

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, December 14, 2022
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

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

ABSENT: Jan Fritz, chief administrative officer

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

(Video Time 00:00:40)

PUBLIC COMMENT

Commissioner Kevin Cameron:

- Commissioner Cameron requested a moment to comment on Commissioner Willis signing up for exercise classes; and
- Commissioner Cameron presented Commissioner Willis with a Christmas gift of exercise related socks.

(Video Time 00:02:46)

PRESENTATION

1. Travel Salem Quarterly Report. –Kelli Weese and Angie Onyewuchi, Travel Salem

Summary of presentation:

- It is the final year of a five-year agreement with Travel Salem:
 - \$125,000 per year is allocated from economic development’s lottery fund; and
 - The contract expires on June 30, 2023.

Angie Onyewuchi, Travel Salem:

- In the first quarter Travel Salem hosted a north Marion County social media seminar at Lady Hill Winery, and they plan to host more of these events in the future;
- Travel Salem continues to post content on their social channels;
- Ironman was held in July of 2022:
 - It was the second year of a three-year contract with Ironman;
 - There were approximately 2,300 athletes and almost 5,000 spectators;

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- The event generated over \$10 million in economic impact;
- The event has become one of the largest Ironman events globally; and
- Contract negotiations for another three years will start soon:
 - During negotiations the possibility of other events will be discussed, such as a full Ironman.
- Travel Salem continues to work with the Resilient Headwaters group:
 - Travel Salem dedicated \$20,000 to fund specific initiatives in phase one;
 - They applied for a \$50,000 capacity grant through Travel Oregon;
 - They will be hosting listening sessions in January; and
 - Travel Salem encourages the county to provide financial support to this initiative.

Board discussion:

- Ms. Onyewuchi will email the Commissioners the date of the 2023 Ironman event; and
- The county has contributed \$15,000 to the Resilient Headwaters group.

(Video Time 00:08:07)

CONSENT

BOARD OF COMMISSIONERS

2. Approve an order establishing the committee and commission appointments for Marion County elected officials for 2023.

TAX OFFICE

3. Approve an order for a property tax refund in the amount of \$54,912.88 for Rialto Capital Advisors, LLC, tax account number 589161.

4. Approve an order for a property tax refund in the amount of \$59,488.95 for Rialto Capital Advisors, LLC, tax account number 589163.

Board discussion:

- The commissioners and other elected officials serve on numerous boards throughout Marion County:
 - The information is listed on the county’s website on the Board of Commissioners page.
- Marion County citizens are encouraged to contact elected officials with questions or concerns related to specific committees;
- It is important for the public to have information regarding committee appointments;
- Commissioner Willis clarified the language for his appointment to the Willamette Health Council:
 - He is not serving on the Board of Directors; and
 - He is serving on the Finance Committee.
- Committee appointments can be changed anytime during the year; and

- The list of committee appointments acknowledges what elected officials are working on.

*** A scrivener's error was discovered following the reading of the Consent agenda during the Board Session meeting. Commissioner Willis expressed that he is not a member of the Willamette Health Council Board of Directors. Commissioner Willis clarified that he is a member of the Willamette Health Council Finance Committee.*

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

(Video Time 00:11:12)

ACTION

BOARD OF COMMISSIONERS

5. Consider approval of an order adopting revised Marion County Administrative Policy #203 and Procedure #203-A, Appointments to Advisory Boards, Committees, Commissions, and Councils. –Sherry Lintner

Summary of presentation:

- It is the county's practice to review policies every three years:
 - This policy was reviewed in 2018, and again last year.
- The policy establishes how the county appoints advisory board members;
- The Board of Commissioners has appointing authority for 19 bodies:
 - Fourteen are county advisory boards, committees, or commissions; and
 - Five are multi-jurisdictional committees.
- During the review process staff solicited input from the following:
 - Department staff who support advisory boards;
 - Department heads; and
 - Elected officials.
- There was a formal review process that involved Marion County Human Resources, Legal Counsel, and the Board of Commissioners office;
- The recommended changes align with current practices and includes the following:
 - Clarifies roles and responsibilities;
 - Defines the process in more detail;
 - Language cleanup;
 - The updated policy no longer refers to the county Legislative Advocacy Guidelines, as it now refers to Policy 214:
 - Policy 214 is the county's legislative advocacy policy.
 - Information was added regarding the internal process, including how each advisory board functions.
- The policy and procedure are a resource for county staff; and
- The updates will help there be consistency across departments.

Board discussion:

- The commissioners requested a list of all of the boards, so they can review and discuss at a future meeting.

MOTION: Commissioner Willis moved to approve an order adopting revised Marion County Administrative Policy #203 and Procedure #203-A, Appointments to Advisory Boards, Committees, Commissions, and Councils. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:18:52)

6. Consider approval of the American Rescue Plan Act (ARPA) Subrecipient Agreements with Liberty House and Catholic Community Services Foundation for the following projects through December 31, 2026:

- Liberty House in the amount of \$250,000 for medical services to address COVID-19 related child maltreatment; and
- The Catholic Community Services Foundation in the amount of \$250,000 for the Bob Steiner Building Renovation for Services and Innovation project.

