

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, November 29, 2017
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97305

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

(Video Time 00:01:05)

Michael Johnson:

- Street lights are coming to a portion of Macleay Road, State Street, Shenandoah Drive, parts of Connecticut Street, Meadowlawn Drive, Morgan Avenue, and Midway Avenue;
- At the corner of Connecticut Street and Macleay Road, the East Salem Suburban Neighborhood Association called upon the City of Salem to install a turn signal in all four directions;
- Issues neighbors have is the amount and speed of traffic in the area; and
- Marion County Master Gardeners, through the OSU Extension, now have all of their workshops available for sign up online:
 - www.marioncomga.org.

PRESENTATION

(Video Time 00:08:40)

Oregon Fairs Association Awards to the Marion County Fair. – Tamra Goettsch

Summary of presentation:

- The Marion County Fair Board showcased their award winning website and Science, Technology, Engineering, Art, and Mathematics (STEAM) program.

CONSENT

(Video Time 00:26:17)

BOARD OF COMMISSIONERS

OLCC Application – Recommended Approval

Lolo Cellars, LLC; dba Sis and Mae Wine Co. – St. Paul, OR

Approve an order appointing Bruce Armstrong as interim Marion County Counsel effective December 1, 2017.

FINANCE

Approve a quit claim deed to convey real property Tax ID #R46879 located at, 13660 Wisteria Drive NE, Aurora, OR 97002.

JUVENILE

Approve the Intergovernmental Agreement with Oregon Department of Education for the Juvenile Crime Prevention Program for \$413,822 through June 30, 2019.

PUBLIC WORKS

Receive notice of hearings officer's decision approving Conditional Use (CU) Case #17-025/Big Horn Solar, LLC and Roth East Side, LLC, Clerk's file #5736.

SHERIFF'S OFFICE

Approve Amendment #1 to the Mid-Willamette Valley Community Action Agency to add \$150,000 in funding to provide legal, medical, educational, and employment assistance to the Parole and Probation Division 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 00:28:00)

COMMUNITY SERVICES

1. Consider approval of Amendment #1 to the Head Lease Agreement with the Oregon Garden Foundation to extend the term of the lease as agreed to in the Second Restated Management Agreement. – Tamra Goettsch

Summary of presentation:

- Department helps with the Oregon Garden Foundation;
- Was signed 15 years ago and stated that Marion County was to receive repayment for its' investment under the lease;
- Due to circumstances that have transpired over the last 15 years, it has not completely been paid off;
- Head Lease due to expire December 2017; and
- The amendment extends the term.

Board discussion:

- Originally, Marion County issued a bond through lottery dollars and economic development;
- Oregon Garden Foundation holds the master lease from the City of Silverton;

- The Oregon Garden needed additional resources and Marion County stepped up to provide the resources through a loan and the bond;
- The term of the original agreement was intended to expire after 15 years;
- Due to the economy going down, the whole repayment was not able to be met within the agreed 15 years;
- The leases are financial security for debts that are owed;
- The term now coincides with the repayment or extinguishment of the debt; and
- There are more monies owed under the receivership order.

MOTION: Commissioner Cameron moved for approval of Amendment #1 to the Head Lease Agreement with the Oregon Garden Foundation to extend the term of the lease as agreed to in the Second Restated Management Agreement. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

(Video Time 00:34:44)

2. Consider approval of Amendment #1 to the Sub Lease Agreement with the Oregon Garden Foundation to extend the term of the lease as agreed to in the Second Restated Management Agreement. – Tamra Goettsch

Summary of presentation:

- This falls under the same terms as the Head Lease Agreement; and
- The Sub Lease Agreement is leasing it back to Oregon Garden Foundation:
 - Marion County

MOTION: Commissioner Carlson moved for approval of Amendment #1 to the Sub Lease Agreement with the Oregon Garden Foundation to extend the term of the lease as agreed to in the Second Restated Management Agreement. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:37:08)

PUBLIC WORKS

3. Consider approval of an order to consider both the conditional use permit and the mass gathering permit for the Willamette Country Music Concerts, LLC at one public hearing, call up the conditional use for consideration by the Marion County Board of Commissioners, direct the Marion County Hearings Officer to hold a hearing on the conditional use application, and make a recommendation to the board by January 31, 2018. – Brandon Reich

Summary of presentation:

