

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, September 10, 2008
Marion County Courthouse Square

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

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

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

CONSENT

CHILDREN AND FAMILIES

Approve an order appointing Mike DeRochier to the Marion County Children and Families Commission for a term ending June 30, 2012.

HEALTH

Approve amendment #51 to receive \$130,973 from the Department of Human Services for the financing of community mental health, developmental disability and addiction services.

PUBLIC WORKS – PLANNING

Receive hearings officer's decision denying partition, case # P07-78, Fultz, Clerk's File #5596.

Receive hearings officer's decision denying zone change, case # ZC08-05, Fultz, Clerk's File #5597.

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

ACTION

PUBLIC WORKS

1. Consider approval of amendment #3 to the franchise agreement with Capitol Recycling & Disposal to add a fuel surcharge to accommodate rising fuel costs (TO BE ACTED ON FOLLOWING PUBLIC HEARING). – Jeff Bickford

2. Schedule a public hearing for October 8, 2008, to consider the adoption of an ordinance restricting the practice of backyard burning for properties located within the urban growth boundaries of Salem and Keizer. – Jeff Bickford, Sterling Anderson

Sterling Anderson, planning director, stated that this is a request to schedule a public hearing for October 8, 2008, to consider adoption of an ordinance restricting the practice of backyard burning from properties located in the urban growth boundaries of Salem and Keizer. The Marion County Solid Waste Management Advisory Council (SWMAC) considered and passed at their January 2007 meeting a recommendation from one of their subcommittees to ban backyard burning within the Salem/Keizer urban growth boundary area. Backyard burning is already banned within the city limits of both Salem and Keizer.

A public hearing was held on this proposal on December 5, 2007 regarding the draft ordinance. One of the overriding concerns was from landowners with larger parcels. Since that time, the draft ordinance has been reviewed and amended several times. The current draft ordinance allows for several specific exceptions, including agricultural burning, recreation and ceremonial fires, and barbeques. Additionally, there are a number of permitted exceptions including burning for pest/disease control, burning performed on properties that are over two acres in size, burning of materials from a natural disaster, or burning on properties that are classified by the assessor as specially assessed for farm or timber properties. Burn barrels are banned outright in all cases under the draft ordinance.

The Public Works department anticipates a phased-in approach to enforcement of the proposed ordinance; with education primarily taking place during the first full burn season after passage of this ordinance. The department has funded another code enforcement position to help deal with the additional workload that could be generated by adoption of this ordinance.

MOTION: Commissioner Carlson moved approval to schedule a public hearing for October 8, 2008, to consider the adoption of an ordinance restricting the practice of backyard burning for properties located within the urban growth boundaries of Salem and Keizer. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

PUBLIC WORKS - PLANNING

3. Receive and consider appeal of the hearings officer's decision granting partition, case #P 08-006, Scarborough, Clerk's File #5595. – Sterling Anderson

Sterling Anderson, planning director, stated this application involves a request to divide a 5.5-acre acreage residential (AR) zoned parcel into one 2.5-acre parcel and one 3.0-acre parcel located at 5051 Gath Road SE. The minimum lot size in this zone is two acres. In this case the hearings officer held a public hearing on June 4, 2008. Subsequent to that hearing, the hearings officer found the applicants had provided the evidence of compliance with all the applicable criteria and granted the partition application subject to standard conditions. In the appeal, the appellant requests that the board reverse the hearings officer's decision granting this partition. The objection appears to relate to condition #2 of the hearings officer's decision that requires that an access easement granted to the applicants by the appellant (due to a court settlement) be recorded. The condition requires that it be recorded because apparently the easement had not been recorded previously. The appellant argues that the applicants do not have a current easement to their property because the easement was not recorded, and that the court

settlement did not require that the easement be recorded. The hearings officer considered the information and arguments and Mr. Anderson believes that is why the condition was added to the decision. This condition needs to be met prior to the applicant being able to proceed with the partition.

Mr. Anderson then summarized what the board's options would be regarding appeals of land use decisions. He said that in this particular case, the state mandated 150-day time limit for finalizing a decision at the board level ends on September 28, 2008.

Commissioner Carlson asked if recording of the easement was something that is required as part of the county's land use process. Mr. Anderson said he didn't believe it was a requirement of the land use process, but it was his understanding that Oregon was a recording state. He said the easement has not been recorded as yet because there have been delays in getting the easement granted. For some reason the applicants had not followed through and had it recorded. They now have the easement and it just has not been recorded.

Jo Stonecipher said the statutes for recording a document is to memorialize and give notice to any future purchasers that the land is subject to an easement. It preserves ones rights; when a document is recorded it gives notice of a person's claim. If for any reason the easement could not be recorded then this process wouldn't go forward because it is a condition of the partitioning. Ms. Stonecipher said this would be resolved either through the courts or just recording the easement. Commissioner Milne stated that this is not an issue because it will be taken care of. Ms. Stonecipher agreed and said she didn't feel there was any real question for the board in this case.

Commissioner Brentano asked Mr. Anderson to give some additional detail about the swapping from one side to another. Mr. Anderson said that this particular access easement has had a long ongoing battle between some of the property owners regarding the use of two side-by-side 30-foot easements, which actually function as one 60-foot roadway area. He said there are between seven and nine parcels that currently get access off of this roadway. In this case the applicants had an existing easement on the west side to access this easement. However, the court issue came out and dealt with modifying that easement to be from the west side to come in from the south of the applicants corner property and access the two 30 foot easements. Mr. Anderson said it was basically a trade one for another and it appears to be adequate access. It was the hearings officer's opinion that the condition was necessary to have the applicants record the easement so it was fully documented in court records.