–Debbie Gregg, Camber Schlag, and Adam Croteau

Summary of presentation:

- Marion County was directly allocated over \$67 million of ARPA awards:
 - The funds are to help mitigate the negative economic and public health impacts of COVID-19.
- The board held multiple meetings, and through an application process funds were awarded to over 40 projects;
- Staff worked with Information Technology to create a website that tracks where the various projects are, and the status of those projects including:
 - A summary of all the projects to date;
 - Funding and expenditure details for the six federal disbursement categories; and
 - An interactive dashboard that includes a map that shows how the funds are being distributed across the county.
- Staff would like to provide the Commissioners with a detailed update on the projects at a future Management Update meeting.

Catholic Community Services Foundation:

- The Bob Steiner Building provides multiple services and programs that support ARPA efforts including the following:
 - Affordable housing;
 - Youth aging out of foster care;
 - Adults with disabilities; and

- Access to food, shelter, counseling, health care, and early childhood education for low-income populations.

Liberty House:

- The award will help support four positions that will provide medical care to children who face concerns of abuse and neglect, particularly in rural and underserved populations in Marion County;
- Over the next two to four years, it is estimated that the positions will serve over 2,000 children; and
- The positions include the following:
 - Medical director;
 - Deputy medical director;
 - Nurse practitioner; and
 - Bilingual intake coordinator.

Board discussion:

- The Commissioners would like staff to provide project updates at a future Board Session meeting in addition to a Management Update meeting, so that the information is also shared with the public;
- Commissioner Bethell commented that it is important that when congress allocates funding, that they give it to local jurisdictions;
- In 2020 and 2021 Liberty House provided 47 percent more assessments to children in Marion County than they did in 2019;
- Liberty House has always struggled to reach the rural communities of the county because they are based in Salem:
 - These funds have allowed them to expand to Woodburn; and
 - They are working on transportation that will allow them to serve children in the canyon.
- Commissioner Willis commented that he serves on the Catholic Community Services Foundation Board, but it is not a conflict because it is a volunteer position:
 - He does not get paid for serving on the board; and
 - There is no personal gain to him or his family from that service.
- A lot of children are helped in the Bob Steiner Building, and it is important that they continue to be able to do that work;
- The Commissioners would like links to the organizations' websites added to the ARPA tracking website;
- The county has challenges getting the ARPA funds spent;
- Commissioner Cameron thanked staff for their work on the website; and
- Information regarding the website needs to be communicated to the public.

MOTION: Commissioner Cameron moved to approve the American Rescue Plan Act (ARPA) Subrecipient Agreements with Liberty House and Catholic Community Services Foundation for the following projects through December 31, 2026. Liberty House in the amount of \$250,000 for medical services to address COVID-19 related child maltreatment, and the Catholic Community Services Foundation in the amount of \$250,000 for the Bob Steiner Building Renovation for Services and Innovation project. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:29:10)

HEALTH AND HUMAN SERVICES

7. Consider approval of Amendment #2 to Contract for Services with Kay L. Dieter, MD to add \$300,000 for a new contract total of \$695,319.50 to continue to provide medical assessment and supervision of Marion County Health and Human Services (MCHHS) adult mental health clients through December 31, 2023. –Ryan Matthews and Natalie Stone

Summary of presentation:

- The contract is an up to amount, and is based on actual hours worked:
 - Historically Dr. Dieter has billed approximately \$20,000 per month.
- Dr. Dieter is an independent, medical professional who specializes in psychiatry;
- She provides medical mental health assessments, and she supervises individuals who need medication as part of their treatment plan;
- She works with nurses and therapists to ensure that everyone is aware of the treatment plan;
- Dr. Dieter educates staff and provides consultation to the team;
- She has worked for Marion County for approximately 12 years; and
- Dr. Dieter provides Social Security assessments.

Board discussion:

- Dr. Dieter is a medical doctor with expertise in psychiatry;
- The following is the process that would occur if a client came in with severe schizophrenia:
 - Intake would be provided;
 - The client would see a therapist that would provide a mental health assessment to determine the individual's needs; and
 - A care plan would be developed:
 - The therapist would be a qualified mental health professional (QMHP):
 - The QMHPs are assisted by a qualified mental health associate (QMHA).
 - Peers also help the individuals with a variety of support.
- Additional members of the team include two psychiatrists, six psychiatric nurse practitioners, and two nurses:

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- Nurses give injections and complete medication troubleshooting with clients having issues with their medications; and
- Practitioners prescribe medications, see clients, consult with nurses regarding medication interventions, and consult with therapists.
- The work being done in adult behavioral health is very expensive;
- Most of the services that Dr. Dieter provides are billable, so the county recoups a lot of the costs;
- Public safety is expensive, and behavioral health care for the sickest individuals in our community is expensive, but it is not as expensive as not doing it:
 - The funds are used to help individuals who need help.
- Therapists and QMHPs cannot prescribe medications:
 - Many of the adults that are served require medication by a professional that is qualified to prescribe therapeutic medications.