- Applied for conditional use permit, in conjunction with a mass gathering permit, for a gathering on August 16-19, 2018;
- Located at the 1300 block of Jorgenson Road S, Jefferson, which is west of Interstate 5, near the Ankeny Interchange;
- Marion County Mass Gathering Code requires when a mass gathering is going to exceed 3,000 attendees, the permit for the mass gathering has to be accompanied by a conditional use permit to look at land use compatibility for the event;

- The mass gathering code gives the board the ability to combine both conditional use and mass gathering applications into one to consider at a public hearing;
- At Management Update on November 20th, the board stated that it would like to have the hearings officer review the conditional use and provide a recommendation to the board for them to consider at a public hearing:
 - The applicant is supportive of the idea.
- Hearings officer public hearing will be on December 20, 2017;
- The decision from the hearings officer will be due January 31, 2018;
- Possible public hearing during Board Session will be on February 28, 2018;
- Benefits of going to the hearings officer is to have a legal review for the criteria in the conditional use;
- The order has a number of components:
 - Because it is a conditional use, normally the planning director will issue a decision and would go through possible appeals through the hearings officer and the board:
 - This is a lengthy process when trying to combine the two with the mass gathering permit.
 - The order contains a provision where the board calls up jurisdiction on the conditional use and send it to the hearings officer for a recommendation back:
 - The conditional use and the mass gathering will be considered at one time by the board at a public hearing.

Board discussion:

- The commissioners are trying to speed up the process to get a decision in time for the mass gathering event;
- The fastest process is for the board to hold a public hearing for all permits at one time:
 - This will preclude the role of the hearings officer; and
 - The hearings officer role adds six weeks to the process.
- State statute states that when a mass gathering involves more than 3,000 attendees and will continue more than 120 hours, it has to have a land use component;
- The event is around 150 hours after excluding take down and set up time;
- Under the state definition, the event is over 3,000 people and more than 150 hours and will require a land use component; and
- Marion County Code states that if it is more than 3,000 people, regardless of the number of hours of the event, it becomes a mass gathering with a land use component.

MOTION: Commissioner Cameron moved for approval of an order to consider both the conditional use permit and the mass gathering permit for the Willamette Country Music Concerts, LLC at one public hearing, call up the conditional use for consideration by the Marion County Board of Commissioners, direct the Marion County Hearings Officer to hold a hearing on the conditional use application, and make a recommendation to the board by January 31, 2018. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

(Video Time 00:47:10)

4. Receive and consider appeal of hearings officer's decision denying Conditional Use (CU) 17-020/Brush Creek Solar, LLC and Klopfenstein, Clerk's file #5735. – Joe Fennimore

Summary of presentation:

- Conditional use to establish a photovoltaic solar power generating facility on a 12-acre portion of a 14-acre parcel in an exclusive farm use zone;
- The planning director issued a decision on June 19, 2017 approving the request;
- The decision was appealed to the hearings officer, who conducted a public hearing on August 2, 2017:
 - The hearings officer issued a decision on October 30, 2017 denying the request; and
 - The hearings officer's decision was appealed to the board on November 4, 2017.
- In the denial, the hearings officer found that two of the criteria, specific to photovoltaic solar array facilities, were not satisfied:
 - Required that the applicant demonstrate that instruction of maintenance of the facility will not result in unnecessary soil compaction that reduces productivity of crop production:
 - This may be satisfied by submittal and approval of a plan prepared by an adequately qualified individual:
 - The applicant submitted a soil compaction plan, however, the hearings officer found that it contains little detail and is not a site specific report.
 - Required the applicant to demonstrate that construction or maintenance will not result in unabated interdiction or spread noxious weeds or other undesirable weed species:
 - This may be satisfied by submittal and approval of a weed control plan prepared by an adequately qualified individual:
 - The hearings officer found that the weed control plan that was submitted was not signed, certified, or site specific and concluded that the plan did not prove that it is more likely than not that construction or maintenance will not result in the unabated introduction of or spread of noxious weeds and the criterion is not satisfied.
- In the appeal, the applicant disagrees with the findings made by the hearings officer;
- As part of the appeal, the applicant submitted a revised solid compaction plan to be considered if the appeal is accepted by the board;
- The applicant has commissioned a revised weed mitigation plan to be prepared, which would be submitted prior to the hearing if the appeal is accepted;
- The applicant has accepted to extend the 150-day decision making deadline if the appeal is accepted; and
- Staff recommends that the board accept the appeal and schedule a public hearing for January 3, 2018.