MOTION: Commissioner Milne moved to accept the hearings officer's decision granting the partition, case #P 08-006, Scarbrough, Clerk's File #5595. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

TREASURER

4. Consider approval of a resolution authorizing the loan of funds from the environmental services division to the Marion County general fund until receipt of the first payment of ad valorem property taxes. – Laurie Steele

Treasurer Laurie Steele said this is something we do every year and she is here to secure funding for Marion County's general fund. The fiscal year begins July 1 and the bulk of our revenue for the general fund does not come in until November when property taxes are collected. This year the most economical method of securing a loan would be from the public works environmental services fund.

Ms. Steele is asking for a loan of up to \$12 million, which would be repaid by December 1, 2008.

Commissioner Carlson asked Ms. Steele to briefly describe the analysis she went through and to also explain how the county arrives at their interest rate for loans. In the resolution, Ms. Steele requested that the rate to be paid on the loan would be same rate that the local government investment pool is paying to local governments. She said the analysis she did this year was because the county invests its money in more than just the local government investment pool. Ms. Steele said she wanted to insure that the county was not paying an extraordinarily high rate by matching the local government investment pools rate, which is relatively high right now comparatively, or that the county was not paying significantly less than what was being earned in the environmental services fund. She said that the interest rate between the local government investment pool and what the county would be paying to the environmental services fund (from the county's own annualized monthly rate) were only a couple basis points different. She said that traditionally the county has used the local government investment pools rate when securing this loan for the general fund every year. She recommended that the board continue that practice this year.

MOTION: Commissioner Carlson moved approval of a resolution authorizing the loan of funds from the environmental services division to the Marion County general fund until receipt of the first payment of ad valorem property taxes. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

5. Consider approval of a resolution authorizing the loan of funds from the environmental services division to the facilities renovation fund to provide funding for the courthouse/work center project until permanent financing is obtained. – Laurie Steele

Treasurer Laurie Steele said that this resolution is to secure some temporary funding. This would be another loan from the environmental services fund. She said this would be for some critical upgrades that were approved in the budget process to the courthouse and the work release center. Ms. Steele said both locations have some critical issues and need to be fixed. The permanent funding for these upgrades will not be secured until after the first of the year and the projects cannot be delayed that long. She is asking for a loan of up to \$3 million to start the work on these two projects. At the end of the fiscal year the loan would be paid back, which is June 30, 2009.

MOTION: Commissioner Milne moved approval of a resolution authorizing the loan of funds from the environmental services division to the facilities renovation fund to provide funding for the courthouse/work center project until permanent financing is obtained. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano called a recess at 9:23 a.m.

Commissioner Brentano reconvened the meeting at 9:30 a.m.

Commissioner Brentano changed the order of the public hearings to consider amending the Marion County Comprehensive Plan first.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS - PLANNING

A. Public hearing to consider amending the Marion County Comprehensive Plan by adopting amendments to the City of Donald Comprehensive Plan. – Les Sasaki

Les Sasaki, planning division, reported that this is an urban growth boundary (UGB) amendment proposal that was initiated by the City of Donald for the purpose of addressing an employment land need that they have in their jurisdiction. Under goal 14, jurisdictions are allowed to have a single focus on their UGB proposal. They are allowed to look at employment lands, public lands or residential lands as a single item without having to necessarily address the other land need issues at the same time. Under the provisions of goal 9, which addresses economic development and the issue of employment lands, it sets forth the requirements with which a jurisdiction needs to look at in determining its employment land needs. Goal 9 allows an economic opportunities analysis (EOA) be conducted to determine what the employment land needs are. The requirements of an (EOA) is to review all the economic factors regionally, locally and in the state to develop a strategy upon which you develop an economic development plan for the community.

Mr. Sasaki said the City of Donald looked at and conducted an EOA, fulfilled the requirements under goal 9 and developed an economic development strategy. Their strategy looked at target industries for their particular community. Their target industry identified in their EOA is for warehousing and distribution. The City of Donald also recognizes that particular industry may include the assembly and repackaging of materials or an industrial type park associated with those types of uses. The second part of their strategy was to look at the expansion of existing businesses in the community. The key point for the City of Donald was to allow expansion rather than relocation of existing businesses out of their community. The third part of their strategy was focused on service types of uses, which include those providing professional services and/or retail types of services. It is primarily based upon growth in the community.

Mr. Sasaki said the proposal is for a little over 40 acres of land. Those 40 acres are divided among four different parcels that are located in different areas around the community. Two of the parcels that are under consideration include land adjacent to existing businesses that are looking to expand their uses. One of the parcels is on the south part of town and is between six and seven acres. There is also a four to five acre piece on the west end of town. These would accommodate the expansion of existing businesses in the community. The third parcel is on the north end and is approximately 27 acres and is targeted for the warehouse and distribution industry. The fourth parcel is a little over one acre at the intersection of Main Street and Butteville Road and is intended for commercial uses along Main Street.

Mr. Sasaki said that part of goal 14 is that when jurisdictions are looking at urban growth boundary expansions they need to provide a long range forecast for population need. Under goal 9 when looking at employment lands, there is an option of looking at population growth relative to employment growth for a particular community. This is not necessarily required to be used as a means of looking at your employment land needs and in this particular case the City of Donald did not chose this option. They chose to look at the provisions under goal 9 and the EOA, which allows them to look at particular sites based on a particular strategy. The city opted for particular site needs to accommodate the target industry of warehousing and distribution and a site that was between the 25 and 50-acre size category for their expanding businesses. They were primarily looking at locations adjacent to those existing businesses, although under the analysis they do have to look at other areas around the community as part

of the priority land system. Mr. Sasaki said city was looking at proximity to the downtown area with the one-acre parcel rather than something that did not have good access to its population. Though the city did not look at employment growth in relation to population growth to determine their particular land need, goal 14 does say that there should be a forecast that accommodates the planning period being reviewed. In this case, it is a 20-year planning period. In trying to look at a coordinated forecast between the county and the city on this particular case and proposal, various options were looked at that could be considered under the population projection, realizing that the county is currently undergoing a population study that would develop new 2030 forecasts. In order to meet the requirements under goal 14 of a coordinated population forecast for the city's UGB amendment proposal that covers a 20-year planning period, several courses of action exist. The city could wait for completion of the county population study and forecasts before proceeding with its amendment proposal. The other option is to proceed with the amendment proposal with the understanding that the forecast coordinated for the amendment will be revised later based on the findings coordination and adoption of the county's population and forecasts for each of the cities in the county.

