

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, June 18, 2008
Marion County Courthouse Square

6:00 p.m.
Senator Hearing Room

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

Commissioner Brentano called the meeting to order.

PUBLIC HEARING

SENATOR HEARING ROOM

6:00 P.M.

PUBLIC WORKS – PLANNING

Public hearing to consider Planning Commission's recommendation in subdivision, case #SUB 07-12, Elkhorn Golf and Resort, LLC, Clerk's File #5577. – Sterling Anderson

Commissioner Brentano explained the instructions on the procedure of the public hearing process. He said the goal is to make sure everyone gets a chance to speak, but the meeting needs to move along in a timely manner. The Planning Division staff will make a report on the case and answer questions from the board members. This will be followed by testimony, evidence and arguments in support from the applicant and/or the applicant's representative. Proponents of the application will present their testimony next, followed by opponents and anyone wishing to make general statements. Sign-up forms are available for those who wish to speak, and speakers will be taken in the order they have signed up to speak. After the general comments are finished, the applicant will have an opportunity for rebuttal as needed, and planning staff will make a final statement. The board members reserve the right to ask questions at any time during the meeting. Commissioner Brentano said they would ask speakers to limit their comments to approximately three minutes. If a speaker wants to go on record as being in agreement with a previous speaker, this can be done by telling the chair, who will have the speaker's name and declaration added to the record.

Commissioner Brentano mentioned the issue of *ex parte* contact. He said the board members have received many letters, e-mails and other material regarding this case, and they have tried to make sure all these contacts have made it into the case record. However, Commissioner Brentano noted that Tom Frith, an old family friend of his, had spoken to him about the case although he had asked him not to do so. Mr. Frith is present tonight, and Commissioner Brentano said he did not want to embarrass him. However, he wanted to go on the

Page -1-

record about the conversation, although he does not believe it would disqualify him from officiating fairly at tonight's hearing.

Sterling Anderson, planning manager and Cindy Schmitt, transportation engineer, came forward to provide the Planning Division's staff summary of the case. Mr. Anderson said the issue before the board is an application by Elkhorn Golf and Resort LLC for detailed approval to implement the conceptual approval granted to Elkhorn Estates Planned Development in Plat Case No. 879 and Marion County Ordinance No. 677, which includes subdividing 65.3 acre into 153 lots (150 single family dwelling lots, 1 condominium lot, and 2 commercial lots and for an exception to Statewide Planning Goals 11 (Public Facilities) and 14 (Urbanization), on a total of 464 acres in an area zoned AR-LU (Acreage Residential-Limited Use Overlay zone), P (Public), and TC (Timber Conservation) and located at 32295 North Fork Road SE, Lyons.

BACKGROUND

On April 21, 1982, the Marion County Board of Commissioners (BOC) conceptually approved the development proposed in Plat 879. The development approval was contingent on the State acknowledging a zone change and an exception to Statewide Planning Goal 4 (Forest Lands). On June 27, 1984, the BOC adopted Marion County Ordinance No. 677, which changed the zone on the property and granted the goal exception. The Oregon Department of Land Conservation and Development (DLCD) acknowledged the ordinance in 1985. Since that time, the applicant has filed timely extensions with the Planning Division. In Administrative Review Case 06-62 (AR06-62), the county determined that the planned unit development (PUD), chapel, golf course, and commercial development granted in Plat 879 had been lawfully extended and could be implemented, and that review and approval of a final detailed plan could proceed on that portion of the property that is zoned AR-LU, which was permitted by the acknowledgment received from DLCD in 1985.

On September 14, 2007, the applicant filed an application for detailed approval of the development. The applicant included a request for modification and clarification of some of the conditions in the conceptual approval. On October 16, 2007, the Planning Commission held a public hearing to consider the request. Comments received from 1000 Friends of Oregon and DLCD prior to and during the hearing raised issues of whether additional goal exceptions would be required for this development. At the hearing, several requests were made to leave the record open, and the applicant then requested that the hearing be continued due to the amount of oral and written testimony presented. A motion was made and seconded by the Planning Commission to continue the public hearing to November 20, 2007, and this motion passed unanimously.

On November 6, 2007, the applicant made a written request to reschedule the continued public hearing to December 18, 2007, in order to address issues raised at the previous hearing, and the request was granted. On November 21, 2007, the applicant amended their request by filing an application for the goal exceptions. The applicant contends that under the unique circumstances of this case, the goal exceptions are not required, but in order to expedite the case and address any future appeals, they have filed an amended application with those goal exceptions.

At the hearing on December 18, 2007, additional oral and written testimony was received, which included a list of 20 conditions proposed by the applicant to meet concerns raised at the previous hearing. A request was made to continue the hearing or leave the record open. A motion was

made and seconded to close the hearing to oral testimony and to leave the record open until December 28, 2007, for written testimony and until January 10, 2008, for rebuttal from the applicant. The motion passed unanimously.

On February 5, 2008, at its regularly scheduled meeting, the Planning Commission deliberated on the proposal. The members discussed their concerns, which focused primarily on the condition of existing public roads serving the development. A motion was made and seconded to deny detailed approval of the subdivision, which failed on a 2-6 vote. A motion was then made and seconded to defer the decision to the Marion County Board of Commissioners with recommendations regarding the proposal. The motion passed with an 8-0 vote.

The Planning Commissioner then discussed the conditions and issues related to the development and made recommendations on some of the proposals made by the applicant. These conditions included:

- Detailed site plan generally conforms to the conceptual plan, and grant a request to allow eight lots located at the eastern side of the single-family development to be developed for condominiums. Passed 8-0.
- Grant applicant's request to allow water storage tanks and carports within the 200-foot special setback and to allow parking and roadway within the 100-foot forest reserve. Passed 8-0.
- Grant applicant's request to allow a 40-unit boutique hotel as part of the development. Passed 7-1.
- Deny applicant's request to allow five lodging rooms inside the clubhouse. Failed 2-6.
- Grant applicant's request to allow a maximum of 200 square feet of signage on each side of North Fork Road. Passed 8-0.
- If request is approved, it should be subject to the 27 recommended conditions of approval outlined in the staff report, as modified, including the requirement for the development to make a proportional share contribution to the cost of pavement overlay on North Fork Road, and to repair or replace areas damaged by trucks during construction as outlined in the comments from Public Works. Passed 8-0.
- If request is approved, it should be subject to the 20 conditions proposed by the developer as outlined in their December 11, 2007, memorandum to the Planning Commission (some of the developer's proposed conditions are the same as those included in the 27 conditions outlined in the staff report). Passed 8-0.
- Request the developer and Board of Commissioners develop a long-term funding source to be used to help maintain public roads serving the development based on user fees such as green fees and condominium, hotel, and homeowner fees. Passed 6-2.

The Commission then discussed the goal exception application and a motion was made to make no recommendation on the goal exception due to a lack of information, and the motion passed on a 7-1 vote.

ANALYSIS

Mr. Anderson continued his presentation by summarizing the current situation of the property. The subject property is located outside an urban growth boundary and is designated Rural Residential, Public, and Forest Land in the Marion County Comprehensive Plan, and zoned AR-LU (Acreage Residential-Limited Use Overlay), P (Public), and TC (Timber Conservation). The property is also located in a Geologically Hazardous (Geohazard) Overlay zone.

The property is located on North Fork Road SE at its intersection with Gates Hill Road SE. It currently contains an 18-hole golf course and a private residence located on the north side of North Fork Road. The remainder of the property is currently undeveloped. Adjacent properties to the east, south, west, and partially to the north are zoned TC and devoted to commercial forest operations. Remaining property to the north, near the east end of the subject property, is zoned AR and consists of small lots containing rural residences.

Attachment A to the staff report contains an analysis of all the conditions the detailed approval is required to satisfy. The conditions of approval from the 1982 conceptual approval and the 1984 zone change are italicized, followed by the applicant's response and staff findings in regular font. If the Planning Commission made a recommendation, it is identified in bold italics.

Attachment B is a memorandum from staff to the Planning Commission analyzing the proposed goal exceptions. The Planning Commission did not consider or make a recommendation on that part of the proposal.

Attachment C is a summary of all the conditions of approval recommended by the Planning Commission. The commission recommended that any approval be subject to the 27 recommended conditions in the original staff report, with some modifications, and also subject to the 20 conditions proposed by the applicants in their memorandum dated December 11, 2007. Some of the conditions proposed by the applicant are nearly identical to the conditions proposed in the staff report. The conditions from the staff report as modified by the Commission are in regular font, conditions recommended by the applicant are in bold, and staff recommendations are in italics.

It should be noted that conditions 31 through 44 were all proposed by the applicant to alleviate or mitigate concerns raised at the public hearings.

OPTIONS FOR BOARD CONSIDERATION

The board has several options for consideration on the proposed amendments that are summarized below. If the board determines that an exception to Goal 11 or 14 is required, and that the applicant has failed to justify the exception, the remainder of the proposal must be denied. If the board grants detailed approval of the proposal, they can adopt some or all of the recommendations or conditions made by the Planning Commission. The applicant requested several interpretations and modifications to conditions of the conceptual approval, and the recommendations of the Planning Commission on those issues are outlined in the bulleted items above. The board may wish to address some or all of these items individually. In summary, the Board's options include:

1. Deny the request and direct staff to prepare an order for adoption by the Board.
2. Determine that an exception to Statewide Land Use Goal 11 and/or Goal 14 is required and deny one or both of the goal exceptions, and therefore deny the detailed approval requested by the applicant. Direct staff to prepare an order for adoption by the Board.
3. Determine that exceptions to Statewide Land Use Goal 11 and Goal 14 are not required or they are required and approved, and grant detailed approval of the proposal with some or all of the recommendations of the Planning Commission, including some or all of their proposed conditions as well as any additional conditions the board feels are needed. Direct staff to prepare an ordinance for adoption by the board.

4. Determine that exceptions to Statewide Land Use Goal 11 and Goal 14 are not required, or they are required and approved, and grant detailed approval of the proposal with some or all of the recommendations of the Planning Commission, including some or all of their proposed conditions as well as any additional conditions the board feels are needed and grant the applicant's request to allow the golf course to be in a separate ownership from the remainder of the development. Direct staff to prepare an ordinance for adoption by the Board.

Based on the testimony and evidence provided at the public hearing, the board can conduct further review of the proposal by continuing the hearing, or by remanding part or all of it to the Planning Commission or Hearings Officer, or by leaving the record open.

Under option 4, the request to allow the golf course to be under separate ownership from the remainder of the development involves two conditions that appear to be mutually exclusive. One of the conditions in the original approval said that the golf course could be under separate ownership, while another one says it cannot be. The applicant is requesting some clarification of this area and is also requesting that they be allowed to have the golf course under separate ownership. Mr. Anderson said that he believed they would be addressing this matter during their presentation. He said this concluded the planning portion of the presentation, but said that Public Works staff had some comments to make as well.

Commissioner Carlson thanked Mr. Anderson for his overview and asked for some clarification on a few points. She said that there is a letter in the materials distributed to the board as a part of the additional comments. It was sent to the board on April 10, 2008, by Daniel Chandler and Jack Wakeland. One of the arguments in their letter is that extending the 1982 decision would be invalid. They state that the board did not have the authority in the first place to keep extending this decision as has been done since 1982. Their argument also states that if the land use laws have changed substantially during that time, which has happened, this would mean the board could not extend this decision lawfully. She referred to Mr. Anderson's statement that in Administrative Review Case 06-62 (AR06-62), the county determined that the PUD, chapel, golf course and commercial development granted in Plat 879 had been lawfully executed and can be implemented with review and approval of a final detailed plan, that a portion of the property is zoned AR-LU, and is permitted those uses outlined in the 1985 acknowledgment.