Board discussion:

- The commissioners would like to remand the matter back to the hearings officer.

MOTION: Commissioner Carlson moved to accept the appeal, remand the matter back to the hearings officer, and extend the 150-day decision making deadline. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:52:59)

SHERIFF'S OFFICE

5. Consider approval of the Justice Reinvestment Council Bylaws. – Commander Jeff Wood

Summary of presentation:

- There are three elements to the justice reinvestment system:
 - Justice diversion:
 - Point of law enforcement contact.
 - Prison diversion:
 - Post law enforcement contact;
 - Sentencing; and
 - Diversion program.
 - Reentry services.
- In 2009, the Sheriff's Office received a Second Chance Act Award;
- Sheriff Myers initiated the Marion County Reentry Council:
 - Advisory council to the sheriff for purposes of reentry and reentry programming;
 - This council was part of the collaborative model;
 - Included people from:
 - Treatment community;
 - Housing community;
 - Education;
 - Mentoring;
 - Employment;
 - Supervision;
 - Representative from the Board of Commissioners;
 - Bridgeway Recovery Services;
 - Community Action Agency;
 - Union Gospel Mission;
 - Health Department; and
 - The Sheriff's Office.
- The Reentry Council initiated several programs:
 - Link Up Program;
 - Student Opportunity of Achieving Results (SOAR);
 - Jail Reentry Program;
 - Women's Accelerated Reentry Program; and
 - DeMuniz Resource Center.
- With the passage of House Bill 3194, the council provided advice in terms of the prison diversion programs:
 - Senate Bill 416 Program;
 - Victim Services;
 - Stepping Up Initiative;

- Mental Health collaborative efforts;
- Mobile Crisis Response Team; and
- Crisis Outreach Response Team.
- The sheriff is hoping to have an advisory council that spans multiple areas of the criminal justice spectrum:
 - Justice diversion;
 - Prison diversion; and
 - Reentry services.
- Projects for the future:
 - Going to initiate Law Enforcement Assisted Diversion (LEAD) Program.
- In June 2017, the Marion County Reentry Council received a presentation that explained the new process and new advisory capacity:
 - The council unanimously supported the motion to expand to include:
 - Justice Diversion;
 - Prison Diversion; and
 - Reentry Services within the councils bylaws.

Board discussion:

- The Justice Reinvestment Council that has been meeting as the Marion County Reentry Council consists of a lot of great people who have put in a lot of effort;
- Small changes were made to the bylaws before Board Session:
 - In the Representation Section on page 1:
 - Added wording, “Including, but not limited to”; and
 - Changing the Oregon Legislative Assembly to be nonvoting members.
- The commissioners suggest changing the cap to 25 members.

MOTION: Commissioner Cameron moved for approval of the Justice Reinvestment Council Bylaws and change the cap to 25 members. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 01:05:09)

6. Consider approval of an order appointing the following members to the Justice Reinvestment Council with terms ending December 31, 2018. – Commander Jeff Wood

- Commander Jeff Wood, Chair;
- Marion County Commissioner Kevin Cameron;
- Marion County Commissioner Janet Carlson;
- Marion County Sheriff Jason Myers;
- Marion County District Attorney Walt Beglau;
- Marion County Community Services Director Tamra Goettsch;
- Marion County Health Department Program Manager Ann-Marie Bandfield;
- Family Building Blocks Executive Director Patrice Altenhofen;
- Lyons Rural Fire District EMS Coordinator Sherry Bensema;
- SEDCOR President Chad Freeman;
- Salem Health Director of Emergency and Psychiatric Services Jill Fulkerson;
- Chemeketa Community College President Julie Huckestein;

- Liberty House Chief Executive Officer Alison Kelley;
- Union Gospel Mission Director of Programs Jeanine Knight;
- Creekside Counseling Executive Director Michael Laharty;
- Salem Police Department Deputy Chief Skip Miller;
- Bridgeway Recovery Services Chief Executive Officer Tim Murphy;
- Community Action Agency Executive Director Jon Reeves;
- Marion County Public Defender and Executive Director Jessica Kampfe;
- Worksource Oregon Project Director Jeff Steeprow; and
- Dick Withnell, Business Member.

