

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, November 19, 2008
Marion County Courthouse Square

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

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

ABSENT: Commissioner Carlson

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

CONSENT

FINANCE

Approve a quitclaim deed to convey real property Tax Lot #R41800, located in Marion County, Oregon.

HEALTH

Approve amendment #59 to receive \$250,000, from the department of Human Services for the financing of Community Mental Health, Developmental Disability and Addiction Services.

PUBLIC WORKS

Receive engineer's report and set a public hearing on December 17, 2008, regarding a request to gate a no-name road between Crosby Road and Whitney Lane NE.

Notification of bid award to Brattain International Inc. for pothole patching equipment in the amount of \$145,004.

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

ACTION

BUSINESS SERVICES – HUMAN RESOURCES

1. Consider adoption of an ordinance amending Ordinance No. 1221, revising the Marion County Personnel Rules; by emergency procedure. – Theresa VanDusen

Theresa VanDusen, human resource manager, reported changes in the Marion County Personnel Rules. She said that in 2006 they rewrote the entire document and it was received and adopted by the board at that time. She committed to going back through the document every few years to make sure it reflects current practice and any legislative changes that have been made that are referenced in the rules. Ms. VanDusen said they have reviewed the rules again this year and have some recommendations for the board to consider.

Ms. VanDusen said that the personnel rules govern the employment and personnel practices in Marion County. It addresses recruitment practices, compensation, job classifications, job responsibilities and duties, performance evaluation processes and similar issues. It largely covers individuals who are not represented by unions. If the unions of represented individuals are silent on a particular issue, the personnel rules are then referenced for guidance. This document is accessible to the public on the Marion County website.

Ms. VanDusen summarized some of the key changes they are recommending. Under the Preface section they have a section about suspension of the personnel rules if there is an emergency situation. They have added language to this section discussing their emergency ordinance. Legal counsel felt it was important to address this with a paragraph explaining their ability to suspend the personnel rules in the event of an emergency. This will allow them to carry on county business during an emergency.

Other additions include changes to article 2, classification of positions, where there are some administrative changes including changing the makeup of some positions and deleting old positions. Article 3, compensation, includes some changes where they have clarified the use of longevity pay, which is only available to individuals who have at least 10 years of service working for the county. They have added language throughout that article clarifying when people are able to achieve longevity pay. They have also added information regarding reclassification of positions and how this is carried out. They added language regarding how overtime is computed. Most employees covered by the personnel rules are not eligible for overtime, but some are, so this needed to be modified.

Ms. VanDusen said they also added a section on pager pay. There are some unrepresented individuals, such as workers at the Psychiatric Crisis Center, who are on 24-hour pager duty and they have clarified some language in this area.

Article 4, recruitment, has been changed to be more process-oriented. That article discusses recruitment, selection, and development of interview lists. They added language that talks about temporary employees. They have added language regarding veteran's preference that incorporates developments from the last legislative session. Article 5 covers what is known as trial service, initial service, or

probationary period and clarifies language in this area.

Article 6, benefits, reflects the county's pickup of the employee's portion of PERS costs, which started July 1, 2008, for the majority of employees. It also reflects a change in the way compensation credits are applied effective July 1, 2008. She also clarified language regarding sick leave without pay and sick leave investigations. They added language-clarifying issues surrounding compensatory time.

Article 9 discusses discipline and the appeal process associated with it. There have been some language clarifications in this area. Under article 12, end of employment, they have clarified legal language regarding payment of a deceased employee's wages to surviving beneficiaries or the employee's estate.

Commissioner Milne said she did not have any questions about the changes as the Board had already discussed these changes thoroughly with Human Resources.

Ms. VanDusen said she had asked for these changes to be adopted by emergency procedure because of legislative changes adopted at the state level.

Commissioner Brentano asked about the language regarding recall from layoff in article 10, which says an employee may only be recalled to the same department from which the employee was laid off. Ms. VanDusen said that when someone is laid off from a county position, that person receives notice of all job openings for which he or she would be qualified and the person can decide whether they want to apply. In some union contracts there are also priority placement options for these people. She said they try hard to get laid-off employees back to work. The language in article 10 allows the employee to be automatically recalled back to the same position in which the employee was working when laid off.

MOTION: Commissioner Milne moved that the chair read the ordinance by title only twice. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Brentano then read the ordinance by title twice.

MOTION: Commissioner Milne moved adoption of an ordinance amending Ordinance No. 1221, revising the Marion County Personnel Rules. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS

2. Consider adopting an ordinance adopting new administrative provisions for the enforcement of the State Building Code, Dangerous Building Code, and On-Site Installations, repealing ordinance Nos. 1228 and 1232; by emergency procedure. – Warren Jackson

Warren Jackson, Public Works, said they are asking the board to consider adoption of a revised Building Code ordinance. He said many of the proposed changes are matters of housekeeping although there are some new provisions that will offer relief to homebuilders, contractors, and homeowners. He said they are combining their current building code ordinance and dangerous building code ordinance into a single ordinance to prevent future confusion. They have also changed some references to Oregon

Administrative Rules as needed.

Mr. Jackson said one of the more substantive proposed changes is to allow a permit holder to extend a permit more than once. Currently, permit holders are only allowed to extend a permit once. Another proposed change includes loosening up the criteria for extensions of permits. Current language requires that the permit holder show in writing that circumstances beyond the permit holder's control have prevented action from being taken on the permit. The new language requires that the extension be requested in writing and that justifiable cause be demonstrated. This would include financial emergency and other unexpected events. Mr. Jackson said they have had a number of people ask for extensions and they have tried to be understanding about this because of changes in the market. They do not want to force people to start the whole permit process over again.

Mr. Jackson said another proposed change is in the permit period. Currently, all permits expire by limitation after 24 months. They have made some changes in the way they archive documents which have made it much easier to track permits. Therefore, they would like to change the expiration period to 48 months, which will give permit holders more flexibility and time. Along with the new ability to extend a permit more than once, this should cover nearly every project and situation.

