

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 28, 2021

9:00 a.m.

Senator Hearing Room  
555 Court Street NE  
Salem, OR 97301

**PRESENT:** Commissioner Kevin Cameron, Commissioner Danielle Bethell, and Commissioner Colm Willis. Also present were Jane Vetto as county counsel, and Brenda Koenig as recorder.

**ABSENT:** Jan Fritz, chief administrative officer

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

**PUBLIC COMMENT**

None.

**PRESENTATION**

*(Video Time 00:01:05)*

COVID-19 (Novel Coronavirus) update. –Katrina Rothenberger

- Ms. Rothenberger reported the following updates for the COVID-19 pandemic as of 8:00 a.m. on Wednesday, July 28, 2021:
  - The seven-day case average is 59 cases per day;
  - The county's rates for positive cases is increasing;
  - The county saw a 37 percent increase in positive cases for the dates of July 11, 2021, through July 24, 2021:
    - Oregon experienced an increase of 52.2 percent for the same time period.
  - An estimated 29 county residents are currently being monitored in the hospital:
    - The bulk of the hospital cases are individuals who have not been vaccinated.
- A large majority of positive cases have been reported for zip codes in the following locations:
  - The City of Salem in the following areas:
    - Central;
    - South; and
    - Northeast.
  - The City of Brooks; and

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- The City of Keizer.
- Some of the following events are contributing to the increase in positive case counts:
  - Barbeques;
  - Parties; and
  - Summer activities.
- The COVID-19 Delta variant is estimated to be 60 percent more transmissible:
  - As a result, individuals are becoming infected more rapidly; and
  - It is poised to become the dominant variant in Oregon.
- Marion County, along with the following counties, are considered part of Region 2 for Oregon's emergency response:
  - Benton;
  - Lincoln;
  - Linn;
  - Polk; and
  - Yamhill.
- The current hospital capacity within Region 2 includes the following:
  - The region has an estimated 100 cumulative, staffed Intensive Care Unit (ICU) hospital beds:
    - An estimated 88 ICU beds are occupied; and
    - An estimated 12 ICU beds are available.
  - The region has an estimated 758 cumulative, staffed non-Intensive Care Unit (ICU) hospital beds:
    - An estimated 698 non-ICU beds are occupied; and
    - An estimated 60 non-ICU hospital beds are available.
- Marion County Health and Human Services (MCHHS) is currently monitoring breakthrough cases or cases in which an individual received a positive COVID-19 test result at least 14 days after completing any COVID-19 vaccine series:
  - There have been an estimated 303 total breakthrough cases;
  - The highest case rates for breakthrough cases are occurring in individuals ages 70 and older;
  - An estimated 51 new breakthrough cases for vaccinated individuals were reported for the prior week:
    - Breakthrough cases accounted for an estimated 21.6 percent of the overall case count;
    - An estimated 33 individuals were already vaccinated with the Pfizer vaccine;
    - An estimated 10 individuals were already vaccinated with the Moderna vaccine; and
    - An estimated eight individuals were already vaccinated with the Johnson and Johnson vaccine.
- An estimated 68.5 percent of eligible Oregon residents ages 18 and over have received at least one dose of a COVID-19 vaccine:

- An estimated 63.4 percent of Marion County residents have received at least one dose of a COVID-19 vaccine.
- An estimated 64 percent of eligible Oregon residents ages 18 and over are fully vaccinated:
  - An estimated 59.2 percent of Marion County residents are fully vaccinated.
- The mass vaccination clinic at the Oregon State Fairgrounds has closed;
- County residents can still get vaccinated at some of the following locations:
  - Healthcare provider offices;
  - Mobile clinics; and
  - Pharmacies.
- Vaccine clinic information is available on the county's website or community members can call 2-1-1;
- MCHHS continues to provide vaccinations for individuals who are home bound;
- The Center for Disease Control (CDC) recommends individuals wear masks in areas with substantial community spread; and
- The Oregon Health Authority (OHA) is encouraging all individuals, both vaccinated and unvaccinated, to wear masks in public, indoor settings.

***Board discussion:***

- Marion County is in the substantial risk category:
  - A positive case count for 50 to 99 individuals per 100,000 is considered substantial risk; and
  - An estimated 238 positive cases were reported for dates of July 18, 2021, through July 24, 2021.
- MCHHS is focusing on the following:
  - Mobile vaccine clinics; and
  - Vaccinating individuals in hard-to-reach areas.
- Community members are encouraged to get vaccinated and wash their hands frequently.