MOTION: Commissioner Willis moved to approve Amendment #2 to Contract for Services with Kay L. Dieter, MD to add \$300,000 for a new contract total of \$695,319.50 to continue to provide medical assessment and supervision of Marion County Health and Human Services (MCHHS) adult mental health clients through December 31, 2023. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:38:33)

PUBLIC WORKS

8. Consider approval of Amendment #1 to the incoming funds Intergovernmental Agreement with the Oregon Department of Transportation to add \$1,499,453 of which an estimated \$1,188,671 will be incoming state funds and an estimated \$310,782 will be provided in county funds, for a new contract total of \$4,486,302 for the River Road South: Willamette River (Independence) Bridge project through August 28, 2027. –Ryan Crowther

Summary of presentation:

- The project is located near the city of Independence:
 - The bridge spans the Willamette River from Polk County into Marion County;
 - The bridge is 2,290 feet long; and
 - The bridge starts at South Main Street in Polk County.
- The project scope includes the following:
 - Construct scour repairs at five separate piers:
 - Scour is when the soil under the footing of a bridge is eroding, and it can have structural impacts.
 - Temporary work including:
 - Traffic control;
 - Erosion control;
 - Work bridges to gain access to the footings; and

- Cofferdams to enable workers to get down to the footings.
 - Restore disturbed areas with native vegetation.
- The amendment does not change the scope of the project;
- Multiple construction contractors bid on the project;
- Construction prices increased between the time the county originally applied for the grant and when bids were requested, so the cost is more than the county anticipated;
- Staff approached the funding source, the Local Bridge Program, and asked for additional funding to make it through construction:
 - The county was awarded additional state funding.
- The original total project estimate was \$2,986,849:
 - This includes design, right of way acquisition, construction oversight, and construction.
- The amendment adds \$1,188,671 in state funds and \$310,782 in county funding; and
- The new total project estimate is \$4,486,302.

Board discussion:

- The county originally applied for the grant approximately five years ago; and
- The bridge is very important to farmers.

MOTION: Commissioner Cameron moved to approve Amendment #1 to the incoming funds Intergovernmental Agreement with the Oregon Department of Transportation to add \$1,499,453 of which an estimated \$1,188,671 will be incoming state funds and an estimated \$310,782 will be provided in county funds, for a new contract total of \$4,486,302 for the River Road South: Willamette River (Independence) Bridge project through August 28, 2027. Seconded by Commissioner Willis; motion carried. A voice vote was unanimous.

(Video Time 00:43:56)

Recessed at 9:44 a.m.

Reconvened at 9:47 a.m.

(Video Time 00:47:16)

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS

A. Public hearing to consider Zone Change/Comprehensive Plan (ZC/CP) Case #22-002/Jason Feusner. –Austin Barnes

Summary of presentation:

- The application requests the following:

- To change to the comprehensive plan designation from Rural Residential to Rural Residential with an exception to Goal 14;
- To change the zone from Acreage Residential with a 10-acre minimum (AR-10) to Acreage Residential with a 2-acre minimum (AR-2):
 - The parcel is 5.07-acres located on the north side of Abiqua Road NE, just northeast of Silverton.
- The property contains a dwelling and three accessory structures;
- The property and parcel immediately to the west were subject to a previous land use action where the comprehensive plan was changed from Primary Agriculture to Rural Residential, and the zoning was changed from Exclusive Farm Use (EFU) to Acreage Residential with a 10-acre minimum (AR-10):
 - This was approved in Zone Change/Comprehensive Plan Change Case 04-009; and
 - The property is a legal parcel for land use purposes.
- Properties to the north and south are zoned EFU;
- Properties to the east and west are zoned Acreage Residential with a 2-acre minimum;
- All surrounding parcels are developed with home sites;
- The only adjacent property that is in farm use is to the north:
 - The property is approximately 60 acres and is zoned EFU; and
 - Approximately half of the parcel is in farm use:
 - The other half is forested and occupied with a single-family home and associated residential uses and structures.
- None of the other adjacent properties are in active farm use;
- The planning division requested comments from various governmental agencies:
 - Comments were provided by Marion County Building Inspection:
 - The comments can be found in the staff memo and the file for reference.
- The property contains none the following:
 - Streams;
 - Wildlife habitat areas;
 - Geological hazards; or
 - Food zones.
- The proposal should not affect air quality or natural resources in the area;
- Staff recommends approval of the zone change as the applicant has addressed the applicable criteria in Marion County Code, as well as applicable State Land Use Goal 14;
- The applicant is arguing that the parcel qualifies as an irrevocably committed exception to Goal 14;
- Information obtained from the Oregon Department of Land Conservation and Development (DLCD) rules states the following:
 - Parcels smaller than 2 acres are determined to be urban;
 - Parcels between 2 and 10 acres could be either based on surrounding development;

