

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 16, 2008
Marion County Courthouse Square

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

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

CALL TO ORDER: Chair Brentano called the meeting to order.

PUBLIC COMMENT

None.

CONSENT

BUSINESS SERVICES – HUMAN RESOURCES

Approve the reclassification of a position from Sign Shop Supervisor to District Road Operations Supervisor and delete the classification of Sign Shop Supervisor.

Approve amendment #6 to add \$50,000 to the Olympic Security Services contract for security services in Marion County Courthouse and court annex locations and extend the term of the contract until September 30, 2008.

FINANCE

Approve amendment #3 to add \$125,000 to the Redwood Toxicology Laboratory contract for laboratory services and extend the term until June 30, 2009.

HEALTH

Approve amendments #44 and #45 to the Oregon Department of Human Services 2007-09 intergovernmental agreement for the financing of community mental health, developmental disability and addiction services: amendment #44 to add \$112,627 and amendment #45 to add \$714,000.

PUBLIC WORKS

Approve ratification of a memorandum of understanding with the Marion Soil and Water Conservation District for sharing information.

Approve the contracts with the following companies to provide rock products: Davis Creek Rock; Delbert Hupp; Knife River, Corp.; North Rock, Inc.; PNP Properties; River Bend Sand & Gravel; Salem Blacktop & Asphalt Paving, Inc.; Cemex; Silver Mountain Christmas Trees, Inc.; Turner Gravel, Inc.; and Windsor Rock Products.

Approve the contracts with the following companies to provide hot mix products: Roy L. Houck Construction, Inc., Salem Blacktop & Asphalt Paving, Inc. (dba: Cemex), River Bend Sand & Gravel, and Morse Bros., Inc. (dba: Knife River).

PUBLIC WORKS – PLANNING

Receive appeal of the hearing officer's decision in conditional use CU07-76, Levy, Clerk's File#5587.

TREASURER

Approve distribution of revenue from Oregon Department of Forestry pursuant to HB 5024.

MOTION: Commissioner Milne moved approval of the consent calendar.
Commissioner Carlson seconded; motion passed. A voice vote was unanimous.

Commissioner Carlson noted she had some missing contracts in her book.

ACTION

BUSINESS SERVICES – HUMAN RESOURCES

1. Consider ratification of the ONA collective bargaining agreement effective July 1, 2008 through June 30, 2012. – Theresa VanDusen, Pat Donenfeld

Theresa VanDusen, human resources manager and Pat Donenfeld, human resources supervisor, were in attendance to present the collective bargaining agreement for the Oregon Nurses Association (ONA). Ms. VanDusen said the bargaining process with the nurses began in February 2008, and after several sessions, the nurses and the county were able to reach a tentative agreement. The nurses ratified their contract on June 26, 2008, and it is effective July 1, 2008. She added there are currently twenty-three nurses covered under the contract.

Pat Donenfeld said the contract with ONA is a four-year contract, with a reopener on wages and benefits at the two-year mark. The county negotiated for the PERS pickup effective July 1, 2008, to be paid for by the county. The cost of this pickup is being partially offset by the reduction of one week of compensation credits for this group. Another item negotiated in this contract is the addition of the sunset of compensation credits for new hires. Newly hired nurses from July 1, 2008, forward will not receive compensation credits, but instead will receive the value of that rolled into their salary rate.

Ms. Donenfeld said that effective July 1, 2008, a four percent market adjustment was negotiated because the nurses were below the average market for comparable positions. This was affecting recruitment efforts for nurses by the Health Department.

Effective July 1, 2009, a three percent cost of living adjustment was negotiated, as well as an eight percent increase in the health insurance cap paid by the county. Effective January 1, 2010, an

additional eight percent increase in the health insurance cap will be added.

Ms. Donenfeld added that in this contract a seasonal position category for programs that only function a partial year was also negotiated.

Ms. VanDusen requested that the board ratify this contract effective July 1, 2008.

Commissioner Carlson asked if there was an option in the following year for current employees to roll their compensation credits into their wages. Ms. VanDusen said that in this particular contract the language did not get added, but she would be offering that option to them. Commissioner Carlson said she felt this was a very good contract.

John Lattimer stated this was a very difficult contract to negotiate and to get a four-year contract is a large undertaking. Mr. Lattimer gave Ms. Donenfeld and Rod Calkins kudos for working so hard on this contract.

MOTION: Commissioner Carlson moved approval of ratification of the ONA collective bargaining agreement effective July 1, 2008, through June 30, 2012. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

PUBLIC WORKS- PLANNING

2. Consider hearings officer's recommendation to grant vested rights determination case VDR M05-46, McCullough and Bartholomew, Clerk's File#5020. - Sterling Anderson

Sterling Anderson, planning manager, stated this case involves a request to determine whether the applicants have a common law vested right to continue and complete a use granted under state and county waivers of the former Measure 37. Based on the partitioning case #P06-41 to divide a 3.32 acre parcel of land in the acreage residential zone into two parcels of 1.82 and 1.50. These are located at 499 459 Cherokee Trail Lane, Salem. The hearings officer held a public hearing on this case on February 13, 2008 and on June 26, 2008, the hearings officer issued a recommendation to grant the request. No request for a hearing has been submitted and the case is now back to the board for consideration.

