

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, February 8, 2023
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Colm Willis, Commissioner Kevin Cameron, and Commissioner Danielle Bethell. Also present were Jan Fritz, chief administrative officer, Jane Vetto as county counsel, and Brenda Koenig as recorder.

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

(Video Time 00:00:09)

PUBLIC COMMENT

None.

(Video Time 00:00:12)

CONSENT

BOARD OF COMMISSIONERS

OLCC Application – Recommended Approval

1. South Falls Cafe – Sublimity, Oregon

PUBLIC WORKS

2. Receive the hearings officer's decision approving Conditional Use (CU) permit Case #22-045/Whitewind Woodland, LLC.

TAX OFFICE

3. Approve an order for the cancellation of three uncollectible personal property tax accounts in the amount of \$6,639.40 for Tax ID's 125993, Royal Mobile Estates; 131805, Valerie H. and Michael S. Forsythe; and 130272, Whitney Craig.

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

(Video Time 00:01:30)

ACTION

HEALTH AND HUMAN SERVICES

4. Consider approval of Amendment #12 to the incoming funds Intergovernmental Agreement with the Oregon Health Authority to add \$866,471.40 for a new contract total of \$20,048,926.75 for the operation of public health services through June 30, 2023.

–Ryan Matthews

Summary of presentation:

- There are several small decreases to the fiscal year 2021-22 award that are a part of the amendment:
 - These changes result in a reduction of \$28,861; and
 - The decreases are due to the fiscal year-end reconciling of the county's actual expenditures versus the contract award.
- In the new fiscal year, 2022-23, the county is receiving \$895,333 in Tobacco Prevention and Education Program funds:
 - These funds are related to a 2020 cigarette tax increase established through ballot Measure 108;
 - The funds expire at the end of this fiscal year;
 - Staff has been working with county partners on community funding opportunities for different initiatives to promote tobacco prevention;
 - Temporary staff is being hired to provide health promotion and messaging around tobacco prevention and cessation; and
 - There are specific items that the funds can be used for.

Board discussion:

- The decreases were due to the county not having enough eligible expenses in some areas:
 - There was staff that was redirected from their normal duties to tasks related to the COVID-19 pandemic, and COVID-19 funds paid for their work; and
 - Some of the funds were not eligible to be carried over into the next fiscal year.
- The Tobacco Prevention and Education Program funds do not require a level of enforcement that the county is not comfortable with;
- Staff brought their plan for the Tobacco Prevention and Education Program funds to a Management Update meeting approximately six months ago:
 - The funds will be used for health promotion, prevention, and awareness campaigns; and
 - The work should not infringe on local businesses.
- The commissioners thanked Mr. Matthews and the Public Health teams for all their work.

MOTION: Commissioner Bethell moved to approve Amendment #12 to the incoming funds Intergovernmental Agreement with the Oregon Health Authority to add \$866,471.40 for a new contract total of \$20,048,926.75 for the operation of public health services through June 30, 2023. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:09:02)

BOARD OF COMMISSIONERS

5. Consider approval of the 2023 Federal Agenda. –Jessica Stanton, Kirby Garrett and Michael Skipper, CFM Advocates

Summary of presentation:

- The county engages CFM Advocates to help develop the county’s federal agenda, and for them to promote the county’s interests in Washington, D.C.

Kirby Garrett and Michael Skipper, CFM Advocates:

- The county’s federal agenda serves as CFM Advocates advocacy framework outlining the county’s project and policy priorities;
- The federal agenda can change due to political dynamics and changes to the county’s priorities;
- There is unprecedented opportunity for Marion County to secure federal funding for local priorities;
- Over \$32 million in federal funding has been secured since CFM Advocates has been working on the county’s behalf, averaging to just over \$2 million per year;
- In 2022 a number of awards were secured for projects including the following:
 - An estimated \$2 million for the Detroit Marina Excavation and Resiliency Project;
 - An estimated \$1 million in additional funding for the Opal Creek economic development initiative; and
 - An estimated \$2.1 million for North Fork guardrail improvements.
- Just under \$10 million was secured for projects in 2021 and 2022;
- CFM Advocates has been advocating on the county’s behalf throughout the past two years to bring additional dollars to the county as part of larger nationwide initiatives including the following:
 - American Rescue Plan Act (ARPA);
 - Secure Rural Schools (SRS) program extensions; and
 - SRS/Payments in Lieu of Taxes (PILT) funding that was included in ARPA.
- Following are funding requests included in the 2023 federal agenda:
 - Funding to support the needs in the north Santiam Canyon;
 - The Interstate 5, Aurora-Donald interchange reconstruction;
 - Rural bridge replacements:
 - This is a pending grant application to replace seven county bridges.

- McKay/Yergen/Ehlen roads safety corridor improvements; and
- Body-worn cameras for the Marion County Sheriff's Office.
- Following are policy initiatives included in the 2023 federal agenda:
 - Maximizing federal housing support;
 - ARPA flexibility:
 - Extending the program deadlines to ensure that jurisdictions can use the dollars.
 - Ensure that waste-to-energy is recognized as clean energy;
 - Repealing the inmate and juvenile corrections exception for federal health benefits;
 - Local flexibility through direct federal investment by advocating for direct investments through counties, as opposed to going through the state or complicated competitive grant programs;
 - Wildfire recovery efforts in the Santiam Canyon;
 - Extending Secure Rural Schools reauthorization;
 - Responsible, sustainable solutions for Oregon and California (O&C) forest lands and U.S. Forest Service (USFS) lands;
 - Funding to combat opioid and methamphetamine issues in the county;
 - USFS wildfire management reform; and
 - Rural broadband deployment.
- The following occurred during the 2022 midterms:
 - Democrats retained a narrow Senate majority;
 - Republicans captured a House majority;
 - There is new Democratic leadership in the House;
 - Senator Wyden of Oregon secured his fifth term:
 - He will continue as chair of the Senate Finance Committee.
 - The biggest change for Marion County was with redistricting:
 - Previously the county was entirely within the fifth congressional district;
 - After the census Oregon received a new congressional seat; and
 - With redistricting, Marion County was divided into the new sixth congressional district and the reshaped fifth congressional district:
 - The fifth congressional district is represented by Representative Chavez-DeRemer; and
 - The sixth congressional district is represented by Representative Salinas.
- With slim majorities in both the House and Senate there will probably not be any landmark legislation passed in 2023:
 - There are opportunities for bipartisanship, as the slim majorities may force the parties to work together to pass shared priorities.

Board discussion:

- The commissioners thanked Mr. Garrett and Mr. Skipper for all their work over the years supporting the county's projects and priorities;
- Commissioner Willis highlighted and commented on a couple of the policy items that were mentioned:
 - Wildfire management reform within the USFS is important:
 - The USFS did not manage the Beachie Creek fire in the eight weeks leading up to the fire:
 - Local USFS personnel requested additional support, but their request was denied by the USFS in Washington, D.C.
 - The following year, there were over 600 personnel deployed to the Bull Mountain fire:
 - They were cutting fire lines and doing back burns, but it was all at the discretion of the agency.
 - It is important for the people of Oregon to have confidence that there will be a certain level of response to wildfires that will ensure their safety;
 - The level of response that the USFS provided in 2020 was unacceptable;
 - Congress needs to step in and direct the level of response that is expected from the USFS when there are fires near towns and homes; and
 - There also needs to be sustainable thinning and logging in federal forests.
 - Marion County has a waste to energy facility:
 - The county's solid waste system is the best in the state, and a key component is the waste to energy facility; and
 - The county needs the energy to be recognized as clean energy.
- Commissioner Bethell made the following comments:
 - Department of Housing and Urban Development (HUD) policies restrict the county from deploying housing in a way that suits the needs of the county's citizens; and
 - Senator Wyden is interested in housing and homelessness.

