Senate had a version of the ethics bill that went through the process and was sent to the House, where provisions were added that only covered the legislature. However, at the last minute, they broadened these provisions to include local government officials as well, so that now the provisions on undue influence covered people on planning commissions, fair boards, and various volunteers and public employees at the local level. She said that it may not look complicated to start with, but it comes down to questions such as whether her brother-in-law has taken more than \$50 from someone who may have a legislative interest in Marion County. These are not the kind of dealings that they could track on a day-to-day basis. She pointed out that the county works with so many groups and organizations that it would be almost impossible not to run into trouble with these rules.

Commissioner Carlson pointed out that the Ethics Commission has only three staff members, and they are currently receiving thousands of additional ethics application forms because of the new rules. All they have time to do at this point is receive the forms and file them away. This means there is nobody monitoring this information except for people that have an interest in catching someone else being bad. She said the law is really designed to be used in a negative way in a political campaign by providing a public record that will allow someone to go after someone else. She said the original intent was clean, transparent, open government, but the impact has actually been to give people ammunition against each other in a very

targeted way. She said it is important that the board pass this resolution. The ethics rules are a constant topic of discussion among groups such as the Mid-Willamette Valley Council of Governments, League of Oregon Cities, and Association of Oregon Counties.

Commissioner Carlson gave an example of how the new law has impacted the Marion County Fair. She said that for many years, the fair has sponsored a reception on the first day of the fair for the mayors of Marion County and the legislative delegation. They have a lunch and meet to talk in a relaxed environment, and they provide fair tickets (\$7.50 each) for the officials and their spouses. They were forced to figure out the individual costs of the meals and tickets, which has required everything to be itemized down to very small amounts to make sure they do not go over the amount specified in the ethics rules. In some cases, people have even reimbursed the fair to make sure they do not go over the limits. This year, with the new ethics rules in place, the fair is now considered entertainment, and there is a complete ban on the legislators receiving any kind of entertainment. Now, it appears that the legislators will not be attending because of the complications of the new ethic laws. The mayors may be able to attend because they are serving in their official capacity as mayors in order to collect awards for the cities. However, even this has required a letter from legal counsel because the mayors are squeamish about attending, and the law is complicated enough that they are unable to tell if they are violating it or not by attending the fair. She said she did not believe these conditions reflected the public's intent in its effort to have more transparent government. She said she could see the necessity of preventing such things as questionable junkets, but said the law should not extend to open events such as this one where officials are involved in ceremonial duties of their positions.

Commissioner Brentano said he also supported the resolution and agreed with the other commissioners. He said the new ethics forms required him to list 26 names and keep re-filing the forms because they include in-laws, which led to the need for more names to be added to the forms. He said his biggest concern here has been the effect on local government in terms of cities. He said that when he was mayor of Sublimity, he was happy to find people willing to serve on the planning commission or the city council. These are volunteer positions involving long hours, no pay, and criticism from neighbors. These volunteers are trying to help their communities, and he said he was against any rules that would make their jobs more difficult.

Commissioner Milne said that in the smaller towns and even in the larger communities, it is very difficult to find volunteers because they tend to get a lot of local opposition and criticism. She said that because of the intense scrutiny and negative campaigns, it is also difficult to get people to run for office. She said this only discourages people from getting involved in their communities, and questioned whether its actual intent was to prevent participation. She also said that one group has been excluded from these rules, which is school board members. She said that given the large sums of money involved and the major decisions made by school boards, this was a significant exception that seemed strange to her.

Commissioner Brentano pointed out that the new ethics rules have driven experienced people out of local government. He said he hated to see these people leave, since their knowledge of the community and its history are being lost for no good reason.

MOTION: Commissioner Milne moved to approve the resolution urging the legislature to make immediate changes to ORS 244.050 to revise ethics reporting requirements for local government officials. Commissioner Carlson seconded; motion carried. A voice vote was unanimous.

The commissioners then read the resolution.

2. Consider approval of a resolution in the matter of employee benefits pertaining to compensation credits and PERS for Marion County employees. - Commissioners

Commissioner Carlson said that Marion County has been working for the last several years on trying to make the budget team process more transparent. The idea is that when the public looks at the budget, they should be able to see clearly where their tax dollars are going. She said one of the benefits held by Marion County employees is compensation credits, which were started in the 1980s in lieu of a pay increase. Each employee has a salary level and also receives a number of weeks of compensation credits. The number of weeks of compensation credits varies depending on the bargaining unit, and they can be taken either as salary or as extra vacation. This means that when stating a county employee's salary, the compensation credits constitute an additional element to be considered. When they first came into being, they were known as "pay-or-play" credits.

Commissioner Carlson said that members of the public are often surprised to hear about the compensation credits, since they are not transparently presented as part of the salary and vacation package for employees. She said that when something has been around a while, it is difficult to get it changed. The credits started out as a few days, but depending on the bargaining unit involved, the total has gone to two, three, four, or five weeks of compensation credits. The second issue she noticed was that there is great difficulty in recruiting for positions in Marion County, and she has heard this from various offices involved in recruitment processes. She said she believed that because the compensation credits are not factored into the advertised salary range, many prospective employees might be dissuaded from applying because the salary range looks too low. This makes the recruitment process less transparent than it should be.

Commissioner Carlson said that in last year's budget process, John Lattimer, chief administrative officer, suggested putting money aside to do department reviews. The Budget Committee and the Board of Commissioners approved this measure. The reviews have been taking place as departments get new directors. The Sheriff's Office had a review when the new Sheriff took office last fall. This review has helped the new Sheriff to learn more about what is going on in the department. MGT of America from Austin, Texas, performed the Sheriff's Office review. It was an assessment of the entire Sheriff's Office and included many excellent recommendations about how to make government more efficient. The reviews are being done across county government departments as funds become available, with a few reviews being conducted every year. The MGT representative called the board's attention to the issue of compensation credits. MGT's finding in their report was that the compensation credit program costs the county a substantial amount in payouts. In the case of the Sheriff's Office, this is compounded by the need for increased overtime when deputies on patrol take compensation credit time.

Commissioner Carlson said that in other departments, the same sort of thing has happened when a staff member is taking compensation credits as time off and someone else has to be hired to fill their slot while they are gone. This leads to increased temporary wages and overtime wages. The MGT representative recommended eliminating compensation credits. She said that from what she has been able to find out, Marion County is the only jurisdiction in Oregon that still has compensation credits. The board discussed the issue of phasing out the credits. There is a proposal going through the process currently that would trade one week of compensation credits for 1.92 percent of each employee's salary and would also fully cover each employee's 6 percent PERS (Public Employees Retirement System) contribution. Commissioner

Carlson said this would represent a net gain of 4.08 percent in the employee's salary, which would represent more than what employees would be offered as a cost of living increase. In the second year, the county would buy back the cost of the compensation credits, which would increase the employee's salary by the amount of the credits. This would allow the county's wage scale in its recruitments to be more representative of the actual salaries for the positions.

Commissioner Carlson said she recognizes that change is difficult and there is suspicion that the board's intent is to take something away from employees. She recognized that many employees appreciate the flexibility of the compensation credit, but the county's vacation package is comparable to that of other jurisdictions. She said she is hopeful that they would be able to reach a consensus on this.

Commissioner Milne said one of the main reasons she first ran for office on the Board was because of the need to get control over the budget and provide transparency and truth in budgeting. She said it was important to treat county employees with fairness and respect. She said she felt that this change is a move in the right direction. She said the board has a responsibility to serve the taxpayers by providing truth in budgeting, and this change in the program would be fair to employees and responsible toward the taxpayers.

Commissioner Brentano said he had very little to add and was in agreement with both of the other commissioners.

MOTION: Commissioner Carlson moved approval of a resolution in the matter of employee benefits pertaining to compensation credits and PERS for Marion County employees. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

The commissioners then read the resolution.

BUSINESS SERVICES – RISK MANAGEMENT

Consider rescinding administrative policy and procedure #506 for employees exercising on county premises and bringing personal equipment for use in county facilities. – Mina Hanssen

Mina Hanssen, risk manager, said that Risk Management is in the process of reviewing and revising all their policies. During the process, they discovered policy and procedure #506, which has been on the books for a long time but is not being enforced. It was originally written to deal with a particular set of circumstances at a time when there was a workout facility at the Public Works location. The facility no longer exists, and the county does not have any other facilities of this type at other locations. They are in the process of developing a more comprehensive fitness program, so this appeared to be a good time to rescind this outdated and inactive policy.