The second option is being utilized with this amendment proposal as the City of Donald concurs in the use of a "safe harbor" population forecast under the goal 14 administrative rule provisions and with the forecast only relevant for the UGB amendment proposal. The city will adopt a new 2030 population forecast as part of the Marion County population study and coordination of a forecast with the city.

Mr. Sasaki said that when a forecast is looked at, it has to be fairly reasonable and it has to be coordinated. The city and county, as well as the state in this case, decided a reasonable forecast for this UGB amendment would be to extend the forecast using the current average annual growth rate of 2.25 percent, but apply it to the current 2007 population estimate for the city of 995.

Mr. Sasaki stated that the commissioners should have received copies of two letters, one from 1000 friends of Oregon and one from Friends of French Prairie. He said the two organizations do not have any objections to three of the four parcels. The objection is to the 27-acre parcel adjacent to Butteville Road north of the existing UGB.

TESTIMONY:

Support:

Walt Wendolowski, 10710 Main Street NE, Donald, said he is a business partner in Morgan CPS Group and also the Community Development Manager for the City of Lebanon. Mr. Wendolowski said this is a process for the city consistent with their goals within the comprehensive plan to talk about economic development in the community. He said they have polices that direct them to look at employment opportunities, provide jobs for local individuals and also have an obligation under goal 9 to insure that they provide these opportunities. The economic opportunities analysis shows the advantages and disadvantages for the city of Donald.

Mr. Wendolowski said that after consideration both with the Land Conservation and Development Commission (LCDC) and county staff, they arrived at a population projection of 1,588 for the year 2028. By itself, it did not have an impact with regard to industrial land, but certainly affected their decision with regard to commercial uses. He said they found they had 8.61 acres of commercial land, but only 1.43 acres for redevelopable or vacant land. Regarding industrial land, they had slightly less

than 30 acres within the city. Two-thirds of this land is developed and left slightly more than 9 acres of land for redevelopment or vacant for development. Under their EOA, they had to analyze national, state and local trends. They looked at the advantages and disadvantages associated with the City of Donald and from those select target industries that would benefit the community. A couple of things really stood out for the City of Donald. They are very close to I-5, a major north south corridor on the west coast. They also have rail access that runs through the middle of the town. In addition, they have an economic base that seeks to expand. With these factors, they then selected their target industries. They decided that warehouse distribution was probably the most logical development in the future for Donald. That does not preclude or exclude other types of businesses. Mr. Wendolowski said they also wanted to improve their trade and service capability within the community. With regard to Donald's needs they saw the warehousing and distribution as requiring about 25-50 acres. The commercial need seems to be 1-3 acres based on existing circumstances.

With regard to industrial land they had to make the comparison of what was needed for the target industries and what the city had available. Mr. Wendolowski said the simple part when it comes to expansion of an existing business is that obviously you can't expand clear across town. Expansion is adjacent to that property. The two expansions are on the south side and the west side.

Mr. Wendolowski said that in further analysis, no one parcel was greater than five acres. A number of parcels were about three or four acres, but a couple were less than an acre. He said even if they consolidated all the available land within the city that's industrial and actually cleared off existing buildings; there may then be enough for a warehouse and distribution center. He said that they did not have that land available within the city. With regard to commercial land, they estimated that one to three acres were necessary and they had seven parcels within the city that were about .14 acre each and redevelopable. There was also .43 acres of vacant land, the largest parcel being .12 acres, so there was a deficiency with land even if it could be redeveloped.

Mr. Wendolowski said that with regard to the UGB expansion itself, there were three basic proposals. They included expanding for the industrial use on the south, industrial user on the west side and also creating a larger parcel on the north side that would be used for warehousing and distribution. He reviewed why these parcels were selected. With the existing businesses they felt that expansion was only logical adjacent to that business. He said it did not make any sense to relocate the business. The larger issue was where do they locate a warehouse and distribution center. Again, the City of Donald has proximity to I-5, as well as rail access into town. He said it is certainly preferable to have rail access and far more critical then in the past. The west side of Butteville Road is away from the downtown residential areas and any truck traffic associated with this particular development would be beneficial, but certainly did not have rail access. Another possible option was looking at the southwest corner of the city and this had access to a major road, but again, truck traffic would be directed through the city's downtown and there is no rail access. The option that made the most sense was on the north end of the city and adjacent to existing industrial users. Truck traffic would simply enter on the north side of the city without going through residential or commercial areas. It also had frontage along the rail line.

Mr. Wendolowski noted for the record that both Marion County and the Oregon Department of Transportation (ODOT) commented on the potential impacts and believed that their issues were successfully addressed. The commercial property is fully served with sewer and water and is 1.67 acres. He believes this property is called irrevocably committed to non-farm use. Mr. Wendolowski stated that there are city goals and policies that certainly support economic development. He said they went

through a process with their EOA to develop an economic strategy. The city's buildable lands inventory that was done prior to developing the EOA clarified that they did not have enough land within the city limits to move forward and provide land for the economic strategy. He said the only alternative was to go ahead and expand the UGB. He added they went through the entire process of the OARS and 024 and 09 with regard to compliance with state law. The LCDC had no opposition to this request and Marion County saw that they met the requirements as well. Mr. Wendolowski believes that this expansion is appropriate and they have met the findings with regard to state law.