- The average parcel size of adjacent lands is greater than 2 acres, so it appears the parcel could be classified as either based on surrounding development;
- The average parcel size in the study area is 5.33 acres, and the median parcel size is 2.38 acres; and
- When parcels over 10 acres are removed from the study area, the average size drops to 2.7 acres, and the median size becomes 2 acres.
- An exception to Goal 14 must demonstrate how the land is irrevocably committed to an urban level of development:
 - This is shown through the small and irregular parcel sizes in the study area, and the inability to farm the parcel:
 - The applicant makes findings that through the existing pattern of development it is impractical to farm, and farming the parcel would have more severe impacts on neighbors than allowing for a second single-family dwelling to be built:
 - The impacts include, but are not limited to, dust, pesticides, gas fumes, and noise, and all within close proximity to neighbors; and
 - Additional impacts include the need to drive farm equipment on residential roads to be able to access the site, which would pose traffic safety and other issues.
- The applicant states that there are no urban services in the area and there would be no need for urban services, including water, storm, or sanitation:
 - The utilities would be rural in nature, provided by a well and a septic system; and
 - The findings show how the study area is rural in nature and does not need urban services such as sewer and water, but the level of development based on parcel size and density trends appears to be urban.
- The rule states that the applicant need not show that every use is impossible, but that they are impractical:
 - The applicant has met the burden of proof showing that the allowed farming uses are impractical on the subject parcel.
- The addition of one more parcel to the study area will not create a need for urban services;
- The use will stay the same on the new parcel if the zone change is approved;
- Based on the findings and the lot size, adjacent lands are considered to be urban based in DLCD's rules:
 - They do not require an urban level of infrastructure for the area.
- The subject property complies with the exception process for Goal 14, Urbanization, to demonstrate that the subject property is irrevocably committed to a level of development and parcel sizing that would allow for rezoning to acreage residential 2.

Board discussion:

- The findings are trying to show that it is urban in some respects based on parcel size, but it is not urban in that it needs utilities from a centralized city area;

- It is clear that there is no way to farm the property;
- The applicant must show that it is irrevocably committed to some standard of urbanization in order to build a second house there, even though it is not in the city:
 - How urban can an area get without having to have centralized water.
- The parcel is in a sensitive groundwater area, so the applicant will have to go through that process to drill a well or combine with another well.

Testimony:

Support:

Wallace Lien, attorney for the applicants:

- This project has been ongoing for 15 years;
- The parcel was originally 10 acres, zoned EFU;
- Approximately 15 years ago, an exception was taken to the farm goals to make the parcel rural residential, allowing it to be partitioned into two 5-acre parcels:
 - One of the 5-acre parcels has already been changed to AR-2, and they are in the process of building their second house; and
 - Mr. Feusner owns the second 5-acre parcel:
 - The property is 5.07 acres.
- The hearings officer suggested that a condition of approval be that when the new parcel is partitioned, that it is required to go through all of the normal processes including:
 - Obtaining a building permit;
 - Getting approval for septic;
 - Obtaining sensitive groundwater clearance; and
 - Others as required.
- The applicant understands that they will need accomplish all of the above; and
- There is no opposition to the application.

The applicant, Jason Feusner, signed up to comment, but chose not to.

Board discussion:

- Jane Vetto commented that in the hearings officer's recommendations she did recommend including a condition regarding the Sensitive Groundwater Overlay Zone requirements:
 - The applicant is okay with this condition.

MOTION: Commissioner Willis moved to close the public hearing and approve the request for Zone Change/Comprehensive Plan (ZC/CP) Case #22-002/Jason Feusner, including the hearings officer's recommended condition. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:59:51)

B. Public hearing continued from December 7, 2022, to consider the hearings officer's recommendation for Conditional Use (CU) Case #20-044/Jeff and Heidi Jones, Seasons at Red Oaks Farm. –Brandon Reich, Lindsey King, and Cody Walterman

Summary of presentation:

Lindsey King:

- Ms. King presented the commissioners with additional emails and letters that were received prior to 5:00 p.m. on Tuesday, December 13, 2022;
- The item before the commissioners is to consider the remand of a conditional use to operate a commercial use in conjunction with farm use, on a 74.5-acre parcel in an Exclusive Farm Use (EFU) zone;
- The parcel is located on Arbor Grove Road in the City of St. Paul;
- The board heard the case regarding the hearings officer's recommendation on the remand on December 7, 2022, and continued the hearing until today; and
- The board asked the applicants to provide evidence and argument that the proposed use is primarily a customer or supplier of farm use.

Brandon Reich:

- At the prior hearing, the board asked staff whether they thought there was adequate evidence to support the supplier customer of farm use criteria:
 - Mr. Reich developed a matrix that shows four different types of arguments:
 - The applicants can make one of the arguments, or all four of the arguments; and
 - What staff will be listening for today is evidence and arguments that pertain to one of the four arguments.
- If applicant's business is providing future farmers, then the following would apply:
 - They are the supplier of students interested in farming to the farming community; or
 - If they are producing farmers, they are a customer of a local farming community that needs to have farms.
- The applicant may also be in the business of providing education in farming:
 - If they are providing education in farming, they are a supplier of education to students; or
 - In providing the education they are a customer of the farming taking place on the property, because that is the means by which they provide the education.
- In the statutes, when there is a first evidentiary hearing the applicant can request an additional seven days to provide additional testimony:
 - The applicant also has the right to ask for a seven-day rebuttal after the record is closed to all opposing testimony:
 - This is a different type of hearing;
 - This is not the first evidentiary hearing; and

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- This is a hearing on remand from the Land Use Board of Appeals (LUBA):
 - LUBA has tasked the county with a specific action to reconsider this case, and to make a decision on this case:
 - The task is to the county, not to the applicants or the opponents;
 - This is not a first evidentiary hearing;
 - It is a remand hearing; and
 - There is a specific action that the county must take because LUBA had directed this.
 - There is a limited time frame to arrive at a decision; and
 - Staff recommends that the board makes a decision today if possible.