Commissioner Milne agreed that the policy should be rescinded if it is not in use. She asked if Ms. Hanssen was planning any new policies in this area. Ms. Hanssen said they are planning on coming up with policies that take a more comprehensive approach to fitness and wellness for employees.

MOTION: Commissioner Milne moved to approve rescinding administrative policy and procedure #506 for employees exercising on county premises and bringing personal equipment for use in county facilities. Commissioner Carlson seconded; motion carried. A voice vote was unanimous.

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4. Consider adoption of the following new or revised administrative policies and procedures. –
Mina Hanssen

Injured worker
Volunteer injury coverage
Work crew injury coverage
Identity theft protection

Mina Hanssen, risk manager, said this is another case where Risk Management is trying to bring its policies in line with actual practices. She said they have made revisions to the injured worker policy and added language regarding their contract with managed care organizations (MCOs) that are now covered in their workers' compensation program. This would allow the policy to reflect the inclusion of that MCO program. Their two current MCO are Providence and Kaiser On The Job.

Commissioner Carlson asked Jo Stonecipher, legal counsel, if the board would need to approve each policy separately. Ms. Stonecipher said this would be the standard way to handle this. She pointed out that what the board would be revising applies to the policies only. The procedures are written by Business Services and then brought to the board for discussion, so they would not be part of this order. This would mean that a correct motion for this item would refer only to the policies, not the procedures.

MOTION: Commissioner Carlson moved approval of an order that revised the injured worker policy. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Ms. Hanssen then asked for revision on the volunteer injury coverage policy. She said that in the case of this policy, they cleaned up some indemnification language and increased the benefit for accidental death and dismemberment to match some of their other policy coverage, such as the inmate work crews.

MOTION: Commissioner Carlson moved approval of an order revising the volunteer injury coverage policy. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Ms. Hanssen said the next policy they are asking to have approved is a new policy called the work crew injury coverage policy. She explained that in past years, the inmate and juvenile work crews have been covered under the workers' compensation program. As a cost saving measure, they have purchased separate coverage for these groups, and this policy reflects the new secondary coverage.

MOTION: Commissioner Carlson moved approval to adopt the work crew injury coverage policy. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Ms. Hanssen said that the last item is identity theft protection, which is a new policy created in response to Senate Bill 583, the Oregon Identity Theft Protection Act. This is the county's policy in addressing that new state law.

MOTION: Commissioner Carlson moved to approve the order adopting the new identity theft protection. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

5. Consider final adoption of administrative ordinance granting zone change/comprehensive plan amendment, case #ZC/CPA 07-04, Manning, Clerk's File #5567. – Sterling Anderson

Sterling Anderson, planning manager, said the particular ordinance before the board today is an application to change the zoning from AR-10 (acreage residential – 10 acre minimum parcel size) to AR-2 (acreage residential – 2 acre minimum parcel size), and to take an exception to statewide Goal 14 (urbanization) with accompanying comprehensive plan amendments on a 7.82-acre parcel in the 3800 block of Blanchet Avenue NE, southwest of the City of St. Paul.

The Marion County Hearings Officer held a public hearing on this application on May 7, 2007, and on December 14, 2007, the hearings officer issued a report recommending the denial of the requested changes. The Board of Commissioners held a public hearing on this application on March 12, 2008. At the conclusion of the public hearing, the board, based on additional evidence and argument submitted at the hearing, granted this application. Notice of adoption of the implementing ordinance was taken on Wednesday, May 7, and the application is now back before the board for final consideration of adoption.

MOTION: Commissioner Milne moved approval of the final adoption of administrative ordinance granting zone change/comprehensive plan amendment, case #ZC/CPA 07-04, Manning, Clerk's File #5567. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano explained the procedures for public hearings. Those who wish to speak are required to sign the appropriate sign up sheet. Commissioner Brentano will open the hearing, with planning staff providing a short report on the application. The applicant and/or applicant's representative then has an opportunity to speak for up to 20 or 30 minutes, followed by proponents and opponents, who should try to keep their remarks under three minutes. If a speaker finds someone else has already said what they wish to say, they can notify the chair, who will add their name into the record as being in agreement with the previous speaker's remarks. The comments are followed by a final rebuttal from the applicant or applicant's representative, and this is followed by the board's deliberation. Board members are allowed to ask questions at any point during the process.

Commissioner Brentano recessed the meeting at 10:08 a.m.

Commissioner Brentano reconvened the meeting at 10:15 a.m.

9:30 A.M.

PUBLIC WORKS – PLANNING

A. Public hearing to consider conditional use, case #CU 07-58, Curtright, Clerk's File #5572. – Sterling Anderson

Sterling Anderson, planning manager, explained that this case involves an application for conditional use to place to place a personal use airport on a 213.2-acre parcel in a special agriculture (SA) zone located at 4107 Wintercreek Road SE, Jefferson. The application was later modified to include the Curtrights' adjacent 6.19-acre parcel located at 4145 Paradise Hill Drive SE, Turner.

Mr. Anderson said the hearings officer held a public hearing for this case on October 17, 2007. Based on the evidence submitted in that hearing, the hearings officer found that the applicant had failed to prove compliance with all the applicable criteria. Specifically, the hearings officer found that the applicants failed to identify the farm and forest uses in the area and farm and forest practices used by those farm operations. This information is needed to determine whether the use is compatible with farm and forest uses and practices in the area. The applicant also failed to show that they have an adequate drainage system serving the property, and there is a lack of evidence regarding the slope and soil stability on the property at the site of the proposed airstrip. The applicants also failed to show compliance with the state's noise standards, and the hearings officer pointed out that the applicants had not adequately signed the necessary certification in the correct place. This problem with the signatures has been taken care of and is no longer an issue. The applicant appealed the decision, the appeal was accepted, and the hearing before the Board of Commissioners has been scheduled for today.

Commissioner Carlson commented that she preferred that speakers stick to the items from the hearings officer's decision that has not yet been met with compliance. She said it would be better to keep matters more concise and not revisit all the objections from the hearing but rather stick to the question of what pieces of evidence are or are not included. She said that in this case, the pertinent issues include the surrounding farm and forest practices. Mr. Anderson clarified that a personal airport does not have to have a commercial aspect to it, although it may allow some commercial uses. Sometimes these commercial uses have been in conjunction with farm uses, but he said in this case he believed it to be predominantly a personal use airport. He said the applicants would probably clarify this during their presentation.

Commissioner Carlson asked Mr. Anderson if the farm and forest practices issue was simply an issue of the impact of the airport on the farm and forest activities in the adjacent area. Mr. Anderson said that according to the hearings officer, the applicants did not provide sufficient information for anyone to be able to tell if current farm and forest uses would be in conflict with this development. He said there is a need to analyze the farm uses and practices in the area in order to identify and mitigate potential conflicts. The hearings officer said the evidence provided was insufficient to prove whether or not the criteria had been met. Mr. Anderson agreed that it would be best to stick to the areas where evidence had been found lacking. Commissioner Carlson said these would include the farm and forest issues, drainage system, soil and slope stability, and noise levels.

Commissioner Carlson asked Mr. Anderson whether the conditional use issues raised by the hearings officer would be relevant for this hearing. Mr. Anderson if this was in reference to the issues of a conference center and possible fly-ins at the property. He

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said that these were activities that would not be permitted under this conditional use, so if they are proposed or intended by the applicant, this would not be the process for reviewing those items. He said these activities might or might not be allowed in the special agriculture zone, but this application would not involve those activities. This process involves only a personal use airport with a few invited guests on occasion. It would not be intended for commercial use or significant use by friends and relatives. He said that in that sense, it would be a very limited approval.

Commissioner Brentano said he had some questions about the history of the case. He said it appeared the case had been going on for quite a while, with an onsite visit by the Oregon Department of Aviation in 2001. There is a note that the applicant previously had one plane and now had five. He asked if there had been any kind of state permit or previous conditional use or land use permit from the county. Mr. Anderson said it appears that the airport and the use were initiated in violation of the county zoning ordinances. No permits were obtained prior to the initiation of the activity on the property. He said that the planning director, in initial review, granted approval of this application subject to certain conditions and limitations to bring it in line with what is actually allowed in a personal use airport. This decision was appealed, and the case went to the hearings officer. Mr. Anderson said it appears there have been no land use permits or approvals. He did not know if the applicant had permits from the Oregon Department of Aviation, since coordination between local governments and the aviation permit process through the State Agency Coordination Program has not always been consistent. He said this is one of the issues planning directors are working on with the state. He said that if the county had known about this case sooner, they could have dealt with it a number of years ago. He said that at this point, the airport is not a legal operation.