Commissioner Carlson said that Mr. Sasaki's report states the conditions that are generally imposed at the time of development through a development agreement or with land use applications for development activity of each of the parcels. She said this told her that rather than making this a condition now, the staff is proposing to make it a condition later when each of the parcels is becoming developed and there will be agreements between the county and the city. Commissioner Carlson asked Mr. Wendolowski if he was agreeing to the conditions stated in the report by the county engineers. Mr. Wendolowski said yes and they clearly understood at the beginning, that traffic and transportation would certainly be a key issue. He said that was one of the reasons they wanted to focus on rail access is as a means to get some of the truck traffic off the highway. Again, some of the alternative sites were as suitable with regard to access, but certainly not suitable with regard to a lack of rail access. He believes this is the best option for the expansion. He added that he was very pleased that ODOT as well as Marion County were willing to work with them. He said the project would be coordinated with the county as well as ODOT.

Janet Lane, 10710 Main Street NE, Donald, said she was speaking on behalf of the mayor and council. She said they had worked very diligently in deciding what was going to be best for the city without having an impact on the surrounding areas. Ms. Lane said two of these locations are for existing businesses, one of which is for a business that already exists on a conditional use permit in the county. She said they would just be moving it into the city. She said the other business is currently on the site of one of the parcels and they would just like additional room to expand. Ms. Lane said that during the process of two to three years, they have had no opposition. She said if smaller cities were not allowed to expand, they would have nothing left for the people to do. The City of Donald now has no area for industrial expansion and their goal is to provide jobs for the citizens.

Todd Deaton - declined to speak.

Mark Hush, 625 SE Maine Street, Donald, said he grew up in Mt. Angel and said he was in tune with things in Marion County. He said he makes his living as a commercial/industrial real estate broker representing companies with their real estate needs. He said these small communities like Donald and Mt. Angel do deserve to have industrial inventory to provide jobs for their citizens. He gave an example of how one employer can make a difference. He said his father just retired from Pepsi after 30 years and this was due to Pepsi locating in Mt. Angel. He said there are numerous people who make their living from this one employer. Mr. Hush said he was here advocating the right for these small communities to expand their employment lands.

Roy Benion, 1218 Third Avenue, Seattle, Washington, said he is a partner in Sutherlin Development. He said they have been working on this project and the property for over two years. He said they were asked to do this by the landowner who had been working with the city for as many as four years prior to that time about the issue of the need for additional industrial land in the City of Donald. Mr. Benion

stated they were initially very reluctant about becoming engaged in this process because of the time and effort, the consultants you have to engage, the cost involved and the manpower of entitling a piece of land that's not currently in the UGB. He said they were convinced to go forward on the project because they understood from the beginning that the city felt very strongly that the property was needed. They felt they had exhausted their industrial growth potential and that while this particular application involves the expansion of several existing industries, there is industry inside Donald that would like to expand, but can't because there's not the ability for them to bring in adjoining land. Specifically, he had been contacted by the property owner adjoining the 27 acres about using part of this property for their needs. He said they are currently stacking some of their materials in a city owned right of way because they need space. He said this company doesn't have adjoining land that they control that they could utilize and expansion only comes from additional land that the city has in its inventory. The issue of job growth, retaining their current businesses and expanding or attracting outside businesses is really what this process has been about. He said he wasn't aware that anyone would object to this process until he received a copy of two letters. Mr. Benion said part of that objection comes from the assertion that there is other land and other communities along I-5 that could serve this need. He said none of these would serve the needs of the City of Donald or the expansion of the companies that they have internally or the ability to bring in additional employee base for the economic development of Donald.

Mr. Benion added that in his business you can't deal with a company on their needs unless the property is available, utilities are served and entitled, and a specific plan can be made. If that process is still three to five years in the future, no one talks to you and it doesn't happen. He said what they have been doing for the past two years with the City of Donald is making it possible so all can sit down and begin working with the companies that have needs. Although those projects probably won't be realized for a couple years from now. It is a long-term process and you have to go through it correctly to lay the groundwork for it to happen. He said the City of Donald has worked very hard for that to happen.

Mr. Benion said that there is a current and political issue and is on everyone's mind, but there has been a radical change in the way the industrial market works in the last six months. He said the cost of fuel and transportation and logistics cost have shifted the way companies approach the decisions their making on locations radically. He has been involved with the development and utilization of well over 1,000 acres of industrial land going into production for companies and employees. He said he estimates that less than 10 percent had a rail need. He said this has shifted radically now due to dealing with \$5/gallon diesel fuel and the impact of railroads has made a strategic change in this country that may very well never leave us now. He said the fact that the Donald site rail is available and served makes an incredible difference in the abilities for companies to grow in Donald. Mr. Benion stated that this is a unique opportunity and the competitive sites that are mentioned don't have that advantage.

Paul Nolson - declined to comment.

Opposition:

Ben Williams, 23013 Yeary Lane, Aurora, said he previously submitted a letter in opposition (in board file) and he is here this morning as a citizen. Mr. Williams lives in the French Prairie area and read his letter of opposition. He stated that Friends of French Prairie is opposed, in principle, to all developmental expansion that removes high quality agricultural land from farm production. It goes without saying that the Willamette Valley is the center of Oregon's agricultural lands, and that French Prairie is the heart of the Willamette Valley, as measured by the quality of its soils, the level of

agricultural production and the Oregon history that took place there.