Another proposed change is to eliminate the adoption of the optional grading and excavation chapter. That will make Marion County consistent with the City of Salem. Mr. Jackson said he was told that the original reason for adopting that chapter was to have a record of where fill was placed around the county. He said that the code has changed in such a way that very rarely is a permit actually required for fill, so they no longer have an accurate picture of where fill is located because it is so frequently exempt from permit. The few instances where a permit is required for fill are generally situations where the person is required to get a permit from another agency, and that permit is much more expensive and more complicated than a county permit. This would be for situations such as placing fill in a flood plain or doing excavation in a geohazard area. These are areas that are already being regulated by someone else, so the county's requirement for additional permits and fees was somewhat redundant. Mr. Jackson said he checked with the code enforcement officers to see if this would have any real impact and they indicated that it would not have a major impact.

Mr. Jackson said they have made a minor change in the adoption of the dangerous building code. In one section they have changed the words "fire marshal" to "building official" to indicate that in Oregon, the building official is responsible for inspecting the mechanical work in the building.

Mr. Jackson said they are asking to have the ordinance adopted by emergency procedure because they want to help homeowners and contractors by implementing the changes on extensions as soon as possible.

Commissioner Milne said she appreciated the changes. She said that the increased flexibility in the ordinance would help people who are building in these difficult economic times.

Commissioner Brentano asked for some additional explanation regarding the fill permits that are covered by the grading and excavation chapter. He said someone asked him a question about this recently and he was wondering if this took away from the county's ability to have input in this area. Mr.

Jackson said this was an optional building code chapter that the county had adopted and the elimination of this chapter would not affect a community's ability to regulate grading, excavation, and the use of fill within city limits. Commissioner Brentano said his concern had to do with other parts of the county outside of the city limits of a given city. Mr. Jackson said that the building code is administered the same way within the county as it is within cities that are part of the county. He said the exception would be something like the dangerous building code ordinance. This is an optional building code for the county and not a required code. He said the excavation and grading chapter is also an optional chapter. He said he did not believe there was anything in that chapter that would prevent cities from using their own planning or zoning regulations or public works regulations to control those types of activities within their borders. He said that over the last few years, in most of the instances where the county could have applied that chapter, they have had other regulations that covered that work. He said the situation tends to end up with two different entities trying to regulate one activity.

Commissioner Brentano asked if the new ordinance would affect Marion County's ability to authorize any instance of fill in the county about which they might become concerned. Mr. Jackson said they are obviously giving up authority to regulate grading and excavation because the county would no longer have adopted that chapter of the building code. He said there are still other statutes that regulate fill, such as statutes that disallow filling a natural drainage way or putting fill in a flood plain. Commissioner Brentano asked if the county could still object in a case where someone had a state permit, but wanted to put fill in a place that could have adverse effects. Mr. Jackson said planning has regulations to address fill in flood plains and they are actually required to address those issues.

Sterling Anderson, planning director, stated that any time there is fill located in a flood plain, the owner would have to get a permit or it would be prohibited. He said filling in flood plains are covered by Federal Emergency Management Agency (FEMA) regulations as well as regulations regarding stream channels, which are regulated even if they are not in a flood plain. Mr. Anderson said that in a steep slope or geologic hazard areas, any cut or fill would likely require review by a geotechnical engineer. He said these regulations cover the hazardous areas where this kind of activity could create problems.

Mr. Jackson said that the vast majority of fill and excavation activity that is going on in the county does not require a permit in any case. He said there are a few exceptions to this, but these are usually regulated at some other level as well, and those regulations usually have more stringent requirements than what the building code would impose.

Commissioner Brentano asked if the county would have the ability to have input with a state or other agency regarding issuance of permits if the county stops issuing its own permits in this area and then finds that there is a grading and excavation location in the county that causes concern. Mr. Anderson responded that the county does have a clear public process and policy for public comment involvement. If there is disagreement with a decision, it is usually a land use decision that would be appealable.

MOTION: Commissioner Milne moved that the chair read the ordinance by title only twice. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Brentano then read the ordinance by title only twice.

MOTION: Commissioner Milne moved adoption of an ordinance adopting new administrative provisions for the enforcement of the State Building Code, Dangerous Building Code, and On-Site Installations, repealing ordinance Nos. 1228 and 1232; by emergency procedure. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

3. Consider adoption of a revised fee schedule for the building inspection division; by emergency procedure (**TO BE ACTED ON FOLLOWING PUBLIC HEARING**). – Warren Jackson

PUBLIC WORKS – PLANNING

4. Consider adoption of an ordinance amending Marion County Rural Zoning Ordinance Chapter 181 (Sensitive Groundwater Overlay Zone) repealing provisions and adding new provisions; by emergency procedure. – Sterling Anderson

Sterling Anderson, planning director, said this item is for consideration of adoption of an ordinance amending the Marion County Rural Zoning Ordinance Chapter 181 (Sensitive Groundwater Overlay Zone) repealing provisions and adding new provisions; by emergency procedure.

Mr. Anderson said the board initiated legislative amendments to the SGO zone by a resolution dated November 7, 2007. The proposed amendments include additions, deletions and amendments to Chapter 181. The board held a public hearing on this proposed amendment on November 12, 2008. Mr. Anderson said that back in 2007, the county recognized that there were some problems with some aspects of the current ordinance regarding the SGO zone. There was a large amount of citizen impact that convinced the board that this issue needed to be examined in more detail. As a result, the Planning Commission formed a subcommittee including members of the Planning Commission and the Oregon Water Resources Department (OWRD). This subcommittee came up with a recommendation that went to the full Planning Commission, which reviewed it, made some amendments and changes, and sent it to the board for further work during a work session and management update meetings. The board fine-tuned the recommended amendments with some additional changes and sent the document back to the Planning Commission, which agreed with those changes.

After the public hearing on November 12, 2008, the board instructed staff to bring the proposed amendments back for consideration of adoption. The ordinance is being presented today to implement those changes.

Commissioner Milne said she had no questions as the board had already reviewed these changes extensively. She said her hope is that this ordinance will be clear and easy for people to understand while protecting water rights.

Commissioner Brentano agreed and said the whole idea here was to allow development, but to also ensure that plenty of water remains available.