Commissioner Brentano asked Mr. Anderson to review some of the other conditions from the planning director's original approval. These included standard conditions such as having 60 days to get the necessary building permits if required, meeting the requirements of Public Works regarding drainage and other issues, providing evidence of compliance with the fire code, and signing the declaratory statement recognizing farm and forest uses in the area. Mr. Anderson said these requirements are standard for any kind of conditional or non-farm use in a resource zone. There were other conditions, including specifications that the owner would operate the personal use airport as described in ORS 215.283(2)(h), and that William and Dama Curtright are the owners of the property and that no aircraft shall be based on the site other than those owned or controlled by owners of the airstrip. The airport would be restricted to use by the owners and infrequent guests except in emergencies. The airport could be used for commercial aviation in conjunction with agricultural operations. The applicants were also obligated to receive any permits required by the Department of Aviation if they had not received them already. There was an additional condition that failure to meet and continually maintain the criteria could result in revocation of the approval. There were also a few advisory conditions, such as reminders that any construction would require building permits and possible SDCs (system development charges), along with permits from Public Works that would be required for any work in the right-of-way.

Commissioner Brentano asked about the number of planes. He said there appeared to be no stated limitation on numbers. Mr. Anderson agreed that this particular condition could have been written more concisely and clearly.

TESTIMONY:

Support:

Mark Shipman, 250 Church Street SE, Suite 300, and Tyler Smith, 181 North Grant Street, Suite 212, Canby OR 97013, are attorneys representing the applicants, William and Dama Curtright.

Mr. Shipman said his firm, Saalfeld Griggs, started working with the Curtrights in 2001 or 2002, after they had acquired the property and started pursuing their dream of having a personal airport on the property. He said he wanted to frame the issue in this case. He said the appeal Mr. Smith filed on behalf of the Curtrights is primarily focused on the Marion County criteria. He said Commissioner Brentano had questioned whether this airport was legal, and Mr. Shipman wanted to emphasize there are various layers of law involved here. He said that Marion County regulates personal landing strips by code in the EFU (exclusive farm use) and SA (special agriculture) zones. There are certain criteria that must be met to establish a personal landing strip. In addition, the Oregon Department of Aviation registers personal use airports and has criteria of its own. He said that in this case, this application satisfies all those elements and criteria, and there is evidence in the record to show this. Mr. Shipman said the third level of regulation here is the Federal Aviation Administration, which approves these types of uses. He said there are letters from the FAA in the record stating that the Curtrights' personal use airport satisfies all FAA requirements and is approved. He said that it was incorrect to say that the personal airport is not legal, since it has been approved at the federal and state levels, and they are now attempting to get approval at the county level. He said Mr. Smith has pulled together planning, civil engineering, and acoustical data to present today. Mr. Shipman said they have gone to great lengths to gather this information to show their compliance with the applicable mandatory approval criteria.

Mr. Smith directed the board to the binder containing the information from the applicant regarding today's case. He said there are various photographs of the property and a list of additional documents in the binder. Mr. Smith presented an aerial photograph of the Curtright property and its layout. He said the airstrip is 1750 to 1800 feet long and runs diagonally across the property from the top left to the bottom right of the map. There is a significant elevation drop on the south side of the hill in the bottom right corner of the map. This is an issue they will be discussing at some length today. He said there is a property called the Cruise Mansion that is not shown on the map, which is owned by Olympic Coast Investment at this time.

Mr. Smith said it is important to see the layout of the land because there is testimony from engineers at Marion County Public Works regarding water and drainage issues. He said that the maps gave them one impression, but these engineers had a completely different impression when they went to the actual site and reviewed it. He said the engineers originally believed there would be a need for a site drainage plan, which they recommended having in place by 2009. However, after reviewing the site, they determined that there would be no impact on the water, and they would not require any additional drainage. He said this personal use airport is actually a fairly minor impact and a minor permit. He said that according to the Marion County code, this type of hearing could even be approved at the staff level, as it was with former Public Works Director Jim Sears. He said it was originally approved in this way, but was then appealed.

Regarding the history and construction of the airstrip, Mr. Smith said the actual airstrip was constructed and first used in the late fall of 2007. This was after the application

had been submitted and directly after Director Sears' initial approval. Even though the history of the project goes back to 2001, he said this was a conditional use permit that was never filed, and there was no permit sought at that time and no use before fall 2007. He said this is not a case where there has been an ongoing violation during that time. After Director Sears' approval, the runway was used a few times for the party that has been discussed previously. This led some to believe that there was some sort of convention center or mass gathering going on at the property. Mr. Smith said that this was actually one party, a barbecue with about 150 people. He said there was no intention to use the property as a convention center, mass gathering facility, or anything of the sort. He said the one party held at the property was a charity fundraising event advertised on a website. He said that the applicant would actually be recommending a condition requiring that he follow any rules for gatherings at the property to prevent any problems in the future.

Commissioner Brentano asked how the 150 people got to the barbecue. Mr. Smith said that there is an asphalt driveway that connects with the Curtrights' driveway, which is Paradise Hill Road, and most of the participants drove in. He said there might have been one or two additional planes along with Mr. Curtright's plane.

Mr. Smith reviewed some of the photos in the binder, including photos of the runway and other photographs of the area surrounding the Curtrights' home. He said the photographs show the significant elevation rise going from the Curtright property to the EFU land to the south. He said the Cruise Mansion is also visible in the photographs. He said the Johnson house, another neighboring property, is not visible in most of the photographs.

Mr. Smith said there were a number of items that were missing from the record or were cited incorrectly in the hearings officers' statement. He said they would be presenting additional information today regarding these matters. He said one piece of information they will be presenting is the original application signed on August 25, 2007, which was in the record at one point. They have provided a copy of this document as Exhibit 1 in the binder. He said this document has been signed, staff has a copy, and this matter has been cleared up.

Mr. Smith said that a number of complaints were discussed at the hearings officer's hearing. He said they felt that some of the comments were unfair, including some of the complaints about aircraft that do not belong to the Curtrights. He said that some of the testimony related to helicopters, power gliders, and other aircraft that are not related to the Curtrights or their property. He said the Curtrights were not using or planning to use these kinds of aircraft at this time.

Mr. Smith said he would turn next to the specific applicable criteria, starting with the surrounding area analysis. He said that Exhibit 2A in the binder goes through a complicated process to prove that something does not exist, according to the formula used by the Land Use Board of Appeals (LUBA) and the Court of Appeals. This process requires them to describe the farming practices on the surrounding lands devoted to farm use (in this case the EFU and SA lands) and explain why the proposed use would not force a significant change in those processes or cause a significant cost increase. He said that farm use in these zoned areas basically means self-sustaining farms. He said their review discusses all these areas

Commissioner Carlson asked who prepared this analysis. Mr. Smith said that he prepared much of it, with assistance from Multi Tech Engineering Services, which has professional planners on staff who did much of the background analysis and statistical work.

Mr. Smith referred to Exhibit 2B in the binder, which is a map generated by Multi Tech, which shows the Curtrights' property in the middle. The surrounding areas are shaded to show whether they are single family dwellings, Christmas tree farms, natural tree areas, rotating crops, cattle grazing, hay, equestrian centers, or vacant and residential uses. Overlaid on this is the zoning, whether SA or EFU. The Curtright property makes a U-shaped formation on the map. He said the methodology is explained in the Surrounding Area Analysis Overview, and identifies why those particular uses were identified as the uses in the study area. They took a half-mile radius outside all the borders of the Curtright property. He said the study itself explains more about the boundaries, refers to some of the other maps, and explains the significance of the property size. He said that properties under 15 acres are generally not considered self-sustaining farm uses by the state, so these were considered less although they were analyzed to some extent.

Mr. Smith said that Planning Director Sears saw no negative impact on the surrounding farm uses. However, the hearings officer asked the applicants to present the farming processes. He said they have reviewed these extensively in Exhibit 2E of the binder, which is 30 pages long and quite detailed. He said this exhibit is a bit excessive, but they wanted to make sure that the hearings officer's question and the neighbors' concerns were addressed. He said this document would be in the public record and available for review so these concerns could be addressed. He said that Christmas tree farming in all its aspect is described in great detail and includes information from various sources on the acceptable general practices in the Christmas tree industry. He said they explained in their documentation that these practices would not be affected by the applicant's personal airport.