He said he supports the expansion of the Donald UGB to incorporate the three small parcels that adjoin and will assist expansion of existing business. He opposes the incorporation of the 28.98 acre parcel commonly known as the Bennion-Feller property because it takes out of active production high quality agricultural lands that are zoned exclusive farm use (EFU). Further, it does so not to support existing business, but to make possible a speculative warehouse distribution center real estate development.

Mr. Williams stated that most of French Prairie is in the county and suffers the twist of fate to be just south of the river from Metro Portland and thus, is an area of the county under ever increasing developmental pressure from Metro Portland. Given the history and the high value agriculture and this constant development pressure, Mr. Williams said he hoped that the powers that be undertake a conscious planning effort for French Prairie. He added that what is missing for French Prairie is any kind of a developmental master plan. What has been seen in the past few years is the path of commercial development by such projects as Tribal Casino at Langdon Farms, an expansion of the Aurora Airport, and a relocation of a 110,000 square feet of manufacturing and warehousing business from Metro Portland into the middle of French Prairie. The Woodburn UGB has been expanded at the expense of farmland and currently there is speculation of expanding the Willamette National Cemetery to the east side of exit 278. The real estate development forces in the Metro Portland reserve steering committee are on record actively proposing development along the I-5 transportation corridor from Wilsonville to Salem. Mr. Williams said that any of these could have been or will be large enough developments to spell the beginning of the end for the eastern half of French Prairie. In the absence of a master plan for French Prairie we face a continual struggle between municipalities with conflicting motives, goals and agendas.

Mr. Williams stated it was his understanding that the City of Donald is a participant in the French Prairie forum, an informal organization of the cities within French Prairie, and that this organization drafted the French Prairie vision a couple years ago. He said it was also his understanding that the City of Donald did not share with the French Prairie forum its application to expand its UGB. He said he was not trying to throw stones at the City of Donald because he didn't think they were legally obligated to do so. He said most specifically, they did not share the data from the traffic impact analysis (TIA) prepared by Group Mackenzie for the warehouse distribution center development plan for the 29-acre Bennion-Feller property.

Mr. Williams said that this TIA, while containing a lot of questionable assumptions and somewhat misleading data, estimates that a warehouse distribution center development on this property would result in 2,604 total daily trips from the development site. Virtually all of these trips would pass through the Ehlen Road, Butteville Road intersection and then proceed east to the I-5 interchange. The TIA goes on to recommend that the only traffic mitigation required for this many total daily trips is a turn signal at the Ehlen Road, Butteville Road intersection. He added that the TIA goes on to recommend that the only traffic mitigation is the turn signal. He said the assumption is based on the projected future, but yet unfunded, Marion County and ODOT improvements to Ehlen Road and exit 278. He said his point is that the City of Donald was only obligated to provide a notice of this hearing to those property owners within a certain distance of the subject property for this UGB expansion. This means that the notice went to a very few citizens of Donald. Mr. Williams asked how a project of this scale, with this many total daily trips, not be required to undertake a regional impact assessment.

Mr. Williams said that Friends of French Prairie respectfully request that the Marion County Commissioners undertake a process to develop a French Prairie Master Plan, and during that time deny all non-agricultural development in French Prairie.

Dan Goffin, President of Marion County Farm Bureau, said that to date they have 4,995 members. He said they are the largest county farm bureaus in the state and that Marion County is the largest agricultural producing county in the state. In Marion County there are close to 250 different crops and commodities grown. Mr. Goffin said the bureau is opposed to a plan for industrial land for three reasons. The first is because it is taking prime farmland out of production. The second is regarding the traffic impact on the City of Donald and surrounding areas. The final reason is the Donald interchange and I-5 because he felt it was currently a disaster. It has been over capacity for ten plus years and now with this UGB expansion it is estimated that there will be another 2,000 trips per day through the intersection. He said it would result in traffic accidents and deaths.

Mr. Goffin said that rail access sounds great, but the majority of the products that will be coming into the proposed warehouse will not be coming by rail. The products will be coming in semis because where the products are being shipped from are not on a rail line. The products would have to be loaded on a semi and then taken to a rail yard, then be reloaded on a railcar. He said that once the product is loaded on the semi, it is cheaper to ship it that way. He said that rail was notorious for being slow and a single car has no priority in the rail system.

Mr. Goffin pointed out the three other parcels and said the farm bureau didn't oppose those parcels. He said these parcels already have existing businesses that want to expand. This is a benefit for these businesses and they are farm related. He said that Wilco wanted to buy a piece of that northern large parcel and no one would talk to them about it. Mr. Goffin said everything comes down to money and once the farmland is paved over it is gone. He added that most of the food would be bought from other countries. The third world countries are using all the chemicals that have been banned by the USA.

Mr. Goffin said that agriculture supports this county and this state. He said that he is a third generation farmer and will be farming the rest of his life. He added that the infrastructure needs to be in place before putting in a big warehouse project that adds more dangerous traffic.

Sid Friedman, 189 Liberty Street NE, Salem, said he was representing 1000 Friends of Oregon (Exhibit A). He asked the commissioners if they deliberate this morning that they please take the time to read the written comments submitted. Mr. Friedman said that one of gentlemen supporting the expansion from Donald said that small communities deserve the right to extend their UGB and their employment lands. He said that 1000 Friends of Oregon does not disagree with this statement. He said the best way to insure it happens in a timely manner and to reduce costs is to do the expansion correctly and comply with all rules and regulations. Mr. Friedman said the application is sloppy that doesn't comply with the rules and doesn't comply with the regulations for all the reasons that are detailed in his written testimony.