MOTION: Commissioner Milne moved approval of the hearings officer's recommendation to grant vested rights determination case #VDR M05-46, McCullough and Bartholomew, Clerk's File#5020. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous

3. Consider hearings officer's recommendation to deny vested rights determination case VDR M06-83, Fischer, Clerk's File#5220. - Sterling Anderson

Sterling Anderson, planning manager, stated this involves a request for determination as to whether or not there was a common law vested right to complete and continue a use granted under state and county waivers, Measure 37. The claim was initiated also based on Marion County subdivision case #07-10, which was to subdivide a 20.43-acre parcel into eight lots and place dwellings on each of the lots. The property is zoned special agriculture and is located 4731 71st Avenue, Salem. The hearings officer held a public hearing on February 27, 2008. On July 1, 2008, the hearings officer issued a recommendation to deny the request. Mr. Anderson stated there has been no request for a hearing on this case and it is

now back to the board for final consideration.

Commissioner Milne asked if the applicants themselves had not requested a hearing. Mr. Anderson confirmed the applicants had not requested a hearing. Commissioner Carlson commented it was interesting reading the discussion about the values because it was the same discussion that has been held at the board level. She felt it unfortunate that someone could spend as much money as this applicant and it is still called no preparation and cannot be approved.

Commissioner Brentano said the difference between putting mobile homes on it versus luxury homes definitely changes the ratio for value. He said he knew the area and it is about 40 percent mobile homes now. Commissioner Brentano said that he didn't agree with disqualifying attorney fees. Mr. Anderson said this falls under preparation as opposed to the actual implementation. He said that under the common law vested rights, the expenditures for preparation as opposed to actual implementation of an approval under a vested right is not countable.

Commissioner Brentano said he understood, but if he was thinking he wanted to do something he felt all costs put in to accomplish this task should be counted. Commissioner Milne added if you don't do the preparation, you don't get to step number one, so how can you get to step number two, which would be the expenditures that would be allowable. She felt it didn't make sense. She also didn't agree with the applicant not being able to count his time. Time is money, particularly when it is related to land use and developing a piece of property. She added this is an extremely good example of an applicant investing many thousands of dollars into their property and it is thrown away because of Measure 49.

Mr. Anderson said that the common vested rights law is a fairly complex and at the same time, it is not well articulated in legal context because there has only been a few that have really clarified what it really takes.

MOTION: Commissioner Carlson moved approval of hearings officer's recommendation to deny vested rights determination case VDR M06-83, Fischer, Clerk's File#5220. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Commissioner Brentano called for recess at 9:23 a.m.
Commissioner Brentano reconvened the meeting at 9:30 a.m.

PUBLIC HEARING

PUBLIC WORKS – PLANNING

A. Public hearing to consider the adoption of an ordinance to amend the Marion County Comprehensive Plan by adopting City of Hubbard Comprehensive Plan amendments (LA 08-1).

Brandon Reich, Planning Division, reported that the City of Hubbard is proposing an UGB (UGB) expansion to include 19 acres of land located toward the southwest of the city on either side of Schmidt Lane, adjacent to the city limits. The area being proposed to be added to the UGB to provide additional

commercial industrial employment land to accommodate future employment needs projected for the year 2027. As part of the amendment proposal, the city is also proposing adopting new policies into its comprehensive plan regarding economic development. The city has held public hearings on this amendment and has approved an ordinance that would take effect following concurrence and adoption by Marion County of the proposed amendments. The proposal from the city is only for employment lands within the city, no residential lands are being considered at this time. The city is preparing a proposal for residential lands and may be bringing it to the county for consideration later. The 19 acre UGB amendment involves six parcels consisting of undeveloped land being farmed that is zoned acreage residential, two parcels of land developed with commercial uses zoned commercial and approximately 2.6 acres of land in the right-of-way of 99E and Schmidt Lane.

The city has conducted an inventory of existing commercial and industrial land within the city. The city contains 31 acres of commercial land and 53 acres of industrially developed land. Additionally, there are 26 acres of buildable land within the city zoned for commercial or industrial use that are either not developed or redevelopable in the city's inventory. The city has also performed economic opportunities analysis developing employment projections for the year 2027. Based on the kinds of industries and employment existing in the city now and anticipated for the future. By looking at the number of employees per acre that are working in different industries, the city identified a need for 36 acres of land to meet future employment demand in 2027, and for a greater variety of parcel sizes to accommodate different types of commercial and industrial development.

While the economic opportunities analysis identified a need for 36 acres of commercial industrial land, the inventory identified 25 acres of vacant or redevelopable commercial and industrial land. Therefore, an additional nine acres is required for commercial and industrial development by the year 2027. In addition to the nine acres, the city included land for future public improvements such as streets, a 6 acre commercially developed parcel in the same area to be served with city services and also land in the right-of-way for a total of 19 acres. The city analyzed alternative locations for the UGB expansion and selected the one proposed because it's an area of higher priority to be included in the UGB. In addition, it is already rural exception area zoned acreage residential and is adjacent to an existing industrial area of the city and more easily served by city of services. The city performed the analysis required by Goal 14 in determining what land to be added to the UGB and reviewed the proposal for consistency with the City of Hubbard Comprehensive Plan goals and policies finding that those were satisfied by the proposal. The city also provided findings related to the Marion County/City of Hubbard UGB and policy agreement and the Marion County Comprehensive Plan demonstrating compliance with both.