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

Commissioner Brentano read the ordinance by title only twice.

MOTION: Commissioner Milne moved the adoption of an ordinance amending Marion County Rural Zoning Ordinance Chapter 181 (Sensitive Groundwater Overlay Zone) repealing provisions and adding new provisions; by emergency procedure. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS

A. Public hearing to consider adoption of a revised fee schedule for the building inspection division. - Warren Jackson

Warren Jackson, Public Works, showed a PowerPoint presentation of a revised fee schedule for the building inspection division. The proposal will increase most permit fees by about four percent and change fee methodologies to comply with new state rules. Mr. Jackson said they have worked with the homebuilders association and other organizations to discuss these changes.

Mr. Jackson presented some of the changes and challenges facing the Building Inspection division. He said that nationwide there has been a steep decline in the number of homes being constructed, which has had a major impact on the entire economy. The impact has been even greater on the industries directly linked to housing construction. The division's revenues have declined significantly while experiencing increased costs. This has led to a sharp decline in their reserve balance. At the start of FY 2007-08, they had reserves of over \$1.2 million. Despite measures taken to reduce expenses, the reserve balance was down to \$826,000 by the end of that fiscal year. The downward trend has continued and is likely to continue for the remainder of this fiscal year and into the next. Mr. Jackson said that given the volatility of the economy it is difficult to predict future revenues with any accuracy, but he would not be surprised if the reserve fund balance was \$300,000 or less at the end of FY 2008-09.

Mr. Jackson said the actual number of building permits over the last three months is only down by about five percent from last year. The real decline has been in permits for new structures. Permits for additions, remodels, mechanical, plumbing, and electrical works are unchanged at this time and may even be up slightly in some cases. Adjusted for the way they classify dwelling permits, the total number of permits is down about 12 percent compared to the same time last year. New construction is down and this is the type of project that tends to require a plan review and plan reviews are down about 20 percent from last year. Inspections are down about 25 percent compared to the same time last year.

Mr. Jackson said staffing has decreased by 30 percent from last year. While the inspection, permit, and plan review load is down, staffing has gone down even further. He said that during the last year they have decreased staffing by 8.0 FTE, which includes two inspectors, three plans examiners and three permit technicians. At the same time, they have also drastically reduced their dependence on temporary

help. When inspection loads go down, it becomes more difficult for them to be efficient in doing inspections because they end up driving more miles per inspection. They have been fortunate this year in having several inspectors complete cross training and obtain certification. This allows them to send fewer inspectors to each individual home, which improves efficiency. Despite the decline in inspections, they have been able to maintain about the same number of inspections per day per inspector.

The rules adopted by the State Building Codes Division in OAR Chapter 918.050, require all jurisdictions to adopt the uniform fee methodology before January 1, 2009. With the exception of the dwelling permit for new homes, the changes required to comply with the new rules are relatively minor. For new dwellings the county currently charges a flat rate per square foot for all permits and plan review. The state methodology is different and in the case of smaller homes ends up costing more than what the county charges currently. As homes get larger, the costs per square foot decrease. The new methodology would be a burden on the smaller homes, so they have worked with the homebuilders to find a way to ameliorate this situation. They contacted the State of Oregon Building Codes Division and asked them if they could offer a discount to the structural permit fee on these new homes and still be in compliance with the new rules. The Building Codes Division said this was permissible, so they have come up with a formula to eliminate most of this discrepancy. There is a maximum amount for the discount so that the county will not end up owing money to the homeowner on permits for very small homes, but the fee as proposed for smaller homes will actually end up being slightly less than what the county currently charges. In most instances the average will be about \$38 less for a home under 2,000 square feet.

Mr. Jackson said the demand for homes has changed in the last year. The homes being built now are slightly smaller. A few years ago the average home size for permit applications was around 2,400 square feet, while the average now is closer to 1,800 or 1,900 square feet with the median being 1,750 square feet. The implementation of the discount should prevent the owners of smaller homes from getting a huge price increase for their permits under the state methodology.

The other major change being proposed is an adjustment of the structural permit fees to make them similar to those of other counties. Marion County's structural permit fees are currently quite a bit lower than those of other counties. He said they have made significant cuts in personnel to reduce expenses, but these have not been enough to stem the decline in their reserve balance. While the proposed changes are not designed to pull the division out of the red the hope is that it will at least buy them some time until the economy improves.

Mr. Jackson said the division is planning ahead and looking for opportunities to increase efficiency and reduce costs. They plan to continue imaging documents to decrease the time it takes to do research on permit histories. They have been told that IT is closer to being able to make archive documents available online over the internet, which will make research easier for customers on septic tank locations and similar topics. They plan to work closely with the Oregon Building Codes Division to increase the types of services and permits available online. The Building Codes Division is now working on a statewide-computerized system that would allow nearly every kind of application to be made over the internet. They are trying to get in line to become part of that system, although they will not be part of the initial testing group. They plan to continue cross training inspectors and plans examiners so they can be more flexible with a smaller work force.

Commissioner Milne thanked Mr. Jackson for the presentation. She said there was a need to comply with state regulations that required them to make these changes. She appreciated their working closely with the homebuilders and others in the construction industry. She said she had heard positive comments from Mike Erdmann of the Home Builders Association of Marion and Polk Counties regarding the work done by building inspection on these fee changes. She said nobody likes fee increases, but these changes will help to at least make fees more predictable and the discount for permits on smaller home would help increase affordability.

Commissioner Brentano said he had also heard positive comments about the new fee schedule from Mike Erdmann. He said he was happy with the efforts to make the permits affordable for the smaller homes.

TESTIMONY:

None.

MOTION: Commissioner Milne moved to close the public hearing and to adopt a revised fee schedule for the building inspection division. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

A. Public hearing to consider hearings officer's recommendation denying zone change/comprehensive plan amendment and approving property line adjustment, case #ZC/CP/PLA 08-01, Lovrien Trust, Clerk's File #5598. – Sterling Anderson

Sterling Anderson, planning director, said this is an application to change the zone from exclusive farm use (EFU) to commercial (C) and to change the comprehensive plan designation from primary agriculture to commercial. This requires that an exception be taken to statewide planning goal 3 (agricultural) on 2.0 acres of the 7.52-acre subject property. The application also requests to adjust the property lines on a 6.29-acre parcel and a 1.23-acre parcel to create a 5.52-acre EFU zoned parcel and a 2.0-acre C zoned parcel at 8755 Silverton Road NE, Silverton, Oregon.