Mr. Friedman said that 1000 Friends of Oregon supports the inclusion of the three smaller parcels, but oppose the inclusion of the approximate 27-acre parcel based on a speculation that it could attract a warehouse distribution center. They also oppose the population projection that the City of Donald is asking the county to adopt. He said that 1000 Friends of Oregon objections could be summarized briefly. The city has not demonstrated any need to urbanize those 27 acres of farmland; land that is now

in the county's number one industrial use, which is agriculture. Secondly, the city's 2028 population projection has not been coordinated with other cities in the county. The city could have, but did not follow the safe harbor methodology provided by law that when you project the population projection forward in the absence of a coordinated projection. In fact, the city originally adopted the safe harbor population, but then changed it without a public hearing. He added that it makes no sense for the county to approve this population projection and UGB amendment, and thus get into a protected legal matter, which will delay the inclusion of the smaller parcels when it could simply wait until the end of the year. This is when the county plans to have a completed comprehensive county wide population forecast at which time the City of Donald could revisit the need for the larger parcel, revisit its residential land needs which it plans to do anyway, and do a comprehensive coordinated review of its land needs going forward.

Mr. Friedman said that Donald joins several other cities in Marion County and French Prairie in pursuing the same so called prize, a warehouse and distribution site along I-5. He said that an UGB expansion was recently approved for Woodburn, also targeting a warehouse distribution center along I-5. He stated the Maletis brothers are actively trying to get their land into tribal trust or into Metro's UGB in order to attract a warehouse distribution center. Salem is trying to attract a warehouse distribution center to the Mill Creek Industrial Center. French Prairie remains widely regarded as the heart of Oregon's agricultural industry. He said it was important to note that when Woodburn did its UGB study, the northwest was placed as the lowest priority for expansion in the nation for a warehouse distribution center. Cities along the I-5 corridor in Marion County are rushing to commit prime farmland to the UGB for a duplicate of land for industries that are not that likely to expand in the region and certainly not on the multiple sites that are being provided. He said the outcome is clear that there will be frustration over unrealized economic development plans and these freeway sites are going to be converted to other uses such as big boxes, fast food or other commercial or residential uses. At the same time the prime farmland will have been lost that supports Marion County's leading industry, agricultural. If cities in Marion County develop French Prairie with industrial uses, south of Butteville Road and I-5, there will be much less reason for Metro to stay north of the Willamette River which will compound the loss of prime farmland and put additional pressure on our leading industry.

Mr. Friedman said that Donald has a much better way to address its legitimate needs. Adopt a limited expansion of approximately 12 acres for these smaller parcels and defer a larger consideration of its overall employment and residential needs until after the completion of Marion County's 2030 population forecast project. He said that Mr. Sasaki had stated he hope to have the forecast completed by the end of the year and that is not a long wait. Donald's review could then be fully coordinated with all the other French Prairie cities and the affected jurisdictions.

During Mr. Wendolowski's presentation said that the industrial land need of 27 acres and the other parcels were not tied to their population forecast. Mr. Friedman agreed that it was not directly tied, but they did find that the subject analysis addressed the employment land needs, specifically industrial land needs for a 20-year population projection. He stated that it cannot be both ways, it either is or it isn't tied.

Mr. Friedman said that if you look at the overall amount of industrial land that is included in the expansion report, it provides valuable context. He then referred to the tables and said that the city is providing four times the amount of industrial land for each new resident it expects than it has historically needed. Previously the city developed about an acre of industrial land for every fifty people.

He said that going forward the city is saying they will develop an acre of industrial land for about every 12 people and there is no explanation as to why there is going to be so much more land consumption in the future than in the past.

Mr. Friedman said he wanted to touch on the inadequate analysis of the environmental energy economic and social consequences of the UGB expansion, especially the economic consequences. The city of Donald acknowledges that farming is a major local industry in the report. Donald is located in the agricultural heartland of Marion County. Direct agricultural sales topped \$600 million in 2007 and are growing every year. He reiterated that farmland is not undeveloped land waiting for urbanization, it is already developed industrial land that supports the leading industry in Marion County. Year in and year out the county leads all Oregon counties in gross agricultural sales and agricultural exports rank number two among all Oregon exports, accounting for about 25 percent of all statewide exports. Agricultural exports increased 46 percent between 2006 and 2007, which is nearly 50 percent in one year. The continued vitality of the agricultural industry in French Prairie in Marion County and in Oregon depends on the continued protection of the land base that makes it possible. The city's environmental energy economic and social consequences analysis is fundamentally flawed because it fails to consider the economic consequences of committing the prime farmland in that large plot to urban uses.

Mr. Friedman said the commissioners adopted a resolution initiating this hearing and initiating these plan amendments and the county code requires that the matter be referred to the Planning Commission and this hasn't been done. He said this might sound like technical nitpicking, but considering that the amendments have the potential to redirect industrial development from existing industrial land in the Salem/Keizer UGB and other cities to what is now farmland; that there is the potential to undermine ongoing efforts to protect the heart of Oregon's agricultural industry in French Prairie and the potential to put additional strains on the I-5 interchange and county roads in northern Marion County; broad public input, citizen input, the type that's provided by the Planning Commission, which in some ways fulfills the goal 1 obligations and meets in the evening where more citizens can attend. He said this isn't just a technical code requirement, but it is also good public policy. To bypass the Planning Commission is poor policy and violates the county's own code.

Mr. Friedman concluded with his recommendation. Donald has two industrial users that need land for expansion and there is no objection to the inclusion of those parcels. There is a need for a little over an acre of additional land for commercial and no one objects to the inclusion of that parcel. He said these are identified land needs that appear to be justified. What hasn't been justified is the population projection that was improperly adopted with no public hearing at the City of Donald and does not follow the safe harbor methodology laid out by the state. The inclusion of the 27 acres also has not been justified.

Mr. Friedman suggested approving the proposal without the population projection and the 27 acres. He added that the county needed to have a coordinated population projection so Donald could also do their residential land needs analysis and do it in the context of coming up with a way to handle the various pressures that are attaching to French Prairie and the various cities that are pursuing the same prize.