**CONSENT**

*(Video Time 00:08:40)*

**BOARD OF COMMISSIONERS**

Approve an order reappointing Robert Carney, Don Frederickson, Ed McKenney, Mike Runyon, and Cari Sessums to the Marion County Public Safety Coordinating Council with terms ending July 31, 2024.

**COMMUNITY SERVICES**

Approve an order abolishing the Marion County Children and Families Commission.

## HUMAN RESOURCES

Approve the recommendation to adjust pay grades upward and update the classifications for class codes #620, Victim Assistance Manager; #621, Victim Assistance Program Coordinator; and #624, Victim Assistance Advocate.

## PUBLIC WORKS

Approve the Intergovernmental Agreement with the Oregon Department of Transportation for the exchange of Federal Surface Transportation Block Grant (STBG) funds to state funds through September 30, 2024.

Approve Amendment #1 to the incoming funds Intergovernmental Agreement with the Oregon Department of Transportation to add \$58,162.50 in federal funds for a new contract total of \$2,884,657.50 to increase the bike lane width for the Hollywood Drive Bike and Pedestrian Improvement project through August 6, 2029.

Receive notice of the Marion County Planning Commission's decision granting conceptual and detailed approval of Subdivision (SUB) Case #21-001/Steiwier Coalition, LLC.

## TREASURER'S OFFICE

Approve an order authorizing the Marion County Treasurer to invest surplus county funds in a manner that provides the best rate of return while protecting the funds and meeting cash flow needs during Fiscal Year 2021-22.

### ***Board discussion:***

- The county is sunsetting the Marion County Children and Families Commissioner (MCCFC):
  - The MCCFC originated in 1989;
  - In 2012, the state redirected funding from local counties to the Oregon Department of Education;
  - The county continued to maintain the MCCFC after the state redirected the program funding; and
  - The county will continue to work with children and their families in other capacities.

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

## ACTION

*(Video Time 00:11:25)*

### BUSINESS SERVICES

1. Consider approval of the Contract for Services with Trane U.S., Inc. in the amount of \$178,267 for the Information Technology Server Room Replacement Project through June 30, 2022. –Terry Stoner and Wesley Miller

#### ***Summary of presentation:***

- Business Services would like to replace the cooling systems for the server room located at Courthouse Square:
  - The intent is to continue using the same controls that are currently being utilized:
    - The controls monitor and adjust temperatures as needed.
- The server room equipment has significantly aged and is dilapidating;
- Access for repairs has gotten progressively worse;
- Humidity control is an ongoing struggle;
- One system out of the three systems has failed and has been decommissioned;
- With the new system if one system fails the remaining system will be capable of taking care of both the capacity and the humidity.

#### ***Board discussion:***

- The current controls are not automated and require an employee to physically enter the server room to perform adjustments:
  - The new system will allow for remote automated adjustments.
- Another government agency implemented the bid and solicitation process;
- As a result, the county did not utilize a competitive process;
- The county reviewed other options; and
- It was determined that this was the most cost effective for the county for the work that is being provided.

**MOTION:** Commissioner Bethell moved to approve the Contract for Services with Trane U.S., Inc. in the amount of \$178,267 for the Information Technology Server Room Replacement Project through June 30, 2022. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

*(Video Time 00:15:44)*

### COMMUNITY SERVICES

2. Consider a resolution approving a rural industrial improvement property tax exemption for Sodbuster Farms, Inc. –Tamra Goettsch, Nick Harville, Strategic Economic Development Corporation, and Douglas Weathers, Sodbuster Farms, Inc.

#### ***Summary of presentation:***

- The county started considering the Rural Industrial Property Tax Exemption program in 2015:

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- The program is an opportunity for industrial businesses to receive a property tax exemption for a set period of time to assist with the expense of business improvements or expansions.
- The exemption is for three consecutive years;
- Sodbuster Farms Inc. submitted the application to the Assessor's Office for review:
  - The application met all the requirements for the tax exemption; and
  - The board has the option to add exemptions or conditions.
- If approved it will be the applicant's responsibility to follow-up with all the tax entities within the county advising of the exemption:
  - The applicant has 60 days to obtain letters of support from all the tax entities.
- The application estimated the new taxable property value will be \$6.8 million;
- An estimated exemption is \$76,000 for three consecutive years;
- The business improvements will allow for the following:
  - A safer harvest;
  - A reduction in noise; and
  - Increase efficiency for labor expense.