Notices of the proposed amendments were provided to the other 19 cities within the county, public agencies, advisory groups, interested persons and property owners within the notice area. Notices of the public hearing and amendment proposal were also provided to area newspapers. Marion County planning staff and the State Department of Land Conservation and Development met with the city and its planning officials and consultants on various occasions during the land use planning process. The staff reviewed the materials and provided comments and data assistance to the city. Marion County Public Works transportation/engineering section reviewed the amendment proposal and provided comments, particularly that once Schmidt Lane is improved and inside the city, it should be maintained by the city and not Marion County. The city has indicated agreement on this item. The 19 acres of property proposed to be added to the Hubbard UGB are currently designated rural residential and commercial in the Marion County Comprehensive Plan and zoned acres residential and commercial. Should the 19 acres be included within the UGB, the rural land designations in the county would be

replaced with the City of Hubbard Comprehensive Plan, urban land use designation of industrial to distinguish between the projected urban use of the property and rural lands outside the UGB. The property would also need to be rezoned from the current county rural zone code designations of acreage residential and commercial to a county urban zone code designation applying to lands in the UGB, but outside the city limits. The appropriate rezoning for this property would be a county urban zone designation of urban transition 5-acre. Applying this designation to properties that are currently in the rural zones allow for the continued use of these properties for agricultural uses until the properties are annexed into the city and developed for urban commercial or industrial use. It also allows existing commercial uses to continue as conforming uses. Staff recommends that the Board of Commissioners concur on the proposed City of Hubbard Comprehensive Plan amendments and direct staff to prepare an ordinance for board adoption approving the amendments to the Marion County Comprehensive Plan by adopting amendments to the City of Hubbard Comprehensive Plan and redesignating and rezoning the properties as described.

Commissioner Carlson said she was hearing the property was primarily industrial, but the letter says residential and employment land needs and asked Mr. Reich how is that mixed on 19 acres. Her second question was about the assumptions on density and the mix of multi family and single-family residential housing inventory analysis. She said the proposed population project was for 2027, but the housing analysis was based on 2000 census data and she wanted to know how this works. Mr. Reich said what had originally happened was that Hubbard had prepared a proposal that included residential, commercial and industrial land. The City Council of Hubbard was making some decisions about the residential component and they decided to separate that from their industrial and commercial lands, so some of the comments in the letters are based on the residential, commercial and industrial. The residential has been separated out and will come back to the commissioners later. He clarified this is just commercial and industrial because it involved a smaller area and is straight forward thus getting it through the process more quickly. He added that an economic opportunity analysis does an employment projection and it is different than what you do for a residential population projection. It is projecting the number of employees based on the types of industries and the way those industries are going to grow. The 2027 employment numbers that were used to generate the amount of land needed aren't the same as what will be done in the future when all the residential numbers for the people living in town.

Commissioner Carlson asked about the fact that the 2027 numbers haven't been coordinated with the rest of the county's numbers at this point isn't a problem. Mr. Reich answered that it was not a problem and these are actually employment numbers, so they are not residential numbers and will not be coordinated in the same way.

TESTIMONY:

Support:

Suzanne Dufner, planner with the Mid-Willamette Council of Governments, and contract city planner for the City of Hubbard. She said she has been helping the city through their comprehensive plan process and came to recommend that the commissioners approve the amendments.

She said this project has been going on for several years. The city has done an inventory of vacant land and has done an employment forecast, which shows that there is actually a deficit and a need for both commercial, and industrial employment land. Ms. Dufner said there is also a need for residential land,

but at this point they are requesting the commissioners consider the commercial and industrial piece. She said they are anticipating within the next six months that the residential piece will be coming forward. Ms. Dufner said there were some kinks that needed to be worked out with the residential plan looking at the areas around the city that they were going to expand. The commercial industrial under the state's priority system for expanding a UGB expansion is straightforward and there is priority given to bringing in the areas that are called the exception lands that are not the prime farm areas. The city has several areas in town with that designation, north and south of the UGB. The reason the city chose the area south of the UGB for commercial industrial is that these parcels met the city's needs for industrial commercial land. They were the appropriate size parcels, there are public city services that can be extended and made available to those properties, whereas to the north of the UGB the parcels are much smaller in size and have houses on them and is much more difficult to get city services to those.

The city has had a number of hearings on the proposal, which began with the first public hearing in August 2007 before the Planning Commission. They unanimously recommended approval of the commercial industrial expansion to the council. The council then had a hearing in December 2007 and again, unanimously recommended approval of the commercial industrial expansion. Ms. Dufner explained the reason this proposal had not come before the commissioners until today was there was actually an amendment made between December and today to include several parcels that have already been developed with commercial uses on them. She said the city respectfully requests the commissioners approve these amendments.

