

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, November 12, 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 Gordean Ash as recorder.

Commissioner Brentano called the meeting to order.

**PUBLIC COMMENT**

None.

**CONSENT**

ASSESSOR’S OFFICE

Approve quitclaim deed transferring property identified as tax account No. R54330 to Sherry Barnash.

BOARD OF COMMISSIONERS

OLCC APPLICATIONS – RECOMMEND APPROVAL

Brassica, Inc. – St. Paul  
Video Y Tienda Mi Barrio – Salem

BUSINESS SERVICES - CONTRACT REVIEW BOARD

Receive protest of the county's intent to award a contract for Entrance Security Personnel Services.

PUBLIC WORKS

Transfer a portion of C Street, from Front Street to North Water Street, to the State of Oregon by quitclaim deed.

PUBLIC WORKS – PLANNING

Schedule a public hearing to consider zone change/conditional use, case #ZC/CU07- 006, Sacher, Clerk’s File #5601; suggested hearing date is December 10, 2008.

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

## **ACTION**

### PUBLIC WORKS

1. Consider adoption of an ordinance relating to the use of off-road vehicles, repealing Ordinance No. 1142, by emergency procedure. – Sterling Anderson, Bruce Armstrong

Sterling Anderson, planning director, said the issue before the board today is the off-road vehicle ordinance. The board has received a number of complaints about noise and dust caused by all-terrain vehicles and off-road vehicles being ridden near houses, often for extended periods of time and by groups of riders. The board held a public hearing on October 15, 2008, to receive public testimony and comment regarding proposed revisions to the ordinance. No comments were received at that time.

Mr. Anderson said the options before the board today are to adopt the off-road vehicle ordinance by emergency procedure, to adopt the proposed ordinance under the regular process, which would delay the implementation of the ordinance for 90 days, or to decline the adoption of the ordinance. Staff recommends that the board consider adopting the proposed ordinance by emergency procedure.

Bruce Armstrong, legal counsel, said the noise ordinance was adopted in 2004 and went under review. He said one of the issues that kept coming up was off-road vehicle noise. He said the single change to the off-road vehicle ordinance relates to the creation of a 100-foot buffer zone. In addition, the only added prohibition to the ordinance is that no person shall recreationally operate or allow another person to recreationally operate an off-road vehicle in any non-road area that is within 100 feet of the property line of a given property. By creating the 100-foot buffer zone they are able to regulate the recreational riding of off-road vehicles and limit the problems of noise and dust. This portion of the ordinance would not affect the use of an off-road vehicle for farming or property maintenance.

Mr. Anderson mentioned some of the language in the ordinance regarding recreational operation of off-road vehicles was modified to include some more descriptive language regarding the use of tracks, trails, loops, etc. These uses are not banned, but they are required to meet certain standards relative to setbacks from property lines. These changes do not affect the use of off-road vehicles for farming, timber management, military use, fire prevention, emergency services, or law enforcement.

Mr. Armstrong said that the existing off-road vehicle ordinance does not allow the operation of an off-road vehicle within the urban growth boundary of any city. This is not a change to the existing ordinance so the new additions only affect uses outside the urban growth boundary.

Commissioner Carlson pointed out that where these issues are concerned, the county operates on a complaint basis, which means that people need to provide a complaint if they see something going on that is a problem. Commissioner Milne mentioned that the changes clearly address recreational use of off-road vehicles only and do not affect agricultural or property maintenance uses of these vehicles.

Commissioner Brentano asked if any of those who have made complaints about off-road vehicles have expressed views on these changes. He said he had not heard anything about this. Mr. Anderson said

they had received no comments in objection or support.

**MOTION:** Commissioner Milne moved to read twice by title only. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

**MOTION:** Commissioner Milne moved to adopt the ordinance for off-road vehicles. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

2. Consider adoption of an ordinance regulating noise and repealing Ordinance No. 1190, by emergency procedure. – Sterling Anderson, Bruce Armstrong

Mr. Anderson read through the requirements of the ordinance and said the board previously held a public hearing. This ordinance is similar to the previous one in that it updates and fine-tunes the existing noise ordinance. The Sheriff's Office receives hundreds of noise complaints and Public Works also receives several dozen complaints per year through Code Enforcement. The two agencies work collaboratively to deal with these complaints, but have found some areas of the ordinance that need revision to make it more effective and easier to enforce. The revision clarifies where the sound measurements must be taken, which is at the place on the complainant's property line that is closest to the source of the sound or within the complainant's dwelling unit if it is on the same property as the source of the sound. The decibel levels permitted are the same as in the past. The revised ordinance also contains a variance provision that would allow an applicant to obtain a variance to the noise ordinance prohibitions and limitations on a case-by-case basis. Any variance would require a public hearing before the board of commissioners. The intent of this is to allow mass gathering events that may occasionally exceed the provisions of the noise ordinance.