***Board discussion:***

- Marion County is a leader in Oregon for offering the industrial business property tax exemption to qualified businesses;
- Businesses expanding or making improvements are investing in the future;
- The exemption provides businesses the time needed to increase profits after a large expansion or improvement has been made;
- Applicants applying for the tax exemption are required to enter into a hiring agreement and increase employment at the business location;
- The county recently implemented a youth wage grant program:
  - The program is for youths ages 14-17 that are first time employees;
  - Under the program, employers can receive a \$4 per hour stipend for each eligible youth employed during the months of May through September;
  - The youth learn job skills and gain experience;
  - The county is partnering with Willamette Workforce Partnership to execute the program; and
  - The program will be an annual project.
- There are limited programs providing incentives for businesses located in rural areas; and
- The program offers rural businesses and agricultural communities the opportunity to grow.

**MOTION:** Commissioner Willis moved to approve a resolution approving a rural industrial improvement property tax exemption for Sodbuster Farms, Inc. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous.

*(Video Time 00:28:25)*

### HEALTH AND HUMAN SERVICES

3. Consider approval of the Purchase Order with Redwood Toxicology Laboratory, Inc. in the amount of \$477,860 to provide urinalysis testing services for individuals participating in Marion County Specialty Court programs retroactive from July 1, 2021, through June 30, 2023.

–Jeremiah Elliot

#### ***Summary of presentation:***

- The Purchase Order is for urinalysis testing services;
- The services will be provided to the five Marion County Specialty Courts; and
- Marion County Health and Human Services performs fiscal intermediary services for the five specialty courts.

#### ***Board discussion:***

- A state pricing agreement was utilized for the Purchase Order;
- The county has a prior working relationship with Redwood Toxicology Laboratory, Inc.; and
- The courts have been working with the company for multiple years.

**MOTION:** Commissioner Bethell moved to approve the Purchase Order with Redwood Toxicology Laboratory, Inc. in the amount of \$477,860 to provide urinalysis testing services for individuals participating in Marion County Specialty Court programs retroactive from July 1, 2021, through June 30, 2023. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

*(Video Time 00:30:45)*

### INFORMATION TECHNOLOGY

4. Consider approval of Amendment #1 to the Contract for Services with Siemans Industry, Inc. to add \$409,873 for a new contract total of \$459,873 for the installation of the video surveillance system at the Marion County Jail through December 31, 2021. –Gary Christofferson and Commander Tad Larson

#### ***Summary of presentation:***

- The project will replace the current video system at the Marion County Jail;
- The Information Technology (IT) department partnered with the Marion County Sheriff's Office (MCSO) to develop the plan;
- The county entered into a contract with Siemans Industry, Inc. to perform the design build:
  - The contract has a two-phase implementation; and
  - Phase 1 of the contract is complete.
- The vendor submitted a design:
  - The MCSO has reviewed and approved the design; and
  - IT has reviewed and approved the design.



- Amendment #1 will execute phase 2 of the contract which includes some of the following:
  - The vendor will implement the system for the approved design;
  - Replace aging data technology with current technology;
  - Replace aged analog cameras with digital cameras; and
  - Replace the video storage system with updated technology.
- The wiring required for the new cameras is complete;
- Retrieval of the digital platform is anticipated to be easier and faster; and
- It is estimated that the project will be complete in five months.

***Board discussion:***

- Completion of the rewiring project at the Marion County Jail is a critical step for executing phase 2;
- The Jail Management System (JMS) went live in June; and
- The Records Management System (RMS) is anticipated to go live in late October.

**MOTION:** Commissioner Willis moved to approve Amendment #1 to the Contract for Services with Siemens Industry, Inc. to add \$409,873 for a new contract total of \$459,873 for the installation of the video surveillance system at the Marion County Jail through December 31, 2021. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous.

*(Video Time 00:35:35)*

**PUBLIC WORKS**

5. Consider approval of the Public Improvement Agreement with Baker Rock Crushing, Inc., dba, Baker Rock Resources in the amount of \$119,942 for the Beachie Creek Fire: North Fork Road Signs project for the installation of traffic and other informational signs through August 31, 2021. –Ryan Crowther and Lani Radtke

***Summary of presentation:***

- The project will be implemented along North Fork Road;
- North Fork Road starts where it intersects with Highway 22 and stops when the pavement ends;
- The construction plan entails replacing and constructing new signs related to the closure of North Fork Road:
  - The wildfire destroyed signs that previously indicated some of the following:
    - No Parking; and
    - No River Access.
- Baker Rock Resources submitted the lowest bid of \$119,942;
- Marion County Public Works (MCPW) has been working with the Federal Emergency Management Agency (FEMA) to determine if the county is eligible for expense reimbursement;



- Construction for the project will start in July 2021; and
- The estimated completion date is August 31, 2021.