Commissioner Brentano asked what came up at the hearings. Ms. Dufner said because at first they were looking at commercial industrial and residential, there were a number of people that testified. The opposition consisted of people against the residential component of the UGB expansion. The commercial industrial did not receive any objections through the city's process.

Opposition:

Carl Larin, 2990 NE Schmidt Lane, Hubbard, said he took a little exception to what Mr. Reich said about informing the public. Mr. Larin said he is directly affected by what is happening and the first he heard of it was when the county informed him. He added that he is going to lose frontage because of the widening of the road. He believes this would put the street right at his front door. The loss in value to his home by making this property industrial is enough of a loss and now they want to take 10 more feet off of his property.

Mr. Reich said the requirement for notice is to publish it in the newspaper and the city published those notices. Marion County published a notice in the newspaper as well and sent out a notice to neighboring landowners. Commissioner Brentano asked about the right-of-way and if there were other opportunities to make it work better. Mr. Reich explained that there is a timeframe kind of solution and that is the improvements won't all occur at once. As the property gets brought into the UGB the permits for Schmidt Lane may not occur until it gets into the city. He added that the right-of-way exists today and is in place, but it hasn't been developed or improved. This won't be widened until the property is developed.

Commissioner Milne asked if there is a 40-foot right of way that currently exists. Mr. Reich said his understanding is that it is a 60-foot right of way, which is 30 foot on either side of the center lane. Only a portion of that to date has been approved.

Commissioner Carlson said she would like to request a public works meeting with Mr. Lauren so things can be clarified. She asked if there was any compensation for Mr. Larin's property being taken. Mr. Reich said not if the right-of-way has already been dedicated.

Ms. Dufner added that looking at the assessor's map it does appear that the right-of-way existing is 40 feet wide. The city's standard for a commercial industrial right-of-way is 60 feet, so additional right away would have to be dedicated and improved. She added it is only the development that's coming in at this point in time and the right of way is 40 feet right now, with an additional 20 feet to be approved later.

Commissioner Milne clarified that this will be an issue between the city and the property owners. She confirmed there is 40 feet that has been there for some time. However, the city's requirements are for a total of 60; the city may need 20 more feet and that is something that will be discussed later.

MOTION: Commissioner Milne moved to close the public hearing, approve the amendments as described and instruct staff to come back with the ordinance consistent with the decision, including the UGB amendment of 19 acres to meet the commercial industrial employment land needs and to include the Hubbard Comprehensive Plan policy pertaining to economic development and the redesignation of these 19 acres as described. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

B. Public hearing to consider appeal of hearings officer's denial of administrative review, case AR07-45/Parisian Trust, Clerk's File #5578 (continuation).

Sterling Anderson, planning manager, explained this case is a continuation of a hearing. The applicant is proposing to replace an existing dwelling with a new dwelling, which was destroyed by fire and removed from the property. The request was initially denied by the Marion County hearings officer on March 6, 2008, and appealed to the Marion County Board of Commissioners on March 16, 2008. During the appeal hearing, the board advised the applicant to reschedule the hearing in order to provide additional information and evidence regarding another dwelling that was previously located on the property and identified as a caretaker's residence. The subject property is designated special agriculture (SA) in the county comprehensive plan and correspondingly zoned SA in the county zoning ordinance.

As previously stated, the county hearings officer denied the applicants request to replace the existing dwelling on a 110-acre parcel. The applicant mentioned in a written statement to the hearings officer that an additional dwelling was formally located in the southwest portion of the property and removed in 2001. There were no documents or other information in the file to adequately substantiate that a dwelling was located in the southwest portion of the property. In the hearings officer order dated March 6, 2008, the former McDougall residence, located in the northeast portion of the property was referred to as dwelling #1, and the primary residence and possible dwelling located in the southwest section of the parcel as dwelling #2. The hearings officer dismissed dwelling #2 as not relevant to the applicants claim. At this time the applicant is proposing that a third dwelling, identified as a caretakers residence, was located on the parcel and wants to use that residence as the dwelling under consideration for replacement. Based on the hearings officer's decision, information in the file and additional information submitted by the applicant, staff offers the following comments:

Since the original decision by the Planning Director, David Williams, the previous property owner

submitted letters to the file. The information offers insight and substantiation of the building permit and assessor's documents already in the record and aides in clarification concerning the status of dwellings that might have been formally located on the sight. Previous staff research revealed that a dwelling was located on the site prior to the applicants acquiring ownership of the property. A dwelling was apparently constructed on the site as early as 1920 and is referred to as dwelling #1, or the former McDougall residence, in the hearings officer's decision. Photographs of this dwelling show a two story colonial style residence of substantial size. It appears the McDougall family owned the property until it was sold to Harvey Aluminum, and then to Harvey Machine Company in 1957. Reynolds Metal Company purchased the parcel in 1963 and sold it to David and Janet Williams on July 5, 1990. The applicant acquired the property on October 3, 2005. A statement by James Cartwright, a neighbor, indicated the McDougall house burned down in the 1940's. Other statements by neighbors, as well as county documents, infer that the residence was probably not used again due to the extent of damage.