Rebuttal:

Mr. Wendolowski said he was disappointed that 1000 Friends of Oregon decided to submit their letter the day before the hearing because he would of liked to have some additional time to comment.

Regarding the population coordination they did work through the safe harbor process based on comments submitted by DLCDC and Marion County. He said they were encouraged to work on the projection with a beginning date of 2007. He said he felt that was an effort consistent with state law and certainly accepted by DLCDC. He said his only concern with coordination was this was part of a state process and something they had to do one way or the other. He used the population-coordinated number of twenty years and it was more tied in with the commercial aspect than the industrial. This was made clear within the report. With regard to traffic, Marion County, ODOT, the city, the potential developer and the property owner all understand there will be issues near the I-5 interchange. Marion County had concerns and a series of conditions that they would expect to be followed and Mr. Wendolowski said they have concurred with those. He said Donald is an independent community with its own elected officials, adopted comprehensive plan and its own vision of its future.

Mr. Wendolowski said he generally agrees that there is a fear that if the warehouse distribution doesn't work out then the industrial land turns to commercial big box uses. He said it doesn't make sense to put a Kmart in the middle of French Prairie. He said a critical point is that the City of Donald wants to expand the UGB and it is not an annexation, zone change or development. He said they have concurred with the DLCDC that they will establish plan policies and/or development ordinance requirements, if necessary, to their satisfaction that this will be industrial land and developed for those purposes.

Mr. Wendolowski said the economic opportunities analysis was the basis for their economic strategy. He emphasized the state sets the standards and they had to prepare a population coordination and a buildable lands inventory. He said he understood that historically the City of Donald has not grown, but the agriculture industry has begun to concentrate with fewer and fewer farm ownerships and businesses. He said that what is happening is a concentration of industries, which means fewer and fewer people employed. To simply look at historical growth does not necessarily mean things will be that way forever. There is a change in taste and demand for goods and services and there is a mix of industrial uses. Mr. Wendolowski felt that everything had been addressed that needed to be and he had provided sufficient findings in support of this expansion. He said he was also pleased to note again that the DLCDC was not opposed to this application and he appreciated their assistance in addressing a number of issues. Marion County was also very helpful and looked at this in terms of addressing state factors.

Les Sasaki came back to the table to answer any questions and talked about the procedural part raised by 1000 Friends of Oregon regarding the UGB amendment. It is an amendment that is initiated by the City of Donald that the county concurs in. Comprehensive plan policy on this is that the process is subject to the city/county intergovernmental agreement between the jurisdictions on the processing of UGB amendments. The City of Donald and Marion County do have an approved UGB policy agreement that was signed in April of 1986 that sets forth the process for UGB amendments and considerations.

Commissioner Carlson asked what would distinguish this particular situation from some of the prior ones where the board did actually have the Planning Commission review. Jo Stonecipher said the only process she recalled that was referred to the Planning Commission was the proposed revision of the population studies. She said that in the urban ordinance it speaks of a legislative amendment that is initiated by the board and in this case the board has never had the practice of considering itself required to do that in UGB amendments. She said it is a question of, "Does this code apply because at this time there is nothing being done under the urban zoning ordinance." What is being done is coordinating under the plan and under the urban growth management boundary agreement. She said the board has over the years interpreted its ordinances and requirements to look at this only in the case of when the

board itself is actually initiating a process. In this instance, the actual amendment was initiated by the City of Donald's request for the board to consider its UGB expansion. If the expansion is approved then there will be zone changes within the UGB. She said it is merely the county's job under the plan and UGB management agreement to review and determine whether it concurs.

Commissioner Carlson asked Mr. Sasaki to speak to the population forecast not being required, but planning did this as part of their analysis and worked with the City of Donald to come up with a safe harbor figure. Mr. Sasaki said the goal 14 provisions relative to the UGB amendments do have a factor in it that is based on a long range forecast. He explained there is a disconnect when you look at that provision and the provision under goal 9, which allows for employment land expansions of UGBs that don't have to necessarily use that particular forecast for determining your land needs. The provisions provide for other options or safe harbor approaches to determine employment land needs. DLCDC advised a 20-year forecast was needed, but that forecast would really not be used to project your employment growth needs. Mr. Sasaki said it is requirement, but not germane to this discussion because the needs are not being based on that particular forecast. Mr. Sasaki said that if there is a forecast it has to be a reasonable forecast. He said that if you read the actual text of the goal 14 provisions for safe harbors for population forecasts where a particular forecast is more than 10 years old of when it was originally adopted there are two provisions for safe harbor. One is the extension or use of the current adopted annual average growth rate applied to the city or it can be looked as a safe harbor. The other option is to look at the percentage share of that particular jurisdiction relative to the county population. He said the county staff looked at what would be a more reasonable forecast looking at the current population estimate of the city. It made more sense to look at the particular average annual growth rate based on where the city was currently rather than looking at an older forecast and extending it out. Mr. Sasaki said that is where the projection of a 2.25 average annual growth rate to the current population estimate to provide for a 20 year forecast period made more sense and a more reasonable forecast.

Commissioner Carlson said that there are a lot of technicalities that go along with doing this expansion. She felt it was a service that we do as a county to assist small cities to insure all the proper requirements are included in their application. Mr. Sasaki said that part of the reason for the goal 14 amendments that the state adopted was to make the process easier for smaller jurisdictions in particular. Obviously, larger jurisdictions do have a higher test and standard to go through as far as their review because they have more issues to deal with as far as efficiencies and so forth. He said the population study that the county is doing is the one that will determine the forecast number utilized by the city in any future land use planning.