Lindsey King:

- Another comment in support of the application came in Tuesday, prior to the 5:00 p.m. deadline;
- The board has copies of the comment as well as the email that was provided by the applicant.

Testimony:

Opposition:

Andrew Mulkey, attorney for Friends of Marion County:

- Mr. Mulkey is staff attorney for 1000 Friends of Oregon, and is representing Friends of Marion County in this case;
- Mr. Mulkey requested that the board consider the following:
 - His objection letter filed on December 9th;
 - The remedy letter that addresses the procedural errors identified in the objection; and
 - Responses to the inadequate notice that he and his client received for the first hearing before the board:
- Mr. Mulkey expressed that he and his client have a right to adequately prepare for a hearing:
 - This means having notice of the hearing with enough time to provide written submission:
 - The first section of the remedy letter contains what Mr. Mulkey would have prepared to respond to the hearings officer's recommendation in this case if he had been given adequate notice.
- The remedy letter contains the following:
 - It goes through the hearings officer's proposed findings and analysis;
 - The letter points out that the applicants have not met their burden for a number of the criteria;

- It is not just about the customer or supplier of farm use issue;
- They have not met the criteria to enhance farming enterprises; or
- The criteria that the proposed use be essential to the practice of agriculture.
- Mr. Mulkey requested that the board accept the remedy letter and acknowledge the objection letter;
- With respect to comments made by staff earlier as to the nature of this proceeding as a remand proceeding:
 - The statute does talk about the first evidentiary hearing and sets out the procedural rights that apply to that first evidentiary hearing;
 - This case is on remand:
 - Mr. Mulkey believes that this actually is akin to a first evidentiary hearing on remand because the applicants need to provide additional evidence or analysis;
 - The applicants have the burden to show that the approval criteria are met; and
 - The opponents have a right to respond to that evidence.
- The record was held open for seven days and the applicants submitted evidence:
 - Staff has not provided Mr. Mulkey with a copy of the letter the applicants submitted; and
 - Mr. Mulkey asks for the right to respond to that evidence:
 - This is allowed under the county's own code which is broader than the statute;
 - Pursuant to the code, the request to respond to the open record submission was made in writing; and
 - Mr. Mulkey believes that the county has to acknowledge and comply with the request.
- Mr. Mulkey does not believe that the 120-day timeline provides a definitive end to these proceedings:
 - He does not believe that the 120-day timeline is jurisdictional;
 - If that time has passed the applicants would still have the ability to go into a circuit court and to ask for a mandamus action; and
 - The 120-day timeline on remand is not jurisdictional:
 - It is something that the county needs to comply with; but
 - If the county does not do so, it does not deprive the county of jurisdiction over this case or the ability to make a decision in this case.
- Mr. Mulkey feels that in this case it is appropriate to comply with the county's own procedures regarding response periods; and
- Opponents have the right to respond to what the applicants present today.

Board discussion:

- Ms. Vetto clarified that the county received an email from the applicants' attorney last night that stated that he had emailed the packet to Mr. Mulkey:

- Mr. Mulkey said that he could be mistaken that he did not receive it.

Testimony:

Opposition:

Roger Kaye:

- Mr. Kaye handed the commissioners a letter;
- Mr. Kaye is president of Friends of Marion County:
 - Friends of Marion County was founded in 1998 by volunteers from all regions within Marion County;
 - Their mission is to represent and advocate for the public's interests in carrying out the spirit explicit in the goals of Oregon's land use system; and
 - They are focused on the protection of farmland, forestland, and open space in Marion County.
- Mr. Kaye realizes that the board is tasked with the role of judge and jury;
- Friends of Marion County hopes that the board will apply the law to the facts in every case, and decide fairly among all the interests, both the applicant's and others, to come to a correct decision regardless of personal feelings;
- As president, Mr. Kaye represents Friends of Marion County, and they want to be treated fairly at these hearings;
- The applicants' program fails as a customer of farm uses because of the following reasons:
 - The statutory definition of farm use is not met;
 - Mr. Kirsch's farm use is not connected to the proposed activities;
 - Crops used for educational activities are not a farm use on this property;
 - The educational program is unrelated to the working farm;
 - Incidental and subordinate elements are lacking;
 - A school or vocational facility is not permitted on farmland;
 - The commercial activity does not enhance the farm enterprise;
 - No commercial activity has been established;
 - Educational and training programs on farmland violates statues;
 - Training programs must be located in the appropriate zones; and
 - Mr. Kirsch's farm practice is unrelated to the proposed commercial activity.
- Mr. Kaye expressed that the county must deny this application:
 - The applicants failed to provide evidence that the commercial activity is a customer of farm uses, and because the proposed farm use, being the primary purpose of making a profit in money through certain activities, does not include what the applicants propose.