Written statements by David Williams and other individual's note that a small dwelling remained on the site near the primary dwelling after the fire. The neighbors state the small dwelling was occupied at different times over a period of years. However, according to Mr. Williams, the residence deteriorated over time and was not habitable by the time he purchased the property in 1990. Mr. William's letter dated November 30, 2007, stated that when he purchased the property there was a dilapidated house, some outbuildings and the remnants of a swimming pool. He said that those inhabitable structures were repeatedly vandalized, vacant and had substantially been destroyed by fire. They were beyond repair and represented a liability to the owner. Mr. Williams stated in his letter dated May 21, 2008, that unfortunately the condition of the walls and roof of the derelict second house was not safe to live in. He said there was no longer operating plumbing and plumbing fixtures were strewn about. Mr. Williams hired White Buffalo Demolition and Construction Company to remove all structures from the site in 1991. Building permit and assessor's information verifies those statements.

According to the documents in the file it appears that any remnants of the McDougall residence were gone or insignificant by 1989. An assessor's document dated September 29, 1989, lists Reynolds Metal Company as the owner of the property and includes a note that a house was abandoned and vandalized. The form lists the size of the house as 689 square feet and contained a notation to remove the improvement value. The site plan included with the information delineated a 689 square foot structure with 192 square foot addition and totals 881 square feet. The size of the structure implies that it could be the caretakers dwelling or second dwelling mentioned by the neighbors or previous property owner, and is obviously not the original McDougall house or repaired portion of that dwelling. The demolition permit issued by Marion County Building Inspection collaborates statements by Mr. Williams regarding the time of removal of the structure from the site. The demolition permit identifies a one story vacant house of 815 square feet. Subsequently, the alleged caretaker dwelling and all other structures were removed from the site by July 1, 1991, when Marion County Building Inspection issued the demolition permits. Aerial photographs taken in 1992 reveal the site is bare land cleared of structures. Staff concludes that assessor's information dated September 29, 1989, noted a residential structure was abandoned and vandalized. This information is verified by the previous property owner's description of the structure when purchased in 1990. The provision that a destroyed dwelling located in a resource zone must be replaced within one year is in ORS 215.136 and implemented in Marion County's policy.

Based on the available information, it appears the caretakers dwelling was abandoned at least 19 years ago while owned by Reynolds Metal Company. The structure was beyond repair and removed in 1991 by Mr. Williams. Since that time no attempt has been made to restore or replace the dwelling.

Subsequently, the request cannot meet the criteria in the Marion County rural zoning ordinance. Additionally, the proposal does not meet ORS 215.136, which states restoration or replacement of any use described in subsection 5 of this section may be permitted when the restoration is made necessary by fire or other casualty or natural disaster. Restoration replacement shall be commenced within one year of the occurrence of the fire casualty or natural disaster. If restoration replacement is necessary under this subsection restoration or replacement shall be done in compliance with ORS 195.260 1 c, which in this case is not really applicable because it's far beyond the one-year time frame. Based on the available information, planning staff concludes that the dwelling abandoned at least 19 years ago and removed 17 years ago cannot be replaced on the property and concurs with the decision of the hearings officer denying administrative review, case #AR07-045, not only to the McDougall house which was the hearings officer's decision, but also for the caretakers dwelling, which was the one removed 17 years ago from the property.

Commissioner Carlson asked if it would have been possible to rebuild if the Williams had made an attempt rather than demolishing the building. Mr. Anderson said he believes the Williams would have received an approval to replace a dwelling on the property at that time based on the one year factor and that there was still a structure there. He added that at that time they broke the chain. Commissioner Carlson followed by asking if it was represented to Mr. Pir that he could build a house by the person that sold it to him. She asked if it was sold as a residential lot or as farmland. Mr. Anderson said he doesn't know what representations had been made to Mr. Pir upon sale, but at the time there were no dwellings on the property. He said the price paid for the property did not reflect having a dwelling on it at that time.

Commissioner Brentano clarified the procedure since this hearing was a continuation. Ms. Stonecipher stated that when the board continued the last hearing they agreed to accept more information so it would be appropriate to hear testimony.

Commissioner Milne stated that the hearing was being continued to allow amendment of the petition and gathering of additional information.

TESTIMONY:

Support:

Henry Pir, P.O. Box 3772, Salem, said as you recall from the previous hearing the board requested additional information. Mr. Pir said he had brought letters of testimony with him.

Commissioner Brentano recessed the meeting at 10:05 a.m. so copies could be made for the board's review.

Commissioner Brentano reconvened the meeting at 10:20 a.m.

Mr. Pir talked about the information he provided regarding the second dwelling (caretaker building). He named the people that submitted information in support of this rebuilding. He said the evidence as well as the information the Assessor's Office has indicates the caretaker dwelling was still on the property and taxes paid until the year of 2000-2001. He believes the caretaker dwelling was there until that time because he has letters from witnesses that said there were people that lived in this dwelling from time to

time. He said the dwelling was occupied as a residential dwelling during a year after the main colonial house burned. Dr. Williams initiated the replacement process as described in detail at the previous hearing and his letters of testimony are part of the record. Mr. Pir said the replacement process was followed by himself since October 2005, which originally he contacted the planning department and spoke with Brandon. He added that this process has been going on for almost three years. Mr. Pir asked the board to keep in mind that ORS 215, subsection 30, and subsection 5 states “change of ownership or occupancy shall be allowed.” He said everything mentioned he believes will satisfy what the board members requested at the first hearing. He added that apparently there is a new way of looking at this, which is different than what Mr. Anderson presented earlier.