Commissioner Carlson asked how many other private airstrips are in the area. Mr. Smith said he believed there were two private airstrips along with the Independence Airpark in the area. Commissioner Carlson asked Mr. Smith to explain only the items that the hearings officer had questioned.

Commissioner Brentano said the applicant's airstrip would be midway between Salem and Albany Airports, and asked if there would be any issues with the state or federal authorities regarding other airports in the area. Mr. Smith said that none of the other airports are very close, and the Oregon Department of Aviation report says there are no air traffic problems in the area. He said the FAA has registered the Curtright airstrip as an approved landing strip. Mr. Smith referred to Exhibits 6 and 7 in the binder, which are approval letters from the FAA. The most recent of these is from January 23, 2008. The FAA letter refers to this airstrip as the Ames Airport.

Mr. Smith said the Curtrights themselves have horses and cattle on their property, with the numbers varying from time to time. They also grow alfalfa on the property. These uses are discussed in the farming practices report, and the private airport will not impact these uses. He said the horses and cattle operations are described in the farming practices report and noted that some opponents had noted concerns about the animals on the flatlands or near the subject property might be affected by noise from the airport. He said that the noise analysis by the acoustical engineer will be described later in the presentation and will show that very little noise goes off the property.

Mr. Smith said that regarding the next criterion, the applicant has obtained an official letter from the Jefferson Fire District showing that the property is within their district and meets the fire safety standards. He said the letter pointed out that the property might even be helpful in the case of a major fire in the area, since it could be used as a staging area for

additional landings and vehicle parking in an emergency. This is Exhibit 8 in the binder, which includes a fire zone map. Mr. Smith said that the airstrip is just a landing site and would not require any utilities. There are two homes in the area that provide the standard utilities.

Mr. Smith said the next criterion was the question of whether the airstrip would have a significant impact on wildlife in the area. He said the hearings officer wanted more information on slope stability, so the applicant has engaged a civil engineer who specializes in soil and slope stability analysis. The engineer's analysis is included in the binder.

Commissioner Carlson asked about the hearings officer's remarks about drainage being a concern because the airstrip is paved, which increases the impervious surface on the property. The hearings officer also quoted the Planning Division as saying a National Pollutant Discharge Elimination System (NPDES) permit would be required. However, there is also a letter in the binder from the Department of Environmental Quality dated November 27, 2007, which states that based on the information supplied by the applicant, the NPDES permit would not be required. Commissioner Carlson asked for some explanation about this. Mr. Smith said that Public Works had pointed out the possible need for the permit a few days before the close of the record in the previous hearing. He said they were unable to get this done in time for the closing of the record, but the letter from DEQ clearly shows that this type of permit is not required in this case.

Commissioner Carlson asked about another letter in the binder, which is from Ted Joling of Marion County Public Works/Engineering. The letter said a site drainage plan had not yet been received by Public Works, and also said the paving of the airstrip would be well over the threshold of one quarter acre of impermeable area that would require storm water handling by retention or detention. She asked if the airstrip is already paved. Mr. Smith said the airstrip has been paved. He said that the date on the letter was September 18, 2007, which was very early in the process. He said the last paragraph of the letter states that the system must be submitted to and approved by the county before construction began, and the construction needed to be completed before a 2009 review date.

Mr. Smith said there had been some misunderstanding in this case, because a site drainage plan had been submitted to Public Works. The applicant engaged a water engineer, Matthew Hendricks of Multi Tech Engineering, to go to the Curtright property with Public Works employees to review the property for water retention, drainage problems, and any kind of water quality issues. He said the first letter was from the engineer, stating that there was no problem, and this is followed in the binder by an email from Byron Meadows of Marion County Public Works, which confirms that he concurred with Mr. Hendricks's views, and that Public Works would not be requiring storm water detention for the paved airport strip. Mr. Smith said the airstrip was constructed by scraping and leveling the ground. Gravel was placed underneath, with large rocks placed at the end of the runway as elevation lifters. The asphalt was put on top of the gravel and rocks.

Mr. Smith presented Exhibit 11 from the binder, which is the wildlife map for the area. The map is from the Oregon Department of Fish and Wildlife, and shows that none of the areas of endangered wildlife overlap at all with the applicant's property. He said there are no fish or waterways at the top of the hill. According to the water engineers, there is also no reason to believe that any water from the property would drain off into surrounding waterways. He said they have public testimony from Phil Olson, a professional flight instructor, that when he has worked on these private airports in the past, there is always a significant outcry

at the start, but once built, the airports do not cause any significant change. He said there is air traffic in the area, which only proves that this airport would not be a major change to the area. He pointed out that this airport was likely to be used only in good weather for occasional use by one pilot who lives at the location. He said these small planes do not emit noxious odors, and they only hold two to four people. He said it was important to keep this in perspective

Commissioner Carlson asked about the hearings officer's statement, page 17, where she expressed some confusion about the number of aircraft that would be based on the property. She said at the hearing Mr. Curtright mentioned having five aircraft, but only the De Havilland and the Super Cub would be based on the property. However, after the hearing and prior to the closing of the record, the applicants mentioned that they would be basing all five aircraft on the property. She asked Mr. Smith for clarification of this. Mr. Smith said that Mr. Curtright does own five aircraft, but he uses the Super Cub and the Beaver most frequently. He said the other three are similar in size and scope, and might be flown in or parked at the property at some point, although they are currently being stored.

Commissioner Brentano asked about the state aviation site report, which pointed out that the runway was long enough for use by three of the possible aircraft, but that other two would require the exercise of caution. Mr. Smith said that this is part of the reason why the other three planes would rarely, if ever, be used at the property.

Mr. Smith gave information on the characteristics of the applicant's planes. He provided photographs of the types and models of planes or similar models (Exhibits 12A through 12E in the binder). He said these included the Super Cub, Skymaster, Cessna 172, and Marchetti. The Beaver is similar to Mr. Curtright's plane, which is a Turbo Beaver that is less noisy, more powerful, and able to go in reverse. He said the airstrip is long enough to land this plane without problems.

Regarding slope and soil stability, Mr. Smith said the applicant engaged a professional civil engineer specializing in slope and soil issues to review the property. Exhibit 13 in the binder is the engineer's report and soil and stability analysis, which shows no concerns about slope instability developing from the runway construction.

Mr. Smith said the Hearings Officer had expressed some concerns about noise. He said the information on the state's DEQ requirements was confusing. He pointed out that the state has suspended their noise control system program. Marion County's code, in Noise Ordinance 1190, specifically requires compliance with state laws, which would include the DEQ's code. He said that if the DEQ still had an active program, the program would have exceptions so the applicant could apply for this sort of minimal use. They currently do not have this option because of the suspension of the state DEQ program. Mr. Smith said the hearings officer recommended that the applicants use a statistical study to get some figures on what amount of noise would actually be emitted. The applicant engaged a professional acoustical engineer, Albert Duble. DEQ's noise regulations require an average 24-hour noise level of 55 Ldn, with less than 50 Ldn being considered quiet. The noise engineer's report, Exhibit 14B in the binder, gives his analysis of the noise levels on the property.

Commissioner Carlson asked how close the acoustical engineer was to the planes when measuring the sound. Mr. Smith said that Exhibit 14D in the binder shows the relevant boundary as requested by DEQ, so they decided the relevant boundary would be off-property noise. They calibrated the noise from the edge of the subject property, and the final

report shows the correlation of the distance and the noise. The report showed the 24-hour average Ldn at the north end of the property was 49, with the 24-hour average Ldn at the east end of the property being 54. Mr. Smith said that there were two fly-ins performed after the hearing only for the purpose of measuring the noise, as they felt there was no other way to get a proper noise reading. The change between the periods with and without fly-ins was not significant enough to put the final Ldn anywhere near 55, which is the cutoff. The acoustical engineer pointed out that a change of one decibel or less is not audible to the human ear. Mr. Smith pointed out that the Oregon Aviation Department had also noted that the noise impact in this case would be minimal because of the location, the buffers of the land, the elevation drops, and the types of planes being used. Mr. Smith said the board should not limit their decisions on the types of planes Mr. Curtright has now, since this is likely to change in the future. He said that the airport is not equipped for night usage, so night noise from takeoffs and landings would not be a factor.