Commissioner Carlson asked Mr. Anderson to explain why Marion County believes that it can lawfully extend its decision from 1982 up to now. Mr. Anderson said that the applicant is likely to respond to this in their presentation. He also said that at the time the subdivision and plat went through the process in 1984 and 1985, the zoning code and the subdivision and partitioning ordinance at that time did not have a requirement, as it does now, that if the regulations were to change, there could be potential that a decision might not be extended. He said this provision did not exist at the time of the original decision in this case, but was only added to the subdivision and partitioning ordinance after this case was decided. He said this is a question of "moving the goalposts," since the applicant had an approval under a certain set of standards and regulations at the time that did not limit how many or how long extensions could be granted. This was left open to decision by the planning director at the time, who for many years granted these yearly extensions. When the applicants came in and looked at this proposal to see how they might want to proceed with the development, they decided that this might become an issue, so they decided to deal with it up front by making an application for an administrative review to determine whether or not those extensions were legal. Mr. Anderson said they went

through this process. Planning issued the administrative review (AR 06-62), provided notice to neighbors and other interested parties, and since no appeal was submitted, the decision became final. The administrative review recognized that at the time of the original decision, there was no limit on the extensions, so the extensions were granted consistent with the rules at the time without changing the rules in the middle of the process. He recognized that in this case the process took many years.

Commissioner Carlson asked about a few letters in the file that came from DLCD. One of them was about the state goal exceptions. She said that Mr. Anderson's comments included the statement that the applicants were not sure they needed to take a goal exception, but now they have decided to do so. She said there are many possible issues regarding what the board could do regarding goal exceptions. The impression she got was that DLCD believed that the goal exceptions would be required. Mr. Anderson applied that this is correct.

Commissioner Carlson also asked about a letter dated September 11, 2007, from Gary Fish of DLCD that talks about the two-acre minimum. However, in this case there was an extension and the conceptual conditions that were in force at the time the decision was originally made. She said that it appears from the letter that DLCD is stating that the two-acre minimum is required in this case. She wanted to know how staff viewed this issue, since it differs from what is in the proposal. Mr. Anderson said this is the reason the state and others have used as the reason for a Goal 14 exception, since Goal 14 is what establishes the two-acre minimum in Acreage Residential zones. To get anything smaller than the two-acre minimum would require a Goal 14 exception.

Cindy Schmitt, transportation engineer from Marion County Public Works, talked about the area maps that were handed out this evening regarding the roads in the area of this development. Ms. Schmitt said that the two maps handed out are the same, but one has an aerial photo background. She also gave out a memo from Public Works providing information about the roads in the area.

Ms. Schmitt said the Elkhorn Development is proposed on North Fork Road near Gates Hill Road, which is located approximately 10.5 miles from Oregon 22. North Fork Road is functionally classified as a major collector up to Gates Hill Road, then a minor collector thereafter. Gates Hill Road is a local facility. These two roads provide the primary access to many home sites, vacation properties, public parks and campgrounds, and public and private forestlands.

North Fork Road is a paved two-lane County road with standard signing, striping, and reflective pavement markers. The Public Works memo contains two sheets of photographs showing the road's appearance. A 0.8-mile section of the road in a slide area has been returned to a gravel road for ease of maintenance due to frequently shifting pavement. A portion of this section is now known as the "Bear Trap Slide area" and is currently limited to a 10-ton weight limit and one lane of traffic. It is clearly signed and delineated for the safety of motorists using the road. The road will probably remain in its present state until the county can have some geotechnical work done addressing how they can address the Bear Trap Slide and other slide areas.

Gates Hill Road is a paved two-lane road similar in nature; however, it has some steeper sections and higher elevations that present winter maintenance issues for the county. During periods of heavy snow or ice, Gates Hill Road can become impassable to most vehicles. The steep grades

and curves also present a challenge for vehicles such as concrete trucks and long vehicle combinations. It is currently restricted to vehicles that do not exceed statutory lengths except by special permit.

During a typical weekday, North Fork Road carries between 300 and 1200 vehicles, and Gates Hill Road carries 100 vehicles. On a Sunday, during peak summer months, the recreational traffic raises the daily volumes to as high as 2,800 for North Fork Road and 200 for Gates Hill Road. Enforcement and parks-related duties increase substantially during these summer months to address the added demands from visitors and seasonal residents.

The nature of traffic analysis requires that a traffic impact study look at conditions during peak hours, more specifically, the thirtieth highest hour. Therefore, the applicant was asked to review traffic impacts during a peak hour on a Sunday afternoon in July. Because of this, the study represents a worst-case scenario, not weekday conditions or typical conditions.

County staff has concluded that North Fork Road and Gates Hill Road have the operational capacity to handle the traffic proposed by the development upon full build out. The only location showing operational issues is at the intersection of North Fork Road and OR 22. This location is an issue not necessarily because of the volume of traffic added by the proposed development, but because of the left turn movements allowed out of North Fork Road and Jenny Road onto OR 22. Any left turn movements, no matter how small, will experience failing levels of service when trying to enter or cross a highway with a daily volume of 7,000 vehicles. The applicant must show that they can mitigate their transportation impacts, and they are expected to make a presentation on this issue during tonight's hearing. There are a number of ways to interpret both the impacts and the mitigations. Therefore, staff will make themselves available to answer any questions or review any additional material provided. At a minimum, the applicant will be required to install a separate right turn lane from North Fork Road onto OR 22. Additional traffic mitigations will depend on the outcome of the goal exception decisions made by the board and will probably need further review.

Ms. Schmitt said the applicant/developer has been made aware of the limitations of Gates Hill Road and the current and potential limitations of North Fork Road caused by the slide area and other forces of nature, along with the impact this will have on both their construction costs and their customer base. They have also been made aware of the general maintenance levels on all of the roads in the area and that it will not increase because of this development.

Ms. Schmitt said Public Works Transportation Engineering staff is requesting two conditions from Planning's Attachment C be modified based on more recent information.

The first of these two conditions is Condition of Approval no. 5(i) originally suggested by Public Works. This condition stated that the developer would be required to make a proportional share contribution to the costs of a pavement overlay on North Fork Road. This proportional share is estimated at \$527,829, and would be assessed on a per unit basis and collected at the time of building permit issuance. The funds may be used for a pavement improvement project (to be constructed soon after development build out) on North Fork Road between the subject property and OR 22. Public Works asked to modify this condition in order to allow them to use these funds, if necessary, to make needed repairs to North Fork Road or to improve an alternate emergency route or anything else that will improve access to the development at the discretion of Public Works. This was discussed with the applicants, and they were amenable to having the funds used in this way if needed.

The other proposed modification involved the applicant proposed Condition of Approval no. 44, which had to do with the applicant contributing \$15,000 to Marion County for the construction of a six-foot-high fence section along both sides of the concrete bridge just northeast of the property to limit access to the Little North Fork River. This is not on the applicant's property, and the need for this is something that Public Works has not had a chance to review yet, so they are suggesting language that would allow this to be done if Public Works finds this to be an appropriate project.

Ms. Schmitt opened the floor for questions. Commissioner Carlson mentioned a letter from Dan Fricke of ODOT dated August 29, 2007. In the letter, he mentions the issues surrounding the intersection of OR 22 and North Fork Road, stating that a transportation impact analysis proposes improvements at this intersection that ODOT cannot accept and will not approve, specifically the recommended improvement of this intersection with a free right turn and acceleration lane from southbound North Fork Road to westbound OR 22. Mr. Fricke's letter said this would create an unsafe merge on a two-lane highway and will not be permitted. ODOT said they could accept the channeling shown in the transportation impact analysis for the southbound leg of North Fork Road only if the right turn is stop-controlled. ODOT said this improvement should be included as a condition of approval for the application. Commissioner Carlson asked where these conditions had been addressed in the proposal before the board.

Ms. Schmitt said ODOT's letter was referring to the mitigations that were identified for traffic issues in the first traffic impact analysis. Instead of the current stop sign and single approach lane where drivers come onto OR 22 from North Fork Road, the county had proposed a free right turn that would go into an acceleration lane on OR 22 and would allow drivers to accelerate and get into the flow of traffic. ODOT was saying in their letter that they would not consider a free right turn lane at that location, and that instead they would need to provide a left turn lane and a right turn lane onto North Fork Road, with both lanes requiring drivers to come to a complete stop. Ms Schmitt said this is included in Attachment C of the Public Works report in Item 5(k), and it reads that they will design and construct a right turn lane on North Fork Road at the intersection with OR 22 to Marion County and ODOT standards, along with some other specifications. Ms Schmitt said that the applicant was planning to speak at greater length about the issues relating to ODOT's letter and the acceleration lane issue, since this is also related to the goal exception issue. Ms. Schmitt said the goal exception issue opens up the applicant to more conditions, a greater burden of proof, and a longer time frame required for the review of possible impacts.

Commissioner Brentano asked about the 10-ton limit on North Fork Road. He said that this would probably mean that any of the trucks hauling gravel, cement, lumber, and other building materials would not be allowed to pass through. He did not want to think of these trucks going over Gates Hill Road either. He asked if there were any mitigations that could be done in the slide area that might make it possible for some of the loaded trucks to pass through this area. Ms. Schmitt said that most empty log trucks could pass through under the 10-ton limit, although most large loads cannot. She said that after last year's technical review, they had hoped to be able to raise or remove that load limit, but they had an outside consultant review it as recently as May 2008, and there is still enough movement in the slide area that he recommended that they not remove the limit or allow exceptions to the limit. This means that Public Works has been asking people to use other routes, with most of them using Gates Hill Road. Some vehicles cannot travel on Gates Hill Road, such as some of the larger equipment going to logging sites, and in these cases, they have usually been able to get permission from private

landowners to use one of the forest haul routes in the area. This has worked relatively well so far. Public Works is planning to work with people who have interest in that private roadway to see whether it could be used as an emergency detour if one is needed later on. Public Works is hoping to have a plan for this in place prior to the beginning of bad weather and slide season this winter. Ms. Schmitt said that at this time, their expert has told them they cannot change the 10-ton limit on the slide area of North Fork Road without risking the entire road section.

Commissioner Brentano asked if there was any short-term way to deal with this issue, particularly when dealing with the issue of concrete trucks having to use Gates Hill Road. Ms. Schmitt said that in the months since they have had the restriction, some concrete companies started out by refusing to haul over Gates Hill Road, but have since decided to haul over the road without taking full loads. Because of the steep grade on Gates Hill Road, they would actually end up losing part of the load if they took full loads. She said that so far they have managed to work through these issues, and they are hoping that over the next few months they will be able to get enough geotechnical information to allow them to assess whether or not they could safely raise the weight limit.

Commissioner Carlson said she thought Commissioner Brentano had concerns about how construction could proceed in the area if the trucks hauling building equipment were subject to these weight limits. Commissioner Carlson said that the issue in this case might be a matter of how heavy the trucks would be that would be bringing in the construction materials for the Elkhorn Development if it were approved. Ms. Schmitt said they have let the developer know that all of their construction traffic would have to use alternative routes. She said that if they used Gates Hill Road, the cement trucks would probably be limited to hauling partial loads, which is physically feasible but is more expensive. Lumber trucks could be up to 40 tons, so they would also have to use Gates Hill Road. Any excavators and heavy construction equipment could use Gates Hill Road, but would probably end up being brought in by arrangement over the private roads.