A public hearing was held on this application on March 12, 2008, before the Marion County hearings officer. On October 20, 2008, the hearings officer issued a recommendation to the board to deny the comprehensive plan amendment, goal exceptions and zone change. However, the hearings officer did approve the property line adjustments subject to certain conditions. Regarding the plan and zone change, the hearings officer basically found the applicants had failed to meet the burden of showing that the request met the requirements for a goal exception. The key in most zone change situations where goal 3 is involved is the goal exception portion of the request. The applicant attempted to show that the subject property is physically developed to the extent that it is no longer available for use as allowed by goal 3 or that it is irrevocably committed to uses not allowed by the goal because existing adjacent uses and other relevant factors make use allowed by the goal impracticable.

Mr. Anderson said there are three different kinds of goal exceptions: the physically developed, the committed, and the reasons exception. He said that in this case, regarding the physically developed

exception, the hearings officer found that the problem with asking for a physically developed exception is that the Oregon Administrative Rules requires that the current development be related to uses not allowed by the applicable goal. Uses allowed by the applicable goals to which an exception is being taken shall not be used as justification for a physically developed exception. The current use of the property is for Christmas trees and for a farm stand. Both uses are allowed and/or permitted subject to standards in the EFU zone. The hearings officer concluded the property could not qualify for a physically developed exception and that none should be taken.

Regarding the committed exception, the hearings officer found that overall, it appears that the parcels surrounding the proposed exception are either in farm use or are uses established under the statewide planning goals in accordance with goal exceptions. Nothing in particular about the surrounding uses makes farm use of the exception area impracticable. Surrounding farm uses do not make farming impracticable and the church was established in accordance with the acknowledged Marion County comprehensive plan and cannot be used to justify an exception. Industrial and commercial use has been made of the Pratum co-op property for years with no apparent impact on surrounding farm use. The same can be said for commercial, residential, and school uses of the Sanders property and the school district property. In conclusion, the hearings officer found that when properties in farm use and uses created under the goals are removed from consideration, the only surrounding properties remaining are the school property (with schools being allowed in an EFU zone), the gas station property, and the apartment complex property. These properties do not affect farming on farm parcels directly adjacent to them and it is difficult to see how they would prevent agricultural use of the subject property. Taking a committed exception is not recommended.

Mr. Anderson said the applicant might consider addressing the reasons exception criteria because the subject property does not appear to satisfy the developed or committed exception requirements. The hearings officer also found that the applicant failed to meet the Marion County comprehensive plan rural development policy 3, which states that rural industrial, commercial, and public uses should be limited to those activities that are best suited to a rural location and are compatible with existing rural development and the agricultural goals and policies of the plan. The hearings officer found that on the surface, it is hard to see how a convenience store would be best suited to a rural location, but if an exception is taken and the commercial designation and zoning is applied, the grocery store use at the proposed square footage that the applicants have proposed would be an allowed use in the acknowledged rural commercial zone and could be considered appropriate in a rural location. The applicant has not addressed how the use would be compatible with nearby farm uses. Without additional information, the requirement of compatibility with agricultural uses, goals and policies cannot be met.

Mr. Anderson said the hearings officer found that the applicant failed to meet rural services policy 1 of the Marion County Comprehensive Plan, which states that the impact on existing services and potential need for additional facilities should be evaluated when rural development is proposed. These services consist of transportation, sewer, water, and other standard services that a use of this kind would need. The applicants have not addressed whether it is feasible to provide water and sewer service for the proposed use. The applicants need to provide information for the board to review. Without additional information, the applicants have not proven that the policy has been met. The hearings officer pointed out regarding Marion County comprehensive plan rural services policy 2, it is the intent of Marion

County to maintain the rural character of areas outside the urban growth boundaries by only allowing those uses that do not increase the potential for urban services. In this case, the applicants would need to address whether the proposed exception can be accommodated in terms of services needed for the proposed commercial market use without the addition of urban levels of service.

Mr. Anderson went on to say that regarding the zone change criteria, the hearings officer found the applicant failed to show compliance with the criteria, stating that the applicants have not provided sufficient information to determine whether the zone change is appropriate considering the surrounding agricultural uses and the pattern of development and use in the area. The applicants need to address whether appropriate water and septic services can be provided to support the proposed zone change and that those uses are not urban in nature.

The applicant's proposed finding was that other lands in the county designated for a proposed commercial market were either unavailable or not as well suited for the use due to the exception area's central location between Salem and Silverton. Specifically, the applicant reviewed the county zoning maps and found no available commercial space within a 2.5-mile radius. Moreover, the nearest urban growth boundary is over four miles from the exception area. The hearings officer pointed out that the applicants did not explain why 2.5 and 4.0 miles were important numbers towards evaluating the criteria or why properties at these sites were unavailable. In conclusion, the hearings officer did not recommend approval of the comprehensive plan and zone change.

Testimony:

SUPPORT:

Alan Sorem of Saalfeld Griggs PC, 250 Church Street SE, Suite 300, Salem, OR, 97301, is the attorney for the applicants. He said he wanted to go over the general criteria in his presentation although there was too little time to address every single criterion individually. He said he wanted to use the evidence in the record to show why this use is in conformity with the comprehensive plan/zone change criteria regarding the physical development and irrevocably committed exceptions. He said there are many overlapping criteria for both the State of Oregon and Marion County that cover many of the same issues. He said his PowerPoint presentation will show why the applicant's evidence does meet all the specified criteria.

Mr. Sorem said that the subject property, prior to the property line adjustment, consisted of two parcels totaling about 7.5 acres. With the approval of the property line adjustment, the second parcel is an approximate 2.0-acre site that is currently designated primary agriculture (PA) in Marion County Comprehensive Plan and zoned exclusive farm use (EFU) on the Marion County Zoning Map. He said there are commercially zoned properties adjacent to the exception area. There are no sensitive groundwater areas, floodplain hazards, wetlands, or geologic hazards on or near the exception area.