Mr. Anderson said there is also a new administrative review process for citizens to pursue excessive noise disturbances. This is intended to deal with situations where a Sheriff's deputy or code enforcement officer cannot actually witness the noise violation in process. This process defines an excessive noise disturbance and establishes factors for when it is an unreasonable disturbance. Two people from different properties within 500 yards of the disturbance must sign an excessive noise disturbance complaint to initiate the administrative process. The county enforcement officer will then fill out the necessary notice of civil infraction if the complaint meets the requirements set forth in the amendment to the ordinance. Among other things, the complainant must have made a good faith effort to contact the enforcement authorities when the disturbance was occurring. A notice of civil infraction would be signed by the complainant and served by the enforcement officer because the law requires that the complaint be witnessed. This allows them to have the complainant serve as a witness.

After the complaint is served, a hearing would be held before a hearings officer about the complaint, with the burden of proving the excess noise disturbance falling on the complainant. The losing party will be responsible for paying the hearing processing fee, which is to be established by the board. The hearing process fee in dog cases is set at \$25.00. Mr. Anderson said the fee in these cases would probably be a similar amount. He said the board must also set a maximum amount for the civil penalty that may be imposed for a violation. The existing maximum penalty for noise is \$720.00. Staff has discussed and reviewed these amendments with the board during three work sessions and three management update meetings along with the public hearing on October 15. There was no comment at

that time from the public.

Mr. Anderson said the board's options in this case are adopting the revised ordinance by emergency procedure, adopt the revised ordinance through the regular process, or decline to adopt the noise ordinance at this time.

Commissioner Carlson asked about how Public Works and the Sheriff's Office would coordinate their efforts in enforcing the noise ordinance. She said that many complaints come in through the Sheriff's Office because they are available after regular business hours, but the actual responsibility for administering the ordinance usually falls to code enforcement.

Mr. Anderson said one of the code enforcement officers is also a reserve deputy so there is very good communication and coordination between the offices regarding these types of complaints. This allows them to decide who would be the best responder for a particular complaint. When code enforcement officers are available, they would go out to investigate the complaint. If the complaint comes in after hours, the Sheriff's Office will respond to the complaint and give it to code enforcement for follow-up, particularly if the civil complaint process is to be used.

Commissioner Carlson remarked that when the board adopted its first noise ordinance there was some controversy over the decibel level for off-road vehicles. Staff has recommended not changing the decibel level. She said that in the off-road vehicle ordinance just approved their discussions made it clear that the actual decibel level is often less of an issue than the location of the off-road vehicles, how close they were to a given property, the numbers of off-road vehicles being used and recreational use issues regarding use of tracks or race courses. She said she believed these changes would address the issue sufficiently without any need to change the requirements for decibel levels.

Mr. Anderson agreed that decibel levels had been a problem in the past. When applying the existing noise ordinance to off-road vehicle complaints, the off-road vehicles consistently met the noise decibel standards even though they were causing annoyance and complaints in these cases. He said the noise is part of the issue, but dust, number of riders, duration of riding activity and some other recreational use issues are also major components of the problem. He said he hoped that these complaints would now be handled under the off-road vehicle ordinance, which is a more effective tool than the noise ordinance for the off-road vehicle cases.

Commissioner Milne said that the noise issue had been difficult for the board to try to tie down over the years. She said each person perceives noise differently and is sensitive to noise at different levels. In addition, there may be a need to address the issue of 24-hour businesses. She said this is addressed to some extent in the noise ordinance and the county may end up having to deal with these cases one at a time. There are probably not many 24-hour businesses outside the urban growth boundary at this time, but it may become more of an issue in the future.

Mr. Armstrong replied that the noise ordinance had an exemptions section and any use that is allowed in a commercial or industrial area is not covered by the noise ordinance. This is the same as it was in the prior version of the noise ordinance.

**MOTION:** Commissioner Carlson moved to read the ordinance by title only twice. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

**MOTION:** Commissioner Carlson moved to adopt the ordinance to regulate noise. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

3. Consider approval of an order establishing maximum civil penalty and hearing process fee. – Bruce Armstrong

Mr. Armstrong summarized the details regarding the order that allows the board to establish a fee and a civil penalty amount for the noise ordinance. He said they have a process in their dog control cases where they do an administrative process instead of going to the Justice Court. For a noise disturbance case when an enforcement officer cannot get to the property and witness the event, there is an administrative process where a complainant can register a complaint and if it meets the requirements, the individual can be served and the case goes before a hearing officer. He said that in dog control cases, the board has set the fee at \$25.00, with the losing party in the case paying the hearing process fee. This fee does not cover the entire costs of the process.

The civil penalty is the second part of the process. Noise ordinance violations under the prior ordinance were considered Class A violations and have a maximum civil penalty of \$720.00. The proposal for the new ordinance is that the same amount be set as a civil penalty at the administrative hearing.