APPLICANT'S PRESENTATION

Steve Pfeiffer of Perkins Coie, 1120 NW Couch St., 10th Floor, Portland OR 97209-4128, introduced himself as a land use attorney representing the applicant, Pacific Santa Fe Corporation. He said they have tried to structure tonight's presentation as efficiently as possible. Mr. Pfeiffer said he would introduce the speakers and try to keep the presentation moving along. He said that after his presentation, the next presenter would be Mark Rockwell, Principal and CEO of Pacific Santa Fe, followed by Rick Dyer, Project Manager, who will speak on the nature of the development and distribute some new information, including a slightly revised site plan. The information presented tonight on various aspects of the project is available in a binder entitled "Elkhorn Resort: Submission to Marion County Board of Commissioners" (Exhibit A).

The final speaker will be Scott Mansur of DKS Associates. He is the traffic engineer who prepared the updated traffic impact analysis they will be submitting tonight as a part of their presentation. Mr. Pfeiffer said Mr. Mansur would also be able to discuss mitigation measures for the roads. Mr. Pfeiffer said he would close with a discussion of some of the unusual legal issues involved in the case, including the goal exceptions. Greg Matthews, their civil engineer, will also be available to answer questions regarding storm, sanitary, and water service for the project.

Mark Rockwell introduced himself as the President and CEO of Pacific Santa Fe Corporation. He said the corporation is the principal and managing member of Elkhorn. He thanked the board for their time and consideration. He also thanked the Marion County staff

they have worked with over the last 18 months. He said the county staff members have been highly professional, helpful, and supportive. He thanked the many individuals who have participated in the more than 40 community outreach meetings they have held over the last 18 months. He also thanked the people who are present to testify this evening on all sides of the project. He said it is important for individual citizens to make their voices heard. He said that both he as an individual and Pacific Santa Fe as a company are taking responsibility for Elkhorn in a significant way. He said they were honored to be chosen by the Cutler family to complete the vision started by Don Cutler over 20 years ago, and they are committed to carrying out this vision in a first-class way. He said that at a time of high energy costs, this is an important opportunity to create a nearby resort for the recreation of Willamette Valley families. He thanked the board again for their time and said he hoped they would approve the project consistent with the recommendations of the staff and the Planning Commission.

Rick Dyer, 3 Monroe Parkway, Suite P, Box 340, Lake Oswego, OR 97035, is Managing Director of Pacific Santa Fe, which is the managing member of Elkhorn Resort Management, which is the sole member of Elkhorn Golf Resort, which is the owner of the property. They acquired the property last year from the Cutler family, and it has always been their intention to develop the second half of this property in compliance with the approvals granted in 1982 and 1984 and in support of Don Cutler's original vision.

Mr. Dyer said he wanted to begin by addressing a concern that has been circulating in the community that they postponed their originally scheduled hearing date as a stalling tactic. He said that nothing could be further from the truth, as they have nothing to gain from stalling these proceedings. He said the postponement occurred for two reasons. The first was in order to allow them to respond to information that was submitted to the board at the last minute, and the second was in furtherance of their desire to submit additional materials of their own.

Mr. Dyer said that over the past 18 months, the company has been making itself available to the community and the general public through a series of meetings, both public and private, with neighboring residents as well as public and private agencies. He said a fair number of the participants in these meetings would be speaking tonight in opposition to the project. He said that without the company's efforts to address concerns early in the project, their numbers would probably be far greater. He said their intention throughout these public meetings has been to listen to the concerns and make sincere efforts to address them. As a result of these meetings, one of the major items they have agreed to is increasing their financial commitments to fund improvements for fencing over the Little North Fork Bridge just east of their property. He said they have agreed to an additional \$528,000 in improvements to North Fork Road and have agreed to the installation of a helipad to serve the community for life flight services on their property. They have agreed to the creation of a police/fire/communication center within their facilities, and have agreed to serve as first responders to road emergencies on North Fork Road with their own maintenance crews in conjunction with Marion County Public Works. He said they have agreed to the creation of a Fire Hazard Management Plan with the Oregon Department of Forestry and the Stayton Fire Department. They have agreed to the creation of a Habitat Management Plan in cooperation with the Oregon Department of Fish and Wildlife (ODFW). Mr. Dyer said they have agreed to a redesign of their site to withdraw parking and carports from the 200-foot setback buffer area as requested by ODFW. They have agreed to a prohibition on any habitable buildings within 500 feet of the river and have agreed to the relocation of elk fencing as also requested by ODFW.

Mr. Dyer said another request they have complied with is the creation of an Education Resource Center for the timber and forest industries in conjunction with the Opal Creek Wilderness & Scenic Area. He said these are just some of the major items involved in the project. Mr. Dyer said that when they have been able to meet with people who are sincerely willing to reach compromises, they have reached agreements that have improved the project. This has resulted in the commitments he has just described, along with many others that will be described later tonight. He said that in this spirit that they agreed to pursue goal exceptions for state Goals 11 and 14, even though it is not clear that these exceptions are absolutely required.

Mr. Dyer said that the company's commitment to the resort has resulted important economic impacts. He said that according to the Oregon Community and Economic Development Department, the communities in the Santiam Canyon, with the exception of Detroit, are listed as being either economically distressed or severely economically distressed. He said that the economic impact study they commissioned indicates that the economic stimulation to the Santiam Canyon from this project would be \$141 million in construction, with 50 percent of this money going to Marion County businesses, and 130 construction jobs. He said there would be \$9.6 million in annual construction payroll over the life of the project, which is slated to be four years. There would be an estimated 120 direct ongoing jobs once the resort is open, representing \$4 million in annual salaries and wages. The project would also generate an estimated \$1.7 million in real estate taxes every year and an additional \$700,000 in lodging taxes.

Mr. Dyer said that their direct financial contributions would be \$1.7 million towards road improvements, which includes system development charges (SDC) and the aforementioned \$528,000 for general improvements to North Fork Road. He said they have agreed to a \$100,000 contribution to the Stayton Fire Department to supplement the volunteer fire station just east of the property, and to the creation of the fire and police communication center. Mr. Dyer said these financial benefits occur without impacting existing services. He said that since this will be a resort community and a second home community, it would not impact the community to the same extent that a single-family subdivision would. He said that the benefit of their \$1.7 million in taxes would not incur the same amount of burden on local services that would normally occur.

Mr. Dyer said the applicants are also committed to an ecologically green and sustainable community. He said they intend to pursue green practices. Their open space totals 84 percent of the entire 464 acres through conservation easements, and this total includes the golf course. They will be using the effluent from the treatment plant to irrigate the golf course and will use pervious cover for all paved surfaces. He said they would also pursue LEED (Leadership in Energy and Environmental Design) certification for all of their commercial buildings. They will prohibit individual lawn irrigation and will implement a light pollution reduction policy, also known as a dark sky policy. They will prohibit buildings within 500 feet of the river and will dedicate one-third of each individual lot to a conservation easement. Mr. Dyer said they would dedicate land they own on the north side of the river to a conservation easement.

Mr. Dyer presented some of the characteristics of the site that have been changed from what the Planning Commission originally saw. He referred to the different areas of the project on a large map. He said some of the things that have stayed the same include the 150 residential single-family lots. Next to these is a "swing area" of lots for eight units that could be either single-family homes or condominiums. This flexibility was envisioned in the original plan, but there has been a slight expansion of the actual area involved, and the Planning Commission has approved this expansion. There are still walking paths throughout the site that terminate at a pedestrian underpass. This will allow people to come to the resort, put away their

car keys, and access all activities onsite via walking paths or golf cart paths. To facilitate linking the parts of the resort that are on opposite sites of the road, they created the underground pedestrian passage. There is a four-way intersection for the resort where people can turn to the residential area on the right or the golf course activities on the left. All of these aspects of the site have remained the same.

Mr. Dyer spoke about the area representing the condominiums and the two-acre commercial parcel. He said there were many possible uses suggested for the commercial area in the original proposal, and out of these they selected a 40-room inn as the use for the commercial area. There is a holding tank for their treatment plant, which is where the effluent will be held for irrigating the golf course. This will allow them to reduce their use of water rights for water they currently take from the Little North Fork River. Mr. Dyer said there are two squares inside the buffer zones of the project that represent water storage tanks that they are requesting to have for potable water and fire services. Mr. Dyer said that the biggest change in the plan is that some of the originally planned development encroached into the 100-foot buffer zones, and they have since withdrawn the items that encroached into those areas.

Mr. Dyer discussed their vision for what the Elkhorn Resort would be like once it was complete and operating. He said it would have a cluster of buildings centered around a central architectural theme. All homes will have to be constructed to a set of design standards. The homes would be clustered in communities containing conservation space and village lawns for community interaction. The design would include a village green for meetings, movie nights, and other activities. Lot sizes would average 12,433 square feet versus the 10,000 square feet minimum requirement that was in the approvals from 1982 and 1984. He said the resort would contain buildings dedicated to public education, containing exhibits from Opal Creek and the timber and forest industry. He said they have approached different vineyards in the Willamette Valley to brand some of the dining facilities with private wine cellars that will feature local wines. The vintner they are currently considering working with is from Marion County.

Mr. Dyer said Elkhorn would have full-time security staff, with each individual residence having fire sprinklers. The clubhouse will contain a wellness center, meeting space, and dining. They intend to have the resort stake its reputation on the quality of the dining experience. The programming will include such things as celebrity chefs, wine tasting, a yoga retreat, artists in residence, golf academies, fly fishing schools, equestrian training, corporate retreats, and similar programs using existing talent from the local community such as fly fishing guides, canoeing guides, and whitewater rafting guides. There will be a strong arts program with a sculpture garden on the property. There will be a day camp for children, a postal annex, a community center and a bakery/deli operation that would provide box lunches for visitors. There would be a deposit on the box lunches to make sure trash would be returned.

Mr. Dyer said their intention is to create a sense of community in the valley, although they recognize that not everyone in the area may want to participate. He passed out binders to the group that included additional information on the project, some of which will be presented at tonight's meeting.

Commissioner Carlson asked about the encroachment issue. She said that as she recalled, this had to do with some carports that would have been in the buffer area. Apparently these have been removed, but the two water tanks would still be in the buffer zone, and she asked for more information on this. Mr. Dyer said that the reason the water tanks are planned for these locations is that after speaking with the state Fire Department, they decided it would be

better to have two tanks in two different locations. The total water need was divided by two and put in two locations, which have to represent the highest spots in the elevation of the site. This is why those two sites were chosen for the sites, and the water tanks are relatively harmless in terms of their effect on the habitat.

Scott Mansur, DKS Associates, 247 Commercial Street NE, Salem OR 97301, is the traffic engineer who prepared the traffic study for the Elkhorn development. He said that at the beginning of this project, Elkhorn representatives met with ODOT and Marion County to talk about the traffic study. They chose, based on recommendations from county staff, to collect their counts of traffic on a sunny weekend in July in order to reflect the highest traffic volumes for the transportation facilities they analyzed.