The final criterion from Marion County's Comprehensive Plan was the issue of adverse impacts on any water impoundments. Mr. Smith said the applicant agrees with the Hearings Officer that there are no water impoundments in the area, and they have provided maps to demonstrate this. He said there are no significant mineral or aggregate sites in the area. Mr. Smith said that one of the opponents might speak about a pond on his own property, and emphasized that the site was not a recognized water impoundment site. He said that in any case, water could not drain from the Curtright property to the opponent's property because of its location.

Mr. Smith said the hearings officer brought up the question of whether or not an access permit was required for the property. One of the conditions required by Public Works was that the applicants would have to get any required access permits. The applicant stated that they did not believe an access permit was required, and since that time, they have applied for an access permit exception. Public Works has stated that the applicant was correct and an access permit would not be required, so the exception was granted, and this exception is listed in the binder as Exhibit 15. Mr. Smith said the DEQ permit was not required, nor was the site storm drainage plan, and these were the other things that the hearings officer had mentioned in her report.

Mr. Smith said that Marion County requested that the Curtrights sign a declaratory statement saying they want to maintain a harmonious and compatible relationship with the farm uses in the area. He noted that the Curtrights have signed this statement.

Mr. Smith said that regarding covenants, conditions & restrictions (CC&Rs) with the neighboring uses, he is are present today to make sure the applicant has all the proper permits and the approved use for the personal use airport. He said the CC&Rs state that the uses in the area are acceptable as long as they are permitted uses, which is what they are trying to achieve with this airport. Regarding the unauthorized fly-ins, he said these were done for the sound study, and while they apologize for that, they felt it was necessary to have fly-ins for the purposes of the sound study.

Mr. Smith said the Curtrights are open to any conditions the board might want to impose. He said they would have no problem with a prohibition on mass gatherings or a requirement for a permit for mass gatherings, which is a condition they would comply with in any case. For safety purposes, they would be willing to meet any necessary conditions regarding fuel storage or maintenance equipment storage. He apologized for a long presentation, but said he needed to make sure he presented all the information and reviewed the input from the various representatives of state and county agencies and independent engineering firms. He

said their reports show that the applicants meet all the applicable criteria, and most observers have had fewer concerns about the operation since they actually went to the site.

Opposition:

Ron Johnson, 12123 Summit Loop SE, PO Box 1205, Turner OR 97392, presented a report on this case (Exhibit A). He said the report includes photographs taken about six weeks ago from his property. He said that the approximate distance from the end of the runway to the boundary of his property is only about 900 feet. The photos also show the elevation. He said the end of the runway is only about 20 to 25 feet from a fence that marks the boundary of the Cruise Mansion property.

Mr. Johnson said the comprehensive plan policy that is most applicable and must be satisfied for this case is Transportation Policy #1 of the county, which is a mandatory approval standard that requires that airports and airstrips be located in places that are safe for these operations and compatible with surrounding uses. He said the Marion County Comprehensive Plan makes no distinction as to type of airport or airstrip in this policy. He said another mandatory approval standard is that all developments that are noise sources must comply with applicable DEQ standards. He said both these policies are mandatory approval standards. Regarding the history of the compatibility standard in Marion County, he mentioned the Trademark case of 1998, in which the county interpreted the phrase "should be compatible" as a mandatory approval standard.

Mr. Johnson said that if Marion County is ultimately responsible for the safe operation of the airstrip, and if the state and federal registration processes exist but are basically only bookkeeping requirements, then the county is responsible for the enforcement, regulation and operation of this airport. He said the way in which this is partially accomplished is through what the Land Conservation and Development Commission calls the airport planning rule. He said that the airport planning rule is found in the Oregon Administrative Rules in OAR 660, and states that a local government must adopt an overlay zone to promote aviation safety. He said the rationale is that there needs to be an area safe from obstruction for takeoffs and landings, and in this particular case the primary surface would be the paved airstrip, which is 1750 feet long from south to north. He said that in addition to this, the property owner is also required to provide control over what are called the approach surfaces, which is where the planes ascend or descend after takeoff or landing. He said the minimum requirement for this would be that the approach surface be 200 feet wide at the end of the runway and extend beyond the runway by 2500 feet and then widen at the end to 450 feet and have an upslope of 20:1.

Mr. Johnson said that in connection with the conditional use procedure, the county would also be required to adopt a zoning act that prohibits any sort of structures, trees, or anything else on these approach surfaces. This would include requiring trees to be topped off so that planes could fly in and out. He showed a photograph that shows the proximity of his home and several other neighbors. Regarding the pond on his property, he said the issue is not one of storm water runoff but rather one of bird traffic, since birds come to the pond and could get sucked into airplane engines.

Mr. Johnson mentioned the elevation change and slope as a possible issue as well. He said that the safety overlay zone would require that nothing between the runway and the fence be higher

than one foot. He said that nothing in the area is to be taller than 45 feet, but the treetops are 175 feet and their chimney is 30 or 40 feet tall. He said their house is a pre-existing use that was present before the airport was installed.

Commissioner Carlson mentioned the Ames Airport site approval document from the Oregon Department of Aviation, which states in the remarks section that takeoffs should be made to the southwest to avoid homes and terrain, with landings being made to the northwest to avoid homes, terrain, and trees while limiting noise for neighbors to the west at the bottom of the hill and closer to the airstrip. She said it also contains a paragraph that was read earlier by Commissioner Brentano regarding the length of the runway. She said that at no point does it mention the overlay zone Mr. Johnson was discussing, and she asked how his comments fit in with the evidence brought forward by the applicant today.

Mr. Johnson said that he is speaking about a different set of jurisdictional issues. He said the county and the history on this go back to the case of *City of Burbank v. Lockheed*, a Supreme Court case in which federal and state involvement in airport operations supersede everything that the county can do above the ground. He said that when the FAA and the state talk about what should be done with the airport, they are only speaking in terms of “should,” since they are not mandating it, and the county has no jurisdiction over that space except with respect to ground activities. He said the county has no authority to regulate how takeoffs and landings are timed or coordinated. He said the state may make recommendations, but these are only recommendations that the county cannot apply or enforce because of the federal preemption.

Commissioner Carlson asked if this meant that the county could not make a condition stating that takeoffs could only occur in a particular direction. Mr. Johnson said that this is correct, and said this rule was adopted in a Clackamas County case that dealt with similar uses at the Mulino Airport. He showed more photographs to indicate locations of other properties that would be within a safety overlay zone. He said that in order for the airport to be found safe, the property within the safety overlay zone would have to be within control of the applicant, and this could be done through acquisition or through an aviation easement in which he obtained air rights. Mr. Johnson said that at least in his case, he had not sold or given any air rights over his own property.

Mr. Johnson said the second mandatory approval standard is a different standard than the farm practices conflict standard that the applicant’s counsel discussed earlier. Mr. Johnson said that Marion County’s Comprehensive Plan imposes a second mandatory approval standard, which requires the use to be “compatible with surrounding uses.” He gave the example of a Land Use Board of Appeals determination last year that clarified that this is a subjective determination. In most land use processes there is a clear objective requirement, but that does not apply here, nor does it apply to any zoning uses or definitions. Instead, it is a question of how the properties are used and whether the proposed use is compatible with the uses of the surrounding properties. He said that the farm practices conflict analysis put forward by the applicant’s lawyer does not satisfy this standard.

Mr. Johnson went on to say that this airport is not a farm use, since ORS 215 specifically states that airports are a nonfarm use. He said that in terms of the conflicts analysis, the declaratory statement that the county requires residents of the area to sign, which states that they would not object to customary farm practices, would not apply in this case. He said that he would be reviewing this in the light of some of the uses of the area. He said Marion County has had some experience with regulating and defining nonfarm uses, and has sometimes

adopted more stringent local criteria in regulating nonfarm uses, as in the *R/C Pilots v. Marion County* case.

Mr. Johnson said he had made an analysis of surrounding uses in a 2,500-foot radius around the property. He said there is roughly 100 parcels inside the boundary, with 87 of these being zoned AR (acreage residential). Most of these AR parcels are nonfarm parcels of 3 to 5 acres used for residential purposes. He said there are three parcels zoned EFU (exclusive farm use) and 11 parcels zoned SA (special agriculture), with the SA parcels being used mostly for residential purposes instead of farming. He said this means that about 90 percent of the area is rural residential rather than a farming area. He said the typical parcel is five acres and there are very few commercial operations. He said there are steep slopes, trees, and other characteristics incompatible with an airport nonfarm use. He said the Curtright parcel, at 212 acres, is the largest in the area. He said that other than several other parcels of 40 to 50 acres, all the other parcels are rural residential parcels of three to five acres that are entitled to protection from nonfarm uses. He said this is a rural residential area, not a farm district, which means that a nonfarm airport use is not compatible with the surrounding uses.