Mr. Sorem explained that the historic use for this property for almost 40 years has been a farm stand of one kind or another at the intersection of Silverton and Howell Prairie Roads, which is a busy intersection. He said the farm stand has been vacant for a few years for a number of reasons, but primarily because the original farm stand was set up long before there was a goal 3, and the regulations

on what a farm stand could be were very different then. He said that every five or ten years the state legislature keeps reducing the role of what farm stands are and can do. He said the farm stand used to be a viable, healthy business remembered by many in the county.

Mr. Sorem said the old farm stand could no longer be used as a farm stand based on the current economic realities because of the proportion rule. Under this rule, only 25 percent of the value of the products sold at the business can be in what is known as "incidental" goods, with the rest having to be locally produced farm crops. The definition of locally produced farm crops has been expanded to the benefit of some farm stand operators that have regional connections throughout California, Washington, and Oregon for specially made goods, and these farm stands have been able to survive under these rules. The other kind of farm stands that have been able to survive are those having very little overhead because they are only open for a few weeks or months out of the year depending on which crops are in season. Mr. Sorem said farm stands used to be a healthy viable business where people could come in and buy milk, produce, bread, and other goods along with fresh produce and fresh ornamental crops. He said this is no longer the case and the Lovriens had one of the last of this type of farm stands, which they were not able to keep open under recent economic conditions and regulations.

Mr. Sorem said their request is to amend the comprehensive plan and change the zoning from PA and EFU to commercial/commercial. The current facility is a 900 square foot building with a 200 square foot cooler and a side yard. Without the outdoor storage, the current facility is slightly over 1,200 square feet. The maximum size that would be allowed under the limited use overlay zone is 2,000 square feet. They have proposed the limited use overlay zone as a way of reducing the impact of this project on the community. The total expansion of the current facility they are proposing is only an additional 800 square feet. The proposed use is something Mr. Sorem has debated with the planning staff and he said they are really only requesting the ability to change the ration to allow them to sell more than 25 percent in value of "incidental goods." The nature of the business will be the same historic product line that has always been sold on the property. They have relationships with farmers in the area and want to continue being a retail outlet for local goods, but have been unable to keep the business going because of the proportions required under the new regulations. He said the size will be increased somewhat, but the use is essentially the same.

Mr. Sorem said they had discussed applying for a non-conforming use for the location, but they do not have a set of accurate receipts for what was going on at the location during the 1970s and 1980s, which would be needed for this type of request. This is why they decided not to go ahead with that application. He said the use they are suggesting for the location would be substantially the same as in the past and the owners are present to give more detail about this if necessary. He said they have been forced to take a somewhat extreme approach to get the results they want in this case and they would have rather done this some other way if there were some other way for them to get the result they wanted. He said the limited use overlay zone would allow something similar to what was already present at the location, but slightly larger in size and scale. He said this is the only way they can get there and this is why they have done this as a comprehensive plan/zone change request.

Regarding approval criteria, Mr. Sorem went on to address the physically developed exception. The question in the criteria regarding this exception asks whether the exception area is physically developed with non-farm uses and improvements to the extent that it is no longer available for farm use. The

hearings officer said the Christmas trees and farm stand would not qualify as evidence of physical development, but he said there was additional evidence involved that should be considered. He referred to a map showing the location of the old Salem-Silverton Highway, where there was a "Y" junction. In the late 1940s and early 1950s, the highway was moved. When they demolished the old highway, they spread all the aggregate road debris in the area. He said nothing has ever been grown on the property in the southern two-thirds of the proposed exception area because of the road debris and utility easements at the location, which are 20 and 22 feet along the applicable roads. He showed some photographs of the exception area including locations where the applicants had tried to grow Christmas trees with very little success in the areas that have road debris. He showed other views of the road debris where rocks are still surfacing nearly 50 years later.

Mr. Sorem said the hearings officer had been unsure about the relationship between the road debris close-ups and the proposed exception area as a whole. He said he understood that this relationship could not be established without a site visit. He showed an aerial photo that shows the exception area where the aggregate is reflecting sunlight on the satellite image. He said the original farm stand was also built on the exception area and the road debris. He pointed out that even without the farm stand the land would not be farmable.

Commissioner Milne said she is familiar with the site and asked how far the debris extends, how deep it is, and whether there have been any attempts to remove it. Mr. Sorem said the debris extends about 80 feet onto the property. He said he was unsure about the depth of the debris, but the owner's attempts to till and farm the area over the last 40 years have been unsuccessful. This can even be seen on the aerial photographs. He said that when the area got bulldozed, portions of the debris would have ended up going deeper into the ground. He said in some spots it would be exposed while in others it would be partially buried and in any case would not be suitable for farming. Commissioner Milne asked if any attempts were made to get rid of the debris before giving up on the project. Mr. Sorem said he did not think anyone had actually tried to excavate the old road site and put in new topsoil. He said the location is about one acre and makes up the bulk of the exception area.

Commissioner Milne clarified that the old road was removed about 40 years ago. Mr. Sorem said the right-of-way was acquired in the late 1940s and the actual demolition and road building was done in the late 1940s and early 1950s. Commissioner Milne said that if the location had been an actual road, the debris would probably be very deep. Mr. Sorem agreed that this would probably be the case. He said he believed the developments on the site would substantiate the case for the physically developed exception they are requesting. He said he also believed the weight of the evidence they would present today would be sufficient to justify the exceptions they are requesting.

Mr. Sorem said the hearings officer had used the counterexample of nursery operations in her opinion, pointing out that nursery operators frequently use gravel on the ground. There is a family about 1,000 yards away from the site that has about four acres that they use for a nursery operation, with most of it covered in rock. They have about 10 greenhouses growing starter plants in a wholesale operation. The hearings officer pointed out that the applicants could have a similar agriculture use at their site despite the presence of rocks and aggregate. He said this would be theoretically possible, but in terms of being an agricultural use, this greenhouse use would have no relationship to the land and could be carried out just as easily at almost any other site. He said that under that analysis, no amount of physical

development at the site would ever be enough to substantiate the criteria.