Mr. Mansur said North Fork Road carries approximately 1,200 vehicles near Gates Hill Road and approximately 3,000 vehicles near Highway 22. The Elkhorn development is estimated to generate approximately 113 peak-hour trips and about 1,350 daily trips in addition to the current traffic. Based on ODOT and Marion County requirements, they analyzed eight intersections on Highway 22, North Fork Road, and Gates Hill Road. They analyzed future-year scenarios for five, ten, and 18 years ahead (2012, 2017, and 2025) using historical growth rates for the three roads as provided by county and ODOT staff. There was one intersection found that was not meeting Marion County and ODOT standards, which was the intersection of North Fork Road and OR 22. The issue was described in the letter that Commissioner Carlson referred to earlier in the meeting. Their original study recommended a right turn lane on North Fork Road and a westbound acceleration lane. A figure showing this planned change, along with some additional analysis was included on page 28 of the original traffic study that is part of the record for this case. After they proposed this, ODOT provided a letter stating that an acceleration lane would not be acceptable. Mr. Mansur said they suggested an acceleration lane because the volume of traffic on OR 22 makes it difficult for vehicles making right turns to turn onto the highway. This is the current situation, which is likely to be intensified by the presence of additional traffic from the Elkhorn development. According to Mr. Mansur, there are currently more than 100 vehicles making right turns at this intersection daily, and the Elkhorn development would add approximately 200 more vehicles per day making turns at this location.

Mr. Mansur said the right turn/acceleration lane would allow vehicles to turn, get up to speed and then move into traffic. ODOT provided a letter stating that they did not feel comfortable with the acceleration lane at that time. The Marion County Planning Commission recommended going back to ODOT to discuss the acceleration lane again. Representatives of DKS Associates and Elkhorn, along with Marion County staff, returned to talk with ODOT again. At this time, ODOT has changed their mind and now support the addition of the acceleration lane if added in accordance with certain guidelines they require. Mr. Mansur said they would be able to meet these criteria, so their recommendation is to continue with the right turn/acceleration lane. He said they were recommending a change to the Conditions of Approval no. 5(k), which was mentioned earlier by Ms. Schmitt. This change would add the right turn/acceleration lane to that condition.

Mr. Mansur said that with the improvements they have identified, the Marion County, ODOT, and transportation planning rule (TPR) requirements would be met based on their recommendations. He passed out copies of the recommended revisions to Condition 5(k) for the record (Exhibit B).

Commissioner Carlson asked if there was any documentation from ODOT confirming their changed views about the right turn/acceleration. Mr. Mansur said that after meeting with ODOT, they said this change would be acceptable if the applicants would meet their conditions. They do not have any confirmation on paper at this time, although they will be requesting this in order to get it into the record. Mr. Mansur said the meeting with ODOT was held earlier this week.

Mr. Pfeiffer came back to speak before the board and said he would be the last speaker for Elkhorn unless there were questions for the other speakers. He said that this is an unusual case. He said that Mr. Anderson did an excellent job of explaining the history of the project, starting with 1982 through 1984 when they were first negotiating for approval of the exceptions to the state goals and the zoning changes.

Mr. Pfeiffer said that in its simplest terms, this is the equivalent of a final plat approval, which is a basic and traditional land division exercise with no condition as to uses or goal compliance. In 1982, the initial approval was labeled a conceptual subdivision approval, which under the Marion County ordinances of that time required less detail than they would today for the initial phase of a two-phase land division approval. He said that it was envisioned at the time that what would follow would be a land division in the form of a plat, which would implement that conceptual approval consistent with all the conditions that were imposed at that time by the board together with the conditional use approval for both the commercial use and the golf course. As part of this, everything south of the road is today zoned AR-LU, which is a two-acre minimum lot size. This is an exception zone, along with many others throughout the county and the state. That area is also the subject of the goal exception, which was approved at the state level and acknowledged. He said these are both beyond challenge at any point, since they do not expire and are not subject to an exception. He said these are mapped decisions that are acknowledged and in place.

Mr. Pfeiffer said that Elkhorn does not have to proceed in this way. He said that if they chose, they could drop the 1982 original approval and come forward with a plat for two-acre lots spread throughout the area south of the road. This would include individual septic tanks for the homes, since there would be no sewer requirements. He said they would not need to comply with the transportation planning rule, which only goes into effect when the goals are applied. They also only have to provide a transportation impact analysis except to the extent that a subdivision would require one. He said the board could deny the applicants and they could still go ahead and proceed with building the projects free of the range of conditions of approval that the county has required over the years. He said they do not object to the county's conditions. There is no question about extension of the mapping or the goal exceptions in place. He said the DLCD concedes in their letter that the two-acre lot pattern is consistent with the Goal 14 administrative rule. There would be no exceptions required for public facilities and services, because they could have individual or community wells and septic systems on individual lots. These would have to be spread throughout the area and would mean the loss of open space. The county would also lose the conditions requiring setbacks, trails, and all the other measures imposed at the time to ensure that the resort would be as pictured in the site plan and not simply a residential subdivision of two-acre lots.

Mr. Pfeiffer said Mr. Rockwell had decided instead to pursue the project using the original approval and conditions. Mr. Pfeiffer said that if the decision were to deny the exceptions, the applicants would default to the base zoning for this area. He said there is usually not a 25-year delay between preliminary approval and final plat approval as has happened in this case. He said the long delay has led to many legal issues, many of which have never been

addressed by Oregon's courts, including the Land Use Board of Appeals (LUBA). He said that when the process started, there was an extensive 1982 approval and the golf course had already been constructed. A second-stage final plat approval was maintained and consistent with the conditions imposed in 1982. The issue of the requirement of goal exceptions was one that only arose later. He said the state goals do not apply unless there is a Comprehensive Plan, zone map, or text amendments. He said the State Goals do not apply to subdivisions and they no longer apply in this case because of the zoning. However, there was an exception to Goal 4 in this case that was clearly accepted, approved and acknowledged, since the land does not have to be used for forest uses but instead can be used for rural residential purposes. Goal 14 requires that urban levels of use, in this case lots under two acres, must be the subject of a goal exception if they are outside an urban growth boundary.

He said that what is also in this rule, which DLCD does not point out in their letter, is that when Goal 14 was adopted in 2000, DLCD wanted to vest owners that were already in the process of building. DLCD decided, in the administrative rule that supports the Goal 14 exception, that applicants who were already in process before the new standard was instituted would not have to comply with the two-acre minimum lot size. There is a provision in that administrative rule that DLCD relies upon to support a Goal Exception that says that these rules, such as the requirement for an exception for all lots under two acres, do not apply to parcels that are the subject of subdivision applications submitted prior to the effective date of the rule. He said this is a simple vesting standard that is part of the rule. Mr. Pfeiffer said that the difference in this case is that this application for subdivision approval was submitted 18 years earlier under criteria that were vastly different from the current ones. There is a clear argument that the provision he just mentioned would vest this application in the same way that it immunizes an application submitted the day before the 2000 rule amendment took effect. He said this is just one example of the open questions they are required to confront if they take the position that goal exceptions are required.

Mr. Pfeiffer said that another example of an open question is Goal 11. He said that Goal 11 is a goal that applies to comprehensive plans, zone maps, and text amendments, but not to subdivisions. He said the argument is being made in this case that it applies in this case because a sewer system would be provided, although the sewer system is required as a condition of approval under the 1982 standards. He said the criteria in effect at the time of the 1982 approval did not include a Goal 11 standard because the amendments that apply Goal 11 to subdivisions did not take effect until 2000. He asked if the "goalpost standard" applies from 1982, which would mean they would be judged by the standards that were in effect on the day the application was submitted. He said there is a LUBA case that says that these standards would apply all the way through to the last permit needed to construct the project. He said there is a very strong argument that that standard would bar the application of the goals in this case.

Mr. Pfeiffer said that this was a long way of saying there are many open questions here. He said that if they were to choose to follow the argument he has presented, there would be no need for the goal exceptions. However, he said they could avoid putting everybody in a state of limbo by openly addressing the issue of the goal exceptions. He said policy should not be made at the appellate court level if it can be made at the city, county, or state level. He said going forward without goal exceptions would raise the specter of possibly being the first ones to address some of these issues. He said the outcome could not be predicted, but if they are after certainty, they are probably better off operating under the context of the goal exceptions. He said this is why they decided to amend the application when that issue arose. He said they have arguments to the contrary, but they would prefer to not have to be the first ones to be a

test case for these arguments, and he would also prefer not to put the county in that position.

Mr. Pfeiffer said that among the fundamental standards for a goal exception are physical commitment, physical lands, and the reasons exception, which is a case where an exception to the goals is being offered because there is a compelling reason why the goals should not be applied. In the course of that process, it is necessary to demonstrate why the project could not be achieved at another location where the goal exception would not be required. Mr. Pfeiffer said that the board would be hearing testimony tonight, just as the Planning Commission did, that there is no reason to approve a goal exception here because all the residential development that would be located in this project could instead be located inside the Stayton urban growth boundary or some similar location.

Mr. Pfeiffer gave examples of green-field traditional goal exceptions where nothing had actually been built yet, such as the NASCAR Speedway in Umatilla and the Dundee Hotel case currently under discussion. These were reasons exceptions based on analysis of reasons to allow either an urban level of development of an urban level of public facilities or something other than farm or forest uses outside an urban growth boundary. He said that in order to make the reasons exception work, it must be shown that the project could not be carried out without requiring an exception by either putting it on the land that is already the subject of an exception or on land inside an urban growth boundary.

Mr. Pfeiffer said the last unusual thing about this project is that it is already half built. He said it is very difficult to envision how they would be able to complete this project by putting the housing component in downtown Stayton, Silverton, or other community with an urban growth boundary, since this is a resort-oriented project with second home potential and developed recreation facilities in proximity to the houses. He said this simply would not work, particularly since the project is already half-constructed.

Mr. Pfeiffer said that the land is already the subject of a goal exception. He said that some speakers tonight would probably say that the standard application of the rules would suggest that the goal exception should not be approved, but he said that in his view, the standard application of the rules is not the way those rules would be applied either on appeal or, he hoped, by the board tonight. He said the circumstances in this case are different because of the very unusual elongated approval with the first and second phases of development separated by 25 years. He said testimony about the goal exception issue has already been discussed and responded to at great length in the Planning Commission hearing, and would probably be presented again tonight. Mr. Pfeiffer closed his presentation and offered to offer any questions the board might have.

Testimony:

SUPPORT:

Eve Berkson, no address given, Mill City, said she supports the project as a start for entrepreneurial opportunities and an economic boost to the community. She said the project was put together well and would be a wonderful addition to the canyon.

Tracy Slye, 947 W. Central, Gates, OR 97346. Ms. Slye said she was at the meeting to represent the North Santiam Canyon Chamber of Commerce and as the owner and general manager of Papa Al's Famous Hamburgers. She also volunteers on the Gates Citizen Page -16-

Emergency Response Team. She asked the board to change the way it is looking at the project. She said this is an issue of people, and this enterprise could provide jobs to local residents. She said the enterprise would provide much-needed customers and jobs for the area. She said there is an issue with the road, and this needs to be discussed, as the road will eventually need improvement no matter what happens with this case.

Mike Long, 21 SW 11th Street, Mill City, OR, said he and his wife own and operate a small business in Mill City. He serves on the City Council for Mill City and on the Board of Directors of the North Santiam Canyon Chamber of Commerce. On behalf of the City of Mill City, he gave the board a copy of Resolution No. 661, which the City Council passed in support of this development (Exhibit C). The council believes this resort will have a positive economic impact on the North Santiam Canyon, which has suffered serious economic setbacks over the past few decades because of the decline in the forest and mining industries. Regarding the road issue, he said this would be a challenge, but the road will receive increased traffic even if the resort is not approved. He said Opal Creek and the other parks along the river are receiving more traffic. He said that if the county did not approve the resort, they would be forced to solve the road problems without the additional funds that Elkhorn was willing to provide to help deal with the road expenses. He urged the commissioners to vote favorably on the project.