MOTION: Commissioner Carlson moved for approval of an order appointing the members listed above to the Justice Reinvestment Council with terms ending December 31, 2018. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

PUBLIC HEARINGS

9:30 A.M.

(Video Time 01:08:50)

PUBLIC WORKS

A. Public hearing to consider amending the Marion County Urban Zone Code to permit Accessory Dwelling Units. – Brandon Reich

Summary of presentation:

- Jurisdictions in Oregon may permit accessory dwelling units (ADUs) on land within urban growth boundaries;
- ADUs are a housing option that can provide affordable, long-term housing for urban residents;
- In Marion County, Aumsville, Keizer, Salem, and Silverton permit ADUs;
- The Marion County Board of Commissioners initiated a process to consider amendments to the Marion County Urban Codes on June 21, 2017:
 - Directed the Marion County Planning Commission to consider the amendments;
 - Hold a public hearing; and
 - Make a recommendation to the board.
- The commission held a work session on July 18, 2017:
 - A public hearing on August 1, 2017; and
 - Made a recommendation to the board.
- The board held a work session on the commission's recommendation on August 22, 2017, and determined it must hold its own public hearing;
- On November 1, 2017, the Board approved the hearing date of November 29, 2017, to consider amending the urban zone code;
- Accessory dwelling units are accessory to the main dwelling on the property and have standards applied to ensure the units remain accessory to the primary use of the property and cannot function as separate, independent uses on a lot;
- The planning commission recommended that one ADU be permitted on a parcel:
 - The ADU can be interior;

- Attached to the residence, or detached; and
 - 900 square feet maximum in size, but no larger than 75 percent of the size of the main dwelling, whichever is less.
- ADUs would be permitted in side or rear yards if detached, and in front, side or rear yards if attached, or interior and be exempt from density standards for dwellings units on a parcel;
- The land with an ADU could not be divided from the dwelling on the property because the ADU is accessory to the dwelling on the property;
- Minimum rental duration of 30 days to ensure the ADU is rented as a kind of long-term housing, not for short term stays, and the property owner would record a notice on the property acknowledging the standards for ADUs;
- In Urban Transition (UT) zones, ADUs could be constructed interior or attached only in order to preserve the largest amount of land in the UT zone available for future annexation and development;
- ADUs would be permitted outright, subject to standards, and no land use review is required;
- In Single Family Residential and Urban Development zones, a permit for interior, attached, or detached ADUs would be considered;
- At the work session on August 22, 2017, the board asked for options to consider in addition to the Planning Commission's recommendation in the following areas:
 - Whether manufactured housing be permitted as an ADU:
 - During discussions with the Planning Commission, at least one member of the commission supported using a manufactured dwelling as an ADU;
 - The manufactured dwelling could be required to meet the standards for development of an ADU, such as size, location on the parcel, and setbacks; and
 - Similar standards could be applied as currently applicable to a manufactured dwelling on a lot in the urban growth boundary:
 - Roof pitch;
 - Siding; and
 - Height off the ground, etc.
 - A manufactured dwelling meeting the standards for size, location, and appearance ensures that the ADU would be consistent with the residential nature of the area where it is placed.
 - The Planning Commission recommended that the ADU not exceed the height of the primarily dwelling:
 - The board may also consider standards that would allow an ADU to be constructed to a maximum height, such as 25 feet for a detached ADU and 35 feet for an attached or interior ADU;
 - These heights provide flexibility for a homeowner wishing to construct an ADU on a property with an existing one-story home, while ensuring that height of the ADU remains residential in nature; and
 - Detached ADUs would be able to be up to 25 feet tall regardless of the height of the existing dwelling and less than the maximum of 35 feet permitted for residential development.