Mr. Sorem said he had discussed the greenhouse operation with OSU Extension and with the Jose Villegas family, which owns the greenhouses. They have explained the costs involved, and starting such an operation would require approximately \$100,000 in initial investment for greenhouses, pots, maintenance, and specialized training. Mr. Sorem said that in the current unstable economy, it might be possible for someone to start such an operation at the site if they had sufficient money and willingness to assume risk, but he did not think it would serve as an adequate counterexample. He said the goal 3 exception criteria did not require the applicants to prove that no possible farm use of any kind could ever be done at the site. He said there is a fundamental policy difference between the hearings officer and the applicant's position that he would like the board to address.

Mr. Sorem said the second option to be discussed is the irrevocably committed exception to goal 3. He said there are many factors in the criteria that have to be addressed, but the basic question involved is whether farm uses are impractical at the site even if they are not impossible. He said the physical development and characteristics of the exception area are both criteria under this second application. While the physical development and irrevocably committed exceptions are technically different, they ask many of the same questions and involve much of the same evidence. He said the applicants did try planting a few Christmas trees at the site, but this was not as part of a commercial Christmas tree operation but as an intended use in relation to the farm stand and would allow people buying other goods at the farm stand to get a Christmas tree cut for them at the same location. This was designed more as a retail operation than a traditional Christmas tree farm. He said that at the far north of the property, there are some substantial trees around 30 feet high, and the applicants are proposing leaving these in place as a kind of vegetation buffer between the use at this site and the orchard to the north. He said the only countervailing consideration is traffic, and the neighbors have requested that access to the site be as far north as possible on Howell Prairie and away from the intersection. He said that as long as they could find a condition of approval that addresses both of those concerns, the development would be a good one for the community and would address the exception criteria.

Mr. Sorem said the main difference between the physically developed and the irrevocably committed exceptions was the need to address the relationship between the subject property and the surrounding properties as a part of the irrevocably committed exception. He said his opinion differed from that of the hearings officer because he believed she had not addressed the language in the text of OAR 660-004-0028, which notes the relevance of surrounding locations, and their suitability or unsuitability for resource uses, even if the uses were established under the goals. He said the hearings officer had excluded many of the surrounding properties as not being relevant as a matter of law, and he said he took exception to some of these, notably the church and the school nearby. He presented a chart showing that many properties in the area are commercial in nature or dedicated to non-farm uses and built with improvements that make the property permanently unsuitable for resource uses. He showed an aerial photograph of the site in relation to other nearby sites, which included a residence, manufactured home, farm building, church, coffee shack, gas station, apartment building, electrical service/repair facility, wireless communication tower, and school.

Mr. Sorem went on to discuss the relationship of the subject property to the immediately surrounding properties. There is a filbert orchard to the north, but the subject property already has mature trees that

would serve as a buffer for this property. The applicants are willing to add more vegetation as a buffer if planning decides this would be necessary. He said that if the planned farm stand is built, it will be a source of customers and a retail outlet for the adjacent filbert orchard, and the owners of the orchard have signed on the record as supporting this application. He said the church across the street has provided a signature from the pastor's wife on behalf of the congregation members, who support the application and would use the farm stand to purchase produce. He said the gas station and coffee shack employees would welcome having a place nearby to buy food. To the west of the property is the applicant's primary dwelling and manufactured home, and there is a grass field to the south.

Mr. Sorem addressed the question of the subject property's relationship to the rest of the neighborhood. He said the original Marion County comprehensive plan identified this neighborhood as a rural services center based on the fact that this has historically been a place where people in the Howell Prairie area have gone for services such as a gas station, a church, a school, and a commercial repair shop. The former farm stand provided groceries and produce services. He said they have received many signatures from people in the neighborhood supporting the proposed use of the location. He said Jim Squires, who will be speaking later today, went door-to-door in the neighborhood to talk to individuals and found much support for the proposed use of the location. Mr. Sorem said he did research and found there were no vacant commercial properties available in the area within a 2.5-mile radius that could be used for this kind of operation. He said this is substantial and relevant because this would be approximately 10 square miles of area with many residences that are not being served at all. He said this particular application would provide a real benefit to people in the area. Mr. Sorem said if the application is approved, it would improve traffic because the requirements from Public Works would include additional dedications to both Howell Prairie Road and Silverton Road along with substantial impact fees that the applicants would be required to provide for system development charges (SDCs) and a proportional share of fees for eventual turn lanes and signalization. He said that without some development on the site, those improvements could very well be delayed further into the future because of the lack of general fund dollars for these projects.

Mr. Sorem said this project is being conditioned in such a way that access will be limited on Silverton Road. He said there might be some concern about how the proposed use would affect farming operations in the area, but they are not proposing putting in an entirely new use. He said all they are really discussing here is expansion of a given use, which will not be substantially different from what already exists at the location other than adding a few hundred square feet to the current facility. He said there were no complaints during the past 30 years of operation at the location. He pointed out that the owners of the nearby filbert orchard, greenhouse operation, and hay farmers have all signed a petition as being in favor of the proposed use. He said that only the property owner to the immediate south of the subject property was unwilling to sign the petition.

Mr. Sorem said that they have provided information in their initial application regarding how the proposed use would fit in with current agricultural operations in the neighborhood. He said they have also provided additional evidence regarding general grass seed farming and filbert orchards to provide evidence for the record. He said that looking at this project from a high level, it makes sense, and given the location's traditional role in the community and what the people in the community want for the future, it becomes clearer that this project fits the location well. He said that the hearings officer might have focused too much on individual criteria regarding when and how the surrounding properties were

parcelized. He asked if the nature of the other properties in the area was contributing to a situation where the subject property was no longer practical as a farming parcel. He also asked if physical development was limiting the site to such an extent that farming was no longer practical. He said the answer to these questions was “yes,” which would mean that an exception would be appropriate in this case.

