

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, January 11, 2017  
9:00 a.m.

Senator Hearing Room  
555 Court Street NE  
Salem, OR 97301

PRESENT: Commissioner Sam Brentano, Commissioner Janet Carlson and Commissioner Kevin Cameron. Also present were John Lattimer as chief administrative officer, Gloria Roy as county counsel and Kristy Witherell as recorder.

Commissioner Brentano called the meeting to order at 9:00 a.m.

**PUBLIC COMMENT**

None.

**CONSENT**

*(Video Time 00:01:08)*

HEALTH

Approve the contract for services with Kay Lynn Dieter, MD for \$815,000 to provide medical assessment and supervision of the Adult Behavioral Health clients.

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

**ACTION**

*(Video Time 00:01:42)*

PUBLIC WORKS

1. Consider approval of the Grant Agreement with the Oregon Military Department - Office of Emergency Management in the amount of \$152,068 for the Emergency Management Performance Grant. – Ed Flick

**Summary of presentation:**

- The grant is about 18 percent less money than received last year;
- The state received a level funding from Federal Emergency Management Agency (FEMA) this year;
- Two factors caused the reduced amount:
  - Based on a formula established years ago that manages the distribution of funds, more jurisdictions, specifically cities, are taking advantage of these grants;

- There were counties in the east part of the state that did not have fulltime emergency managers that do now; and
- Oregon Emergency Management was able to match more money and has taken their full amount that they have been afforded given the new formula.
- With the deduction, the county was awarded \$33,000 less federal income to the program.

***Board discussion:***

- The majority of the projects Mr. Flick oversees are funded through other federal grants:
  - Has a very small operating budget.
- The reduction in awarded money impacts response time in an emergency; and
- Would like to pursue more funding through second supplemental budget.

**MOTION:** Commissioner Cameron moved for approval of the Grant Agreement with the Oregon Military Department - Office of Emergency Management in the amount of \$152,068 for the Emergency Management Performance Grant. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

*(Video Time 00:11:17)*

2. Consideration of Zone Change/Comprehensive Plan (ZC/CP) Case #15-001/Coastal Forest Products, LLC, Clerk's file #5704. – Joe Fennimore

***Summary of presentation:***

- An application to change the zone code from Exclusive Farm Use (EFU) and change the comprehensive plan designation from Primary Agriculture to Industrial on 6.25 acres located on Portland Road NE, Salem;
- The property is the former North Salem Drive-In Theater;
- A one acre portion of the property fronting on Portland Road is zoned commercial;
- The property contains a landscape supply business with retail sales being conducted on the western, commercially zoned portion of the property;
- The area proposed for the zone code change contains bulk storage and materials that are wholesaled;
- Properties to the north and south are zoned commercial and industrial:
  - Contain trailer sales; and
  - A wrecking yard.
- Properties to the east and west are zoned EFU and in farm use;
- The hearings officer held a public hearing on August 5, 2015;
- Issued a recommendation on November 10, 2015 that the board deny the request;
- The hearings officer found that based on the information in the record at the time, an exception to statewide Goal 3, Agricultural Lands, was not recommended:
  - Additional information was needed to satisfy Goal 6, Air Water Quality:
    - Goal 11, Public facilities and Services;
    - Goal 12, Transportation; and
    - Goal 13, Energy Conservation.
- The applicant needed to show how the proposed use fits on the proposed Industrial Zone;