MOTION: Commissioner Cameron moved to approve the 2023 Federal Agenda. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous.

(Video Time 00:31:49)

PUBLIC HEARINGS
9:30 A.M.

PUBLIC WORKS

A. Public hearing to consider amendments to the Marion County Urban and Rural Zone Codes.

–Brandon Reich

Summary of presentation:

- The legislature passed laws in recent sessions, and the Department of Land Conservation and Development amended the rules in Oregon related to land use planning:
 - The rules are in effect, or go into effect soon, and they must be implemented into Marion County code.
- In addition, there are proposed amendments to the code to add uses, amend standards, and correct errors;
- This topic was brought to a November 2021, Management Update meeting, and the board initiated consideration of the amendments in February 2022;
- Staff worked with the Planning Commission to develop a recommendation on code updates:
 - Work sessions were held on April 12, 2022, and May 17, 2022.
- The Planning Commission held a public hearing on August 16, 2022;
- The Planning Commission recommended amendments to the board on September 20, 2022;
- The board held a work session on the amendments on December 15, 2022, and directed staff to schedule a public hearing for February 8, 2023;
- The amendments include changes to incorporate into county land use code recent changes made to statute and implemented in rule including the following:
 - The ability to establish a brewery on farmland; and
 - A relative dwelling would be allowed on forest land.
- The Planning Commission is also recommending amendments allowing lot of record dwelling provisions into the Exclusive Farm Use (EFU) zone, and modifying the requirements for secondary farm dwellings;
- Further amendments include adopting provisions related to historic structures and the division of property that has a historic structure on it, and clarification of the standards for a second kitchen in a dwelling;
- There are also clarifying amendments and amendments to correct scrivener's errors; and
- The Planning Commission recommends that the board adopt the amendments as provided today, and have staff return with an ordinance reflecting the board's decision.

Board discussion:

- Commissioner Cameron thinks that the recommendations for the Recreational Vehicle (RV) code should have been more lenient:
 - The county is dealing with a housing crisis.

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- Mr. Reich provided the following information pertaining to RVs:
 - Per building code statute, there is a provision where an RV can be on a property if there is already a dwelling on the property:
 - It is unclear how to implement this in the planning code.
 - In current planning code the county can permit a hardship dwelling:
 - The previous board decided that if there is a medical condition that could be related to homelessness, or a mental health condition that could be exacerbated by homelessness, that a hardship dwelling would be allowed.
 - The Planning Commission developed the new RV code knowing there is already provision in the code where individuals can stay for 120 days, and there is also the hardship provision which is very flexible in its implementation:
 - The county has not had anyone apply for the hardship provision.
 - Staff could also come back to the board to apply the building code statute in a way where there could be occupancy of an RV by putting sideboards on it.

(Video Time 00:37:44)

Testimony:

Opposition:

Julie Kraemer:

- Ms. Kraemer is a resident of Butteville;
- She is testifying today on two proposed code revisions;
- Ms. Kraemer's attorney submitted written testimony on her and her neighbor's behalf:
 - The written testimony provides a detailed explanation of why they oppose the revisions.
- The proposed revisions to Marion County code sections 17.119.020 and 17.119.025 arise from a greenway permit application that was filed by a private entity to build a structure in the purported right-of-way between Ms. Kraemer's home and her neighbor's home:
 - The application was improper for many reasons, including that it violated existing county code because it did not include Ms. Kraemer's signature or her neighbor's signature as property owners;
 - The private entity convinced Marion County staff to ask the board to change the code to permit them to proceed with the project on Ms. Kraemer's property and her neighbor's property without their permission or signatures;
 - The property owners oppose the project because of the damage they have already sustained from early parts of the project;
 - Since the county and the private entity began installing park amenities in the small strip of land between the two homes, it has become a magnet for illegal drug use, garbage dumping, and excessive noise; and
 - Additionally, individuals attracted to the area trespass on Ms. Kraemer's property at all hours of the day.