Mr. Sorem said that urban services were not an issue in this case because the applicants are only considering expanding an existing facility on the subject property. The owners already have an onsite well and septic tank. He said public works has been involved in making sure that the road access is sufficient. He said the site would not require urban services for the planned development to be carried out. He said that if there were any concerns in this area, they could be addressed by appropriate conditions of approval, although in his view the existing rural services would be sufficient.

Mr. Sorem said that he believed his presentation had addressed all the concerns posed by the planning director and the hearings officer and had met the criteria involved. He said that in his view, an exception was warranted since this use would be a small-scale grocery store with conditions of approval that would limit the use to that kind of operation. He said that if they did not get the approval, the site would continue to be vacant and there would be no farm uses on the property. He said the applicants have worked carefully with public works to address traffic needs and make their application fit the criteria and respectfully requested that the application be approved.

DELIBERATION:

Commissioner Milne asked about the flexibility the applicants are seeking in the ratio of 25 percent incidentals versus 75 percent locally produced produce. She asked why it was a problem for the applicants to meet the standard ratio in this case. Mr. Sorem replied that the current site does not have a sufficient customer base to bring in enough money by providing only local goods. He pointed out E-Z Orchard as a successful local farm operation, which offers specialty jams and sauces along with other products made throughout Oregon, California, and Washington. While these items are processed specialty goods, they fit inside the definition of a farm crop. In order to carry out this kind of operation, it is necessary to have ties to all those producers on a regional basis, and there are only so many individuals who can do this. He said this leaves the applicants in the position of selling only raw goods and produce, which would be required to be 75 percent of their gross receipts. He said incidentals such as candy, coffee, and milk, all count toward the 25 percent of gross receipts, and the applicants have been unable to keep that ratio within the confines of the law and run their business effectively. He said that in the case of the applicants, the ratio might even need to be reversed in the short term in order to build up the client base.

Speaking further about the ratio of incidentals to local produce, Mr. Sorem said the nursery owners down the road from the subject property would love to have a nearby retail outlet, but their products would only be viable for a short time and would therefore require a high turnover rate. He said it is impossible to get the customer numbers and sales unless the retail outlet would also be selling household goods and convenience-store items such as milk and bread that people living nearby need on a regular basis. Mr. Sorem said the reason the former farm stand at the location could not stay open was because

the applicants tried to run the operation within the confines of the laws and despite running the stand successfully for decades, they were unable to make sufficient profit under the new rules.

Commissioner Milne said there are many local producers of a variety of food and agricultural products, with many of the products they produce being seasonal. She said she has run a retail food business herself and is aware of the issues involved in getting suppliers and wholesalers for this kind of operation. She said it sounded as if the applicants had been unable to keep sufficient inventory within the proper ratios in the past.

Mr. Sorem said that Commissioner Milne's statement was correct. He said the market conditions for the developing local producers have changed. He said the local producers no longer want to sell their products at a roadside stand but instead want to sell to stores such as Lifesource Natural Foods where they can get a premium price for their goods. He said there needs to be a critical mass of repeat customers in order to create this kind of operation and make it work. He said there are a few examples of farm stand operations in the region that have been able to do this, but these have been the exception. He said that a retail farm stand/store operation of the kind the applicants are proposing, which would have different merchandise ratios from those allowed under the current rules, would only be allowed in a rural commercial zone, which is what the applicants are asking for.

Commissioner Milne said it appears what they are asking for here would be more a convenience store/local grocery store, which would fit under the rural commercial zone standards. Mr. Sorem agreed that this was the case.

Commissioner Milne asked Mr. Sorem what percentage ratio the applicants were hoping to have for their store. Mr. Sorem said they were unable to come up with a specific number, but public works was amenable to the having the limited use overlay limited to the standard industrial classification of a grocery store. He said the ratio of product types would probably be changing as market conditions changed, so this would be a moving target.

Commissioner Brentano mentioned that the limited use overlay zone also has a 2,000 square foot maximum, which limits the size the store could reach.

TESTIMONY:

Support:

May Lovrien, 8755, Silverton Road, Silverton, OR, is one of the applicants. Ms. Lovrien said she and her husband have worked hard at the subject property for years. She said they have had some bad luck with renters in the past and would like to carry out the planned project on the property in order to have money to live on. She said they have lost rent on the property for over a year now.

Jim Squires, 1209 Mill Street, Silverton, submitted three current photographs of the subject property. He said the terms "convenience store" and "grocery store" have been used during the hearing, but what is really being discussed here would be a Central Howell community market. He said the market would serve the community and create partnerships with members of the community, including local farmers

who have no outlet for their products. Mr. Squires said he had gone door-to-door and talked with over 600 people in the Central Howell community about this project. He said the important questions were: 1) whether the Central Howell community wanted a community market, and 2) would they support a community market? He said that in the current economic times, it would be foolish to put a market in the area if the community members would not be willing to support it. He said he spoke with residents, local businesspeople, church members, contractors, and nursery operators, and he heard over and over that the store being closed has created a real hardship in the area. He mentioned that gasoline costs continue to climb and the nearest stores are six miles away and nine miles away. These distances add considerably to the costs of groceries.

Mr. Squires said he heard from the people who work in the area that during their lunch hour, they have nowhere to go to get any kind of lunch if they did not bring their own lunches. He said the store would provide basic services that the Central Howell community needs in terms of staples and allow a showcase for the products of nurseries and farms in the area. Mr. Squires said he decided to go out into the community and find out if the store would be viable. He heard constantly that the store being closed has been a real hardship because so many people were involved with the store. He said there are probably 25 nurseries along Silverton Road that have no real outlet for their product, so if they could have their products available at a prominent corner business such as this one, it could make the difference to the livelihood of many people and businesses in the area. He said that he heard no opposition from anyone he spoke to, and most people were interested in finding out how soon they could get the store opened.

Mr. Squires said the pictures he submitted are very current. He said he has been at the location cleaning, painting, and repairing. He said the store would not be a convenience store. He said it would be a community market, which is what it has always been. He said that it would be esthetically in keeping with the rural neighborhood and would not be a Circle K or 7-11.