- Without the goal exception, the proposal does not meet the comprehensive plan policies or zone change criteria and recommended denial;
- The board held a public hearing on May 18, 2016;
- At the hearing, the applicant submitted additional information and testimony to address the issues raised by the hearings officer:
  - Included was evidence that the previous development of the property as a drive-in theater prevents it from being farmed;
  - A study showing that storm water can be contained and treated;
  - A count on the amount of truck traffic that is generated; and
  - A proposal that limited the use overlay to be applied to make all other uses in the proposed Industrial Zone a conditional use.
- The board closed the public hearing and directed staff to work with the applicant to develop conditions to consider if the application was approved;
- The applicant and staff agreed on a list of conditions for the board to consider if the request is approved:
  - A limited use overlay that would require any other industrial use of the property to first obtain a conditional use permit;
  - The business must be closed to the public between the hours of 7:00 p.m. and 7:00 a.m. to minimize noise complaints;
  - Meet all of the development standards in the Industrial Zone regarding setback screening;
  - Require the applicant to submit within 45 days an erosion control plan for review and approval:
    - Once approved, implement the plan within 60 days.
  - Require the applicant to submit within 150 days a stormwater drainage plan for the site:
    - Within 90 days after approval, construct the system.
  - Require the applicant to, within 30 days, coordinate with Public Works and Oregon Department of Transportation (ODOT) for permits to realign the intersection of Portland Road and Lakeside Drive:
    - Construct the improvements within 150 days from issuance of the permits.
  - Requiring that the applicant will, within 30 days of obtaining permits for the intersection realignment and applying for permits to construct improvements to Lakeside Drive from the Portland Road Intersection to its driveway on Lakeside Drive:
    - The improvements include widening of pavement and restriping.
  - Requiring the applicant will, within 30 days of obtaining permits for the intersection realignment and obtain permits to improve its driveway on Lakeside Drive by paving it at least 100 feet into the property.
- In lieu of constructing the improvements to Lakeside Drive and Portland Road, the applicant can implement condition 9, prohibiting semi-trailers from accessing the driveway on Lakeside Drive;
- The issue with realigning the intersection is that there is a power pole that would have to be moved:
  - The power pole has line going in four directions;
  - All lines would have to be dropped;
  - Would have to condemn property; and

- The cost is prohibitive to the applicant.
- The staff recommends the board approve the request with the recommended conditions.

***Board discussion:***

- Planning staff create timelines for the conditions to be satisfied;
  - Will use a tracking system to make sure timelines are being met; and
  - Once conditions are met, code enforcement makes sure the business is meeting the conditions.
- The neighbors are concerned that the business will not follow the conditions;
- Marion County would follow normal enforcement process, which is usually multiple notifications and a letter requesting the business to comply voluntarily;
- In condition #9, it appears there are physical constraints required that would prohibit the larger trucks from entering on Lakeside Drive;
- The commissioners do not want to make the neighbors the planning police;
- There needs to be a new process to hold people in Marion County accountable to the planning conditions;
- The public works director has authority to make sure conditions are met; and
- The board is directing John Lattimer and Alan Haley to work with the Planning Division on a specific process to ensure accountability.

**MOTION:** Commissioner Carlson moved for approval of Zone Change/Comprehensive Plan (ZC/CP) Case #15-001/Coastal Forest Products, LLC, Clerk's file #5704 with the recommended conditions. Failure to comply with conditions will be subject to any and all legal remedies available to the Board of Commissioners. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

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

*(Video Time 00:32:00)*

**PUBLIC WORKS**

A. Public hearing to consider Special Assessment of Open Space (OS) Case #16-001/Confederate Tribes of the Grand Ronde Community of Oregon, Clerk's file #5720. – Joe Fennimore

***Summary of presentation:***

- The land is on 430 acres in An Exclusive Farm Use (EFU) zone located on Dieckman Lane SE, Stayton;
- Under ORS 308A.300 -330, the county is required to process the request in the same manner as a comprehensive plan amendment;
- The matter was referred to the Marion County Planning Commission, which conducted a public hearing on December 6, 2016;
- The property is located west of Stayton, just outside the Urban Growth Boundary along the Santiam River:
  - Almost entirely in the identified 100 year floodplain; and