- Ms. Kraemer asked that the board reject the proposed revisions to Marion County code sections 17.119.020 and 17.119.025, as their sole purpose is to make it easier for the county to allow a private entity to impair property rights.

Board discussion:

- Mr. Reich explained the details of the proposed code revisions that Ms. Kraemer is addressing:
 - Under current code, a property owner can make and sign an application;
 - A governmental body can also make an application, but they cannot sign it;
 - The revisions to the code will allow the county to bring forward land use cases, like an easement, where the board and others can consider making a decision on it;
 - Marion County owns a lot of right-of-way with easements, and when there is work in an easement someone must be able to make the application and sign for the application; and
 - When a decision is to be made on a land use case, the county can evaluate how the criteria apply, and whether or not it is a proper use.
- The proposed code revisions are broader than just the issue in Butteville, and they impact the county's ability to do work throughout the county;
- Today the board is considering adopting a broad, generalized code;
- Mr. Reich explained that if an application came forward, the county has to make a determination that an appropriate local government or state agency made an application for a public works project:
 - An opponent could argue that the project is not an appropriate Public Works project;
 - The revisions allow an application to be brought forward to be able to make those determinations and have the arguments;
 - All rights are preserved for property owners, neighbors, and opponents to have their part of the process, to appeal, and to come before the board for a decision; and
 - Under the revisions, a property owner's signature would not be required for a public works project within an easement:
 - It would have to be a public agency project;
 - The property owner could argue that the project is not an appropriate public agency project; and
 - To do the project the public agency has to have an easement right.
- The board needs to decide if a public agency should be able to sign a land use application;
- Ms. Vetto made the following comments regarding the underlying case:
 - The county did not have the authority as an easement holder under current county code to be an applicant; and

- The Land Use Board of Appeals (LUBA) said that if the county wants to be an applicant, they have to amend their code.
- Mr. Reich explained that a property owner cannot apply for a Public Works project:
 - Most of the county's land is within easements;
 - An example of a Public Works project within an easement would be the county adding a travel lane to a roadway easement:
 - The property owner could not make that application.
 - The county needs the right to do certain work in an easement, and to be able to make and sign the application; and
 - If the county does not have an easement, they would not be able to make an application.

Testimony:

Opposition:

Julie Kraemer:

- There is another code that is clearly being violated:
 - The code states that there will be no changes to existing use:
 - There is trespassing occurring due to the fact that the area is open 24 hours a day, which is clearly a violation of the code.

(Video Time 00:54:33)

Board discussion:

- Mr. Reich explained that the code Ms. Kraemer is referencing is part of the state greenway code:
 - The county has limited ability to amend the code;
 - The greenway is an area along the Willamette River where there is a lot of native vegetation;
 - The county can consider approving or denying a greenway permit, and conditions can be included with an approval:
 - The conditions could help mitigate the change of use associated with the right of way; or
 - The county could deny the project and say that it is not an appropriate use within the greenway.
 - There are 13 different criteria in the greenway code, and some do involve impacts to the area.
- Mr. Reich explained that these specific code amendments were not given to the Planning Commission:
 - They came out during the process;
 - There was some testimony before the Planning Commission, but none of it seemed like something to bring forward as proposed amendments;

- If amendments come up during the process, staff is able to consider them and incorporate them at the public hearing before the board; and
- The LUBA decision came out during the process.
- The commissioner did receive the letter submitted by Ms. Kraemer's attorney;
- Ms. Kraemer stated that she did not receive notice of today's public hearing;
- Notices are not sent to every resident in Marion County for public hearings that are broad to the entire county:
 - Public notices are made in public newspapers and through other means; and
 - If the case was specific to Ms. Kraemer, she would have received a direct notice, but today's public hearing is not specific to Ms. Kraemer's issue.
- Commissioner Willis made the following comments:
 - Ms. Kraemer is concerned about one specific amendment in a large packet of amendments;
 - The legislature changed the law, so the county has to make changes to county code based on those changes; and
 - Ms. Kraemer is talking about the specific amendment that comes from LUBA's decision that says that in order for the county to make a land use application, they have to be able to sign the application that is submitted.
- Mr. Reich commented that any land use requirement in an easement, such as a roadway project, could not happen under the current code:
 - The LUBA decision highlighted the issue, and that the county needed to make a change to county code:
 - The county needs to be able to make and sign an application.
- Commissioner Bethell made the following comment based on a conversation she had with Ms. Vetto:
 - The conversation on the subject matter of today's public hearing started in 2021 because of the legislative changes.
- Commissioner Bethell made the following comments:
 - There is a need for the county to change county code;
 - Commissioner Bethell is going to support the entire code amendment process today; and
 - She looks forward to the future discussion on Ms. Kraemer's particular situation and any application that may come forward.