Testimony:

Support:

Nicole Sharpe:

- Ms. Sharpe is the direct neighbor of Red Oaks Farm:
 - Her property borders Red Oaks Farm on two, maybe three, sides;
 - She has lived on her property longer than the Joneses have had their property; and
 - The Joneses took an abandoned property and turned it into a functional farming property.
- The property is clearly being farmed;
- The Joneses lease and farm some of Ms. Sharpe's land;
- Ms. Sharpe lacked an education in farming when she started farming, and she wishes she had had more access to education about farming when she was younger;
- A large and tangible benefit that the proposed educational program can provide is it will give students access to a farmer who they can ask questions to:
 - Many farmers would welcome questions, but it is an isolated lifestyle, and they do not get a lot of opportunity to educate future farmers.
- There is a lack of understanding about agriculture among students; and
- Students educated in agriculture are a really important supply of individuals who support farming, including workers, supporters of continued land use in agriculture, and those who support agriculture in a variety of other ways.

(Video Time 01:26:13)

Michael Gelardi, attorney for the applicants:

- Mr. Gelardi addressed the procedural issue that Mr. Mulkey mentioned:
 - As Mr. Gelardi understands it, the board voted last week to close the record except for the customer supplier issue; and
 - Two days after that decision, Mr. Mulkey submitted a letter to try to argue about other issues:
 - Mr. Gelardi submitted a brief response to that yesterday afternoon, explaining that it is an improper attempt to have the last word on other issues, and to raise issues at the last minute that were resolved, or could have been resolved, by LUBA or the board:
 - If there is an issue that was resolved in a prior stage of the process, it cannot be relitigated:
 - The opponents are saying that this should be treated as a school, instead of a commercial activity:
 - This issue was raised last year, and it was resolved by LUBA; and
 - LUBA said that it could qualify as a commercial activity as long as the connection to farm use is shown.

- Mr. Gelardi's office sent the evidence to Mr. Mulkey at approximately 4 p.m. yesterday afternoon;
- The local code provision says that the commercial activity has to primarily a customer or supplier of farm use;
- There are two broader legal principles that apply:
 - Oregon Statewide Planning Goals, specifically Goal 3 which is to preserve and maintain agricultural land:
 - The record in this case is clear that what the Joneses are trying to do is to maintain farmland; and
 - They are trying to motivate, inspire, and train young people to want to take care of farmland.
 - The basic constitutional right to private property:
 - The federal courts have said that in order to protect people's substantive due process rights to use their private property, zoning rules have to be rationally related to a legitimate government purpose:
 - In this case the legitimate government purpose is Goal 3.
- There should be no question that this property is in farm use, and that the proposed program is in conjunction with that farm use; and
- The Commissioners asked the applicants to prepare more evidence about the customer supplier issue, particularly about how the program can act as a supplier in terms of the agricultural workforce:
 - Mr. Gelardi submitted a letter yesterday afternoon that includes the following:
 - A summary of the evidence that was already on the record;
 - The following evidence that was already in the record:
 - Application narratives that describe the details of the program;
 - An additional letter from the Joneses from July of last year that provides further details;
 - A copy of the Kirsch lease;
 - An additional letter from Mr. Kirsch talking about how the program will benefit his farming operation; and
 - A number of examples of other programs like this around the county.
 - New evidence that was provided includes the following:
 - Future Farmers of America (FFA) statistics that were discussed last week showing the strong correlation between students who are involved in FFA and individuals entering careers in agriculture;
 - A report from Oregon State and Portland State concerning the future of Oregon farming that highlights the need for more programs to try to increase the number of young people going into farming; and
 - Three new letters from supporters of the application.

Board discussion:

- Commissioner Willis expressed the following:
 - He believes that the applicants have provided evidence establishing that there is an active farm with the primary purpose of making a profit in farming;
 - There is the question of what the commercial activity is that is being done in conjunction with farm use:
 - It seems like the commercial activity is providing farm training and education to youth; and
 - Mr. Gelardi agrees with this characterization.
 - LUBA said that it is too remote to say that this training is going to supply farm workers, and that based on the record they felt that there was not sufficient evidence that this was a supplier of farm workers for the agricultural community;
 - A person's first work experience is important, and if a person does not have work experience until after college, they are behind;
 - It makes sense to Commissioner Willis that providing farm training to youth on a farm is a commercial activity in conjunction with farm use;
 - If the commercial activity is providing farm training and education to youth, it needs to be determined who is the customer and who is the supplier:
 - The customers are the youth in this case, as they are buying an experience and education:
 - This is an educational experience where it is necessary to be on a farm to get that experience; and
 - This is a commercial activity in conjunction with farm use because you cannot have an education or training in farming without a farm.
 - To be trained well in an occupation individuals need real world practice:
 - You need to have a farm in order to train or educate children about farming; and
 - In order to do this kind of training you need to have a farm.