**Board discussion:**

- A portion of North Fork Road is eligible for FEMA reimbursement;
- A portion of the road is considered a federal highway and is not eligible for FEMA reimbursement;
- The county is not eligible for reimbursement for temporary signage related to road restrictions:
  - Only permanent signs are eligible for reimbursement.
- Signs are already in place at the North Fork Road entry point;
- Gates have been ordered to assist with the road restrictions;
- MCPW has been collaborating with the MCSO to determine the number of signs needed and the sign locations; and
- The signs have assisted the MCSO with enforcement.

**MOTION:** Commissioner Bethell moved to approve the Public Improvement Agreement with Baker Rock Crushing, Inc., dba, Baker Rock Resources in the amount of \$119,942 for the Beachie Creek Fire: North Fork Road Signs project for the installation of traffic and other informational signs through August 31, 2021. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous

*(Video Time 00:40:40)*

6. Consider approval of the Public Improvement Agreement with RiverBend Construction, Inc. in the amount of \$181,257.70 to provide asphalt concrete repairs and paving for the Beachie Creek: North Fork Road and Gates Hill Road Repairs project through September 30, 2021. –Ryan Crowther and Lani Radtke

**Summary of presentation:**

- The county is working with FEMA to determine if a portion of North Fork Road is eligible for reimbursement;
- Sections of the asphalt were damaged during the 2020 wildfires by some of the following:
  - Burning debris;
  - Burning trees; and
  - Tree root wad.
- Implementing spot repairs may reduce the potential further damage:
  - Only localized points of damage will be repaired.
- RiverBend Construction, Inc. submitted the lowest bid of \$181,257.70;
- Construction for the project will start in August 2021; and
- The estimated completion date is September 30, 2021.

**Board discussion:**

- The Oregon Department of Transportation (ODOT) implemented similar repairs on portions of Highway 22 that were damaged by the wildfires; and
- Commissioner Cameron expressed his appreciation for expediting the project.

**MOTION:** Commissioner Willis moved to approve the Public Improvement Agreement with RiverBend Construction, Inc. in the amount of \$181,257.70 to provide asphalt concrete repairs and paving for the Beachie Creek: North Fork Road and Gates Hill Road Repairs project through September 30, 2021. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous.

*(Video Time 00:44:25)*

7. Consider approval of the Public Improvement Agreement with Emery and Sons Construction Group, LLC. in the amount of \$408,876.25 for the 2021 Americans with Disabilities Act (ADA) Improvement project through February 25, 2023. –Ryan Crowther and Lani Radtke

**Summary of presentation:**

- The project is located in the eastern area of the City of Salem;
- Portions of the following streets will be impacted:
  - Lancaster Drive;
  - Pennsylvania Avenue;
  - Shawnee Drive SE; and
  - Shenandoah Drive SE.
- Existing conditions include some of the following:
  - Non-compliant ADA ramps;
  - Sections of asphalt walkways with no sidewalks;
  - Radius sidewalks that have inadequate curve ramps; and
  - Sections of sidewalks with drainage issues.
- The construction plan entails some of the following:
  - Reconstruct segments of substandard asphalt walkways;
  - Construct compliant ADA ramps at a number of intersections; and
  - Install two new school crossings on Pennsylvania Avenue where it intersects with the following:
    - Shenandoah Drive; and
    - 46th Avenue.
- Emery and Sons Construction Group, LLC., submitted the lowest bid of \$408,876.25;
- A Safe Routes to School (SRS) grant will fund up to \$300,000 for the construction projects located at the intersections of the following:
  - Pennsylvania Avenue;
  - Shawnee Drive SE; and
  - Shenandoah Drive SE.
- The SRS grant does not apply to construction repairs located on Lancaster Drive;

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- If approved, construction on the project will start immediately;
- The contractor has until February 25, 2022, to complete the project; and
- Concrete contractors have an extended project deadline window to allow for inclement weather and other constraints.

***Board discussion:***

- Several city streets contain narrow pathways with no actual sidewalks;
- The narrow pathways can make ramp designs and providing ADA facilities challenging; and
- There are no right-of-way acquisitions for the projects.