Commissioner Milne asked if Mr. Pir was referring to the memorandum dated June 27, 2008? Mr. Pir confirmed that was correct. She asked Mr. Pir to comment on the memorandum. Mr. Pir said that the memorandum states that SA zoning is for promoting continuation of commercial agriculture, which is not exactly what Chapter 137 states and is not described by the planning staff. He added the purpose is for farming operation, grazing of livestock, orchards, grains, grasses, christmas trees and specialty crops. Mr. Pir said the staff mentioned exclusive farm use (EFU) was the zoning for this property. Mr. Pir said he disagreed; this is SA and is called “hobby” ranchers or a “hobby” agricultural type environment. He said the memorandum also stated the property owner failed to replace the dwelling within the required one year period as stated in the ordinance. His response to this was that the ordinance uses the word “commenced”. He said it was his belief that staff felt the work had to be done in that one year time period. He said that Dr. Williams had started the process and that he has pursued it this far. He added that the law allows for a change in ownership to be continued.

Mr. Pir clarified the different dwellings and said the property had an original home site (dwelling #1), which burned. Next to the original site was the caretaker dwelling (dwelling #2) and then farther down the property was dwelling #3 in the forest area. Mr. Pir said he is only talking about dwelling #2, which was the caretaker unit. He said the memorandum states all the dwellings were burned and that is incorrect. The only dwelling burned was the main house, not dwelling #2 or any other structure. The memorandum also states that all buildings have been removed from the property and Mr. Pir said this was also incorrect. In 1999 the only things removed were the burned house, shop and barn. The second dwelling was in place until years later when Dr. Williams removed it in 2001 and until then all taxes were paid.

Commissioner Carlson said she was not finding this information very useful. She said she appreciated the time Mr. Pir spent collecting this information and that there are many different facts, but the board can't ignore the law. She felt the only argument Mr. Pir actually had was that the replacement had been commenced within one year. Commissioner Carlson said she needed a chronology because there is too much extra information that is not pertinent.

Commissioner Carlson reiterated that there were three dwellings. The hearings officer dismissed dwelling #1 due to it being burned in the 1940's and it was removed from the property in 1991. Mr. Anderson said the second dwelling was actually in the southwest portion of the property and was removed in 2001. Commissioner Carlson asked Mr. Anderson if he felt there was still a possibility with dwelling #2. Mr. Anderson said he didn't feel there was a possibility with dwelling #2 for the same reasons that all three of these former dwellings on the property were removed no later than 2001. It appears that the most recent structure on the property that was a former dwelling was removed in 2001. The applicant purchased the property in 2005 and there was no commencement that was implemented

during that time to replace any of the dwellings on the property by previous owners. Mr. Anderson said that did not occur until Mr. Pir's application came forward.

Commissioner Carlson stated there is a letter in the file from Dr. Williams dated May 21, 2008. In the letter he stated they took a few preliminary steps in preparation for the rebuilding. They dug a well, professionally trimmed and removed some trees and the dilapidated structures were bulldozed away. Dr. Williams stated in his letter that they were under the impression that the absence of the old primary house would not be an impediment to obtaining building permits because the secondary house was in existence. Commissioner Carlson said that unfortunately Dr. Williams letter doesn't state what year that preparation happened in. She asked Mr. Anderson what would happen legally if the board could get further testimony that the preparation commenced within the first year. Mr. Anderson said it does appear that in the late 1980's or early 1990's that the Williams commenced some activity. It would have been viewed at that time that it was commencement for replacement. However, they state that the fire in California destroyed their primary home in Santa Barbara and ultimately directed their efforts away from building in Salem. Mr. Anderson said it appears they ceased those efforts to commence replacement because of their situation in California and basically, no further action was taken on their property in Salem until it was sold. They commenced some activity in 1990, but ceased it very shortly after.

Commissioner Carlson stated the language says, "restoration or replacement shall be commenced within one year," from the occurrence of the fire casualty or natural disaster. She asked how you cease commencing something legally? Commencing means you begin it. She asked if there was a law that states how long that commencement has to begin or that the chain cannot be broken? Mr. Anderson said that was up to the board. He said there may not be any clear law that states you have one year to finalize or complete it, but the fact that the Williams did stop activity 17-18 years ago and the property has been sold, it raises a question of whether it is still a valid commencement. Is it possible to commence something one day and have it last forever? Mr. Anderson felt that the answer is no and that you have to have a cutoff at some point. He said where the board establishes that is up to them or if they establish it at all. He said it was his opinion in this case.