Testimony:

Opposition:

Julie Kraemer:

- Ms. Kraemer commented that she has been impacted and harmed since 2017;
- She does not feel heard by the county, and it is very frustrating; and
- There is no doubt in her mind that this particular code amendment is being passed specifically as a result of the LUBA decision.

Board discussion:


- Commissioner Bethell commented that if an application comes forward on this issue in the future, the board will address it;
- Commissioner Willis made the following comments on Ms. Kraemer's case:
 - The board likes to make decisions based on the substance of a case;
 - In land use decisions it often becomes all about process and procedure;
 - As a policy making body, it is the board's job to look at a situation and determine if it is right, if it is just, and if it is fair to everybody involved:
 - In a case like this where this is a fight over procedure, Commissioner Willis looks at how the board should determine the particular case, and this particular case should not be determined on whether or not there was a signature missing:
 - The board should determine the case on the things that Ms. Kraemer has identified including the following:
 - Is there an easement;
 - Is there a right for the public to use that easement;
 - Are they using it appropriately; and
 - Is the county preserving the rights of the property owner?
 - If the board were constantly making decisions based on technicalities, they are going to frequently do injustice because they would be making decisions based on technicalities, not based on the substance of what they are deciding;
 - When the board is looking at legislative changes, they have to ensure that they are making decisions for the entire county;
 - In the future, if Ms. Kraemer comes before the board, she would know the following:
 - The board is going to make a decision based on the merits of the case;
 - She is not going to lose based on a technicality; and
 - She is not going to win based on a technicality.
 - In order to do justice to Ms. Kraemer and everyone in the county, the board has to ensure that they are able to move these cases out of the realm of technicality, process, and procedure, and into the realm of substance, so that decisions are based on the facts.
- Mr. Reich commented that if an application comes in on this issue, he intends to send it right to the hearings officer for a public hearing:
 - The neighborhood, property owners, and Public Works would be able to participate; and
 - It is important to Mr. Reich to get a resolution on this issue:
 - The application would be approved or denied; and
 - If the application is approved, conditions can be attached to make it fit into the code and to meet criteria.


- If Ms. Kraemer were to submit an application, then notice of public hearings would be given directly to her and her neighbors:
 - Notices are mailed out 21 days before the first hearing.
- Commissioner Cameron made the following comments:
 - In the third bullet of the attorney's letter, it says that if the amendments are passed, property owners would be vulnerable to attempts to take private property without compensation:
 - This is not true, and there must be an easement in place for this to even take place.
 - Ms. Kraemer's case is a sensitive case that is outside of what the board is doing today.
- Mr. Reich, or staff, will follow up with Ms. Kraemer to discuss her options going forward.

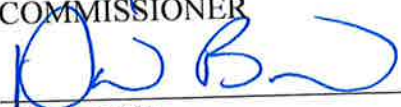
MOTION: Commissioner Bethell moved to close the public hearing, approve amendments to the Marion County Urban and Rural Zone Codes, and direct staff to return with an ordinance. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 01:15:20)

Commissioner Willis adjourned the meeting at 10:16 a.m.


 CHAIR


 COMMISSIONER


 COMMISSIONER

Board Sessions can be viewed on-line at
<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>

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