**MOTION:** Commissioner Bethell moved to approve the Public Improvement Agreement with Emery and Sons Construction Group, LLC. in the amount of \$408,876.25 for the 2021 Americans with Disabilities Act (ADA) Improvement project through February 25, 2023. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

*(Video Time 00:49:02)*

SHERIFF'S OFFICE

8. Consider approval of a Memorandum of Understanding with the Marion County District Attorney's Office in the amount of \$236,741 to collaborate and provide risk assessment and case management for specified, non-violent, property and drug offenders with medium to high risk criminogenic risk factors retroactive from July 1, 2021, through June 30, 2023.

–Commander Kevin Karvandi

***Summary of presentation:***

- The Memorandum of Understanding (MOU) is between the Marion County Sheriff's Office and the Marion County District Attorney's Office;
- The MOU focuses on the Prison Diversion Program and is derived from Senate Bill 416:
  - The program was originally implemented in 2012;
  - It is an evidence based sentencing program that utilizes risk needs assessments; and
  - The intent of the bill is to divert non-violent offenders away from prison sentences and into community supervision.
- The program works in partnership with the following:
  - The Marion County Sheriff's Office (MCSO);
  - The Marion County District Attorney's (MCDA) office;
  - Courts; and
  - Bridgeway Recovery Services.
- Funding for the program is provided by the Criminal Justice Commission (CJC) Justice Reinvestment Initiative;
- The program provides funding for one deputy district attorney;
- The MCDA's office identifies potential candidates who meet qualifying criteria:

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- The target population is nonviolent offenders, property offenders, and drug offenders that are motivated to change their behavior and address their addiction;
- Once a client is deemed appropriate, then a public safety check list is utilized to determine if the individual is medium or high risk;
- The selected individual is then referred to the MCSO; and
- The MCSO performs additional evaluations.
- The program provides for some of the following:
  - Substance abuse treatment;
  - Professional mentoring services; and
  - Case management.
- An estimated 100 individuals participate in the program every year; and
- The term date for the MOU is July 1, 2021, through June 30, 2023.

***Board discussion:***

- The program also provides for some of following:
  - Education; and
  - Victim outreach.
- A small percentage of offenders can safely be managed with community supervision and are diverted away from prison;
- Benefits to the program entail some of the following:
  - Individuals are given the opportunity to address their addiction and improve their lives;
  - The individual stays out of the criminal justice system; and
  - The program assists a victim with restoring their life.
- Client qualifications entails some of the following:
  - No person-to-person violence;
  - No domestic violence; and
  - No sex offense.

**MOTION:** Commissioner Willis moved to approve a Memorandum of Understanding with the Marion County District Attorney’s Office in the amount of \$236,741 to collaborate and provide risk assessment and case management for specified, non-violent, property and drug offenders with medium to high risk criminogenic risk factors retroactive from July 1, 2021, through June 30, 2023. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous

The commissioners recessed at 10:57 a.m.  
The commissioners reconvened at 11:03 a.m.

*(Video Time 01:03:35)*

## PUBLIC HEARINGS

9:30 A.M.

### PUBLIC WORKS

A. Public hearing to consider Conditional Use (CU) Case #20-044/Seasons at Red Oak Farm, LLC. –Lindsey King

#### ***Summary of presentation:***

Lindsey King:

- Public Works submitted additional public comment that was received prior to the 5:00 p.m. cut-off time on July 27, 2021:
  - The new comment was presented to the board for review.
- The application is for a Conditional Use (CU) to operate a commercial use in conjunction with farm use on a 74.5-acre parcel in an Exclusive Farm Use (EFU) zone:
  - The property is located at 21465 Arbor Grove Road NE in the City of St. Paul;
  - It is located approximately three miles from the City of Donald; and
  - It is not located within an Urban Growth Boundary (UGB).
- The commercial business being proposed is a farm experience program for families and youth that would offer the following:
  - U-pick harvesting;
  - Harvest and holiday themed activities;
  - Retail sales of local products;
  - Wildlife viewing; and
  - Plant education.
- The property has an existing home, accessory buildings, and an area being developed (based on permits for the program);
- Surrounding properties are zoned EFU and in farm use;
- Staff denied the application on February 1, 2021, and denied a request for reconsideration on March 16, 2021:
  - All of the applicable conditional use criteria were not met.
- The decision was appealed to the hearings officer:
  - A public hearing was held on April 29, 2021; and
  - The request was denied on June 10, 2021.
- The decision was appealed to the Board of Commissioners on June 25, 2021:
  - The Board accepted the appeal on July 14, 2021, and scheduled the public hearing for July 28, 2021.
- The application was denied due to criteria D, under the conditional use criteria for commercial use in conjunction with farm use, not being met:
  - Criteria D states that the commercial activity must be primarily a customer or supplier of farm uses.
- Since the appeal, additional testimony has been submitted, both for and against the proposal.