Commissioner Carlson clarified that the commencement involved dwellings #1 and #3 and not #2, or does it matter. Mr. Anderson said the commencement appears to be for the McDougall residence, which is dwelling #1. Commissioner Carlson confirmed that the Williams could have had a valid building permit if they would have continued commencement. Commissioner Carlson said that dwelling #1 had intact plumbing, etc. before the fire, but what does the board have to do to establish plumbing and the different elements needed for dwelling #2 and #3, if Mr. Pir were to put in an application based on one of those two dwellings. Mr. Anderson said it is difficult when there is nothing there to prove that one of the dwellings had all the elements, particularly as dwellings get older, it might be possible they didn't have interior plumbing. He said the only way that evidence could be provided is that at some point the other structures, the caretaker dwelling, would have constituted dwellings, apparently very small, but would have probably had most of the elements required for a dwelling. He reiterated part of the problem that has been discussed before is that the requirements are in the present tense, but there are no dwellings now to look at. Mr. Anderson said it is difficult to prove, but there are probably some assessor records that list the square footage and that it was used as a residence. He said there is testimony in the record to indicate that all three of those buildings were once dwellings. The main question is how long after a dwelling has been removed and there has been a change in ownership, how long can something that appears to be commenced still be valid.

Commissioner Carlson said there is a letter in the file dated May 20, 2008, from Clarence Mink who discussed the caretakers home having water, well and electricity and that people were living there. Commissioner Carlson said if people were living there she would assume that they had the basic elements of a home.

Commissioner Milne asked for clarification that the county is referring to the caretakers' home as dwelling #3 and Mr. Pir is referring to it as dwelling #2. She asked Mr. Anderson if it mattered which structure or living unit is replaced between the main house and the caretaker house because they are on the same tax lot. Mr. Anderson said that was correct. The evidence shows that people stated someone did live in the caretaker house and had water and electricity. She wanted to verify there isn't any law or ordinance that has put time frames other than to commence within the year. Her position was there was a commencement and it wasn't just a one-day commencement. It appears that there were some things from time to time that were done. She added if there is nothing that would restrict or say that a replacement has to be completed at any one point in time, then it is the boards' decision.

Jo Stonecipher said one thing that isn't clear to her and that the board might want to have in the record is whether or not whatever replacement was commenced, is that what is continuing because there is a concept, which is more equitable and fits the work the board has been doing with vested rights. The idea that someone has started something and continues it gives them a right to continue, but there is also a concept in land use and in equity abandonment. She felt this is what Mr. Anderson was trying to explain to the board and they need to decide at some point when someone begins to do some of the groundwork for rebuilding (i.e., remove a tree, well locator) and then don't proceed further if it would be considered abandoned under land use and they wouldn't be able to revive it many years later unless they had established that they had continuously worked at this or could justify it. She added all this is because equity is based on good faith and is different than what is looked at in land use, which is quite standard and criteria driven. She said if there is a commencement of one individual to look for a well, etc., is it a continuation of that work that is going forward here versus a continuation of boot strapping that on to something completely different. She felt that would be inconsistent with the standards that are set in the statutes, which govern the notion that farm use is intended for farm use, and these restrictions in 215 and the county's 136 and 137 both apply to EFU land. Both SA and EFU zones are for purposes of state law and our comprehensive plan are EFU zones. She added that she had found the deed in the planning file and the property, which is 110 acres most recently sold for \$440,000. She said she thought that \$5,000 per acre is the farm use value and perhaps is a factor in the board's equitable consideration here. Ms. Stonecipher said the date of sale was in 2005.

Commissioner Carlson summarized that dwellings #1 and #3 were removed in 1991 and #2 was removed in 2001. She commented that this is a very unique case. Discussion followed regarding looking at all three dwellings as a package in the application as opposed to separating them because there is testimony in the letters stating that the Williams believed they had the right to continue to build. They kept a dwelling on the property although they had removed the other two for safety reasons. The Williams commenced replacing a dwelling within the first year in 1989-90. At least two of the dwellings, if not all three, had the makings of a home with water, electricity and plumbing at some point. Discussion continued regarding Mr. Pir amending his application to include the other two dwellings and making it a package. This would make the distance in time for dwelling #2 only four years from the time Mr. Pir purchased the property and the time when the dwelling #2 was removed. At the time of purchase, Mr. Pir immediately started the process to see if he could farm and so on.

Commissioner Carlson added that there is a letter from Soil and Water Conservation District that states having a dwelling on the property is a necessary feature of farming. In addition, to develop a plan to cultivate and restore the land, it is critical for an owner/operator to live on the premises and have headquarters where heavy equipment, fuel, tools and a workstation for repairs can be conducted. Commissioner Carlson said if this was the intent of the SA/EFU, then the dwelling furthers the philosophy and intent of having farmland. She asked Ms. Stonecipher if any of these legal arguments place the commissioners in severe violation of the Oregon Statutes.

Ms. Stonecipher said she had some difficulty with the Conservation District letter because it is contrary to the 80-acre, \$80,000 requirement that has been imposed by statute and administrative rule. She wasn't saying that the letter should be disregarded, but the same could be said about any piece of farmland in Oregon. Commissioner Milne said that was only looking at that one issue versus all the unique aspects of this case. Commissioner Carlson added that the other piece is of the 80-acre, \$80,000 rule is that if you want to put a home on the property and there has never been one before. She added that in this case there were three dwellings on this property and there has been all kinds of testimony about the difficulties of actually farming the property as well.