Commissioner Milne asked if those who are involved in these cases understand the fee process. She asked what kind of information is provided to both parties regarding the costs. Mr. Armstrong said it works differently in dog control cases because Marion County Dog Control brings forward the case against the dog owner and eats the cost of the \$25.00 fee if the dog owner wins the case. He said that in barking dog cases, they try to solve the problem through mediation to avoid having an excessive number of hearings. In both dog control and noise cases, the person gets served with the complaint or citation and that starts the process. He did not remember whether this actually is part of the text of these documents, but he said that they definitely make the total possible costs clear to anyone being served. Complainants will also be told the same with noise complaints and if they lose the case they will be paying the \$25.00 fee.

Commissioner Milne said her concern was that they solve as many of these cases as possible without having to go to a hearing. She said that whenever possible, these cases need to be solved by mediation earlier in the process. She said making the costs and responsibilities clear would help many cases get solved sooner without having to go to a hearing.

Commissioner Carlson brought out the points of the noise ordinance that address the possibility of neighbors working things out first and avoiding unnecessary use of staff and board time. She said that by making complainants aware of the costs and requiring two complainants from different properties, this ordinance should be able to minimize frivolous complaints.

**MOTION:** Commissioner Milne moved approval of an order establishing a maximum civil penalty and hearing process fees. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

PUBLIC WORKS - PLANNING

4. Consider adoption of an ordinance amending Marion County's Rural Zoning Ordinance, amending provisions, adding new provisions and repealing Chapters 132 and 133, by emergency procedure. – Sterling Anderson

Mr. Anderson said that on November 7, 2007, the board initiated amendments to the Rural Zoning Ordinance. The amendments have been under consideration by the board since a work session on August 14, 2008, and a management update meeting on October 20, 2008. The board held the required public hearing on the amendments on October 29, 2008, and instructed staff at that time to bring the amendments back for final adoption.

Mr. Anderson said these amendments are largely cleanup actions to correct minor errors or changes. The majority of the amendments include new administrative rule and statutory requirements. He said a significant update of this ordinance has not been undertaken during the last two legislative sessions, so they are trying to get it up to speed before the next legislative session starts. He said the board has the option to adopt the ordinance now or defer adoption to a later date, with staff recommending adoption of the amendments by emergency procedure today.

**MOTION:** Commissioner Carlson moved to read the ordinance by title only twice. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

**MOTION:** Commissioner Carlson moved to adopt an ordinance amending Marion County's Rural Zoning Ordinance #516, amending provisions, adding new provisions and repealing Chapters 132 and 133. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

**PUBLIC HEARINGS  
9:30 A.M.**

PUBLIC WORKS – PLANNING

A. Public hearing to consider amendments to Chapter 181 (SGO zone) of the Marion County Rural Zoning Ordinance. – Lisa Milliman, Sterling Anderson

Mr. Anderson summarized the recent history of this ordinance. He said that on January 8, 2008, the board considered options for amending the Sensitive Groundwater Overlay Zone (SGO) portion of the Marion County Rural Zoning Ordinance. They received recommendations from the SGO subcommittee of the Planning Commission and alternatives discussed by the board at an earlier work session. The board directed staff to bring the preferred option to the Planning Commission for consideration. The Planning Commission considered the proposed changes to the ordinance on May 20, 2008, approving

the changes with the exception of the required level of accuracy of static water level measurements required for monitoring plans for subdivisions and one-time monitoring for partitions. The Planning Commission voted to change the required level of accuracy from 0.05 feet to six inches (0.5 feet). The SGO subcommittee was advised of the change and none of the members expressed concern about the change. The Planning Commission informed staff that the preference of the commission is for the board to hold any hearings required for the adoption of amendments to Chapter 181 of the rural zoning ordinance. The board had a work session on August 14, 2008, for an update on the Planning Commission meeting to discuss the proposed changes to the SGO ordinance and to consider adoption of amendments to the SGO ordinance along with revisions to other chapters of the Marion County Rural Zoning Ordinance. The board suggested two revisions to the draft ordinance. They were the correction of the required level of accuracy to 0.5 feet and to delete the first sentence in Section 181.140. The board discussed corrections at an October 13, 2008, management update meeting and these are included in the draft of the amendment.

Mr. Anderson explained the board's options. The board could receive public comments at the hearing. Following the hearing the board can direct staff to bring the amendments back as an ordinance for adoption. The board can instruct staff to make certain changes to the proposed amendments, or instruct staff to bring the changes back to the board for further consideration at a second public hearing. The board can decide not to adopt the proposed amendments.

