

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, March 14, 2018
9:30 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97305

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

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

PUBLIC COMMENT

None.

CONSENT

(Video Time 00:01:27)

BOARD OF COMMISSIONERS

Approve an order recommending renewal of Oregon Liquor Control Commission Licenses.

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

ACTION

None.

PUBLIC HEARINGS

9:30 A.M.

(Video Time 00:02:02)

PUBLIC WORKS

A. Public hearing to consider Legislative Amendment (LA) 17-002/Rural Zone Code Amendments regarding Photovoltaic Solar Arrays. – Joe Fennimore

Summary of presentation:

- Under Oregon state law and administrative rules, a county can choose whether or not to allow commercial solar farms to be placed in farm zones;
- If counties choose to allow these uses, state statute requires them to obtain a conditional use permit;

- Oregon Administrative Rules contain minimum standards that must be satisfied;
- Counties can adopt more restrictive standards and criteria;
- In 2011, the current zone code was updated to allow these facilities and the state standards were adopted into the zone code;
- In 2015, Marion County began receiving conditional use applications to site these facilities in farm zones:
 - 17 sites covering a total of 205 acres have been approved by the county;
 - All but one of these approved sites is on land that is composed primarily of high-value farm soils; and
 - Many of those approved sites consist of Class I and II soils.
- A number of individuals and organizations have contacted the county with concerns about allowing these types of facilities on properties that are actively being farmed, particularly those farms with higher quality soils:
 - Their primary concern is that these facilities are having an adverse impact on agriculture in Marion County by reducing the limited supply of highly productive farm land.
- On January 31, 2018, the board adopted a resolution initiating revisions to the Marion County Zone Code and scheduled a public hearing for today;
- The board directed staff to prepare code amendments that would create additional standards for the establishment of these facilities on high-value farm soils:
 - The proposed standards are intended to ensure that the facilities are being placed on land where it is not economically feasible to farm due physical constraints; and
 - It would require an applicant to provide evidence demonstrating that it is not economically feasible to farm the proposed site of the location of the facility.
- Evidence shall include consideration of the following factors:
 - Soil conditions;
 - Steep slopes;
 - Lack of water rights precluding irrigation;
 - Isolation from other lands being farmed;
 - Other factors; and
 - These additional standards would only be applied to the commercial solar farms proposed on high-value farm soils.
- This is a zone code update that could restrict the use on a property and Public Works was required to mail notices to all property owners in the Special Agriculture (SA) and Exclusive Farm Use (EFU) zones;
- The existing code currently allows a property owner to apply for one of these facilities:
 - The proposed amendments would pertain to future applications; and
 - It will have no effect on those commercial facilities already approved or those that applied prior of any change in the code.
- Mr. Fennimore is making it clear that these proposed amendments apply only to the large solar farms in farm zones; they do not apply to the smaller solar panels seen on properties, usually on a roof, that serve an existing use.

Testimony:

Sharon Dodge, Turner, OR:

- Opposing further restrictions of solar arrays;

- Has acreage that would benefit putting solar arrays her on property;
- Land is clay and not irrigated;
- Taking away certain rights of a landowner if the zone code is changed;
- Grows one crop a year of grass hay:
 - Receives very little revenue from it.

Liz Vachter, Silverton, OR:

- Opposed to having solar farms on high value land;
- Received two letters from Berkshire Hathaway indicating that a solar company wanted to lease her land to build a solar farm;
- Leases 45 acres of land to be farmed;
- Does not want to see high valued land being taken over by solar farms; and
- In support of solar power, just not on farm land.

Jason Carr, Cypress Creek Renewables, Director of Community Relations:

- Works with zoning and development teams;
- Attends public meetings in the community;
- Works with landowners;
- Community outreach and engagement:
 - Held a number of community meetings in Marion County on a couple of projects.
- Former economic development director for Crook County in Prineville, OR;
- Understands the need and desire to protect farm land;
- Realities of solar development and how it occurs:
 - Work within a small box;
 - Highly regulated environment because of the relationship with the utility companies;
 - Works within Oregon's land use system;
 - Looks for substations and their infrastructure:
 - If it is capable of handling a solar project.
 - Look for willing landowners who live by substations;
 - Needs to have a site control in hand in order to begin the process with the utility companies;
 - Negotiates the power of purchase agreement:
 - Interconnection agreement; and
 - Engineering studies.
 - Begins land use process.
- Very defined pathway;
- Very specific in terms of how and where the solar arrays are placed;
- Cannot put solar arrays anywhere:
 - Must be close to a substation.
- Just because a site looks suitable doesn't mean that it is;
- Industrial land is too expensive:
 - Built to provide companies with a number of different services:
 - Power;
 - Water;
 - Sewer;