- The Planning Commission recommended that the same setbacks applied now to accessory structures in urban growth boundaries apply also to ADUs:
 - The board asked staff to compare those setbacks with the ones Salem adopted for ADUs:
 - Salem requires setbacks for an ADU in the rear yard of 5 feet from the rear property line and 5 feet from the side property line;
 - Marion County's code for accessory structures establishes setbacks based on height of the structure and the location in the rear yard; and
 - Both sets of standards additionally appear to provide separation for an ADU from neighboring properties and ensure adequate distance between structures for fire and safety standards.
- For parking, the Planning Commission recommended that if the ADU is interior or attached, one additional parking space is required:
 - If detached, two additional parking spaces;
 - No new curb cuts would be permitted;
 - Two additional parking spaces for the ADU is the same as the requirement for the dwelling on the property;
 - Since it is possible a garage would provide two parking spaces and the driveway in front of the garage adds an additional two parking spaces, most homes already have four spaces and this ADU standard should be able to be met;
 - If the ADU is constructed internally, it may result in the conversion of the garage to the ADU:
 - Since the garage would no longer be available for parking, it's harder to achieve two additional spaces.
 - Prohibiting new curb cuts to extend or create driveways was recommended because the curb cut removes a space from on street parking to create a new space off street, which equates to no net gain in parking spaces; and
 - New spaces can be created off street using the existing driveway.
- The following are standards not recommended by the Planning Commission for adoption:
 - Property owner-occupied status:
 - It is not proposed to require the owner of the property to live in either the ADU or main house.
 - Screening:
 - The standards proposed for adoption will ensure that ADUs are consistent with existing residential development in neighborhoods and any impact from them will be minimal.
 - The ability to be rented:
 - Portland and Ashland, which both permit ADUs without a property owner occupancy requirement, have found that the owner lives on the property 70-80 percent of the time anyway;
 - Without the owner occupancy requirement, it's possible to finance the property as a "duplex" where a portion of the renter's income is counted toward the property owner's income for loan qualifying purposes, making it more viable to finance the construction of an ADU; and

- The enforcement of the owner occupancy requirement is tremendously difficult.
 - Design standards:
 - Design standards are difficult to adopt and tend to be discretionary in nature;
 - Marion County does not currently have a design review process;
 - Without an existing design review process in place, it would be difficult to apply design standards to ADUs; and
 - The standards for development proposed above would ensure compatibility with the residential nature of the neighborhoods ADUs are placed in without requiring additional design standards.

Testimony:

Support:

Michael Johnson, East Salem Suburban Neighborhood Association:

- The neighborhood association is in support of the ADUs
- In the property tax records, there is a stormwater fee, which is based on a 3,000 square foot hardscaped dwelling unit:
 - The commissioners stated that the stormwater fee would not be raised.
- Parking:
 - Currently under the Marion County Code, all of the parking in the urban growth boundary is limited to five cars per household; and
 - If an extra space was added, there would be a tendency to add more than five cars per household.

Mike Erdmann, Homebuilders Association of Marion and Polk Counties:

- Supportive of the county's effort in ADUs;
- Better maximize land inside the urban growth boundaries;
- More affordable housing options;
- Can derive rental income from the property;
- Multigenerational families;
- Appreciative of the effort Mr. Reich and staff have put into the recommended standards;
- Suggestions and modifications:
 - Setback standards are different than what the City of Salem has adopted:
 - Suggests keeping setback standards in the urban growth boundary only.
 - Restricting height for ADU's would be problematic when adding above a detached garage:
 - Would restrict adding a second story to the house.
 - Suggest going with 25 foot height for detached ADUs and 35 foot height for attached ADUs;
 - Do away with parking requirements; and
 - City of Salem approved ADUs at the beginning of the year and one permit has been submitted.

Holly Sears, Salem Association of Realtors:

- Provided written testimony;
- Closely involved in ADU standards;

- Supports inclusion of manufactured dwellings;
- Ability to build above detached garages;
- Agrees with keeping setback requirements; and
- Recommends requiring one additional parking space.

Board discussion:

- The commissioners support manufactured dwellings:
 - The commissioners would not want older manufactured homes as ADUs; and
 - The commissioners would like Mr. Reich to contact the Manufactured Home Association representative and negotiate language.
- Preference would be detached maximum height of 25 feet and attached interior height as 35 feet;
- Keep the Marion County setbacks as five feet from back of property line and three feet from side property line; and
- The commissioners are in favor of one additional parking spot.


MOTION: Commissioner Cameron moved to close the public hearing, keep the record open until 5:00 p.m. on December 12, 2017 for comments regarding manufactured home building standards, approve adopting the Marion County Urban Zone Code to permit Accessory Dwelling Units, and return with an ordinance for the board to review. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 11:19 a.m.


 CHAIR


 COMMISSIONER


 COMMISSIONER

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