Commissioner Carlson said her last issue is traffic. She was looking at the transportation analysis and said there had been a lot of discussion about the traffic impacts. She asked in the worst-case scenario what the number of extra trips would be with this expansion. Karen Odenthal from Public Works came forward to answer Commissioner Carlson's questions. She said this is a reasonable worst-case scenario. In this case they looked at a warehouse type industrial development and she was sure there were other more intensive industrial uses that could go into this expansion that were not looked at. She added this is a high-end scenario and not for a specific development. Ms. Odenthal said this is a UGB expansion and not a zone change and not an annexation. At the time of the zone change/annexation and/or actual development, a refined traffic study will probably have to be done to look at their actual impacts. As far as the county setting themselves up for a fall and not being able to afford the improvement, she said there is always that chance. She said what they looked at in the reasonable worst-case scenario was how many trips and what the cost would be for these improvements. She said there are four projects

identified at the actual interchange. They are signaling both sets of ramps, realigning Ehlen Road and Bents Court and signaling those. Ms. Odenthal said if one big developer came in they would likely be able to do some of the mitigation, but not all of them unfortunately.

Commissioner Carlson reiterated that even though it is in the transportation plan, the county couldn't fund the plan in 2025. Ms. Odenthal said that they would have to pursue some other funding opportunities. At this point if someone comes in and is putting additional traffic in the area and if they would contribute towards the cost of the interchange, in 20 years they might have enough money to do these projects.

Commissioner Milne thanked everyone who has commented and their interest in the expansion. She said that it seemed like this discussion was pitting various industries, job sources and businesses against each other. She does not look at farming as being exclusive and it is not the only industry in Marion County or Oregon. She added that she has been a very strong outspoken advocate of farmers, agriculture and farming for many years. She recognizes how important that industry is to our county and state. She added that there are a lot of challenges to farmers and agriculture right now and yet the industry continues to be the state's top industry. Nursery stock is now the top crop and that is not food. She said that some of the issues, concerns and problems that agriculture is facing, while they are valid, clouds what is trying to be addressed with the City of Donald expansion. She said the issue of the French Prairie Work Group was brought up and how much various people know what's happening in the north part of the county and the French Prairie area. She said the French Prairie Work Group wants to look at how to protect agriculture in the north part of the county and it is important to all of us. In addition, the individual communities have opportunities and responsibilities to respond to what their citizens need and we all should be supportive of each other's needs.

Commissioner Milne said she did believe that all of the issues had been addressed. She said that small communities have to grow or businesses will not survive. Businesses have to constantly be able to grow and meet new needs and challenges in order to stay alive and offer new jobs. Commissioner Milne said she was in support of this amendment.

Commissioner Carlson said she wanted to thank the City of Donald for all their effort to get this done. She added that she appreciated public works for their assistance to Donald in getting this done. She said she is still troubled with the issue of traffic. While she will be supportive today of the comprehensive plan change, she felt there would be a lot more work that needs to be done before a development is put on that spot.

Commissioner Brentano said that after being a mayor for a small city for ten years, he understands what it takes for a city to grow and thrive and to contribute services to the population. He said he supports the amendments to the plan.

MOTION: Commissioner Carlson moved to close the public hearing and that the board concurs in the proposed City of Donald comprehensive plan UGB amendment and direct staff to prepare an ordinance for board adoption approving the amendment to the Marion County Comprehensive Plan by adopting the amendment to the City of Donald Comprehensive Plan. The City of Donald Comprehensive Plan amendment includes an UGB amendment of 42.5 acres to meeting commercial and industrial employment land needs, and the redesignation

of the 42.5 acres to be included within the amended UGB from a Marion County Comprehensive Plan rural designation of primary agriculture to City of Donald Comprehensive Plan designation of commercial and industrial. In addition, approve the rezoning of the 42.5 acres to be included within the amended UGB from a Marion County rural zone designation of exclusive farm use (EFU) to a Marion County urban zone code designation of urban transition farm (UTF); the rezoning will be a part of the ordinance for board adoption approving the plan proposal. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Commissioner Brentano recessed the meeting at 11:30 a.m. for a break.
Commissioner Brentano reconvened the meeting at 11:35 am.

Commissioner Brentano read the final public hearing and said that under the new ethics laws, it lists in-laws as potentially problematic. He said he has a brother-in-law that works for Allied Waste and he would excuse himself from the hearing and the decision. Commissioner Milne then proceeded with the public hearing.

PUBLIC WORKS

A. Public hearing to consider approval of amendment #3 to the franchise agreement with Capitol Recycling & Disposal to add a fuel surcharge to accommodate rising fuel costs. – Jeff Bickford

Jeff Bickford, Public Works, said that Capitol Recycling and Disposal is the county's franchised operator for the Salem/Keizer Recycling and Transfer Station and also is known as Allied Waste. They have been providing this service since 1986 and in 2002 we renewed their franchise agreement. At that time, the pricing for the haul of the waste from the transfer station to the Marion County Waste to Energy Facility was based on approximately \$1.25 diesel prices. Allied Waste does other hauling for the county and those agreements have been changed for those particular hauls to reflect a fuel surcharge. This is the only agreement that does not have a fuel surcharge. Since this is a franchise agreement, any changes to the agreement must be heard at a public hearing and is required by the Marion County solid waste ordinance. Mr. Bickford reported that the approximate additional cost to implement this type of fuel agreement would be in the low \$20,000s per year. He explained that the county spends approximately \$260,000 per year in hauling fees from waste. For the entire transfer station operation it is about \$1.8 million per year.

MOTION: Commissioner Carlson moved to close the public hearing and approve amendment #3 to the franchise agreement with Capitol Recycling & Disposal to add a fuel surcharge to accommodate rising fuel costs. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous. (Commissioner Brentano did not vote).

Commissioner Brentano read the calendar.
Commissioner Brentano adjourned the meeting at 11:43 a.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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