- Access through roads and transportation; and
 - Most communities want to protect industrial land for full time, family wage jobs.
- North Carolina is the top solar producing state in the United States:
 - 9,000 acres of solar on farm land;
 - Currently 8.4 million acres of farm land in North Carolina;
 - .0017 percent of farm land is being used for solar arrays; and
 - If all solar projects are out there that could possibly be built, it would take up less than one half of one percent of farm land in North Carolina by 2030.
- In Marion County, there are 17 projects totaling 285 acres:
 - 286,000 acres of farm land in Marion County; and
 - 0.0007 percent of all existing farm land in Marion County with solar arrays on them.
- Only so many substations exist:
 - Many do not have existing capacity; and
 - Upgrading them would be uneconomical.
- Not all landowners are willing to lease their land;
- Cannot do business if a landowner says no;
- Utility companies have additional siting rules in place that limit the amount of development that occurs around a single substation;
- Economic development consideration:
 - Solar is becoming the type of energy that can be produced at the local level at an inexpensive cost compared to other energy;
 - Bypasses a lot of money that Bonneville Power Administration, Pacific Corp., and PGE would have to pour into updating existing transmission lines in order to continue to move large amounts of megawatts back and forth;
 - Provides energy locally;
 - Able to create a stopgap if there are power constraints that prevent businesses from being able to build; and
 - Helps communities develop.
- Opposed as a company to the proposed amendments to the siting rules because it unduly and unfairly restricts development;
- More than happy to go through a collaborative process with the county;
- Wants to be a good neighbor; and
- Wants to develop in a responsible way.

Donna Thompson, Silverton, OR:

- Amendments proposed appear to limit consideration of property for solar usage to those currently not in active farming;
- Creates unintended limitations on land use decisions in the future;
- Understands and supports the need to balance both agricultural development and clean energy resources for the area;
- The guidance found in chapter 17.121.10 is adequate for deciding whether to approve solar powered generating facilities; and
- Proposals should be considered individually without the additional criteria that could severely limit land use decisions and economic development in the future.

Ralph Kincaid:

- If the zoning changes, it concerns Mr. Kincaid that it will open it up to residential building on farm land in the future; and
- Opposed to the change because of it not having enough guidelines.

Amy Berg-Pickett, Madras, OR, Cypress Creek Renewables, Zoning and Outreach Coordinator:

- Opposed to the proposed amendments;
- Solar farms in Woodburn, Turner, and Silverton:
 - Collectively they generate 6.5 megawatts of power:
 - Powers the equivalent of 900 homes.
 - Energy that is generated onsite is distributed through the PGE grid;
 - Screened the land for environmental concerns:
 - Listed and threatened species; and
 - Wetlands.
- Looking for the opportunity to engage in voluntary mitigations that would allow the project be efficiently sited;
- Works with the landowner to understand the current farming operation;
- Will not affect farming on adjacent parcels;
- Hires third party consultants, including archeologists:
 - Geologists;
 - Biologists;
 - Civil engineers; and
 - Local civil contractors and electricians.
- The Turner solar array is an active sheep farm:
 - Great example how solar farms and farming coexist.
- Oregon currently generates less than one percent of its energy from solar energy:
 - The rest is a mix of:
 - Hydro;
 - Coal;
 - Natural gas; and
 - Nuclear energy.
- Has taken three years to develop three solar arrays in Marion County of 6.5 megawatts;
- Four other projects are slated for 2019;
- Fairly slow process to site a project due to screening and negotiations:
 - Very strenuous process.

John Strauch, Salem, OR:

- Opposed to the proposed amendments;
- Lives by MacLeay Road and Cordon Road;
- Four acres of flat land;
- Struggles anytime government tells him what he can and can't do with his property;

George and Patty Harris, Silverton Oregon:

- Battled with an approval of a solar farm behind his property;
- Appeal rights were denied two weeks ago;

- Applicant denied the extension of 150-day appeal time;
- The hearings officer wasn't willing to listen to testimony that was given;
- Supplied an engineering report that showed considerable damage done to the property;
- Land contains water rights and prime soil;
- Supports changes in the code;
- A farmer is currently leasing the land the solar array is going to be placed on:
 - He is personally opposed that a company can come into a prime piece of EFU land that is in production;
 - Once this land is pulled out of EFU, it will likely be lost forever for agriculture crops;
 - This could expand to more farm land in the future; and
 - There is land that is not productive outside of the prime valley agricultural land that would be better suited.
- Cypress Creek pulled their application in Salem, because the neighborhood would have been negatively impacted;
- Should be restrictions placed on setbacks away from residential structures;
- Supports changes to protect farm land;
- Has been a frustrating process; and
- Some companies are doing their due diligence and others are not.