- Historic use of the property appears to be a mixture of farm land and riparian vegetation.
- Various governmental agencies were notified of the request and given an opportunity to comment:
  - No comments have been received.
- In determining whether to approve the application, there are three factors that must be considered:
  - ORS 308A.301(1) compares the value of preserving the lot as open space versus the costs and consequences that could be incurred when extending urban services to or beyond the property:
    - Have to expand an urban growth boundary to compensate for any reduction in available buildable lands;
    - The property is located almost entirely in the identified floodplain of the North Santiam River;
    - Very unlikely that urban services will ever be extended to or beyond the property unless the Stayton UGB is extended to include the property; and
    - The costs and consequences of the extension of urban services or the buildable lands inventory are negligible.
  - ORS 308A.309(2) prevents the request from being denied solely on the fact that there may be a potential loss of revenue if it is determined that preservation of the open space will enhance or protect specific resources:
    - The applicant indicates that the designation will conserve or enhance natural and scenic resources:
      - Protect air;
      - Streams;
      - Water supplies;
      - Promote conservation of soils and wetlands; and
      - Enhance the value to the public of abutting or neighboring forests, wildlife preserves and other open spaces.
    - The property has been receiving special assessment for farm use;
    - Under the proposal, it will be special assessed for open space; and
    - The estimated loss in yearly tax revenue collected is approximately \$930.
  - ORS 308A.309(3) states that the granting authority may approve the application with respect to only part of the land and if that is done, the applicant can withdraw the entire application.
- The Marion County Planning Commission recommends that the board grant the open space special assessment for the entire property.

***Board discussion:***

- Open Space zoning is very rare in Marion County:
  - Only eight parcels currently zoned Open Space Special Assessment.
- Open Space Special Assessment is intended to add value to neighboring properties:
  - Golf courses are zoned Open Space Special Assessment; and
  - It's a way to preserve air quality of the land.
- In order to value property under Open Space, it has to be viewed as if its highest and best use is for open space:

- Cannot be farmed.

*Testimony:*

Michael Karnosh, Confederate Tribes of Grand Ronde:

- The tribal name for this property is Chahalpam, which means, “Place of the Santiam Kalapuya People”;
- Part of the original homelands of the Kalapuya people that are a member tribe of the Confederate Tribes of Grand Ronde;
- The property was purchased in 2013 from the Gray family;
- Was purchased through the Willamette Wildlife Mitigation Program that’s funded by the Bonneville Power Administration (BPA);
- As a condition of that BPA funding, the BPA took back a conservation easement on the property;
- The property is owned and managed by the tribe;
- Must be managed under an approved management plan for wildlife habitat;
- Currently, the property is in agriculture production;
- Will be phasing the agriculture production out over time;
- Each year, starting next year, one or two farm fields will be converted back to native vegetation;
  - Will be planted with a mix of plants and trees native to the area.
- The first priority of the property is control of invasive vegetation;
- There will not be any adverse impacts to neighboring properties;
- The property means a lot to the tribe; and
- It is a great honor to be able to manage the property.

*Support:*

Pam Prichard:

- Daughter of the land owner that owns 18 acres to the east of the property;
- Very excited with working with the tribe on invasive species control;
- Will add value to their property;
- Grandparents were familiar with the Santiam Indians who came through the area at different times of the year;
- Aware of the historical nature of the application;
- Importance of the fishing and hunting of the property to the Native American’s; and
- Family was friends with the Santiam Indians, who are now part of the Grand Ronde Tribe.

Ellie Prichard:

- Husband’s parents and grandparents found Native American relics when they harvested crops;
- The history of the Native Americans and her family goes way back; and
- Likes the idea of turning the land back to the way it was.

**MOTION:** Commissioner Cameron moved to close the public hearing and accept the recommendations for Special Assessment of Open Space (OS) Case #16-001/Confederate Tribes of the Grand Ronde Community of Oregon, Clerk's file #5720. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

*(Video Time 00:53:25)*

B. Public hearing to consider Special Assessment of Open Space (OS) Case #16-002/Confederate Tribes of the Grand Ronde Community of Oregon, Clerk's file #5721. – Joe Fennimore