*(Video Time 01:11:01)*

**Testimony:**

**Support:**

Jeff Jones:

- Mr. Jones is the property owner, along with his spouse, of Seasons at Red Oak Farm;
- The Joneses purchased the farm in May 2019:
  - The farm was in bankruptcy;
  - The farm had three years of neglect; and
  - It was a non-working farm.
- The owners spent one and a half years cleaning up the property and turning it in to a working farm;
- The property is 74.5 acres:
  - 35 acres is farmable and will be farmed; and
  - The remaining acreage is covered in trees, steep hills, and gravel.
- Mr. Jones feels there is a real need for the farm experience program they are proposing;
- Mr. Jones clarified the plans for the program:
  - A 1.5 to 2-acre gravel and yard area will be utilized for the program;
  - Permits have been secured for a new building and a new driveway;
  - Children will participate in a farm experience where they will see the different stages of a crop, from plowing to harvesting;
  - Mr. Jones does not expect the program to make money;
  - The non-profit organization Firmly Planted will handle a large part of the program:
    - The non-profit will pay for children who could otherwise not afford to attend.
  - Mr. Jones does not expect a large number of participants in the program:
    - Would like to have 1 to 2 groups per week in the fall and in late spring.
  - There is parking for 32 cars.
- The Joneses want to be great neighbors;
- Surrounding neighbors have been supportive of the program;
- Area nurseries and farmers have expressed support of the program; and
- The Joneses are interested in partnering with Future Farmers of America (FFA) and 4-H, to help them with their programs.

**Board discussion:**

- The 35 farmable acres will be planted with clover:
  - The owners will choose crops that are interesting to see; and
  - The clover will be sold.
- The Joneses have been in contact with FFA and 4-H and these groups have expressed interest in having a place where they can meet;
- There are similar programs at farms in southern Oregon and other parts of the country;
- The program will provide:



- Approximately two hours of instruction on various aspects of farming;
- Play time; and
- Lunch time.
- The core issue of the appeal is if the program is appropriate for EFU land:
  - Opponents of the program are concerned with eroding the purpose of EFU land;
  - The county has to follow statewide land use planning statutes; and
  - There are other avenues within the existing statute that could potentially work for the applicants:
    - Mr. Jones is willing to meet with planning staff to discuss other options; and
    - The applicants are growing sunflowers that could be used for u-pick as part of a farm stand concept except that:
      - Currently you have to have an appointment to access the property;
      - The Joneses want to control who comes on to the property; and
      - The Joneses want to control how many people come to the property.
- The gravel area on the property cannot go back to being farmland:
  - No farmable land is being taken out of production.
- The county received a letter from the Oregon Land Conservation and Development Commission (LCDC) stating they do not support the application;
- The main issue identified by staff is that Criteria D is not being met:
  - Applicant states that the issue of farm use is met because they will be supplying future farm labor:
    - Commissioner Cameron inquired if this has ever been previously used to meet the criteria.
- The applicant can prove there is income from farming on the property; and
- Ms. Vetto clarified that county code allows testimony that is given in response to the issue before the board, so the new testimony in opposition to the application is allowed.

*(Video Time 01:45:14)*

Michael Gelardi, attorney for the applicant:

- Mr. Gelardi is an agricultural and land use lawyer;
- Mr. Gelardi clarified previous discussions held with county planning staff:
  - Mr. Gelardi and the applicants have been working for two years on getting the application approved;
  - Discussions have been held with planning staff:
    - The various options to permit the program were discussed.
  - The commercial activity category was proposed by the applicants because it appears to be the best fit under the statutes:
    - Mr. Gelardi and the applicants thought the planning staff agreed with this, and that they supported the proposal:



- Applicants went ahead and obtained permits for the building and the driveway.
  - No communication was received from planning staff in advance of the denial; and
  - Mr. Gelardi discussed with planning staff what information he should submit for a reconsideration:
    - The reconsideration was denied.
- Mr. Gelardi discussed the farm stand option:
  - Planning staff did not recommend the farm stand option until after the permit was denied;
  - Mr. Gelardi has discussed with planning staff multiple times why the farm stand option would not work, and in writing with the hearings officer;
  - There are two reasons why the farm stand option does not work:
    - The income standard cannot be met:
      - Farm stands must show that 75 percent of their retail sales income comes from farm crops; and
      - This does not align with the Joneses' business plan.
    - There are constraints on the type of building that can be used for a farm stand:
      - Has to be designed for the sale of farm crops; and
      - The workshop building built by the Joneses is a multi-purpose building that can be used for their farming and for the proposed program.
- The applicants did consider other options available under the statutes, but feel the current proposal is the best option;
- In a past legal case the courts stated it doesn't matter who specifically is transacting business, what matters is whether the commercial activity is closely tied to farming and that it enhances the local farm community;
- The four standards in this case are local standards, not state law, so the board has the authority to interpret them; and
- The applicants have provided ample documentation to show how they meet the standards.