Dan Mullen, St. Paul, OR:

- Currently neutral on the amendments;
- Landowner of the Woodburn property that has a solar array;
- As a fifth generation farmer, he is trying to figure out how to keep the farm viable for his children;
- Local vegetable processor sold their canning line to Seneca Foods and his farm was affected;
- Keeping his farm land valuable;
- Needed to replace income;
- The land has no tile:
 - Heavy clay soil;
 - No irrigation;
 - No home site; and
 - On top of I-5, which makes it dangerous for the drivers when the land is tilled.
- Marion County and the City of Woodburn okayed an expansion of the Woodburn Urban Growth Boundary:
 - Right across the road, the land was selected for industrial land;
 - Will increase truck traffic; and
 - Decrease accessibility to get to the land.

James Todd, East Salem:

- Supports the amendments;
- Has neighbors who are eager to farm small parcels;
- The pressure from farmers is always the same, cannot find enough farm land;
- Solar farms are not creating more jobs:
 - Small farmers are hiring people to farm the land.

- Agrees that solar development is needed:
 - Should not be at the expense of the farm land.

James McAteer, Salem, OR:

- Supports amendment;
- Critical that the exceptions and uses are clearly defined:
 - Rocky terrain; and
 - Steep slopes.
- Supportive of agriculture in the area; and
- Supportive of solar arrays.

George Grabenhost, Salem, OR:

- Opposes changes to the amendments;
- Amendment to the changes are too vague;
- Suggests maintaining solar arrays at a maximum of 12 acres:
 - Put a cap of 5,000 acres countywide.

Bruce Chapin, Salem, OR:

- Supports protecting farm land;
- What is being proposed is too subjective of a standard that will do nothing more than give lawyers an opportunity to argue;
- Four suggestions:
 - Soil type Class III or lower for allowed solar arrays;
 - At the end of 30 years, the solar array equipment will be obsolete:
 - Only permit for a 30 year period; and
 - Reclaim back to farm land.
 - Instead of allowing concrete or gravel, drive posts in the ground for foundations; and
 - Preserve water rights.
- Requesting a moratorium on the issue until a workgroup can be put together.

Michael Mann, Shaw, OR:

- Small landowner;;
- Does not have water rights;
- Looking for economic uses for the farm; and
- Opposes amendments.

Andrew Barrier, Pine Gate Renewables:

- Owns three of the 17 solar farms in Marion County;
- In opposition of the amendments;
- Current processes that Marion County has is a strong one:
 - Marion County has a number of important aspects in the conditional use process that helps preserve land.
- Would like a process that would let landowners and the county have power to choose and the flexibility to select good sites on a case by case basis;

- The proposed amendment creates limitations on landowners for their economic choices for their land;
- When done right, solar power is great for landowners, Marion County, the planet, and environment;
- Pine Gate Renewables approaches farmers to buy or lease their land:
 - Can't force people to build a solar farm on their property if they don't want to.
- 84 percent of farms are owned by individuals:
 - Median age is 60 years old.
- Pine Gate Renewables looks at solar farms as an additional crop;
- 12 acre plot for thirty years on a guaranteed income;
- Benefit to Marion County:
 - Tax paying citizen:
 - Farms will pay ad valorem taxes.
- Cares about the environment;
- Marion County's current conditional use process has a number of conditions on the use of the land:
 - Replace disturbed soil with native grasses;
 - Manage sustainable vegetation process; and
 - Need a decommissioning plan.
- Clear people care about this issue; and
- Solar power benefits the landowners, the county, and the planet.

Julianne Wooten, Pine Gate Renewables:

- Solar culture initiative aims to make the solar farms sustainable and productive members of the community by considering revegetation and long-term management of the land;
- Considers the entire system of the site;
- Work with local contractors and restoration biologists;
- Works with local universities to monitor vegetation successes and failures; and
- Opposed to the proposed amendments.

Ted Coleman, Stayton/Sublimity, OR:

- Wants to strike a balance;
- Suggests taking a broader look on restrictions;
- Wants to make sure the farm land isn't changed forever; and
- Opposed to the amendments.