Pat Carty, 305 Lakecrest Dr., Detroit, OR, said he is the Mayor of Detroit and President of the Detroit Lake Recreation Area Business Association. He also serves on the Board of Directors of the North Santiam Canyon Chamber of Commerce. Mr. Carty said he and Mr. Long both play golf at Elkhorn and know the facility well. He said he has about 30 years of experience in the North Santiam Canyon, particularly on the east end of the canyon, which has gone from being a timber community to being a recreation area. He has watched all the different developments that go into an economic area, and he has watched the economic devastation of the disappearance of the timber industry. He has attended various meetings regarding this development, and he feels this is one of the best laid-out and thought-out projects he has seen at that end of the county. He said that when dealing with a developer, credibility is very important. In this case, he feels that the developers are credible and their requests for exceptions are reasonable. He said he agrees with everything Mike Long had said in his statement. Regarding the short-term and long-term impact of the project for the canyon and for Marion County, he noted the importance of the jobs for Detroit, Mill City, and Gates. He uses Gates Hill Road to get to Elkhorn Golf Course, which is a short and relatively easy trip that is better since the road was paved. He said he has also used North Fork Road, which has some problems, but he feels there is a solution to the North Fork Road issues, and this solution will be found as traffic increases in the area. Regarding livability issues, he said the impact of this project on homes in the area would be less than some people think, and would be likely to increase home values in the area. He said there is already considerable traffic in the area, and it is likely to increase whether the resort goes ahead or not. As the spokesman for the Detroit City Council, the Detroit Planning Commission, the Detroit Lake Recreation Area Business Association, and as a member of the North Santiam Canyon Chamber of Commerce, he asked to go on the record as being in favor of this project.

Doug DeGeorge, 195 N. Detroit Ave., Detroit, OR, is owner of the Detroit Lake Motel in Detroit and the Silverton Inn and Suites in Silverton. He said he was here to support the opportunity to have this development company come forward and make a large investment in making improvements in a beautiful area. He said there is no guarantee there will be a return on their investment, but the representatives of Elkhorn think enough of the area to go forward with a large investment and cooperate with the county to improve roads and access in the area. He said this project will benefit the entire county now and in the future. Mr. DeGeorge Page -17-

said he is planning to build The Lodge at Detroit Lake, which will be a 24-room or 28-room lodge with a restaurant and a dining room in Detroit. He said the Elkhorn project would be beneficial to him and to the town. He said he took an old motel in Silverton at a time when downtown Silverton was 50 percent undeveloped, and when they finished making it into a 15-room boutique hotel with a restaurant and small lounge, the downtown impact was approximately \$250,000 per month from the tourists who bring in economic vitalization and discover a new area. He said the impact of a resort such as this one could be great for an area that is very beautiful but suffering economically. He thanked the Elkhorn team for their interest in the community and their willingness to cooperate. He said he strongly supported approval of the proposal.

Victor Madge, 760 Mill Street, Silverton OR, said he sits on the Planning Commission in Silverton. He said he sees a lot of developments come through the Silverton area, and they are of varying quality. He said this development is a tremendous economic opportunity for the county and for the North Santiam Canyon. He said the quality of this project was likely to be similar to that of Sunriver. He thought Elkhorn would become a great destination for people from the area who cannot afford to travel far away, and it would also serve people of means who would bring additional economic benefits to the area.

Arin Atiyeh, PO Box 429, Lyons OR 97358, said he was speaking on behalf of Emery & Sons Construction. The owner of the Emery & Sons is out of the area and unable to attend the meeting, and he provided Mr. Atiyeh with a letter to read for the group. Mr. Atiyeh said he grew up next door to the Elkhorn Golf Course and will most likely be the project manager for the civil construction portion of the development as an employee of Emery & Sons Construction. Mr. Atiyeh said he has known about the possibility of this development and has followed its progress since childhood. He worked with Don Cutler and two of his children on the annual maintenance items and the construction of the tees and greens on the back nine holes of the golf course up to and beyond the time of Mr. Cutler's death in 1998. He said Mr. Cutler's dream and plan for this resort has been in the works since the early 1970s. Through the years, he has seen other developers show interest in taking on this project, but until his introduction to the applicants in September 2006, he never had the confidence that the project would be built with the long-term planning and consideration needed to make it a success. He said the applicants are committed to blending this project into the surrounding area and involving the local community in planning the construction of the project. He said the plan fits into the current zoning for this property as established by Don Cutler and Marion County. He said the project would alter some aspects of the Elkhorn Valley that he and others have come to love, but the company has worked to address community concerns and has worked to be transparent. He said Emery & Sons is a local construction company that employs 175 people, with the majority living in the local area. The Elkhorn project would be a substantial civil contract for the company over the next several years. They are pleased that the applicants were willing to work with a local company instead of outsourcing it to a contractor from out of the area. Emery & Sons is committed to using local employees and subcontractors for the project. He said the project would be an economic benefit to the area for years to come.

Mr. Atiyeh read the letter from Bill Martinek, President of Emery & Sons, which was dated October 3, 2007. Mr. Martinek said he has been a member of the local community for his entire life. He noted the economic ups and downs of the North Santiam Canyon and the need for economic development in the area. He supported the efforts of the applicants and said they have been very transparent and professional in their dealings. He said their plan would help preserve Mr. Cutler's vision for Elkhorn. He praised the economic and business

opportunities that the project would offer for the North Santiam Canyon and urged the board to approve the project.

Tim Kirsch, 613 River Road, Mill City, OR, 97360, is employed by Elkhorn Golf course and has been there for eight years. He said the course has been there for 30 years. He said it was a nine-hole course for the first 25 years of its existence and was ranked by some leading golf magazines as one of the top ten nine-hole courses in the nation. The latest rating of the golf course had it as a four-star rating, with the five-star rating being reserved for golf courses with full amenities. He said the Elkhorn golf course is very popular and hosts thousands of guests per year. Those guests use North Fork Road to get there, with most players coming from the Portland, Eugene, and Bend areas. He said it is already a destination golf course. He said the Forest Service has been improving the Opal Creek area to serve more guests, and the parks in the area are attracting more visitors to the area. He said this is already a major recreation area, so the Elkhorn development can only add to its prominence as a recreation area. He pointed out that the road would need work whether the project is approved or not, and voiced his support for the project.

Commissioner Brentano recessed the meeting at 7:53 p.m.

Commissioner Brentano reconvened the meeting at 8:01 p.m.

OPPOSITION:

David Engen, 1145 14th Street NE, Salem, OR, 97301, said he opposed the Elkhorn development. Mr. Engen said he has lived in Marion County for 43 years and is a Vietnam veteran. He mentioned Oregonian articles from the previous weekend regarding growth issues and the Marion County commissioners' opposition to efforts by METRO and Multnomah, Washington and Clackamas Counties to get Marion County to cooperate in designating rural and urban reserves in the French Prairie area. The Marion County commissioners said they wanted Marion County to be in control of its own destiny. He said he opposes the Elkhorn development because in his view, rural development affects the environment negatively. He said it is also negative for taxpayers, who are expected to pick up a large percentage of the development costs. He used the example of the salmon fisheries as a related example of environmental and economic losses due to development.

Caroline Milbank, 592 Salem Heights Avenue, Salem, OR, said the public hearing notice of this hearing gave a list of 13 criteria for the decision the commissioners would make on this issue. She said there was a need for an additional criterion from the board of commissioners mission statement, and quoted this document as follows: "to provide leadership that ensures fiscal accountability and enhances the health, safety, and livability of our communities." Ms. Milbank said there are problems with building a 2008 development using 1982 dimensions. There are exceptions to Goals 11 and 14 to be dealt with. She said there are inconsistencies with the conceptual plan approved in 1982 and a failure of the developers to meet certain conditions of operation. She said there is no shortage of motel, hotels, condominiums, campgrounds, and single family homes in southern Marion County for those who might want to play golf at Elkhorn. She said the shrinkage is in forestland and pristine areas. She estimated the size of the community to be 392 people if there are to be 150 single-family homes and 40 condominiums, with an average of two people per dwelling. She said these people would be getting a pristine environment at the expense of those who would be unable to move there. She strongly urged the commissioners to think long and hard about their decision on the project.

Aaron Thompson, 13260 SW Aragon Street, Beaverton, OR, 97005, said he is currently volunteering as the chairman of the board for the Upward Bound camp for people with special needs and serves 700 campers per year. The camp presently occupies a spot on North Fork Road past the proposed development. He said he opposes this development because it will negatively affect the camp. He said that the current day use visitors who come to the area bring their own alcohol. He said he was concerned that if the development were to build a store offering box lunches, the store would be likely to attempt to get a liquor license as well, which would increase the amount of alcohol available to day use visitors and have a negative impact on the camp. Mr. Thompson said the road is falling apart and would be unable to withstand the increased traffic. He said he believed that the extra residents would also negatively affect the level of emergency response in the area.

Roger Kaye, 10095 Parrish Gap Rd. SE, Turner, OR, 97392, is president of Friends of Marion County, a nonprofit land use advocacy group dedicated to the promotion of sustainable growth in Marion County. He read from his letter to the board dated June 18, 2008 (Exhibit D). He said the Friend of Marion County oppose the development because of its impact on the county's transportation system. He said North Fork Road is currently the only practical way to reach the golf course and other recreation areas further to the northeast. His letter included maps and photographs showing problem areas along Highway 22 and described the situation at some of these problem areas. He added that Gates Hill Road is not plowed and provides the only escape from the area other than North Fork Road. Gates Hill Road is very steep at a 16 percent average incline. He said the additional traffic generated by the development would intensify the existing problems and have a significant impact on the county's transportation maintenance budget. He asked the board to deny the application.

John Brandt, 625 N. 7th Ave., Stayton, OR, 97383. Mr. Brandt said he serves on the Stayton Planning Commission, although he is not representing that commission tonight. He mentioned his work with the planning commission because he was one of 100 Stayton citizens who worked on the town's revitalization plan. Mr. Brandt submitted a map of the Downtown Stayton Revitalization Plan (Exhibit E). He recommended a site in Stayton for this type of development. He said the revitalization plan has the approval of many people in Stayton who have worked on the plan and approved it. He said that as a land use advocate, he found it odd to be courting developers, but he said this sort of development belongs in a place like Stayton, which could provide all the services typically available within an urban growth boundary. He said there are a few miles of undeveloped riverfront in Stayton that might work even better for this sort of development. Mr. Brandt said Stayton recently extended its sewer project to the Santiam Golf Course, which is likely to start a lot of development in that area. He said these sites could be built and developed with far less environmental impact than the Elkhorn site. He said he is very familiar with the Little North Fork area and has hiked there for almost 40 years. He served on the advisory committee for the Opal Creek Scenic Recreation Area. He said Elkhorn Creek has been designated a Wild and Scenic River. He said this has occurred since 1982, when the original plan was approved. He talked about Mr. Pfeiffer's reference to reasons for exceptions to the state land use goals, and one of these was that the development was already half built. Mr. Brandt said he found this puzzling, since perhaps he meant the golf course was built, since there is not much housing in the area. The golf course has been there for almost 20 years, so he said he was not persuaded that this area needs an exception. He said there are many places nearby where this kind of development can be done with far less impact.

