

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, June 20, 2018  
8:30 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 8:30 a.m.

**PUBLIC COMMENT**

*(Video Time 00:01:03)*

Vincent Vanderhyde:

- Asking for the status of an investigation into the incident that happened in Detroit, Oregon that involved a deputy and a citizen.

***Board discussion:***

- It is under the Sheriff's jurisdiction to conduct an internal review;
- The investigation is being done by an outside party; and
- The status is unknown at this time.

**CONSENT**

*(Video Time 00:04:31)*

BOARD OF COMMISSIONERS

OLCC Applications – Recommended Approval

Salem Gas and Grocery, DbA: Salem Oil, LLC – Salem, OR  
Las Cazuelas – Salem, OR

BUSINESS SERVICES

Approve an order revising the Retirement Plans Committee Charter.

COMMUNITY SERVICES

Approve an order awarding the Fiscal Year 2017-18 Business Development Grant Application to Metal-tech Cage, LLC in the amount of \$50,000.

Approve an order awarding the Fiscal Year 2017-18 Community Project Grant Applications to the following:

- City of Aumsville, \$10,000;
- City of Mt. Angel, \$16,000;
- City of Turner, \$15,000; and
- City of Woodburn, \$15,000.

#### FINANCE

Approve a quitclaim deed to convey Real Property Tax ID #R23783 and Manufactured Home ID #M130372 located at 402 63<sup>rd</sup> Avenue NE, Salem to the prior owner of record.

#### HEALTH

Approve the incoming funds Intergovernmental Agreement with Oregon Health Authority for \$1,140,000 to provide Medicaid administrative claiming services for children and families served by the county.

#### INFORMATION TECHNOLOGY

Approve the Client Support and Software Update Services Agreement with Tyler Technologies, Inc. for \$179,340.61 to provide service and support for the Assessor's Office Tax Office.

#### PUBLIC WORKS

Receive notice of hearings officer's decision approving Conditional Use (CU) Case #18-011/Marion SSD 4, LLC, on property owned by the Selkirk Holdings, LLC.

Receive notice of hearings officer's decision approving Conditional Use (CU) Case 18-010/Marion SSD 6, LLC, on property owned by Gabriel and Vassa Molodyh.

#### SHERIFF'S OFFICE

Approve an order appointing Cyndi Leinassar, Dan Clem, and Tina Morris to the Marion County Justice Reinvestment Council with terms ending December 31, 2018.

Approve the Intergovernmental Agreement with Jefferson Patrol Services for \$342,963 to provide law enforcement services to the City of Jefferson.

Approve the Intergovernmental Agreement with Marion County Community Services for \$131,400 to provide work crews for the Dog Shelter.

Approve Amendment #1 to the Contract for Services with Bridgeway Recovery Services, Inc. for \$338,722 to add funding for the jail re-entry cognitive and treatment courses.

Approve Amendment #1 to the Contract for Services with Chemeketa Community College for \$383,280 to add funding for the SOAR services for clients of the Parole and Probation Division.

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

## ACTION

*(Video Time 00:08:05)*

### COMMUNITY SERVICES

1. Consider the second reading and adoption of an ordinance allowing property tax exemptions for eligible brownfield cleanup projects. – Tom Rohlfig, Tom Hogue, Scott Norris

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

- This ordinance is for last resort funding for cleanup projects;
- An owner of a property that has a legacy brownfield can apply through the Assessor's Office for property tax relief in order to fund the cleanup effort;
- Allows a property tax exemption for up to 10 years, or the total amount of the cleanup plan;
- The ordinance is being adopted under the regular procedure for the adoption of ordinances; and
- The board may move to adopt the ordinance and will take effect after 90 days from adoption.

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

- This ordinance applies to private parties; and
- The property owners would still have to get 75 percent of the taxing districts approval.

**MOTION:** Commissioner Cameron moved for adoption of an ordinance allowing property tax exemptions for eligible brownfield cleanup projects. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

*(Video Time 00:11:21)*

2. Consider the second reading and adoption of an ordinance allowing property tax exemptions for rural industrial investments. – Tom Rohlfig, Tom Hogue, Scott Norris

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

- Cities throughout the State of Oregon have an economic development incentive tool called an Enterprise Zone:
  - Allows new investments to receive a property tax exemption benefit, which is not generally available outside of cities.
- In 2016, the legislature approved a new program and it was amended in 2018 to clarify some language:
  - Can now be applied in rural areas, outside of Urban Growth Boundaries (UGB) of 40,000 people or more.
- In rural unincorporated areas, an applicant can come to the Assessor's Office with an application;
- Could receive a tax exemption for up to three years as an incentive to make investments in rural areas;
- This is not an automatic exemption;
- The ordinance will be adopted by regular procedure; and
- Will take effect 90 days from today.