Lori Maravilla, Stayton, OR:

- Opposing the restrictions; and
- Believes that there is a climate issue the community needs to be aware of.

Nate Butler, Forefront Power:

- A lot of residents of Marion County do not have the opportunity to go solar;
- Not sending power out of the area;
- All power stays local; and

- Proposed amendment would restrict opportunity for community solar projects in Marion County.

Ben Williams, Friends of French Prairie:

- Supports the ordinance;
- Marion, Yamhill, and Clackamas Counties are looking at restrictions because of significant farm land destruction;
- Would like to find a balance for siting of solar arrays; and
- Yamhill County is considering an ordinance prohibiting solar arrays on Class I, II, III, and IV soils.

John Miller, Represents Solar Industry Association of Oregon:

- Recognizes the value and need of good policy and regulation;
- Wants to make sure the policy is written clearly;
- Opposes current amendments;
- Farm land can be recovered for future use;
- Solar arrays provide extra revenue;
- Sheep assist with vegetation management;
- Impacts from these smaller sites are far different from larger site solar arrays; and
- Lack of knowledge is the fault of the solar businesses.

John Konovalov, Woodburn, OR:

- Supports having solar arrays on farm land.

Charlie Coggeshall, Clean Energy Collective:

- Opposes the amendments;
- Representing the Coalition for Community Solar Access (CCSA);
- CCSA has over 40 companies:
 - Business led trade association working to expand access to clean, local, and affordable energy nationwide through community solar.
- Community solar provides an opportunity for diverse customers, residential and non-residential, to participate in cost and benefits associated with solar development;
- Customers own an interest in the system and receive credits on their bill;
- Utilities like community solar due to predictability of solar generation;
- Produces economic development opportunities and clean energy goals;
- In the midst of creating a community solar development program, which is slated to be completed at the end of 2018;
- The program has policies in place to ensure projects are subscribed heavily by residential and small commercial customers:
 - Requires that the program include 10 percent of its capacity to go to low income customers.
- The amendments proposed could prohibit programs like this:
 - Establishes arbitrary limits that are not transparent; and
 - Creates ambiguity in the permitting process.
- Solar power will never compare to the agricultural community, but deserves a place to contribute to the local economy and the local value of the county; and

- CCSA encourages Marion County to table this action, and instead commit to becoming a stakeholder in the rule making work sessions adopted by the Land Conservation and Development Commission.

James Adelman, Salem, OR:

- Supports the amendments:
 - Doesn't think the amendments go far enough.
- Owns land on Brooklake Road and Portland Road;
- Received a letter from a solar company wanting to use his land for a solar array;
- The commissioners are caught between a political and economic discussion;
- Solar power is still in its infancy;
- Converting EFU land to commercial land:
 - Hopefully these companies are paying the back taxes on the land once the land loses its EFU designation.
- Land improvements need to be valued and added to the land.

Damien Hall, Represents Cypress Creek Renewal:

- Would like to work collaboratively with the county for a workable outcome of the county code;
- Solar arrays are a tool for a sustainable source of income for farm owners;
- Solar arrays are a good neighbor to agriculture;
- There are a number of protections under the current code;
- Opposes the proposed amendments;
- Solar arrays do not destroy farm land;
- The current process that is in place is thorough;
- The proposed draft is ambiguous;
- Mr. Hall's objective is to have clarity on what the board's policy is:
 - Would like the opportunity to provide the board with as much information that is needed about pending projects; and
 - Provide additional evidence on constraints on solar projects outside the land use system.
- Encourages additional opportunity of dialog with the board; and
- Requests that the hearing be continued so further information can be entered into the record.

Margie Barnett, Aurora, OR:

- Fifth generation farmer;
- Grows vegetable crops and grass seed;
- Has two different solar arrays proposed to go in near her property;
- A solar array is going in on a piece a property where Ms. Barnett has already invested money into growing vegetables;
- Multiple companies have contacted Ms. Barnett wanting to put in solar arrays on high value irrigated farm land;
- Wants to make sure the solar arrays pay taxes on the land; and
- Supports the amendments.

Mike Carlson, St Paul, OR:

- Needs good soil to grow food; and
- Supports the amendments to the code.

Samuel Beyer, Turner, OR:

- In support of the amendments;
- Lives near the solar arrays;
- Ground is wet and full of clay; and
- There are enough places that cannot be farmed that would work best for solar arrays.

Daniel Sandau, East Salem, OR:

- Farmer;
- Owns property and rents out property;
- Sees a degradation of rights as landowners;
- When EFU zoning went into place, there was no compensation; and
- Opposes the amendments.