***Summary of presentation:***

- The land is on 410 acres in an EFU zone located on North Santiam Highway SE, Stayton;
- Under ORS 308A.330-330, the county is required to process the request in the same manner as a comprehensive plan amendment;
- The matter was referred to the Marion County Planning Commission, which conducted a public hearing on December 6, 2016;
- The property is located approximately three miles east of Stayton along the North Santiam River;
- The majority of the property is in the identified 100 year floodplain;
- Historic use of the property appears to be a mixture of farmed and forested land;
- Various governmental agencies were notified of the request and given an opportunity to comment:
  - No comments have been received.
- In determining whether to approve the application, there are three factors that must be considered:
  - ORS 308A.301(1) compares the value of preserving the lot as open space versus the costs and consequences that could be incurred when extending urban services to or beyond the property:
    - Have to expand an urban growth boundary to compensate for any reduction in available buildable lands;
    - The property is located almost entirely in the identified floodplain of the North Santiam River;
    - Since the property is three miles from the Stayton UGB, it is very unlikely that urban services will ever be extended to or beyond the property:
      - Based on this information, the cost and consequences of the extension of urban services or the buildable lands inventory is negligible.
  - ORS 308A.309(2) prevents the request from being denied solely on the fact that there may be a potential loss of revenue if it is determined that preservation of the open space will enhance or protect specific resources:
    - The applicant indicates that the designation will conserve or enhance natural and scenic resources:
      - Protect air;
      - Streams;
      - Water supplies;

- Promote conservation of soils and wetlands; and
  - Enhance the value to the public of abutting or neighboring forests, wildlife preserves and other open spaces.
    - The property has been receiving special assessment for farm use;
    - Under the proposal it will be special assessed for open space; and
    - The estimated loss in yearly tax revenue collected is approximately \$2,630.
- ORS 308A.309(3) states that the granting authority may approve the application with respect to only part of the land and if that it done, the applicant can withdraw the entire application.
- The Marion County Planning Commission recommends that the board grant the open space special assessment for the entire property.

*Testimony:*

Michael Karnosh, Confederated Tribes of Grand Ronde:

- The property is a few miles east from the previous property;
- Unlike the first application, this property does not have active agriculture fields on it;
- It had been grazed at one time;
- Right now, it is mainly forest property with over a mile of riverfront;
- Since it does have quite a bit of forest, there is a big scotch broom problem;
- The priority is to control the scotch broom so it doesn't come back:
  - Do light thinning of the property.
- Nothing would change about public to access to the river; and
- The tribal name of the property is Chankáwan, which means, "Place of Salmon".

*Opposed:*

Ed Dunham:

- Properties purchased outside of the original allotted tribal lands should be valued and assessed like the surrounding lands and should have equal taxation; and
- Looks like tribes are pushing outside property purchases in hopes they can expand future gaming or other tax free activities.

***Board discussion:***

- Open Space land is land that is left as open space:
  - It is not farmed or developed in any way.
- The zone will stay EFU zone, but will have a special type of assessment on it;
- Under the agreement with Oregon Department of Fish and Wildlife (ODFW), the property is open to the public:
  - Anyone wishing to visit the property, other than the river easement, will have to apply for a permit with the tribes' Natural Resource Department.
- There is no potential for future gaming activities:
  - The conservation easements on the property prohibit the development of any structure or activity.



- Under the terms of the conservation easements, if the Grand Ronde Tribe decides to sell the property, it has to offer the property back to the BPA and then to the State of Oregon:
  - If neither of those properties want it, it has to offer the property to the Confederate Tribes of Warm Springs and the Confederated Tribes of Siletz; and
  - If none of those parties want it then it can be sold elsewhere:
    - The conservation easement will still apply to the property no matter the owner.

**MOTION:** Commissioner Carlson moved to close the public hearing and approve the recommendations for Special Assessment of Open Space (OS) Case #16-002/Confederate Tribes of the Grand Ronde Community of Oregon, Clerk's file #5721. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 10:18 a.m.



CHAIR



COMMISSIONER



COMMISSIONER

**Board Sessions can be viewed on-line at <http://www.youtube.com/watch?v=VYF8Y6U7178>.**