Commissioner Brentano asked Mr. Johnson to summarize the rest of his presentation and said the board would review the document accompanying his PowerPoint presentation. Mr. Johnson said that regarding the noise issue, it is important to determine where the noise is being measured. He said that Marion County's noise ordinance regulates noise on the ground. He asked that the record be left open for seven days to allow him to review the applicant's noise analysis. Mr. Johnson said he did not believe that the applicant's noise study satisfies the standard that noise should be measured at the boundary of the property and not at the applicant's residence, because the noise from the takeoffs could be heard clearly from inside Mr. Johnson's house.

Mr. Johnson said some of the other speakers would probably be bringing up the farm practices issue. He reiterated that he did not believe that the county had the authority to put conditions on flight activities in a navigable airspace, although the county could use its land use powers to regulate activities on the ground. He said that the county did not have authority to regulate how planes fly in and out of a location. He said they would probably be hearing testimony with respect to whether or not this airport qualified as a personal use airport, along with questions about the standard for the numbers of planes to be based at the location. He said there was a similar case in Grant County where there was some confusion about this issue, and in that case, the court decided there needed to be a standard of explicit determination because planes, owners, and numbers can change over time, meaning that a high standard of documentation must be required of the applicant.

Mr. Johnson said he did not believe that air operations could be conducted safely at this location. He said he did not believe the airport would be compatible with the characteristics of the area. He pointed out again that he wanted the record to remain open for seven days so he could see and respond to the applicant's noise reports. He said he had not seen these reports, but he believed they would not satisfy the county's standards. He said privately owned airports are virtually unregulated by the state, and the federal government has even less involvement except for a bookkeeping role. He pointed out that in a case from Klamath County, it was shown that the ultimate responsibility for approvals, enforcement, and safe operation of private airports rests with the county. Lastly, Mr. Johnson said that to overturn the hearings officer's order, the board would need to proceed on the assumption that all of the applicant's assertions were true and that none of the hearings officer's conclusions were to be relied on. He said this is

a very high burden of proof, which had not been met by the applicant and the applicant's representatives.

Commissioner Carlson stated that while the county is operating under its current noise ordinance, they have had a number of work sessions on the subject of the noise ordinance and are working on a new version of the ordinance. She said that in the past, the ordinance has not always been clear on where noise should be measured from, but that is being clarified in the new version of the ordinance. She said that the noise usually would be less if the location were further away from where the noise is being made. She said that the ordinance does not require that there be no audible noise, but it does require that the noise stay below a certain level. Mr. Johnson said the test seemed to be whether the noise would interrupt conversation. He acknowledged that this case is a first for everyone involved, and that this is the first new airport application in western Oregon in 15 years.

Sherri Hinrichsen, 11793 Summit Loop SE, Turner, said she and her husband are very opposed to this airport. They moved to the area to be away from the noise of the highway and the city. She said that unlike farm equipment and helicopters, an airport in this location was not necessary for the applicant's business or lifestyle. She agreed with Mr. Johnson and applauded his work on this issue.

Donovan Steward, 4881 Shadow Hills Drive, Turner, said he was present in support of the neighborhood and was also in agreement with Mr. Johnson's presentation.

Richard L. Kraus, 4942 Shadow Hills Drive SE, Turner, declined to comment.

Bobbie J. Moore and Robert Moore, 12363 Summit Loop SE, Turner also declined to comment.

Pat Corey, 12194 Summit Loop, Turner, said he and his wife have lived at this location for about 12 years on a 4.5-acre property that is about 350 feet to the northeast corner of the applicant's property. He said that from his property, they can see the edge of the airport and see the takeoffs and landings. He said their focus is only on this airport. They have no issue with pilots and aircraft generally and have flown with friends in small aircraft on numerous occasions. He said they have no issues with the Curtrights themselves, but they are concerned with the airport and its impact on the community. He said the airport and the associated aircraft are invasive, noisy, and threatening to the safety and livability of the area. He said that as Mr. Johnson stated earlier, the airport is not compatible with the surrounding residential area. He quoted the Marion County Comprehensive Plan on the issue of "maintaining a high standard of livability." He said the noise levels of the planes are invasive and harmful to livability. He said he and his wife can clearly hear aircraft on the property from inside and outside their home, and the applicant's noise studies appeared to be based on aircraft that were physically on the airport. He submitted a letter (Exhibit B) that includes photographs of aircraft flying directly over their home in approach to the airport.

Mr. Corey said that aircraft flying at low altitudes are threatening and invasive to the neighbors, and since the airport has gone in, there have been aircraft flying very low and approaching from any direction. He said it was important for the neighbors to have the county's help to make sure the policies, rules, and laws are followed. He said that by using the airport on multiple occasions when it was not approved and to serve an advertised conference center and lodge that were not zoned or approved, the Curtrights have demonstrated a disregard for the policies, rules, and laws of Marion County and the State of Oregon. He said that the Curtrights have

demonstrated that they do not care about the safety and well-being of their neighbors, so he is depending on the county to help by denying the use of the airport. Mr. Corey said he and his wife live in the area because of the quality of life, and they would not have bought their property if the airport had existed or if they had known it would be built. He asked the board to protect the safety and livability of their country community by not approving the use of this airport.

Commissioner Brentano asked Mr. Corey about the frequency of the use of the airport from his perspective. Mr. Corey said it has been sporadic, and sometimes it is not every day, while other times it might be several times a day. He was not always sure whom the planes in question belonged to, but the planes were flying below 500 feet so he had to assume they were approaching the Curtrights' airport. He said the very low altitude flights have increased since the airport was built. Commissioner Milne asked when the photographs were taken. Mr. Corey said he believed they were taken in the fall of 2007, and there have been numerous other instances since then.

John Durkheimer, 601 SW 2nd, Suite 2100, Portland, OR 97204. Mr. Durkheimer said he represents Olympic Coast Investment, Inc., which owns the property that has been referred to as the mansion and is located directly north of the applicant's property. Mr. Durkheimer said he sent a letter dated May 12, 2008, via overnight mail. This letter has been added to the record. He said Olympic Coast stands by the original brief they filed in this case. He said there has been some testimony with regard to FAA approval in this case, and he asked the commissioners to note that the FAA approval was issued seven years ago in 2001. He said much has changed since then, and this approval is now out of date. He said he believed that the FAA would concur with this. He said the original approval was for two aircraft, and then they were told before the hearing that there would potentially be five aircraft at the airport. He said the applicant is now requesting that there should be no limit on the number or type of aircraft at the location. He said this is a violation of the CC&Rs, which provide for single-family residential use of one of the parcels this airstrip intersects with, which is parcel 1404. He said that he concurred with the hearings officer's conclusions and decision, but he said that he disagreed with the hearings officer's statement that the CC&Rs are agreements between the public parties, since the CC&Rs in this case are recorded covenants that actually run with the land. He said that the noise and safety issues are a large concern because their property is 30 feet from the end of the actual runway.

Donald and Mona Beaton, 11333 Sunset Sky Lane SE, Turner, OR 97392, had to leave before they could present their testimony, but left a copy of their written testimony (Exhibit C).

Elaine Sink, PO Box 96, Turner, OR 97392-0096, said she and her husband own property at 12135 Summit Lane Road SE, which is on the other side of the Cruise Mansion property to the north. She said she owns Lazy S Quarter Horses and works as an equine judge and official. Ms. Sink presented a packet of information about her business operations (Exhibit D). Ms. Sink said they bought their property in 1988, and at that time it was a nice rural area. She said there have been several pieces of property that have been divided since then in the section where they live. Their property is just under six acres, and they raise show quality buckskin quarter horses there. She said that recently they had a colt out in the pasture when a plane, which may or may not have belonged to the Curtrights, flew over their property about 200 to 300 feet overhead. The colt was frightened and went through a fence because it was so scared. She said a breeder has to breed for a long time to have a colt of this quality, and she had planned to show him at a world show. She said that now this colt will be unable able to be in this show or any other.