***Board discussion:***

- Commissioner Willis asked Mr. Gelardi how he would distinguish what commercial activity was allowed on EFU land:
  - Mr. Gelardi responded that EFU land has to be primarily used for farming, and other commercial activity has to be supplemental to the farming:
    - The applicants' land is primarily a farm; and
    - The commercial activities associated with the proposed program are incidental to the farming.
- Commissioner Willis asked Mr. Gelardi how he would determine if a commercial activity was incidental:

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- Mr. Gelardi responded that the courts have not specifically used a revenue standard to determine if land is being used primarily for farming:
  - There are three standards:
    - Are you related to local agriculture;
    - Are you enhancing the local agricultural community; and
    - Is the commercial activity incidental?
  - The Joneses have met these three standards.

*(Video Time 02:04:54)*

***Opposition:***

Aileen Kaye:

- Ms. Kaye submitted additional written testimony to the commissioners;
- Ms. Kaye lives in south Marion County, and is a long-time member of the Marion County Farm Bureau and Friends of Marion County;
- She is asking the commissioners to deny the conditional use permit:
  - She feels the proposed use does not fit any of the conditional uses allowed by law.
- She is concerned the applicants may be planning on running a private school;
- Ms. Kaye described what she feels is different between the applicants' proposal and the existing Bauman's Farm:
  - Bauman's Farm grows its own produce on hundreds of acres:
    - The produce is sold to the public;
    - The public can visit the property without paying an entrance fee; and
    - They have large fall events where a fee is charged.
- Ms. Kaye cares for horses and feels very protective of farmland that provides hay, pasture, and riding opportunities;
- She agrees we need young people to get in involved in agriculture, but feels there are already programs that address this issue;
- Applicants did not bring supportive representatives from FFA or 4-H;
- Ms. Kaye feels the plan is for this program to be a private school that charges tuition;
- Within the existing Oregon Farm to School program local farms invite local school children to visit their farms; and
- There initially was no opposition to the proposal because the area of notification is 750 feet and the area properties are large:
  - There were not many farms that received notification of the application.

*(Video Time 02:13:23)*

Roger Kaye:

- Mr. Kaye is president of Friends of Marion County;

- Friends of Marion County learned about the application when it was initially filed in December 2020:
  - They agree with the planning staff and hearings officer's decisions.
- They are requesting that the board deny the application:
  - Believes the applicants do not meet the standard for commercial use in conjunction with farm use; and
  - The applicants have rejected the other possible options of farm stand, agritourism, and small mass gathering.
- The applicants are proposing a combination of uses that are not permitted by state law;
- Friends of Marion County feels the program being proposed is actually a theme park:
  - The proposed activities are recreational and not essential to the practice of agriculture.
- The applicants have not described the scope of the proposed activities and how they relate to agriculture;
- The applicants have not revealed how many events are planned; and
- Friends of Marion County agrees with the hearings officer's decision and they urge the board to deny the application.

*(Video Time 02:18:58)*

Carla Mikkelson:

- Ms. Mikkelson lives in Woodburn on a 185-acre farm that she leases to other farmers:
  - Her farm is in the same area as the applicants' farm.
- She is a member of the Marion County Planning Commission;
- Ms. Mikkelson is concerned with the proposal for the following reasons:
  - Safety issues with traffic;
  - Educational facilities are normally not found on EFU land;
  - There are existing facilities that FFA utilizes; and
  - If a new activity is allowed on EFU land it would set a precedent for future requests.
- If the county wants to maintain rural environments and maintain agriculture as an industry they need to deny requests like this one;
- Marion County has an excellent planning department that works hard alongside applicants to see that requests can be approved;
- Educational use is not allowed in an EFU zone; and
- Ms. Mikkelson feels the proposal does not meet all of the relevant criteria.