Testimony:

Support:

Michael Gelardi, attorney for the applicants:

- The customer supplier language comes from a case from 1994 where LUBA was trying to come up with a way to determine whether a store that sells goods is really in conjunction with farm use:
 - LUBA has not applied the customer supplier standard since that case, until this case; and
 - There have been several cases where LUBA has not applied the customer supplier standard.

- The participants in the program are customers of the farm use that is on the property, and they are also customers of the other farms that are going to supply goods to the program;
- The program itself is also a customer of farm uses, as it is a customer of Mr. Kirsch's farming operation, and it is a customer of the other farms that are going to supply the program; and
- The program is a supplier of farm uses because the goal of the program is to improve the agricultural workforce, and to improve the supply of individuals who are going to go into farming:
 - The evidence is clear that there is a real need for this.

Board discussion:

- Commissioner Willis made the following comments:
 - There are companies that supply labor to farms:
 - If the court says that that is what it means to be a supplier of labor, then this program might not fit under that.
 - The company is clearly a customer of the farm, as you cannot have this experience if you are not on a working farm.

Testimony:

Support:

Michael Gelardi, attorney for the applicants:

- There is a general idea among some in the state that people should not be allowed do stuff on farmland, in order to protect the farmland:
 - Mr. Gelardi counters that the goal is to preserve and maintain farmland, and people are required to maintain farmland.
- Farmers need to be empowered to be able to steward their land.

Jeff Jones, applicant:

- Mr. Jones is one of the owners of Seasons at Red Oaks Farm;
- This has been a long process, but the Joneses have continued to make the farm into what they believe it should be:
 - There are making the farm a safe place for children to come;
 - Farms are not always set up for children, and they are not set up for children in wheelchairs:
 - They are working to make spaces handicap accessible, which is unheard of in farming.
 - The farm has bathrooms and all of the things they need to keep children safe and to learn.
- The Joneses are currently working with FFA who says that their participants have a lot of class time, but they do not have a lot of farm time:
 - For them to have a farm set up for this kind of a program is unbelievable.

- The program will be put together with input from FFA, 4-H, and groups from interested schools;
- There are companies that supply labor, but the Joneses are looking to supply careers;
- Mr. Jones hopes that at some point the Commissioners come out and see the farm and what it really looks like:
 - The farm is set up for this type of a program.
- The Joneses have individuals to run their other businesses, as they plan to run this program.

Heidi Jones, applicant:

- Ms. Jones is one of the owners of Seasons at Red Oaks Farm;
- Their desire is to supply youth with the opportunity to visit a farm, and to experience what goes on at a farm;
- There are basic things that we assume are understood about agriculture, farming, and where food comes from, that is not understood by youth;
- This opportunity merges their passions, skills, and backgrounds:
 - Mr. Jones has been in the nursery business for 40 years, and Ms. Jones has been a marketing and community relations director and a college advisor; and
 - Together they helped start a school.
- Over the last two years they have not felt comfortable enough to determine exactly what the program might look like:
 - They have a curriculum coordinator that can help them determine the best ways to teach different age groups.
- They hope that this will be approved, and then they can meet with the various organizations interested in the program:
 - There are eight FFA organizations within ten miles of the farm.
- There are many communities that can benefit from this program;
- The property is very diverse and provides access to farmland, streams, and forest;
- They understand the desire to maintain farmland:
 - They are not trying to be a hinderance or a detriment to farmland.
- They are trying to start a program that will provide the future farmers that the community and state needs.

Jeff Jones, applicant:

- They lease most of their land to Eric Kirsch, and he is doing most of the farming on their land.

Board discussion:

- Commissioner Cameron verified that the Joneses are okay with the conditions the hearings officer recommended, including the number of people and the hours of operation; and

- In response to a question from Commissioner Willis, Mr. Jones concurred that what they are providing is career and technical education in farming to the students who come to the program.

(Video Time 02:00:51)

Recessed at 11:01 a.m.

Reconvened at 11:04 a.m.

(Video Time 02:03:46)

Testimony:

Opposition:

Andrew Mulkey, attorney for Friends of Marion County:

- Friends of Marion County is funded to protect farmland;
- If the application is approved buildings and infrastructure will be put on farmland, and a future farmer will have to pay for the value of those buildings;
- It is not that a program like this, or some kind of apprentice, could not occur on farmland working with a farmer, but there is going to be a building, and what is the connection of the building to actual farm uses;
- As the applicants explained today, they have not actually determined what the program will be, or what the specific activities of the program will be:
 - It is hard to understand the connection to being a commercial activity in conjunction with farm use when the program is not fully developed.
- Mr. Mulkey does not think that even a university program or a technical program that would provide a degree or certificate meets the in conjunction with, or connected to farm use, standard;
- There are many activities that are described in the applicants' proposal that are not farm uses or that the applicants have not shown are farm uses, and they are not all in connection to the farming operation:
 - They need to be connected to the farm use.
- The applicants have not shown that the activities are connected to a farm use, and there is not enough evidence to know what their program is:
 - The applicants need to develop their program first, and then come for approval; and
 - The applicants have not met their burden.