Sid Friedman, 1000 Friends of Oregon, 189 Liberty Street NE, Salem, said he had submitted written testimony, and he confirmed that the commissioners had received it. Page -20-

He said there are many reasons they feel this development should be denied, but the most important are the goal exceptions. He said unless the commissioners feel this subdivision is more important than protecting the rural character of the Little North Fork canyon from urban levels of development, they should deny the request to develop the area. He said they did not doubt the sincerity of the developers or their desire to build a quality development, but the issue is whether the Little North Fork canyon and the Elkhorn location would be appropriate for a new urban center. He said Goal 11 and Goal 14 are designed to keep urban development off of rural lands. He said the developer is asking for a “reasons” exception to the goal, which means that there is some reason this development is important enough to outweigh the protection of the Little North Fork River. He said that under the current Marion County Comprehensive Plan, the proposed subdivision is prohibited unless the comprehensive plan is amended by adoption of these goal exceptions. He said the board has the discretion and the obligation not to do this. He said that even if they believe there is a need for this sort of subdivision, the 1000 Friends statement offers details on over 30 alternative sites in the Santiam Canyon that would not have the same adverse impacts or require goal exceptions, and are in communities that need the economic development. He said he was unsure about Mr. Pfeiffer’s statement that the developers would come back with a subdivision of two-acre lots if the current proposal were denied. He said he saw this as a threat or a red herring.

Mr. Friedman said the current location has an acreage residential zone with an overlay zone pursuant to a reasons exception. He said that under 1982 standards, this would have allowed a development similar to what they are requesting. However, he said that he believes that entitlement probably went away with the adoption of Goal 14 in 2000. He said this is not a final plat approval but rather a new application for detailed subdivision approval. He said this should be judged as a new application. Mr. Friedman said that Mr. Pfeiffer had asked for something other than a standard application of the rules, and he said he did not believe this application warrants an extraordinary application of the rules. He said the board should instead apply the standard rules as it would in any other case, which would mean denial of the application. He said that the condition of the road that was another issue that was important to him and to many others. He said five to ten years of build out with heavy building traffic on that road was something the board should consider carefully.

Richard Reid, 3424 Bluff Avenue SE, Salem, OR, 97302, said that when this project was first proposed in the 1980s, there was a cushion and room to grow, and it looked as if taxpayers could afford to underwrite a development of this size. He said the future at this time is much less certain, and it might not be prudent to risk tax dollars at this time. He said the population is overshooting the carrying capacity of the area and the available natural resources. He said this is also a bad time in the housing market. He said that in economics it is important to reduce risk. Mr. Reid said that in public/private partnerships such as this one, in which the taxpayers are required to subsidize real estate development, the level of public investment is often unclear, and the element of risk is often underestimated. He said nobody knew exactly how much this project would end up costing the taxpayers in terms of infrastructure. He said the project should be put on hold until more is known in order to allow the county to make a better public investment. He said that canyon residents should also be aware that there is no obligation for the developer to hire locally, and they should keep this in mind.

Gerik Kransky, 534 SW 3rd, Portland, OR, 97124, said he is also with 1000 Friends of Oregon. He said his views were in support of those of his colleague, Sid Friedman. He said he opposed the proposal because of its urban densities in a rural area. He said the North Fork Road is clearly in terrible shape, and increasing traffic there would hurt Marion County

taxpayers because of the investments that would need to be made in that infrastructure. He said the current intersection of North Fork Road and OR 22 is insufficient to handle the increased traffic, and the applicant's mitigation plan has been rejected by ODOT. He said that in the face of long commutes and high gas taxes, this is the kind of development Oregon needs to avoid. He said the Little North Fork of the Santiam River is home to the federally listed threatened and endangered salmon and steelhead. He said the development does not have the necessary water rights to serve the development, nor do they have approval from the Department of Environmental Quality for the planned open sewage lagoon. He said there are few remote and undeveloped canyons like the Little North Fork left in the Willamette Valley, and it is also in a National Scenic Area on a national Wild and Scenic River. He said the application as currently written does not meet the requirements of a destination resort, and it cannot be approved as an urban residential subdivision because Oregon law does not provide for the approval of new small towns many miles from an existing urban area. He said 1000 Friends still opposes this application.

Paul Pace, 4676 Commercial SE, #12, Salem OR, 97302, said he has lived in the North Fork area his entire life. He anticipated many traffic accidents if the development went in, and he said there would be major traffic backups for the people who live in the area. He said the Department of Forestry building at the intersection would need to be moved, and the department would not allow this. He said the area is already very crowded and all the parks are already full. He said that this development would double the population of the area and ruin the beauty that makes the area enjoyable now. He said the added population would mean major demands for emergency services and rescue services. Mr. Pace said this is the only place in Oregon that has been left alone, and he would hate to see this taken away because someone wants to come in and make money.

Susan Patterson, 26027 Taylor Park Road, Lyons, OR, 97358, said she has owned a home on the river since 1970. She said she is opposed to this development for many reasons, including the road safety issue. She said there were many other places that were better suited for economic development, and she would prefer to see other industries coming in instead of a development that would offer minimum-wage service jobs. She said she was concerned about the forest and the river ecosystem. Ms. Patterson said she would hate to see the loss of the salmon and steelhead in the area. She said that trespassing and illegal dumping are already becoming a big problem in the area. She said there are better ways to bring in economic growth. She asked if the board has budgeted for this or planned for how much it would end up costing the taxpayers. She said the development may seem appealing now, but she asked whether the long-term consequences would be as appealing

Steve Frank, 1515 E. Jefferson Street, Stayton, OR 97383. Mr. Frank said he had testified at the Marion County Planning Commission hearings and had also sent written testimony to the board. Mr. Frank said that he is an elected Stayton City Councilor but is speaking tonight on his own behalf only. He said he was concerned about the Oregon Department of Fish and Wildlife's conclusions that the impact on threatened fish is expected to be low and that there is no nesting of bald eagles in the area. He said any impact on the threatened fish should be prevented given the downturn in salmon and steelhead runs in the surrounding area. He said the development would also impact new bald eagle nesting capabilities. Mr. Frank said he has loved this area for decade, and any degradation of the habitat and quality of life for the residents concerns him. He asked the board to deny the development.

Mike Swaim, 2730 Holiday Drive S. Salem, OR, 97302, referred to the letter he wrote to the Planning Commission on December 19, 2007. He said the letter was based on a 1997 BLM analysis of the North Santiam Watershed conducted by 16 disinterested specialists. He said the study sets a baseline, and he asked whether conditions have improved or gotten worse over time. He said he had sympathy for working families in the Santiam Canyon. He felt the project was a good one, but the location was wrong for reasons pointed out in the BLM report. He said the according to the BLM report, the stream flow was already over-allocated 20 percent of the time in 1997. He said the situation would have to be the same or worse now. He gave examples of other problems cited in the 1997 study. He said there was no way to mitigate or manage around issues such as a lack of water or the high stream temperatures that were endangering salmon and steelhead in the river. He said he did not want his grandchildren to read that salmon and steelhead went extinct in the Little North Fork.

Laura Pierce, 36155 North Fork Road, Lyons, OR, is executive director of the Upward Bound Camp that assists people with disabilities. The camp is about six miles from Opal Creek and six miles north of the proposed development. She said she has been in the recreational industry for over 30 years, and she sits on a committee that has worked for the last few years to amend the state rules and regulations for organized camps. She said the first rules that were adopted were in 1980 were six pages long, and the new rules will be closer to 30 pages. Ms. Pierce said things have changed, and people are not operating in the same world as in 1982. She said a black bear was captured and killed this morning on the Little North Fork, not because he encroached on human territory but because people have encroached on his territory. She wanted future children to be able to enjoy the pristine area that her children have grown up with in the area. She noted the earlier comment by supporters stating that Pacific Santa Fe thought highly enough of the area to come in and make a large investment with no guarantee of return. She said she found this surprising, since they are a venture capital investment company. She wondered if their investors were aware that they would be doing this project without an expectation of return.

Ms. Pierce said she is also an employer who struggles to find people who will work for minimum wage or close to minimum wage on the North Fork. She said people enjoy the work but do not enjoy the drive, which is dangerous in winter because of weather conditions and in summer because of drunk drivers. She said she did not see how this development could be seen as a potential economic asset to the area when there is no safe access to the area. She said that these people know how to develop a resort, but she does not believe this is the right place to do it because of its environmental impact and lack of economic feasibility. She said that the unsafe roads are an issue. After this winter's snow they had gravel trucked in, and drivers have told her they would not go over Gates Hill Road with a full load or take a trailer over that road.

Lindsay Walker, PO Box C, Stayton OR 97383, is another worker at the Upward Bound Camp and she also lives there. She agreed with other speakers about the dangerous condition of North Fork Road. She said she would not consider driving on the road at night. She said that on the previous day's drive she saw a black bear and almost hit three deer. She echoed what Ms. Pierce had said.

David Harrison, 585 Washington Street South, Salem. Mr. Harrison introduced himself as President of the Salem Audubon Society and said he wanted to speak on behalf of their 1500+ members in expressing strong opposition to the development. He said this kind of high-density development is usually not allowed outside cities, and there is no compelling reason to make an exception in this case. He mentioned the issue of the North Fork Road, and said the taxpayers of Marion County were likely to be saddled with large expenses for

maintaining the road. He said runoff from the project could run downstream and threaten the quality of Salem's drinking water, since the effluent pond would be adjacent to the creek and could overflow, ending up in the North Santiam River, which is the source of Salem's drinking water. Mr. Harrison said he was also concerned about the project's impact on fish and wildlife including elk, deer, cougar, and bear. Finally, he said the economic benefits from this project would only be short-term, and he felt this land should stay in its original state. He said the Salem Audubon Society opposes the project for all these reasons..

Jim Lind, PO Box 371, Salem, OR, 97308, said he believed in the project and he likes what they are doing, but he believes it is in the wrong place. He agreed with the other speakers who had mentioned the state of North Fork Road as a problem. He said this must be attended to before doing anything that would increase the traffic. Mr. Lind said this is a core area for the Willamette Valley Chinook Salmon and is important for other wildlife as well. He said the project should be closer to an urban area, perhaps along the main stem of the Santiam River.

Laurel Hines, 10371 Lake Drive SE, Salem, did not testify, but left a comment that she would provide written comments.

Richard Harisay, 5106 Victor Point Rd. SE, Sublimity, OR, 97385, is a small-scale organic farmer. He referred to Mr. Pfeiffer's earlier comments, which seemed to imply that the project would be built one way or another whether the board liked it or not, and that if the development were not approved, they would take it to court. He said he was concerned about the possible reduction of the water table in the area where he lives, since this is essential to his farming operation. He said this would add to the need for deeper well drilling. He added that the community as a whole is facing many environmental challenges. He questioned what this project would do for the people downstream from the development. He said the development would contribute to the existing problems instead of alleviating the problems.

Dick Berkey, 11054 Dogwood Lane SE, Lyons, OR, 97358, said he lives off North Fork Road and opposes the development for several reasons. He said there is no infrastructure in the area to support a development that would be the size of a small town. He said the current fire department is a volunteer operation, and the needs in that area would probably double. He said there is little police protection in the area, and the resort's own local security people would probably be calling on the sheriff when they had major problems, which would increase costs to Marion County. School enrollments in Mill City and Lyons would be likely to be affected. He said North Fork Road is in atrocious condition as others had already mentioned, and there are four slide sinks in a short unpaved stretch of eight-tenths of a mile. He said the road is washboarded and potholed despite the county's constant efforts to keep it in passable condition. He invited everyone to go up to the area to see the road conditions and the pristine beauty of the area. He said that the costs to improve this road would be prohibitive to the county, and he questioned where the funds would come from to do this. He said the wastewater holding pond could be a danger to the pristine condition of the river water if it were to overflow. He spoke of the Opal Creek wilderness area, which would see an increase in use that could lead to overuse. He said the tax dollars required for this development would be prohibitive and not in the best interest of the taxpayers.

Kathy Cook and David Cook, both of 32196 North Fork Road SE, stated that they were opposed to the development but did not testify.