Mr. Anderson advised that staff felt these amendments provide for collection of new data in areas where little data now exist. The additional data will allow for more accurate determinations of groundwater sustainability through the hydrogeology reviews required by Chapter 181. The water use inventory step has been eliminated and no demonstration of adequate water supply is required for land divisions where the minimum lot size exceeds five acres. Partitions and subdivisions proposed with any lot less than five acres in size will be required to submit a hydrogeology review. All land divisions will have to supply a static water level measurement (partitions) or implement a water-monitoring plan (subdivisions). Staff recommends that the board adopt the amendments as proposed.

Commissioner Carlson said that the proposed changes are a three-level process of determining whether property could be subdivided below a certain acreage in an SGO area. This proposed ordinance would eliminate the first step, which is a computerized analysis of whether a property is eligible for subdivision or partition.

Mr. Anderson said the first step in the process was known as the water use inventory step and this step is proposed for elimination. In lieu of that step, the amendments would include a provision that excludes the requirement for review in a subdivision or partition where the minimum lot size exceeds five acres. He said the assumption is that five acres offers a low enough density that it would not have a significant impact on the groundwater aquifer system. He said partitions and subdivisions proposed to go under the five-acre limit would require the higher-level review, which is the hydrogeology review. In these reviews the existing evidence is collected and prepared as a report by a hydrogeologist. This report is then peer-reviewed by an independent hydrogeologist to determine whether the information is accurate, complete, and in accordance with the requirements in the ordinance for a hydrogeology review and the level of evidence regarding impact on the aquifer.

In addition, all land divisions resulting from a partition would have to supply a static water level measurement prior to the development going forward. This provides a starting point level. Land divisions that result from a subdivision, which means a higher number of parcels being created, would have to implement a water management plan so that over time the water levels would be measured and new data would be coming in to show what is happening with the water underground. Mr. Anderson said part of the reason for the SGO has been to collect new data so they can update the requirements, determine what is going on in the area, and keep the State Department of Water Resources aware of this for use in their own water management plans. This will allow the state to determine the status of groundwater and identify areas that are groundwater-limited areas. The way the ordinance was previously constructed the new information was not being provided as needed. With the static water level measurements and water monitoring plans, they hope to be able to generate the new information to help refine and better define groundwater issues in the area.

Commissioner Carlson said the prior ordinance had a threshold lot size of an average of five acres, while the proposed ordinance has a minimum lot size of five acres. She asked how the two would differ.

Lisa Milliman of planning explained that in the way the current ordinance is implemented the threshold lot size ranges from five to seven acres. Under the new ordinance, if the lot size is five acres or more, there is no need to go through the demonstration of adequate water supply through the water use inventory step of the process. The proposal is essentially the same, except that if someone wants to create lots smaller than five acres they would have to go through the hydrogeology review.

Commissioner Carlson asked about the Benton County SGO ordinance. Planning studied this issue and decided to take a different approach. Ms. Milliman said they looked at the Benton County ordinance, which requires pump tests. She said the pump tests give an idea of whether water can be taken out of a well today, but this is not as good as the process Marion County has adopted in terms of looking at long-term water supplies and aquifer conditions. She said well-monitoring requirements would give them more long-term data that will take longer to obtain, but be more useful over time so they can insure they are not depleting the aquifers.

Commissioner Brentano asked what would happen if at some point it became clear that water levels were actually going down in SGO areas of Marion County. Mr. Anderson said that if an aquifer well-monitoring plan indicated that the water level is going down in a subdivision, the county could step in to determine conservation measures to reduce consumption. He said the state already has a limit on exempt-use wells for how much land they can be irrigating. He said they might find that there are people who are not following the rules when they go out to do follow-ups. In that case, the state and the county would work together to make sure the rules for exempt-use wells were being followed. If the problem were severe enough, the state would need to step in and take action to reduce consumption of the aquifer, which usually means cutting off the newer wells that have been drilled in the area. The wells drilled earlier would take priority rights under Oregon water law. Only the state can regulate the wells and the consumption of the water. He said they would probably prefer not to take severe measures such as cutting off the newer wells, but it is the ultimate option they have. In these types of situations there are other water supply alternatives besides wells. In at least one case, they have required properties to have holding tanks for water and have created some restrictions on water use as part of their Homeowners' Association covenants, conditions, and restrictions. These rules go beyond the

standard state requirements. There are also options for hauling water, storing rainwater, and other ways to conserve water. This is not very common in western Oregon, but this may become more common in groundwater-limited areas, especially if they are accessing basalt aquifers or marine sediments. There are alternatives for people living in rural areas to get water even if they have no well or their well has been shut down by the state.

Commissioner Brentano asked Mr. Anderson if he thought the groundwater problems could reach a point where the county had to limit building in an area. Mr. Anderson said he did not think this would happen because people would still be allowed to build homes, but would need to explore alternative ways of getting water besides wells.