Ms. Sink said her family had moved to the area to get away from city life. She said the Curtright and Cruise property are between her property and Brawley Farms, which harvests hay, but she has never heard the Brawley Farms equipment. There is a Christmas tree farm to the east of her, but she only hears them when they have helicopters out to do spraying, and this does not bother her or the horses because it is seasonal. She said she has a watershed on her property that was not mentioned by the applicant. Is it a cistern, or open-ended well where she collects water, and when the airstrip went in at the applicant's property, it was surfaced with oil-containing blacktop. This left her concerned that her family might have to dig a well on their property. She said that fortunately, they have had their water tested and it is not currently affected, but she was still unsure whether any rain or runoff could end up on her property and affect the water quality. Ms. Sink mentioned the county ordinance that requires notification of neighbors within 750 feet, but said she was never notified about the hearing, although her property would qualify as being well within the impact area of 2,500 feet from the subject property. She said the planes have been close enough for her to look up at them and see faces in the windows, which is a very uncomfortable feeling. She was concerned about the possible loss of her home or horses if there were some sort of explosion or fire from an aircraft accident. She asked whom she could go to for recourse in such a situation.

Ms. Sink said that since the airport has gone in, there has been a great decrease in deer, birds, and other animals in the area. She said this airport, along with its associated road traffic, has been the biggest change since they moved to the area in 1988. She said there were well over 150 guests and five planes that came to the Curtright property when they held the Republican Party fundraising event on the property, with three of the planes coming close to taking out treetops in the area around her property line. She thanked Mr. Johnson for his research and work on this project and said she agreed with his conclusions.

Roger Dicks, 12184 Summit Loop SE, Turner, OR 97392, declined to comment.

Judy Brawley, 4556 Wintercreek Road SE, Jefferson, OR 97352, said that she and her family own Brawley Farms and have an equestrian center they have been involved with since they moved to the area in 1975. She said their property is just south of the Curtright property and they have mostly had a congenial relationship with the Curtrights. She said her husband spoke with Mr. Curtright about the airstrip, and they felt that as long as it was a personal airport for the applicant's personal use, they would not object to it. It sounded as if there would be a minimal number of flights, so this is what they expected. She said the area is very pastoral, which is why they chose it. Their equestrian center usually has 28 to 32 horses, which they board and train, and there are 40 to 50 children and adults who take lessons at the center. She said that if there were many planes coming and going, they would see this as a real problem, since planes can spook even well-trained horses. She said this would also raise liability issues of whether the Brawleys or the Curtrights would be responsible if noise and low-flying planes spooked the horses. She said that without time regulations on the Curtrights' flights, there would be no way for them to plan around them. She said many of their riders are beginners and would not know how to react if a horse became agitated. She said Mr. Curtright's seaplane has gone over their property a few times, and it flies very low. It has not been a problem up to this point, but she said it could become a problem if there were several flights coming and going.

Ms. Brawley said they originally bought 35 acres in the area and then bought another 35 acres to the southwest. Their son purchased another property south of them, so they are contained within 100 acres. The reason they have bought the adjoining pieces of property was to try to control what is happening around them, since they have horses and riders going for trail Page -24-

rides on their property. She said she was less aware of the problems that the people on the hill have had, since it seemed like the planes were mostly taking off and landing close to her property. She said that it appears that some of the other neighbors may have been more severely affected than the Brawleys were. She said that if additional numbers of flights were allowed, this would affect her family and their business and would also be a concern to others in the area.

Bill Brawley, 8825 Holmquist Road SE, Aumsville, OR, said he was here on behalf of his father, Tom Brawley, who asked him to present a written version of the verbal agreement that he and Mr. Curtright entered into in the fall of 2007. Mr. Brawley read aloud from the agreement (Exhibit E), which stated that Mr. Brawley would not oppose the airport as long as it was only for the applicant's occasional personal use, and that Mr. Curtright was not going to subdivide his property for development or resale. Mr. Brawley said that his father and the rest of the Brawley family did not have a problem with the airport as long as Mr. Curtright agreed to maintain this agreement to the letter. He said that because of some inconsistencies regarding the letter, the Brawley family would like to have the letter put in written form and recorded as a deed of restriction to ensure that the airport was restricted to private use. He said that the Brawley family would not oppose the airport as long as they could make sure it would not endanger their enjoyment of their equine business and their home.

Commissioner Brentano said that he saw a possible problem with the agreement, since there is no place in the letter where the applicant states that the airport would only be for his personal use. Mr. Brawley pointed out that this letter was based on his father's perception of the verbal agreement between himself and Mr. Curtright.

Deborah Brawley, 32330 SW Armitage Road, Wilsonville, OR, said she is also affiliated with Brawley Farms. She and her husband live near the Aurora airport, and when they bought their property, they did so with the understanding and the knowledge that there would be air traffic. However, the farm was not purchased with the idea that there would be an airport in the area, but instead in order to run the equestrian business and farming operations. She mentioned safety concerns as an issue. She said that from her perspective as a riding instructor at the equestrian business, she was concerned about the safety of the children who ride at the facility. She said that the farm was purchased with the expectation that the area would be involved in normal farm operations, and that they would be able to control the noise levels from farm equipment to keep noise from potentially scaring the horses and causing other problems. She said horses and farm equipment are accepted uses in EFU zones. She was concerned about the liability issues as well and said that non-conforming uses in this case could interfere with a business they have worked very hard for over 35 years to build up in their area.

Jolene Rogers, 12005 Summit Lane SE, Turner OR, did not speak.

Commissioner Brentano called a recess of the meeting at 12:40 p.m.

Commissioner Brentano reconvened the meeting at 12:45 p.m.

Mr. Smith presented the applicant's rebuttal. He referred to the map again and said that he believed the Brawleys' concerns would be addressed by the Curtrights. He said Mr. Curtright wants to maintain good relations with his neighbors and show respect for their equestrian operations. He said the Brawleys were concerned about the flight path being to the south. He pointed out that the planes take off from the northern part of the property, go off the edge of the hill to the south, and then turn west. He said landings come the opposite

direction going uphill from the south to the north. Mr. Smith said the testimony showed that the flights were relatively infrequent. He said the other flights people complained about were probably people coming to see the Cruise Mansion as a tourist attraction, although there may have been other flights at the Curtright property on the day of the fundraising event.

Mr. Smith said the applicant was willing to agree to conditions regarding the directions of takeoffs and landings from the airport. He said that in order to get the airport certified, the Oregon Department of Aviation has already reviewed the safety issues, traffic, noise, and other issues for this airport. Mr. Smith stated that the most recent FAA approval for the airport is from January 2008, not from 2001 as one speaker had stated. Mr. Smith said that their surrounding area analysis covered the equestrian operations in depth, and their noise study and safety analysis should cover any concerns regarding the safety of horses and riders in the area.

Mr. Smith said the applicants would welcome the requirement that they comply with all state, local and federal airport safety requirements. He said it is their belief that they are already in compliance, since they have been able to acquire state and federal approvals. Mr. Smith said a personal use airport can be approved even for landing on bare land, and the runway in this case actually represents an added safety bonus. Mr. Smith said the applicant has fully addressed the issue of compatibility through the Comprehensive Plan and has shown that this is a harmonious use. He said they addressed residential uses as well as hobby farms in their surrounding area analysis.

Commissioner Carlson said the applicant's representatives have provided a very detailed report. She said her chief concern is the issue of compatibility, with existing uses in the area, which also appears to be the primary concern of the neighbors. She said that the key phrase here is "occasional personal use," which according to the hearings officer's report would mean 10 to 20 flights per month. She said there appears to be a lack of trust about what the word "occasional" means, and this has been exacerbated by the references to the website advertising the fundraising event, which was mentioned in the hearings officer's report and by others. She asked what "occasional" really means in this context, and what the applicant is willing to commit to in terms of narrowing the scope of what the personal use airport is for.

Mr. Smith said Mr. Curtright owns an established company in Salem that sells chemical materials, so he is usually working during the week. He said most of the flights would be occurring on weekends during the summer. Mr. Smith said the original application estimated 10 to possibly 20 uses per month, and there could be periods during the summer with additional traffic. He said they did not initially present any kind of number as a cap, but if this is a condition that the board would want, they would be open to this. He said that the noise study explains that each trip in and out of the area is only a matter of a few minutes.

Commissioner Carlson asked again about the website advertising the fundraising event. She asked whether the property was being represented as a bed and breakfast or a conference center. Mr. Smith said that it is not a bed and breakfast or a conference center, and that the website and the name were created only as an advertisement for the fundraiser mentioned earlier, in which close to 150 people visited the property. He said the event was a barbecue with a band playing music, and there was no lodging on the property. He said this property is not a conference center or any kind of commercial use. He said that this would only be for occasional use by Mr. Curtright and some possible infrequent use by guests. Commissioner Carlson asked if the website in question was still online, and Mr. Smith said it had been taken down.