Richard Berkey, 35315 Ruth Street, Lyons, OR, said that he agreed with many of the previous speakers. He saw the road as being the biggest issue. He said there were seven slide sinks instead of just four on the unpaved portion of North Fork Road. He mentioned the water as another major issue, and said he opposes the subdivision.

William Roth, 2120 Robbins Lane SE, Salem, said he owns property up on the North Fork River, which he is trying to get in shape so it can make it their permanent home. He said this is a pristine area, and he did not want to see a large development of this type going into the area. He said the impact of the vehicle traffic would be increased by almost 70 percent. He said there was a lot of concern about elk fencing in the area, and he questioned the need to build a subdivision in an area where so much fencing would be required to keep the elk out. He said this is a subdivision in the guise of a destination resort, but it is really a golf course with an adjoining subdivision. He said he did not envy the commissioners in their job of having to decide on this. He said he hoped the commissioners would not be swayed by the threats of litigation if they did not approve the project. Mr. Roth said the people in the area are very protective of the environment, and they want to keep it pristine. He said there are many places where this resort would be wanted and would not have an adverse impact. He urged everyone to go to the location and see whether this development would truly fit into the area.

APPLICANT'S REBUTTAL

Mr. Dyer clarified some of the comments made tonight. He said there was no evidence to support any claims that the development would have any negative impact on the environment. He said they have worked closely with the Oregon Department of Fish and Wildlife to protect wildlife in the area. He also said the development's impact would not be the same as a year-round housing subdivision, since the occupancy most of the year would average about 50 percent or even less in the winter months.

Mr. Dyer said the store at the resort would not offer packaged liquor sales. He said they had never intended to use or access any subsidies from tax dollars. He said Elkhorn would pay its own way, and the company would provide any infrastructure required to support the development. He said they are even contributing dollars outside the boundaries of their property in order to lessen their impact, and they would not need any financial support from the public.

Mr. Dyer pointed out that North Fork Road has been a problem for a long time. He said the applicants were trying to assist in providing a solution for that problem, including providing funding to help deal with the problem. He said they have had ongoing discussions with Public Works on this topic.

Mr. Dyer said the Oregon Water Resource Authority would require Elkhorn to acquire all necessary permits for water. He said there is no support for the claim that they would be degrading the quality of the water in the area. He said Elkhorn would take less water from the river than they are currently entitled to use during the peak summer months. They will be reducing their current impact on the river's water, and he said this would benefit everyone along the river.

Mr. Dyer said Oregon Department of Forestry is fully aware of Elkhorn's recommendation for a right turn and an acceleration lane at the intersection of OR 22 and North Fork Road. He said they are supportive of those actions, and it would not require a taking or removal of their building to accomplish those interchange improvements as one opponent had stated. He said that ODOT has had a change of policy and now supports the acceleration lane plan. Page -25-

Regarding employment and the resort, Mr. Dyer said there has been no testimony from anyone in their organization saying that they were only going to pay minimum wage for the jobs at the resort. He said their wages would be commensurately higher, and the management positions traditionally come from the local community at these resorts.

On the question of effluent and runoff from the ponds, Mr. Dyer said that runoff is not permitted. He said there would be no habitable structures within 500 feet of the river, and the bulk of development is more than 1500 feet from the river. The runoff, both during construction as well as storm water runoff after occupancy, would be permitted by DEQ. He said that because of the three-basin rule, not even a teaspoon of runoff would be permitted into any tributary that finds its way into the North Fork River. He said their holding pond has been sized directly in anticipation of the amount of rainfall they experience in the valley. He said it is designed to anticipate 90 inches of annual rainfall.

Commissioner Carlson said Mr. Dyer mentioned the Department of Fish and Wildlife with regard to the big game and fish issues, but there was a Bureau of Land Management plan that was also mentioned. She asked if they had responded to that plan. Mr. Dyer said that was a 1997 report, and they have not been in contact with the BLM. He said ODFW has been their primary contact on fish and wildlife issues.

Commissioner Carlson asked Mr. Dyer about the water rights issue, since it sounded as if they did not have the water rights at present but would be applying for them. Mr. Dyer said they are currently in the process of applying for those water rights. He said they got an exception to the basin plan rule. He said it has been concluded that Elkhorn's water right is non-consumptive in nature. This is because by foregoing a certain amount of the right they have to the North Fork River water they currently use for irrigation, they will be supplanting that amount of water during the critical summer months with the effluent from the wastewater treatment plant, which will allow them to reduce their impact on the surface water by a 1-to-1 reduction. He said they then transfer the amount of water they were previously withdrawing from the river directly into a belowground well that will be used for potable water. He said this is a 1-to-1 mitigation tradeoff wherein they would not be taking any more water than they already do. This is partly because they are reducing the irrigated land area by using the effluent, and they are also reducing the amount of area they irrigate by roughly 10%. This brings them into balance. He said that the impact, as determined by the Oregon Water Resources Department, is non-consumptive in nature. He said the latest ruling from Water Resources is pending while the current process of getting subdivision approval.

Commissioner Carlson asked about the issue of packaged liquor sales. She asked how they could control a store's ability to request a license to sell liquor. Mr. Dyer said their intention is not to offer packaged liquor sales, and they are committed to this, although they plan to have alcohol available as part of the onsite dining experience. He said that if the board decided to impose a condition of not allowing packaged liquor sales in the future, that would be acceptable to the applicants. Commissioner Carlson said this would be an interest of hers.

Mr. Pfeiffer spoke next, saying he wanted to make it clear that he had not threatened litigation against the county. He said this was not the case, and that such litigation would serve no purpose. He said that two of the groups represented in tonight's comments against the project

are actually known for being aggressive in their litigation and have threatened to litigate if the project gets approved. He said that any threats of litigation tonight were not coming from the applicants.

Another matter Mr. Pfeiffer mentioned was the issue of the base case of the zoning for the Elkhorn development. He said the zoning for this area is Rural Residential with a two-acre minimum lot size, and there is already an existing developed golf course on the property. He said he only points this out because whatever action the board takes on this development would leave this owner or a subsequent owner of a subdivision with two-acre minimum lots. He said he had a hard time believing anyone in the room would support this sort of cookie-cutter lot patterns with septic tanks and individual wells without the wide-ranging conditions of approval that were approved in 1982. He said he was not trying to threaten and he was not making up the fact that this type of subdivision would technically be allowable under the current zoning. He said that he was obliged to build a factual record in case the Elkhorn development got approved and opponents then decided to file an appeal. He said that in such a case, he would need to be able to provide proof to support the findings that all the criteria have been met. He said many opponents had made apocalyptic predictions about what might happen without any actual evidence to support these claims. He gave the example of claims that the effluent pond would overflow, which did not acknowledge that any such facility would go through extensive review by the county staff and DEQ, which would include opportunities for appeal and participation by opponents. He gave the example of allegations that the development would deplete the fish stock of the river, but he said there would not be a habitable structure within 500 feet of the river, and there was also no water intake at this time coming out of the river and no water going into the river from the development because of various regulatory programs.

Mr. Pfeiffer addressed the issue of how the development would impact the Outward Bound camp. He said there was no evidence of any such impact other than the question of liquor sales, which he said did not even seem connected to the camp. He said in every case the opponents had made allegations that seemed unrealistic. He said they are required to rely on the regulatory schemes that are in place, the consultant reports they have put into the record, and the engineers who have signed off on their drawings. He said he was unable to respond to assertions of the kind made by some opponents today, but there were many agencies such as DEQ, the Department of Water Resources, the Corps of Engineers, and the Division of State Lands who would be monitoring the various aspects of the project and reviewing it throughout the process. ODOT and the county's regulatory apparatus will also be charged with reviewing aspects of the project. Mr. Pfeiffer said that in his view, the opponents of the project were telling people not to trust the federal, state, or local regulatory programs to properly address any aspects of the project.

Mr. Pfeiffer said they had heard testimony this evening that this project was an effort to try to cram a 1982 approval into this space under the current regulations. He said this was not true, since the transportation planning rule is a current regulation and the DKS report indicates compliance with it. He said the goal exceptions are current regulations, and they have asked for and demonstrated compliance with those rules as well. He said the Elkhorn development is applying the current county land division code and will also be getting current 1200C permits as required by DEQ. He named various other types of certifications they will be pursuing that are current regulations.

Mr. Pfeiffer said that all the infrastructure on the site will be taken care of by the applicants, including storm sewers, water, and pipes. Road frontage improvements are Page -27-

required, and the applicants have proposed to pay \$1.7 million in transportation improvement. He said the applicants will spend none of this money if the project is not approved. He also noted that the development would be bringing in additional tax revenues that are not in existence today. He said that there is also the consideration of the \$140 million in construction costs and the many jobs that would be created by this development. He disputed the allegations that the county would have to carry the development or subsidize the development. He said there were no public subsidies involved here, and nobody had presented any numbers on that issue except for him. He said Elkhorn is a freestanding project that would bring revenues to the table. He recognized that this is a balance and there are tradeoffs.

He said he did not believe that the alternatives requirement from the goal exceptions should be met by trying to build this development within an urban growth boundary such as the suggested site in downtown Stayton. He said the project is based on an existing golf course and adjacent residential uses. He said he did not believe this was the intent of the rule.

Mr. Pfeiffer referred to Mr. Friedman's criteria and said he was giving the group a mixed message by saying on one hand that there was no conceivable basis for goal exceptions to support this project while also stating that goal exceptions are required to develop the project. He said this would have to mean that there is no basis for relying on any part of the 1982 approval, despite the fact of the development of the golf course that has already occurred under that approval. Mr. Pfeiffer said that Mr. Friedman's rural residential zoning scenario is not plausible, since it would have to mean that the 150+ acres zoned AR has no development potential whatsoever. He said he did not believe that the law required this, and he said there was nothing in the record to support these kinds of assumptions.

Mr. Pfeiffer said that the road is an issue that the board will have a chance to address. He said Elkhorn would be bringing money to the table to assist with the road, and the analyses from both the county and the DKS consultant have shown that the additional trips can be accommodated. He said there is a problem with the road already, and it is not likely to be extensively exacerbated by the development. Also, the developers will be bringing money to assist with this problem. He said gravel roads such as the portion of North Fork Road described earlier are not uncommon or necessarily dangerous, and he believed this should not be the overriding factor in the decision.

Mr. Pfeiffer said he had not had a chance to see the additional material submitted tonight. He said they would send a copy to anyone who provided an address. He said that in his view, a continuance is warranted because he would like to see what other people have handed in to the board, and they should be able to see what he has handed in and respond accordingly. He said he would have no problem with a continuance, which would mean another public hearing, or with just leaving the record open for the submission of more material. Mr. Pfeiffer said the continuance would probably be the best approach if the board wanted to have him and others available to answer their questions. He said a three-stage approach often works best, with the first period allowing anyone to submit anything they wanted to say on the issue, the second period restricted to rebuttals of what came in during the first period, and the third period, under the statute, providing an opportunity for the applicants to provide a written-argument rebuttal only with no new evidence of any kind being submitted unless they agreed to the record being reopened to allow the other parties to have a chance for rebuttal of the new evidence. Mr. Pfeiffer said that in terms of time, the first period should probably be about three weeks, with the second period a two-week window for response and the third period being a one-week window for the final written argument. He closed his argument and said he hoped there would be a chance for everyone to respond to what they had heard tonight.