#### TESTIMONY:

##### Support:

George Gerspacher, PO Box 177, Sublimity, OR 97385, said that he and his wife live on 35 acres at 7495 Anderson Road SE, Aumsville. This is a property his father bought in 1913 when he came over from Germany. He said their property is in the Stayton/Sublimity/Aumsville Sensitive Groundwater Area Six. In 1960 his family drilled a well that the Water Resources Department started monitoring in 1962. This monitoring went on for 30 years on a monthly, quarterly, and eventually annual basis. In 1992 they discontinued the monitoring because of lack of funding. During that time, approximately 500 acres were developed to the west and southwest of their property and these parcels were originally between 4.5 and 6.5 acres, and some of these parcels were later re-divided into pieces approximately 2.5 acres.

Mr. Gerspacher said during the period of well monitoring from 1962 to 1992, the water table in their well dropped 18 feet. He said Measure 37 and Measure 49 claims will lead to more rural development and the 2007 House Bill 2566, which would have required registration of all new domestic wells, was unsuccessful. He said he has been a realtor for 39 years and he has found the Oregon Association of Realtors and well drillers to be opposed to his views as they see it as another level of bureaucracy. He said that for many years, septic tanks and irrigation wells were added without installation permits, but both require installation permits now and have some restrictions in some areas. There are no irrigation wells allowed currently in the SGO areas unless one can buy water rights from someone else that gets water from the same aquifer.

Mr. Gerspacher said it is time to require domestic wells to have hydrological studies and be registered. He said he lives in a six-acre SGO zone and the parcel size requirement in his area is too small. He referred to Section 181.100, the hydrological review process, which says any development should require location of lots, parcels, and wells within one-quarter mile of the proposed development. He said he would like to see that extended to at least one mile because the groundwater on his property has been significantly reduced over the years although much of the development in his area was over one mile away.

Mr. Gerspacher said it should be the responsibility of the Oregon Water Resources Department (OWRD) to enact these regulations statewide where appropriate, as opposed to having the counties do it.

He said this process should be tied to other state regulations. Permitting logging of new domestic wells and monitoring existing irrigation wells will allow the OWRD to know if any SGO area is being depleted of groundwater. If this had been done years ago they might have been able to prevent these problems. He felt he should not have to drill a new well because of a new unrestricted development around him. He thanked the Planning Commission and the ORWD for the work they have done in this area. Mr. Gerspacher mentioned a 2005 water study of the Willamette Basin done by ORWD and felt this study needed to be looked at more closely and perhaps re-done to see how conditions have changed over the past few years. He said it might be too late to correct some of the problems, but others may still be preventable.

Mr. Gerspacher said he had a few questions for the record. He asked if the five-acre minimum to avoid a hydrogeological study would be the same in a subdivision as in a partition.

Mr. Gerspacher said he echoed Commissioner Brentano's concerns about what could be done if the groundwater ends up getting depleted further. He gave the example of the Laack subdivision in South Salem. There was information presented at those hearings that the wells were going dry in the area, but the development was still allowed to proceed.

Laurel Hines, 10371 Lake SE, Salem, OR, said she was present as a representative of Friends of Marion County. She thanked the commissioners, the commission and staff for all the deliberations and time spent on this subject. She said that the Friends of Marion County motto is, "Keeping Marion County a great place to live."

She said Friends of Marion County supports the proposed changes and read from a letter they sent to the board (Attachment A). There are some areas in the ordinance that the changes fail to address, but they believe it is a positive development overall.

Brian Hines, 10371 Lake Drive SE, Salem, 97306, said he agreed with Ms. Hines regarding the changes to the ordinance. He said he represents the Keep Our Water Safe Committee, which is closely allied with the Friends of Marion County. He said hydrogeologists could make mistakes unintentionally or even intentionally. He gave an example of a hydrogeologist involved in a past case who had lost his license. Because of these dangers, a hydrogeological review couldn't merely be taken at face value. He said the revised ordinance is somewhat ambiguous about whether a peer review of a hydro review is required and he the language needed to be clearer because of the dangers connected with incorrect information passing through the process unexamined.

Mr. Hines said wells are very important to rural people and there are major differences between city and country life. In the country, losing one's well water tends to be a panicky situation for homeowners. Deepening a well is very expensive and almost everyone is suffering from the difficult economic times. No one likes the idea of having to change to holding tanks, severe conservation measures, or spending \$10,000 to \$15,000 to deepen an existing well. Many also do not have the money to do this in any case. In his view, the other options such as using holding tanks or hauling in water were not satisfactory. He said they needed to protect the existing system of wells and avoid going to these other much less desirable alternatives.

Mr. Hines said there are mysterious things going on under the earth where groundwater is concerned and no one can measure future rainwater. The federal government and others agree that there is a climate change. He said this needs to be taken into account at the local level as well. No one knows how much water sinks into the ground in a given area, but with a hydro review there is a better chance of knowing. It is also impossible to know how much water people are using individually because this is not monitored. He said the county allows a certain percentage for error in terms of allowing for adequate water, but it is impossible to know if that percentage will be enough. He said water does not necessarily remain within a one-quarter mile radius.