William Curtright, the applicant, addressed the board. He said he and his wife have two houses on the property, one for themselves and one for guests. He said they also have horses on their property along with some farming operations. He said he does not fly low and takes off in only one direction, coming back in the same direction. He said they have a 1700-foot runway and usually do not need to use all of it, except during takeoffs. He said he would mostly be flying the Super Cub, which is a small plane. He said he has no plans for development of the property. He pointed out that other planes fly over the area, including military planes. He said there are accusations going around in this case that are not true. He said he would be very careful in the future to be considerate of neighbors in the area when he is flying.

Sterling Anderson, planning manager, discussed what the county would need to do regarding the Airport Planning Rule. Brandon Reich from the Planning Division is their specialist in this area, and Mr. Anderson said Mr. Reich was present at today's meeting to answer any questions the board might have. Mr. Anderson said his understanding of the Airport Planning Rule under Division 90 is that it requires an overlay and the county's adoption of a zone. He said he was aware that the board has been talking about this rule, particularly in relation to the Aurora Airport. There are several other airfields in Marion County that the state has identified as falling under the Division 90 regulation. However, that designation would not include any new airfields. Division 90 applies to airfields that had three airplanes based at them on December 31, 1993, and no new airfields would qualify under Division 90 as he understands it. Mr. Anderson said the county would only have to comply with the Division 90 requirements for those airfields in Marion County when they enter periodic review, but counties are no longer required to undergo periodic review. This makes it optional for the board to decide whether they want to follow the Airport Planning Rule regulations. He said that if the board decides to do this, they could go forward with the regulations, but the Division 90 regulations would not apply to this airfield in any case.

Mr. Anderson said that another comment had been made regarding control surfaces on the aircraft, and that trees would be required to be topped to avoid obstruction of these surfaces. He said that at Salem Airport, there are several trees at the south ridge that are in the airspace but have never had to be topped. He said they are identified as a potential object in flight manuals for the Salem Airport and on the overlay map, but they have never been required to be topped or removed.

Commissioner Carlson asked about the covenants, conditions & restrictions, and said there had been some discussion about whether these were agreements between parties or instead accompanied the land itself. She said she was unclear on how the CC&Rs would affect this particular case. Mr. Anderson said it has been his understanding that CC&Rs may run with the land, but they can also be agreements between parties when someone buys into a subdivision. These often include information and restrictions on the use of the land, but the county is not a party to these types of documents, so the county has never taken a position that the CC&Rs could affect their decisions relative to land use. They are viewed as something outside of land use cases, since they are privately implemented and enforced. Mr. Anderson said there have been a few cases where the county has required a CC&R to contain some information, but this is usually for limited groundwater areas. In such cases, the CC&Rs cannot be amended without county approval, but this kind of situation is very rare, and he could only remember a few cases where this has been done.

Commissioner Carlson asked what the remedy would be for neighbors if there were more than the 10 to 20 monthly flights specified in the application. She asked if the

board could put in any conditions in an approval order that would give a description of the meaning of the term “occasional personal use” so the neighbors could have recourse if the use of the airport became excessive. Mr. Anderson said there is an ability to establish conditions on the operation of the airfield itself in terms of hours of operation. He said he would need to check to see if they could impose conditions limiting the number of takeoffs and landings. He said he would also need to see if this would affect the exemption provisions for Oregon Department of Aviation and FAA. He pointed out that the county might be restricted from setting standards in this area, although this would not mean the applicant could not agree to some kind of limitation on the number of flights. Mr. Anderson said enforcement would be problematic, but if neighbors were willing to assist in enforcement and testify, it might be possible to have a case to put before a judge. He said enforcing the number of flights could be difficult. Mr. Anderson said it would be possible for the board to put conditions on the number of aircraft to be based at the location, which could have some effect on the number of takeoffs and landings.

Commissioner Brentano said he was aware of requests for time to submit more materials in this case, and there had also been some talk about imposing some conditions on any final approval. He asked the other board members if they were interested in discussing conditions at this time. Commissioner Milne said that there appeared to be some interest in taking more time to digest the materials and to think about possible conditions.

Mr. Anderson said there had been a request to leave the record open for seven days to review the applicant’s material. He said he was assuming the applicant would also want an additional seven days to review anything the opponents submitted, since this is the standard procedure. He said that under those circumstances, the board could not make a decision until the record was closed, so this would give the board more time to review materials submitted today as well as any follow-up submittals.

Commissioner Carlson mentioned some of the areas that she thought would need to be reviewed by the board and by Mr. Anderson. One issue was compliance with state and federal safety requirements. Another was compliance with the 55-dBA noise level requirement, which appears to be a state requirement, and with the Marion County noise ordinance requirements. Fuel storage and oil maintenance is another issue. Also, there is a need to make certain the airstrip meets the statutory requirement of a personal use airport. There was a site plan to be submitted, which was discussed in the applicant’s presentation. Regarding the “occasional personal use” question, Commissioner Carlson said there might be a need to establish a suitable number of flights per month. Other areas needing examination include restrictions on numbers and types of aircraft, length of runway, and safety considerations regarding runway use. Mr. Anderson said that several conditions, such as access permit exceptions, fire districts, and driveways, have already been complied with as discussed in the staff report.

Commissioner Carlson mentioned the standard conditional use criteria from page 13 of the hearings officer’s report. She felt the board would need to make sure the applicant had complied with these criteria. She said her last question was whether there might need to be a need for a buffer between the end of the runway and the adjacent Johnson property. She said she could not determine distances from the pictures, but it might be something for further consideration as a possible condition.

Commissioner Milne commented that with regard to flights, type of aircraft, and some of the other issues, much of the material is already covered by state and federal regulations. With regard to the definition of the term “occasional use,” she said she was not inclined Page -28-

to come up with an actual limit on the number of days or hours of use because life and weather do not always cooperate with these sorts of restrictions. She felt reluctant to restrict the applicant's rights in this area, since personal use airports and planes are matters of personal transportation and individual hobbies. She did not want to limit the use of the airport in ways that might restrict the applicant's constitutional rights.

Commissioner Brentano said he felt inclined to either deny the applicant's request or accept the request with restrictions if the applicant would be willing to comply. He said he was concerned about two of the applicant's planes, which were mentioned in the Oregon Department of Aviation report as being too big for the runway. He said this showed there needed to be a limit on the number and type of planes. He also said there needed to be a clear definition of how many guests could be allowed at one time. He said there should be a definition of flight paths in accordance with Oregon Department of Aviation rules. Fuel storage and times of flights are other issues he wanted to see defined clearly. Commissioner Brentano said any approval he would give would run with the property and would be contingent on the ownership and occupation of the property by the Curtrights.

Commissioner Milne thanked the participants for taking time out to come and speak at today's hearing. She said she understood the concerns of neighbors and people keeping horses in the area. She said this is an emotional issue, but it is necessary to see what the laws and county ordinances are to make sure the board meets the letter of the law in their final decision.

Commissioner Brentano asked Jo Stonecipher, legal counsel, how the board could proceed regarding continuation of the hearing. He said he did not intend to have more oral testimony, but he wanted to leave the record open for written testimony. Ms. Stonecipher said that if the commissioners decided to close the record to oral testimony, this would constitute closing the hearing. However, the board could close the oral portion of the hearing while leaving the record open for seven days for the opponents to respond to materials presented to the board today. The applicant would then have another seven days to respond to the new materials from the opponents. Ms. Stonecipher says that the applicant always has the burden of proof and is always entitled to the last word in land use cases under the state process. She said there is a deadline that requires a final decision to be issued in this case by July 7, 2008, so the extra weeks for written testimony would be within that deadline. Going beyond that deadline would require the permission of the applicant.

Ms. Stonecipher pointed out that when the case returns to the board for final decision, it would come back as an action item to go on the board's action calendar instead of as a continuation of the present hearing. She said this would be the case unless there was some extraordinary reason for the hearing to be continued. In that case, the board would be required to re-notice the hearing again to the affected parties and to the public.

MOTION: Commissioner Carlson moved to close the public hearing and leave the record open for seven days for the opponents to respond to materials presented today with a deadline of May 21, 2008, at 4:30 p.m. This will be followed by another seven days for the applicant's rebuttal, with a deadline of May 28, 2008, at 4:30 p.m., to be followed by a scheduled time for the board to decide on the case as an action item on its regular weekly calendar. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.
Commissioner Brentano adjourned the meeting at 1:22 p.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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