Commissioner Carlson asked about the Goal 4 exception that has already been granted, and this is listed in the staff report. This means that consideration of alternate sites is not necessary. She said there was some discussion in Mr. Friedman's letter regarding the problem with not exploring alternate sites. In another part of the staff report, it states that there is a bit of reliance on the Goal 4 exception as a rationale for the Goal 11 exception. She said this appears to be a sort of circular thing going on here. She said that Mr. Pfeiffer had also stated that current goals and regulations are being applied here, not just 1982 goals and regulations. She said that Mr. Friedman's letter and another letter had mentioned a lack of conformity to the conceptual plan, so this appears to suggest that there have been alterations in the conceptual plan from 1982. She asked Mr. Pfeiffer to discuss these matters, which she said were interrelated.

Mr. Pfeiffer said there was not much testimony at the Planning Commission to indicate that the plan submitted by the applicants is in any way at odds with the conceptual plan approved in 1982. He said the requirement of the terms of the 1982 approval was that the final plan be in conformance with the concept map approved in 1982. He said Mr. Friedman's written material suggests that there is some difference between the plans, but his oral testimony did not. Mr. Pfeiffer said the next phase, which is the subdivision application they are submitting now, must be in substantial conformance with the concept plan map and also demonstrate compliance with all the conditions of approval for both the concept plan approval and the AR zone. He said that if the board found that their subdivision application to not be in substantial conformance, they would then be justified in denying the application, but the applicants would also be allowed to resubmit their application based on the board's findings. He said the applicants did not believe that they were out of conformance with the 1982 approval.

Regarding the goal exceptions issue, Mr. Pfeiffer said that Oregon land use has evolved with time. There have been major changes beginning in 1976, with changes in the statutes and the administrative rules. He said it has been a reactive system because when problems creep in, rules are adopted at the state level to address those problems. He said that back in 1982, things were much looser than they are now. At that time, the general concept for land being developed outside the urban growth boundary on exception lands, which were basically rural subdivisions, were that exceptions would have to be taken for Goals 3 and 4, the forest and farmland goals. He said it took a while for anyone to get traction for the additional concept that while there might be exceptions to Goals 3 and 4, this would not mean that someone could still build an urban level of development at these locations. These developments were still required to be rural, but not necessarily forest. He said this was the theory when the AR zone was mapped in 1984. This left an AR zone with a two-acre minimum lot size, with the finding being that a two-acre zone was a rural use that would not trigger any urban development issues. If the applicant wanted to do development at an urban level, then Goals 11 and 14 are triggered, because urban services and urban uses are being allowed. Mr. Pfeiffer said that what happened in the 1980s was that many projects got approved with a Goal 3 or 4 exceptions and 10,000 square foot lots. In the late 1980s and early 1990s, the urban exception requirements for Goals 11 and 14 gained traction. He said that he believed this is why the board in 1982 and 1984 did not feel a compelling need to require Goal 11 and 14 exceptions, since the other counties were not doing it and the state was not requiring it at the time.

Mr. Pfeiffer said that now the new goal exceptions for Goal 11 and 14 come into question. He noted the statement in the staff report saying that since there was a Goal 4 exception in this case, there is no requirement to prove that there are no alternative locations to accomplish this use without a goal exception, which is basically an urban growth boundary. He was not Page -29-

sure what the staff meant by that, but in his view the basis for a reasons exception to Goals 3, 4, 11 or 14 would be essentially the same, and for all of those, it would be necessary to go through and demonstrate that there is no other alternative location to achieve this use that would not require the exception. He asked why they would be doing an exception if there were any way to accomplish their objective. He said that standard applies in the case of a Goal 4 exception for a use that is non-forest but rural (such as 2+ acre lots), which would not require exceptions to Goals 11 and 14. To go to a smaller lot size, he said Goal 3 and 4 exceptions would not be required because of the “goalpost rule” exempting subdivisions submitted prior to the effective date. Mr. Pfeiffer said the alternatives requirement is a standard that is alive and well for cases that require Goal 11 and 14 exceptions, even if the applicant has a Goal 4 exception. It is a test that would have to be met for Goal 11 and 14 exceptions to be granted.

Commissioner Carlson asked about the comments from the opponents that the proposed subdivision is not adequate to qualify for the Goal 11 and 14 exceptions. Mr. Pfeiffer said he did not believe that criterion could reasonably be interpreted to find that a location inside the urban growth boundary in one of the neighboring communities would be a viable practical alternative to the current location at the golf course for the purpose of accomplishing the proposed use. He said it would be like putting the parking in Stayton and the building in Silverton. He said that in practical terms, he did not think it was a reasonable interpretation, but it is the standard.

Commissioner Carlson said that the way this was stated in the staff report, the development is supposed to be around the golf course, and if it cannot be near the golf course, then it cannot be done. Mr. Pfeiffer said they have a more detailed explanation in their packet that gives their proposed narrative of how the board could find the development to be in compliance. He agreed, however, that the staff report had described this situation well, since there would be no place for this type of development to be achieved other than in proximity to the golf course, which already exists.

Commissioner Carlson mentioned the issue of claims that the current application is inconsistent with the conceptual approval. She said Mr. Friedman’s letter has a short statement about this, but Mr. Chandler of Willamette University gave a more extensive version of this argument in his letter to the board of April 10, 2008, which is included in the information packets provided to the board tonight. Mr. Pfeiffer said that he did not believe that Mr. Chandler’s argument demonstrated compelling reasons to prove the applicants were not in compliance, and he did not believe these arguments would give rise to such a finding. He said the applicants rebutted this claim in the findings section of their written application.

Commissioner Brentano said he was looking for information regarding the ownership of the golf course, why it was important, and how it related to the case. Mr. Pfeiffer said Mr. Rockwell would probably be a better source of information regarding the golf course ownership. Mr. Pfeiffer said that there were two conditions attached to the proposal, one of which was attached to the concept plan approval, with the other being attached to the zone change. He said he could not remember which was which, but one of them requires common ownership by the Homeowners Association (HOA) of the golf course together with other lands the HOA owns. The other one actually allowed them to be in separate ownership. Mr. Pfeiffer agreed that they needed to resolve that inconsistency.

Commissioner Brentano asked him to clarify what this would mean. Mr. Rockwell said they would like to see the two parcels in separate ownership, simply because requiring Page -30-

the HOA to take on the management responsibility, ownership and liability for a golf course would be very difficult. He said the ownership of the golf course should be in one entity, professionally run by golf course people, and the homeowners should not be burdened with the requirements of managing, funding, and running a golf course.

Commissioner Brentano said ownership of the golf course by the HOA would allow the homeowners more of a voice in the management of the golf course. Mr. Rockwell said the homeowners would have the right to use to golf course, but burdening an HOA with anything beyond the confines of their immediate neighborhood would be untenable. He said a golf course requires professional management, which is beyond what an HOA could be expected to handle.

Mr. Pfeiffer said that he could see Commissioner Brentano's point, since there would need to be a way to assure a homeowner that the purchase of a home in the development would include a properly managed golf course at that location. Mr. Rockwell said that using the golf course would be a major reason for people to come to the development. He said it would be a public golf course and could not suddenly start to exclude people even if it were a separate legal entity that was owned and run separately from the housing portion of the subdivision. Mr. Rockwell said they are simply concerned about the ongoing fiscal responsibility and management of the course.

Mr. Rockwell said they would want to give residents of the subdivision every possible reason to use the golf course. Mr. Pfeiffer said they could come back to the board with some sort of answer for the board about how this assurance could be provided to the homeowners. Mr. Rockwell said he understood Commissioner Brentano's concern and the need for the applicants to come back before the board with a condition that would provide the peace of mind of knowing that the golf course ownership/management issue would go forward properly.

Commissioner Milne said that when looking at housing developments that are located on golf courses, it would be very rare to find a homeowners association that actually runs the golf course. She said that it was very difficult financially, but there are agreements that are typically made that allow the homeowners to have rights with regards to use of the golf course. She said she assumed that this is what the applicants would bring back to the board. Mr. Rockwell agreed that this is a common practice, and it should not be difficult to come up with a policy similar to those in existence at other similar developments.

Sterling Anderson, planning manager, came back before the board for the final presentation.

Commissioner Carlson asked Bill Worcester, director of Public Works, for his views on North Fork Road, what it would cost to fix the four slide areas, and how the road would be affected by the development itself and the \$528,000 that the applicants are offering to contribute for road work. Mr. Worcester said there are many unknowns about the slide areas, and it may be a few months before they have a report from their consulting geotechnical engineer about the slide areas. He said that in the past, ODOT has done some geological studies in the area, and there are some difficult problems because the entire hillside is moving. He said groundwater is an issue in the area, and the eventual cost for repairing the slide areas would probably be in the millions. He said the additional traffic from the development would probably not be an issue with the slides, since these have more to do with the effects of nature in the area. There is currently a 10-ton load limit for vehicles using North Fork Road because of some dangerous conditions left over from last winter's slides.

Mr. Worcester said he thought the \$528,000 would be a good start for dealing with the slide areas on North Fork Road. Because the road is a forest highway, there are grants available for work on the road, and Ms. Schmitt is currently working on a grant application for this road. He said ODOT is soliciting for grants for work on the forest highways, and if Marion County Public Works were able to get some of this grant money along with the developer's money, they would be off to a good start for dealing with the slide problems and other road issues in the area.

Commissioner Carlson asked Mr. Worcester what Public Works would do if the entire slide area became impassable for some reason. Mr. Worcester said that in some situations, such as the most recent slide, they have been forced to have heavy vehicles use alternative routes such as logging roads that go across private property. He said that if that section of road were impassable for some reason, they would create a detour in addition to the current use of Gates Hill Road. He said that they are working on getting a more permanent arrangement with the owners of the logging roads in case these would need to be used more extensively for detours.

Commissioner Brentano asked if the \$528,000 that the applicants were contributing for the roads had any relation to the system development charges (SDCs) for the project. Mr. Worcester said that as far as he knows, this amount is separate from the SDCs. He said the applicant's total contribution for the road, including SDCs, would be about \$1.7 million.

Commissioner Brentano said he would need some more time to review the additional material submitted by 1000 Friends of Oregon and Elkhorn this evening. He said he also needed an opportunity to go over the 40 different conditions involved in this case, which come from three different sets of conditions. He said this would probably mean keeping the record open.

Commissioner Milne said there had been a suggestion to allow three weeks for everyone to review the materials, and she agreed that this would be a good idea. This could be followed by two more weeks for review and an additional week to receive written testimony.

Commissioner Carlson said this would mean closing the public hearing but leaving the record open. Commissioner Carlson said the board could review the conditions in a work session with staff.

Jo Stonecipher, Marion County legal counsel said the work session would be a public meeting but not a public hearing. Members of the public would be able to attend the meeting but would not be able to participate.

Commissioner Brentano said they needed a place to debate and discuss the case, followed by another chance to review their work.

Ms. Stonecipher reviewed the statutory aspects of this matter and the amounts of time required for submissions of new written material and responses. This would mean keeping the open record for three weeks to allow submission of additional written material by any interested party, followed by a two-week period where anyone could submit material in response to the new materials submitted during the three-week period, followed by a one-week period for submission of a final rebuttal by the applicant.

Mr. Anderson confirmed that the dates for the submission of additional material would be July 9

(three weeks from today) for all parties, July 23 (two additional weeks) for responses to the new material, and July 30 (one additional week) for the final rebuttal by the applicant.

MOTION: Commissioner Milne moved to close the public hearing, but keep the record open for three weeks to allow any party to submit new material, followed by a two week period where anyone could submit material in response to the new material, followed by a week for final rebuttal by the applicant. The commissioners will hold a work session after all information is submitted and will issue their the final decision as an action item at a regularly scheduled board session. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano adjourned the meeting at 10:20 p.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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

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