Mr. Hines said it is necessary to recognize the number of unknowns and variables in this process. He asked the board if they were given a hydro review of a new partition or subdivision that said it was 90 percent likely for there to be adequate water there, would they be willing to bet their life savings on the results? He said this is the question faced by everyone who lives in a rural area next to a development. Much of their net worth is tied up in their home and this is contingent on having adequate water. He said he would prefer an 80 percent or even 75 percent formula to avoid the possibility of these areas running out of water in the future.

Tim Jaskoski, 744 Scenic Heights Drive SE, Salem, said he had previously testified in regard to the Laack subdivision. He mentioned Victor Point in Silverton, where the aquifer ran into trouble and wells ran dry. This was because of a development very similar to the one being proposed to go in next to Spring Lake Estates. In Silverton, the situation got bad enough that the City of Silverton decided to extend the municipal water supply beyond the urban growth boundary. The city paid over \$1 million to do this and the homeowners had to pay over \$14,000 each even though not all the homes were served. The aquifer continued to decline and according to someone he spoke with at OWRD, they withdrew the aquifer and will not allow it to be used for further development.

Mr. Jaskoski said that groundwater and surface water are very closely related and this is another area that requires careful monitoring. He said he spoke with people at Victor Point who looked into getting storage tanks, but there were many complications involved with these. If water has to be hauled in, there is the same problem of insufficient water, but they are just shifting the source of the problem. He wanted to take a preventative approach instead of waiting until the situation is too extreme to be remedied.

Sid Friedman, 189 Liberty Street NE, Salem, OR 97301, testified on behalf of 1000 Friends of Oregon. He said their organization wanted to go on record as being in support of the proposed amendments. He said that the amendments are a step in the right direction and will hopefully help them avoid problems that have arisen in the past, such as the unfortunate situation at Victor Point.

Mr. Friedman said many speakers had mentioned potential further improvements to the ordinance and he said that he agreed with them, particularly in the area of increasing the margin of safety in the ordinance from 10 percent to 20 percent by amending Section 189.100(c)(1) to change 90 percent to 80 percent.

Mr. Friedman mentioned Commissioner Brentano's question about what could be done for alternatives if later monitoring shows that groundwater is declining in an area. Mr. Friedman said Mr. Anderson

mentioned several alternatives such as curtailing water use and hauling in water, but he said the alternative of requiring a 5-acre minimum lot size was not mentioned at that time. He summarized that the amendments are a step in the right direction. He said the primary responsibility of the board is to protect the health, safety, and welfare of county residents. While the proposed amendments are not perfect, they are an important step towards fulfilling that responsibility.

OPPOSED:

None.

Mr. Anderson came back to summarize and respond to some of the points raised in the testimony. He said Mr. Gerspacher had asked a question about subdivisions with lots of five acres or larger and whether these subdivisions had any additional requirements. Mr. Anderson said that when the lots are over five acres, there is no other requirement for demonstration of an adequate water supply such as a hydrogeological review or hydrogeological study. However, that subdivision would be required to develop an approved water level monitoring plan as a condition of any approval for the subdivision. The water-monitoring plan allows them to stay aware of water levels in case any problems develop after the subdivision is built. He said that as Mr. Gerspacher had already mentioned, the state had been cutting back on its water-monitoring program. The county is attempting to fill in the gaps by putting some well monitoring in place in groundwater-limited areas.

Mr. Anderson said he recognized that water holding tanks are an expensive and imperfect solution, but it was also very expensive and problematic when Victor Point had to hook up to the City of Silverton water supply. He said drilling wells cost many thousands of dollars for a homeowner, particularly if multiple wells have to be drilled because the wells keep coming up dry. He recognized that it was unpleasant to consider the future possibility of having to haul in water or use holding tanks at some point, but it was something that home buyers needed to take into account as part of their due diligence if buying a home in an SGO zone.

Mr. Anderson said surface water and groundwater do interact and this is an important issue. As mentioned, the complexity of the groundwater is a problem as it is often difficult to tell what is going on. In his view, the process under these amendments offers the best avenue for trying to acquire new information and get a handle on what is going on within the limitations of the current science. He said this is not the first time they have gone through the process of monitoring what they were doing in this area and trying to figure out what was working and what was not working. Mr. Anderson said this would be a continuing process as they learn more and collect new information.

Mr. Anderson said that licensed hydrogeologists sometimes have other people do portions of the work in a report, but when the licensed hydrogeologist puts his or her stamp on the report, this certifies in effect that they have reviewed the report and found it to be complete and accurate regarding whether the site meets the requirements of the county's code. If there is a question about the stamp on an individual report it is an issue for the State Board of Geologists as the county has no authority over this area of certification.