Bob Mahler, Silverton, OR:

- Has a piece of property near Silverton;
- Has a solar array right behind the property;
- Supports the amendments;
- Has a federal lawsuit against Cypress Creek;
- Marion County allowed the solar array behind his property without notification;
- Compaction issues when the solar arrays are installed;
- Would like to propose a citizens panel to discuss limiting solar arrays; and
- Believes solar panels hurt the environment.

Eric Page, Salem, OR:

- Owns farm property in Marion and Clackamas County;
- Opposes the amendments as they are written;
- Third generation farm landowner;
- Special Agriculture and EFU zoned land puts limitation on landowners;
- Would like the commissioners to look deeper into the issue of having solar on farm land; and
- Needs a good solution for putting solar arrays on land zoned EFU that is not farmable.

Jonathan Nelson, Portland Oregon, Conifer Energy Partners:

- Opposed to the amendments;
- It is very unlikely that a landowner will lease land that has water rights;
- Oregon has a program called Instream Lease Program, where the water rights can be leased back to the State of Oregon for the sake of stream management and watershed management;
- The project areas are taken out of EFU classification, but can be returned back to EFU classification at the end of the lease;
- The projects fund a considerable amount of infrastructure upgrades;

- The project remains solvent as long as the public utility company is around;
- Does not receive subsidies;
- Need approval from the Federal Aviation Administration with placement of a solar array;
- Appreciates the value of the Willamette Valley's agricultural heritage;
- Wants to preserve resources and improve the quality of life;
- Oregon emits more greenhouse gasses from burning fossil fuels during periods of warmer temperatures;
- Climate change poses a risk to the vitality of agriculture in Marion County;
- Solar can be a tool to help preserve vitality of the county's farming operations;
- The proposed amendments would severely limit future projects;
- Solar arrays do not make it more difficult for the property owners or adjacent property owners to farm land;
- Farmers will not give up their best acreage for a solar project:
 - Will not give up irrigated land.
- Income from a solar lease improves the financial health and longevity of farm operations by diversifying a farmer's annual revenue.

Board discussion:

- The commissioners can make a decision not allowing solar arrays in farm zones until a final decision is made;
- The board can adopt an ordinance repealing the existing provisions of code dealing with solar arrays;
- The notice to the Department of Land Conservation and Development (DLCD) is a notice of proposed ordinance change, but it does not bind the board to follow the proposal;
- The board doesn't have to do anything to countervail the statute, the statute is permissive;
- The commissioners would like to have a moratorium on the issue until a workgroup is formed;
- Mr. Fennimore will look into seeing if the Planning Commission has the ability to form a subcommittee to look deeper into the issue of having solar arrays on farm land:
 - The commissioners would like to find a venue for the ideas that were presented.
- Under the fixed goal post rule, which is state statute, rules that exist at the time of submission of an application would go forward;
- Can move forward with standards, but not stop the whole process:
 - Put a workgroup together; and
 - Set a timeline for the workgroup to come back with a common solution.
- DLCD rules timeline:
 - No urgency with the rule making; and
 - Can take six months to a year for them to adopt their rules.
- If the land is EFU, the land would stay zoned EFU:
 - There would be a conditional use permit required;
 - There would be changes in the tax code; and
 - After the solar array is removed it will still be EFU land.
- Can consider a total acreage cap for solar arrays in Marion County;
- Marion County is unique:
 - Number one in agriculture for a reason and the farm land needs to be protected.

- Would like to place solar arrays in areas that are zoned EFU, but are not ideal for farming;
- Is all for doing what landowners want to do with their property within the rules:
 - Making more money by putting solar arrays on farm land isn't compelling enough evidence.
- Not convinced after hearing the testimony that the language in the proposed amendments does what the commissioners want it to do;
- The proposed amendments need more clarification;
- The commissioners can sunset the ordinance;
- The commissioners would like Mr. Fennimore to create a workgroup under the Planning Commission that would include parties that testified; and
- The commissioners appreciate everyone who testified at the public hearing.

MOTION: Commissioner Brentano moved to close the public hearing, deny the proposed amendments, repeal Marion County Code 17.120.110 and all applicable ordinances, and direct staff to create a workgroup to come back to the board with a new ordinance on or before October 1, 2018. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Carlson read the calendar.


Commissioner Carlson adjourned the meeting at 12:37 p.m.



 CHAIR



 COMMISSIONER



 COMMISSIONER

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