Ms. Stonecipher said her first reaction was that you have the \$80,000 rule and that is really inconsistent with state law. She understands in the circumstances of this case that could be something the board may want to consider. The statutes and ordinances are not written to take in different considerations. She said perhaps this gets to the boards determination of a general analysis of a commencement in 1989, something on the property in 2001, which may or may not at that time had qualified as a dwelling. However, there is evidence that at some point it qualified. Ms. Stonecipher said if the board wanted to piece all these things together, that is certainly something the board could do. She added if the matter is appealed, they could strive to defend it. She didn't believe the board would be setting a precedent that would bind them because of the unique circumstances.

Commissioner Carlson asked if adding dwellings #2 and #3 to the application make this legally more tenable than it currently is with just dwelling #1? Ms. Stonecipher said she didn't know if it really matters.

Commissioner Milne said they have certainly heard the testimony from Mr. Pir of what his desire is and if the board were willing to make a motion to proceed in some way, all conditions could be listed in the ordinance. She added that there was a clear intent in this case to use this property to the highest and best use. It is a very difficult property to find the highest and best use, but each owner has tried to achieve the same result, which is to have a dwelling on the property so that some kind of farming operation can take place. It is clear without a dwelling on the property that this will never be farmed in any kind of productive manner, and largely because of vandalism and lack of respect. There have been three different owners with the same intent. She felt there were some very unique circumstances, but with a story that continues to produce the same result. She said she has not heard a law that would disallow the board to go forward

Mr. Pir said that he didn't understand he needed to amend the application, but would be willing to do this if it needed to be done. He said when he applied for this replacement dwelling, his intention was one dwelling and it still is.

TESTIMONY:

Support:

James Cartwright, 6774 Skyline Road S, Salem, said he wanted to commend Mr. Anderson on the completeness of his report regarding the property. Mr. Cartwright said his interest in the property is that for all these years it has been derelict property. He said the property was nothing but weeds and felt that we, as citizens, should encourage people to do things with their property. He added that when the Pirs purchased the property they started cleaning up, building fences and investing money. He said he would like to see the area cleaned up. He said the red hills around Salem are being treated like prime farmland, but they are not. He said you can grow Christmas trees, grass seed and animals, but you can't grow strawberries. Mr. Cartwright said he would like to see the Pirs be able to build a house on the property.

Commissioner Milne commented that Mr. Cartwright said it all very well that the best use of this is for someone to put a house on the property and clean it up. She added that if she isn't told there is a law that disallows it, she is all in favor of it.

Commissioner Carlson thanked Mr. Anderson for all the background research he did. She said that as a board they do have some discretion in this case. If the board can find a way within the law to do what they feel is right, she wanted to do it. She said this case makes sense from a common sense point of view. However, she felt it was a fine line from a legal point of view. She said the board is not establishing a precedent and she did not want others to come in and try to do this because this case is unique. She felt the board could broaden their evidence to encompass the three dwellings on the property although the application only addressed dwelling #1. In doing that and with the facts provided in testimony and in writing the board could establish that within the package of the three dwellings there were dwellings on the property that were habitable at one point in time, as well as had all the elements that the statute required. When the Williams had the property they commenced within the first year to try and replace one of the dwellings. She said that commencement meets the letter of the law of ORS 215.130. She said others could make an argument that there was a gap between the time of commencement and when the present owner purchased the property. Depending how that gap is viewed, it is 18 years or 4 years, however there is nothing in the statutes that requires the board to consider whether the commencement ceased, or whether the commencement meets the letter of the law. Commissioner Carlson said if you look at the spirit of the law, land use is never easy and her belief is that the \$80,000 rule was to insure that people who lived on farmland didn't get to put luxury homes on that land and it was kept as farmland. She felt that in this instance dwellings did exist and at what point do you get to replace the dwelling. She felt that in this case there is enough evidence to make the connection and work within the law and still meet the spirit of the law of replacing homes where a home is necessary. In addition, to place it where it was before and where the prior owners stated it was always his intent to build and would have continued building had not personal circumstances gotten in the way. It was also always the intent of the current owner to do the same. Commissioner Carlson said because of all the arguments she is willing to support the application.

Commissioner Brentano said he thought with the proper emphasis and development Mr. Pir could have made the \$80,000 test with 110 acres and then could have build a dwelling. Mr. Anderson stated the applicant said they had planted many different crops and it was very hard to make that \$80,000 test.

Commissioner Milne agreed that it was possible and that the timeframe for that \$80,000 to actually be achieved might take a long time.

MOTION: Commissioner Carlson moved to close the public hearing and to approve the applicants request to replace a dwelling that was destroyed or removed on a 110.28 acre parcel owned by Parisian Trust in a SA zone located at 6835 Skyline Road in Salem, OR, case #AR 07-45. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

ADJOURNMENT: There being no further business before the board, Chair Brentano declared adjournment at 11:20 a.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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

Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168

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