Mr. Anderson pointed out that there had been a previous situation under the old ordinance where one

large lot on a site could be averaged out in size with other lots on the site to create a situation where some lots could be partitioned smaller than the five-acre minimum. Under the proposed amended ordinance this could no longer be done, as the ordinance now requires not an average lot size of five acres but a minimum lot size of five acres.

Commissioner Milne asked Mr. Anderson what he thought about the idea of changing the 90 percent standard (10 percent margin of error) requirement to a more stringent 80 percent (20 percent margin of error) requirement. She asked him if he could also give a short explanation of the history of this issue and how they ended up with the 90 percent requirement.

Mr. Anderson said the 90 percent requirement is what planning has used in the past to determine whether or not the groundwater in an area is being overconsumed. If the score is more than 90 percent, then the belief is that the aquifer is too close to the 100 percent consumption level. They also recognize that these things are not perfect and are only estimates. He said he was unsure what the effect would be if they went from 90 percent to 80 percent, although there would certainly be more sites that would fail this test and would have to go to the next level of having the hydrogeological study. The hydrogeological study includes a long-term monitoring process to determine what is going on in the aquifer and generates new information on this question. He said the county could go from a 90 percent requirement to an 80 percent requirement if the board chose to do so.

Mr. Anderson asked Ms. Milliman if she remembered where they got the 90 percent requirement. She said she did not remember where the 90 percent requirement came from originally, but it is something they have been using since the beginning. Mr. Anderson said they could check further on this question and find out more about the actual source of the 90 percent requirement.

Commissioner Milne said she would be comfortable with keeping the standard at the 90 percent level.

Commissioner Carlson said someone had raised the question of why the county had not done a new study. She said she had been in favor of a new study as well and asked Mr. Anderson about his thoughts regarding this suggestion.

Mr. Anderson said if a new study does not generate new information, it is simply a rehash of old information. He said what is needed is more new information in terms of water level monitoring, which is something that they are hoping this amended water ordinance will generate for them. At that time, a new study would perhaps be warranted. He said the cost of a study was also prohibited given the current budget constraints. The last study cost over \$50,000, and planning was uncertain about where the money would come from for another study. To get good information the county would be required to set up a well field-monitoring program, which is something the county has looked at previously and decided against because of costs.

Commissioner Carlson asked about whether the county is doing enough in terms of disclaimers to make homebuyers and owners aware of the groundwater levels and supply in their area.

Mr. Anderson said the disclaimer is primarily an effort to make the homeowner aware that the home is in a groundwater-limited area and the county is not guaranteeing that they will have an adequate

groundwater supply. It is something they do to provide awareness to the homeowner. He said that in terms of providing information about the possible consequences of aquifer depletion or a well going dry, that information falls under the authority of the OWRD. The OWRD has the actual authority to cut off wells if necessary, although this is a very formal process they would have to go through to do this. The county's disclaimer is designed less to warn people about consequences than to make them aware of the situation and let them know they can check with OWRD for further information.

Commissioner Carlson said the amended ordinance requires a minimum parcel size of five acres to avoid the requirement for a hydrogeological study. She said Friends of Marion County had questioned whether this needed to be a larger lot size. She said that after considerable discussion, the Planning Commission's work group recommended the five acres while acknowledging that it is not a magic number for the size threshold. She said it appears to have been a compromise and asked Mr. Anderson if he had any comments about this.

Mr. Anderson said the five-acre minimum is a compromise. When the Kienle report came out, there were several lot sizes used as minimum lot size numbers. The report showed the majority of the groundwater-limited areas in Marion County as falling under the SGO-5 limit, but there were also SGO-6 and SGO-7 sites that required a six-acre or seven-acre minimum. He said the five-acre minimum is basically considered an adequate threshold size across the board. If someone wanted to go below that lot size, there would be the need for additional information. He said the five-acre threshold was a compromise number and there is no guarantee that this is a perfect number.

Commissioner Carlson asked whether the five-acre minimum would also apply in the SGO-6 and SGO-7 zones as well as the SGO-5 zone. Mr. Anderson replied that would be the case.

Commissioner Carlson asked Mr. Anderson about Mr. Gerspacher's suggestions regarding Section 181.100. Mr. Gerspacher had stated that the ordinance currently states that any development should require location of lots, parcels, and wells within one-quarter mile of the proposed development. He wanted to see that requirement extended to at least one mile away because the groundwater on his property has been significantly reduced over the years although much of the development in his area was over one mile away.

Ms. Milliman said there are provisions when doing hydro reviews and hydro studies where the study area or report has to include the effect on certain wells out to about one-half mile. These are generally the larger irrigation wells. She said the study area size also depends on the geological conditions in the area.

Commissioner Carlson asked what the downside would be of extending the study area out by an additional three-quarters mile. She asked if it would be more expensive.

Ms. Milliman said it would be much more expensive to include this additional information on wells in the area including location and background information in the study area. She said this would quadruple the amount of the area they would have to study and she was unsure whether the results would be much different.