*(Video Time 02:28:18)*

**Neutral:**

Steven Willis:

- Mr. Willis lives in Salem and was raised on a small five acre working farm;

- Mr. Willis is neither opposed or for the proposal;
- He feels this issue is about what the relevant criteria and laws are;
- Removing any existing gravel would be extremely hard;
- Hopefully the applicant can work with planning staff to come up with a solution:
  - Educating our youth about agriculture is very important.
- Mr. Willis is concerned if fees were charged that a precedent would be set.

*(Video Time 02:34:25)*

***Support:***

Michael Gelardi, attorney for the applicant:

- Mr. Gelardi spoke for a second time;
- Some opponents have suggested that the applicants have not coordinated with other programs that may participate in the proposed program:
  - This is not accurate; and
  - There are letters of support from the North Marion FFA and a local school that are a part of the record.
- Mr. Gelardi feels there could have been better communication from planning staff in the beginning of the process:
  - The applicants would have then rethought how to proceed, and maybe would have tried to redesign the program.
- Mr. Gelardi and the applicants do not feel there is a viable alternative.

*(Video Time 02:37:013)*

***Board discussion:***

- Lindsey King came up to address comments from the commissioners;
- If conditions were added to the request could it be approved:
  - Ms. King thought this could possibly be done if all of the relevant criteria were met, but was not sure if it would be allowable per county code; and
  - She has preliminary conditions drafted that follow previous commercial use in conjunction with farming applications:
    - Hours;
    - Lighting;
    - Sign standards; and
    - Other home occupation conditions.
- Ms. Vetto clarified that one of the criteria that must be met for the application to be approved is that the proposed activity has to be primarily a customer or supplier of farm use:
  - The board must make that determination first, before adding conditions to the request.
- Determine if the products and services are essential to the practice of agriculture:

- Commissioner Willis feels that having youth grow up to work in agriculture is essential to agriculture.
- Most of the revenue on the Joneses' farm will be from farming, and other activities could be considered incidental;
- The board needs to come to the right outcome for the community;
- The board needs to protect EFU land and not set a negative precedent:
  - Special conditions could be added:
    - Set-backs;
    - Hours of operation; and
    - Number of people allowed on the property at one time.
- The application is for a conditional use permit:
  - If the applicants decide in the future that they do not want to farm the 35 acres, the permit can be pulled by the county; and
  - The county reviews conditional use permits to ensure that conditions and criteria continue to be met.
- Commissioner Bethell asked for a description of the noticing procedures:
  - Are there special circumstances in the noticing in farmland to ensure surrounding neighbors are informed;
  - The noticing for this application was a 750-foot radius;
  - The radius gets smaller for more urban areas;
  - There is no mechanism to increase the 750-foot radius; and
  - Neighboring properties are noticed after the decision is made.
- Commissioner Bethell read the North Marion FFA letter of support:
  - The program would be an opportunity for students to gain valuable hands-on skills that the classroom cannot provide.

*(Video Time 02:52:18)*

Joe Fennimore:

- The board has the authority to add conditions to the request:
  - They would first approve the conditional use; and
  - They would direct staff to work with the applicants on conditions to bring back to the board for the order to be adopted.
- The board could close the hearing without making a decision:
  - This would allow planning staff and the applicants to work on acceptable conditions; and
  - The applicants would have to agree to give the board additional time.


*(Video Time 02:54:48)*


**Board discussion:**


- Commissioner Bethell clarified that the board would have to continue the public hearing, requiring an agreement from the applicant to extend the 150-day decision making deadline;
- Mr. Fennimore stated that a 14-day extension would probably be enough time for planning staff and the applicants to come up with acceptable conditions;
- Mr. Fennimore stated that if the hearing is continued to a specific date the county does not have to re-notice;
- Commissioner Cameron feels that the proposal does meet Criteria D, the commercial activity must be primarily a customer or supplier of farm uses:
  - Providing long term labor does meet the criteria.
- Ms. Vetto explained how the process should proceed:
  - The board would continue the public hearing to August 11, 2021;
  - Planning staff would work with the applicants to come up with conditions based on approval criteria; and
  - If the conditional use with conditions met with the board's approval, the board could decide that this is a permissible conditional use subject to these conditions.
- Mr. Jones agreed to give the board the additional time.

**MOTION:** Commissioner Willis moved to continue the public hearing until August 11, 2021 requiring an agreement from the applicant to extend the 150-day decision making deadline until that date, and direct staff to work with the applicant to draft conditions consistent with our discussion this morning. The applicant has agreed to the extension. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous.

Commissioner Cameron read the calendar;  
Commissioner Cameron adjourned the meeting at 12:11 a.m.

  
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CHAIR

  
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COMMISSIONER

  
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COMMISSIONER

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

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