Mr. Squires mentioned the earlier discussion of the aggregate and debris from the old road on the subject property. He said some of the debris on the property is about 40 feet deep. He said there are some telephone poles on the site and he had heard they had to dig 40 feet deep to install these poles because of the depth of the debris. He said the Lovriens' efforts to put a small garden on the site had also been unsuccessful because of the depth of the debris.

Mr. Squires said he strongly supported the store. He said it would be great to have the store be part of the community again and for the community to have a center for creating relationships and partnerships. He thanked the commissioners and the staff for allowing him to participate in today's testimony.

Jeannie Lehman, 1680 95th Avenue NE, Salem, OR 97317, said she agreed with many of the comments already made by the other speakers. Ms. Lehman said she has lived in the area for 10 or 11 years and said the fruit stand was a very important part of the community when it was open. She said the owners of the fruit stand worked with the schools on their fundraisers and were very active in the community. She said she hated having to drive to Silverton or Salem just to have to buy eggs or milk. She said the stand was a place for children to learn about business by picking their own cherries or other fruit and selling them at the stand to make some money. She said she had seen Mr. Lovrien on his tractor trying to get something to grow on the part of the property where the road used to be, and despite his excellent

growing skills, he has been unable to get good results in the area with the rock and aggregate. Ms. Lehman said she has talked with many neighbors and she has not heard anyone opposed to having the store reopened. She says it is a community center for the people who live in the immediate area, but also for people in areas nearby such as Central Howell who do not want to go all the way to Silverton when they need to buy a few food items. She said that regarding the ratios of local produce versus incidental items, there has been a change in the last ten years in terms of many more Saturday markets being started in recent years. She said this may be one reason why it is difficult for them to reach the desired ratios. She said the people in the area miss having the store and hope to see it return.

OPPOSITION:

None.

Mr. Anderson returned to the board for a final summary of the issues.

Commissioner Brentano said that what he is hearing is that this is an enterprise that is currently doing nothing for the community located on a spot where agricultural uses would be very difficult to accomplish. He said he grew up in West Woodburn and remembers how many of the people in the area relied on the West Woodburn Market and Broadacres Market in a similar kind of situation to this one. He said he also could see how commuters from the bedroom communities in the area might appreciate having a store somewhere in this rural area. He said that in his view, this store would meet the requirements. He asked Mr. Anderson if he saw any kind of fatal flaw in this suggested use that he might have ignored.

Mr. Anderson said that it is very difficult to meet all the goal exception requirements, even in a situation like this. He said the goal exceptions are intentionally created this way. He said he agreed with the applicant's legal counsel regarding the definition of agriculture needing to be "impractical" or "impracticable" as opposed to "impossible" in order to qualify for the irrevocably committed exception. Mr. Anderson said there have been a few cases similar to this case, including a location north of Salem on Highway 99 where there was a property that had been used for other than farm purposes and had considerable gravel and buildings on it. The site would have been unsuitable for farm use, and the case was similar to this one. Mr. Anderson said the two acres in this case is impracticable for farm use in his view.

Mr. Anderson said he could not agree to as great an extent with a physically developed exception for this location. He said that when looking at the physically developed and irrevocably committed exceptions together, however, the situation is different. He said that in some cases, if an applicant cannot get all of the support they need for their proposed use under one of the exceptions, they may be able to achieve the desired result using more than one exception. He said this location is largely made impracticable for farm use, although he was uncertain if the gravel and aggregate at the location would qualify as being developed. He said he didn't see any particular fatal flaw in the proposed use. He said, however, that if the decision were appealed at some point, higher authorities have been known to point out flaws missed at the local level. He said, however, that he saw no serious problem in this case and the proposed use made sense for this community and in this location.

Commissioner Brentano said the hearings officer's report stated several times that the applicants had not submitted enough information to prove a particular point. He asked Mr. Anderson if he had heard any additional information in today's presentation that would fill in those gaps. Mr. Anderson said that today's presentation offered far more detail regarding the location and particularly the gravel situation. He said the basic facts and regulations are the same but many of the information gaps were filled in. He said regarding the issue of encouraging urban services, the main one in question would be sewer services, which do not exist in the area and would be totally impractical in this setting. He said the applicants would have to meet DEQ requirements regarding septic services, which may pose some problems, but he said that because of the small-proposed size and the limited use overlay zone proposed, it appeared to him that these issues could probably be addressed. He said the transportation impact would probably be positive because the corner is relatively open currently, and with the improvements the owners would be adding, the impact would be positive. Mr. Anderson said the applicants could run the property as a farm stand under the 25 percent/75 percent ratio of the statute, but this would not allow the improvements on the open corner to take place as quickly.

Commissioner Milne said that Commissioner Brentano had asked a lot of the questions she had planned to ask. She said Mr. Anderson had pointed out some of the possible problems that might arise if the board decided to approve the application. She said that in her view, the benefits outweigh any concerns from what she heard. She said the project clearly has the support of the local community in the area and could be very beneficial to local businesses. She said this would allow them to continue the previous use of the building. She said she had been sorry to see the fruit stand close down. She also thought the road improvements at the intersection would be a major benefit to the county in terms of getting the contribution of additional dedications and system development charges from the applicants. She said that unless there was some kind of fatal flaw, she supported going forward with the application.

Mr. Anderson said that if there were any kind of significant flaw or major issue regarding the statewide land use goals in an exclusive farm use zone, this would be addressed by the Department of Land Conservation and Development (DLCDC), which receives notice of all these kinds of applications. He said DLCDC does not hesitate to let local government know if they feel there is any kind of issue involved, and they have offered no objections or comments regarding this proposal at this time. Mr. Anderson said that if DLCDC saw a problem here, they would appeal the decision, but he thought this would be a remote possibility.

MOTION: Commissioner Milne moved to close the public hearing and approve the application for zone change/comprehensive plan amendment and property line adjustment, case #ZC/CP/PLA 08-01, Lovrien Trust, Clerk's File #5598, and direct staff to come back with an ordinance that would cover the conditions regarding septic, water, limited use overlay and other related requirements for the location. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.
Commissioner Brentano adjourned the meeting at 11:16 a.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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

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