Mr. Anderson explained that in the county's peer review manual, which is used to assist the hydrogeologist doing the study and the peer reviewer, the two parties are asked to communicate prior to the formal peer review being submitted in order to look at the proposal, design the study, and in some cases extend the area being studied if conditions appear to warrant this. He said that in some cases the hydrogeologist and the peer reviewer decide, based on their professional judgment that they need to cover a larger area. He said they had to come up with some minimum standard as a starting point and one-quarter acre had been generally accepted as a good starting point.

Commissioner Carlson asked about Section 181.150, which covers peer reviewing of hydrogeological studies and hydrogeological reviews. She asked if peer reviews are required for both the hydrogeological studies and the hydrogeological reviews.

Mr. Anderson said that peer reviews are required for both hydro studies and hydro reviews.

Commissioner Carlson asked Mr. Anderson whether he thought the ordinance needed to reference the peer review manual or if the manual could just be part of the implementation of the actual reviews.

Mr. Anderson said he was unsure whether the peer review manual was mentioned in the ordinance. He said it is used to guide both the hydrogeologist and the peer reviewer regarding how they conduct the original study and the peer review. He said the manual provides many of the details not included in the ordinance and is essentially a policy that planning requires them to follow.

Commissioner Carlson suggested that Mr. Anderson check with legal counsel and see if they should possibly include the peer review manual as part of the ordinance.

Jo Stonecipher, legal counsel, said it would not be a good idea to include the peer review manual as part of the ordinance because as further scientific techniques and knowledge develop in this area, they would want to be able to make changes in the manual without having to go through a complete land use process. She said it would be best to leave it open and changes can be brought to the board or through policies developed by planning.

Commissioner Carlson thanked the planning staff and the OWRD for their assistance in putting together the amendments. She also thanked the Planning Commission and their subcommittee for all the work they put into this process.

Commissioner Brentano said the only way to make sure water levels stay the same is to outlaw any withdrawals from groundwater. He said this is not a reasonable expectation. He said the next best way would be to limit new development to minimize new demands on the aquifers. He said that even if there were no water taken out, there is no absolute guarantee that the groundwater levels will not change for other reasons. He felt that outlawing all development was unfair to those who own undeveloped property. He stated that in his view the amendments to the ordinance are a step in the right direction.

Commissioner Brentano also addressed Mr. Gerspacher's comments on the Laack case, saying that case had been a very difficult one for the board and many of the new amendments under discussion were designed to address some of the problems that arose from that case. The first of these was the question

of average lot size versus minimum lot size. Commissioner Brentano said he did not think it was fair to move the goalposts on people and under the previous version of the ordinance this left him with no choice but to follow the rules at the time. In some cases this included approving the use of lot size averaging although this led to situations where there were some lots of less than five acres. He said the amendments to the ordinance would change and clarify this by making certain that a five-acre minimum is required.

Commissioner Brentano said he did not always respect the peer reviews, as he gets many different answers from different experts about conditions at a site. He said letting a peer reviewer make the final decision on whether a development goes forward or not is unreasonable because there is no opportunity for the opposition to reply and address the peer reviewer's conclusions. He said this was another thing that happened in the Laack subdivision case. He felt that in the Laack case they were able to address some of the problems and minimize the impact by requiring the development to be done in phases.

Commissioner Brentano said he could not go along with the idea of changing from a 90 percent margin of error standard to an 80 percent margin of error standard, as he felt this would probably make almost all future development impossible. He said these amendments to the ordinance are a response to problems they have had in making decisions in the past. These changes will allow the county to recognize situations where there are problems and send those cases on to the OWRD for enforcement if necessary. He said he was in support of the amendments as presented today.

Commissioner Milne thanked the staff for all their work during the long process of getting these amendments prepared. She thanked all the citizen groups and speakers for their involvement and for bringing forward community concerns. She said two of her children live on acreage and have wells so she is aware of the issues and the difficulties for well owners and rural property owners. She said this issue is a moving target, but she believes the questions posed today have been answered adequately. She said she was comfortable with the recommendations as presented. She said that if someone has scientific evidence or data that might make them want to consider a change they would be welcome to come forward with this information.

Commissioner Carlson said that these amendments would help to remedy some of the problems they have encountered in the past with the ordinance. She said the amendments are not perfect, but this will offer a good compromise. She thanked the speakers for their contributions and questions.

**MOTION:** Commissioner Milne moved to close the public hearing and direct staff to prepare the final ordinance as recommended amendments to Chapter 181 (SGO zone) of the Marion County Rural Zoning Ordinance. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.  
Commissioner Brentano adjourned the meeting at 11:09 a.m.

**Attachments:** Agenda

ABOVE MINUTES APPROVED

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CHAIR

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COMMISSIONER

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COMMISSIONER

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