Board discussion:

- Buildings on farmland must be related to the farming;
- There are a lot of examples of career and technical education in Marion County:
 - It has proven to be a very effective form of communication, and it is expanding;

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- Each school in Salem has career and technical education classes as part of their curriculum, and schools are moving more in that direction because students are having more success learning; and
- The key to career and technical education is that the student is actually practicing the work.
- The whole point of the application is that the applicants would like to do a commercial activity that is not farm use, but it is connected to farm use;
- For experiential learning in career and technical education you need to have access to what you are trying to teach:
 - For example, the culinary program at the Career Technical Education Center has a commercial kitchen, because you cannot teach students to work in commercial kitchens if you do not have a commercial kitchen;
 - Diesel mechanic programs need to have a diesel engine; and
 - Farm programs need to have a farm.
- The farm is necessary for students to have a career and technical experiential learning opportunity, and there has to be a farm use active on the property for students to have that experience;
- All of the uses could not be farm uses, but they have to be connected to a farm use:
 - The farm use is essential to the program, as you cannot have the program without the farm use; and
 - The program itself does not have to be a farm use, it can be in conjunction with farm use.
- A nursery is a farm activity, and if students are going to be taught about growing plants in a greenhouse, that is really close to what is done in a nursery:
 - Mr. Mulkey responded that it needs to be an actual nursery.
- Commissioner Cameron commented that he does not appreciate comments that were made about the Commissioners “donning black robes” and “yielding a gavel”, and other comments that are not germane.

Testimony:

Support:

Michael Gelardi, attorney for the applicants:

- Mr. Mulkey is being speculative when he says that if a building is built it will raise the value of the farm to where it is too expensive in 50 years for a farmer to buy:
 - The county’s authority to regulate this is based on the statutes, not on this generalized desire to control things and project into the future.
- The building has already been built, and Friends of Marion County submitted the building’s inspection reports in the record:
 - The building is allowed as an ag building; and

- The Joneses chose to build it to commercial standards so if they get this permit, they can use it to have people inside for educational activities, in addition to storage for farm equipment.
- Friends of Marion County is drawing the process out, forcing the applicants to spend a lot of time and money;
- Mr. Mulkey did not say that the applicants need to produce more evidence or make more arguments, so Mr. Gelardi feels that it is appropriate for the Board to close the record and make a decision; and
- Mr. Gelardi clarified with the Board that if this is approved, the conditions of approval would be the same as the conditions that were developed last year including:
 - The property has to be in commercial farm use;
 - There is a limit on the number of groups per week; and
 - They can only operate during certain hours.

Board discussion:

- Commissioner Cameron commented that this is about the facts of the case, and the Commissioners will decide based on the facts;
 - He does not appreciate the sides impugning people.

Lindsey King:

- Staff does not have any additional conditions to add to the conditions that were developed last year.

Board discussion:

- Commissioner Willis asked Mr. Reich if based on what was heard today, and what is in the record, if he had any problem with the Board finding that the business is in the business of career and technical education in farming for students, and that it is a customer of farm use:
 - Mr. Reich responded that he thinks an argument can be made for that, and that there is evidence in the record for that.
- Commissioner Willis asked Mr. Reich what he thinks about the idea of whether the business is also a supplier of future farmers:
 - Mr. Reich responded that he thinks you can make an argument that the business would supply education in some aspects of farm training, but you may not be able to make the argument that you actually supply farm workers; and
 - If you are in a culinary program and you are working in a commercial kitchen, that is not actually a restaurant.

Brandon Reich:

- Education is a strong component of ag in Oregon:
 - Oregon State University has field research areas where crops are grown, and students perform experiments.

- The farm plans to have an expert who will develop curriculum that will pertain to different age groups.

Board discussion:

- Information submitted shows that the program plans to hire a curriculum developer and coordinator;
- This is a conditional use permit;
- If at any time the applicants are not doing what they said they were going to do, the permit can be pulled;
- The permit can be pulled if the applicants are not meeting the conditions on the conditional use, if factual errors are found, or if they are not doing the use that they were approved for; and
- Ms. Vetto made the following comments to help frame up the motion that would be made:
 - Regarding the three issues that were brought before LUBA on remand, the hearings officer found that the first two criteria had been met, and that she needed more evidence on the third criteria:
 - At the last hearing the board agreed with the hearings officer, so today's hearing is about the third criteria; and
 - The motion would accept the hearings officer's findings in the recommendation.

MOTION: Commissioner Willis moved to close the public hearing, accept the hearings officer's findings and her recommendation, and approve the Conditional Use (CU) permit application, finding that the applicant did provide sufficient evidence of farm use on the property and that the commercial activity that is being proposed is a program of career and technical education in farming, and it is primarily a customer of farm use. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.


Commissioner Bethell noted for the record that there will be no board session on December 21, 2022, and the final board session of 2022 will be on December 28, 2022.

(Video Time 02:33:33)

Commissioner Bethell adjourned the meeting at 11:34 a.m.



CHAIR



COMMISSIONER



COMMISSIONER

Board Sessions can be viewed on-line at

<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>