**MOTION:** Commissioner Brentano moved for adoption of an ordinance allowing property tax exemptions for rural industrial investments. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

*(Video Time 00:14:11)*

### PUBLIC WORKS

3. Receive and consider appeal of hearings officer's decision dismissing the appeal of Adjustment Case #17-003/Mid-Valley Community Action Agency, Inc. – Joe Fennimore

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

- An adjustment to allow a gravel surface driveway and parking area for a Head Start facility on a five acre parcel in a Public zone, located on Silverton Road NE, Salem;
- On September 20, 2017, the planning director issued a decision approving the request;
- On October 5, 2017, the decision was appealed to the hearings officer;
- After the appeal was filed, the applicant granted an extension to 120-day decision making deadline to work out a compromise with the appellant;
- When no compromise could be reached, the hearings officer conducted a public hearing on May 23, 2018;
- The appellant failed to appear at the hearing:
  - Under the hearings officer's procedural rules, the appeal may be dismissed.
- On May 25, 2018, the hearings officer issued an order dismissing the appeal and reinstating the planning director's decision granting the request;
- On June 8, 2018, that decision was appealed to the commissioners;
- In the appeal, the appellant states that they unavoidably missed the hearing on May 23<sup>rd</sup> due to being out of state:
  - The appeal is based on an incomplete inspection summary for a driveway access permit not meeting the standards for temporary and seasonal gravel parking and loading areas; and
  - Health is at risk for the dust fumes generated from the gravel surfaces.
- The board has the options of accepting the appeal and remanding the matter back to the hearings officer:
  - Accept the appeal and schedule a public hearing for July 12, 2018; or
  - Deny the appeal and uphold the hearings officer's decision dismissing the appeal and reinstating the planning director's decision.

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

- The appellant was notified by mail:
  - Did not state that he would not be able to attend.

**MOTION:** Commissioner Cameron moved to deny the appeal of Adjustment Case #17-003/Mid-Valley Community Action Agency, Inc. and reinstate the planning director's decision approving the request. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Carlson read the weekly calendar.

**PUBLIC HEARINGS**  
**9:00 A.M.**

*(Video Time 00:29:37)*

**PUBLIC WORKS**

A. Public hearing to consider the application for Mass Gathering Case #17-004, Noise Variance #17-001, and Conditional Use #17-043/Willamette Country Music Concerts, LLC. – Brandon Reich

***Summary of presentation:***

- Commissioner Brentano met with Linn County Commissioner Nyquist on April 13, 2018:
  - Commissioner Nyquist is concerned with traffic congestion;
  - Public safety;
  - Police and emergency services;
  - Alcohol distribution;
  - Slow cleanup of property; and
  - Believes the concert belongs at a football stadium, like Reser or Autzen Stadiums, where it is equipped to handle large crowds.
- Application is for a Mass Gathering permit on Exclusive Farm Use (EFU) Zone property, located at 13054 Jorgenson Road S, Jefferson, OR;
- The property consists of 12 tax lots on the north and south side of Wintel Road SE, and the north and south side of Talbot Road SE, Jefferson, OR;
- Property is on the west of Interstate 5;
- The property is approximately 720 acres;
- The properties are designated Primary Agriculture in the Marion County Comprehensive Plan, and zoned Exclusive Farm Use;
- The applicant is proposing a music festival that will take place over four days in August 2019;
- Estimated attendance is 30,000 people;
- The proposed event meets the definitions of a large gathering;
- Sound amplification will be used;
- Alcohol will be available;
- Fireworks will not be used or shown;
- Staff recommends that a noise variance be approved for the use of sound amplification from 7:00 a.m. – 9:00 a.m. each morning;
- Mass gathering ordinance requires the applicant to coordinate with various governmental agencies to ensure there are adequate facilities and services available:
  - Marion County Public Works;
  - Sheriff's Office;
  - Marion County Environmental Health;
  - Marion County Risk Management;
  - Jefferson Fire District;
  - Oregon Department of Transportation; and
  - Oregon Water Resources.
- Each agency was provided a copy of the request and given an opportunity to comment on the requirements:

- The Sheriff's Office and Jefferson Fire District approved the plans;
- Marion County Public Works and Environmental Health provided conditions of approval:
  - Public Works notes that the applicant has not received approval for a Transportation Impact Analysis, or a Traffic Control Plan; and
  - Public Works staff continues to work with the applicant on the plans toward approval, if possible.
- Oregon Department of Transportation and Oregon Water Resources will require permits be approved prior to the date of the event.
- Because the event is a large gathering, the event must also receive conditional use approval;
- In November 2017, the board adopted an order which elected to consider the conditional use and mass gathering permits at one hearing, calling up the conditional use for consideration, directing the Marion County hearings officer to hold a hearing on the conditional use application, and make a recommendation to the board:
  - The hearings officer held a public hearing on December 20, 2017 and February 21, 2018:
    - On June 7, 2018, the hearings officer issued a recommendation denying the conditional use application;
    - The hearings officer found that the county has the authority to define a large mass gathering to include the conditional use criteria:
      - The board does not have the authority to grant a conditional use or a temporary use of the zone, pursuant to ORS 215;
      - If the board finds they have the authority, that authority would likely come from ORS 433, mass gathering statute;
      - The hearings officer determined that even if the board does have jurisdiction to grant a conditional use or temporary use, the applicant still hasn't met all of the criteria:
        - More likely than not, the large scale music festival in August would force significant changes in the accepted farm practices on surrounding farm lands;
        - There was insufficient evidence addressing whether the ground water is protected in the proposal;
        - Approval of the application without additional input from U.S. Fish and Wildlife is premature;
        - Until it is established that there will be no significant adverse impact on the Ankeny Wildlife Refuge, there is a conflict with Oregon Statewide Planning Goal 5;
        - It is not evident that any noise associated with the use will have a significant impact on nearby uses, specifically Ankeny Wildlife Refuge;
        - Since the hearings officer determined that the board does not have the authority to grant the conditional use or temporary use, or if the board determines that it has the authority, the gathering does not satisfy the criteria for a conditional use; and

- Planning staff must recommend denial of the mass gathering permit, because approval of a conditional use is required before the mass gathering permit can be approved.
- The applicant should be advised that because the hearings officer determined that ORS 433 applies, the criteria and statute 433.763 (1)(c)(B) must be met:
  - The proposed gathering is compatible with existing land uses; and
  - Would not materially alter the stability of the overall land use pattern of the area.
- Mass gatherings may not include permanent structures;
- The applicant proposes to install a well for potable water on site and an underground distribution system:
  - The well and distribution system are being installed solely for potable water for the event.
- Because no permanent structures are permitted in conjunction with a mass gathering permit, the event does not meet the definition of a mass gathering, and the permit should be denied;
- Staff recommends the board receive the hearings officer's recommendation into the record today; and
- Because so much of the public comment submitted pertains to aspects of the other two cases, staff recommends that the board enter the records of each of the cases, Mass Gathering 17-004, Noise Variance 17-001, and Conditional Use 17-043.

***Board discussion:***

- Everything in the mass gathering could be conditioned except for the permanent structure piece and receiving the conditional use approval;
- Not allowing permanent structures in the mass gathering is from ORS 433;
- Having a conditional use requirement as part of a mass gathering was not appropriate:
  - ORS 433.763 states that when more than 3,000 people and more than 120 hour event, it requires the aspects of a land use component.
- Over 3,000 people would be contrary to farming;
- Uses are authorized in the farm zones by state law:
  - They come out of ORS 215.
- The country music festival does not fall under any parameters of conditional uses;
- ORS 215 does not authorize the county to permit large mass gatherings:
  - ORS 433 is a separate authorization; and
  - The Oregon Department of Land Conservation and Development has guidance that says events over 3,000 people do have a land use component.

*Testimony:*

*Support:*

Mike Reeder, attorney representing the Willamette Country Music Concerts, LLC:

- The Willamette Country Music Festival has been in Linn County for the last 10 years;
- Seeking to relocate to Marion County;
- In 1970, the Oregon legislature decided to regulate unregulated outdoor mass gatherings:
  - Did it under police power authority; and

- Provided health and safety regulations.
- The 9<sup>th</sup> Circuit Court of Appeals upheld outdoor mass gathering statute as constitutional;
- ORS 433 creates two types of mass gatherings:
  - Outdoor mass gathering of 3,000 or more people up to 120 hours;
  - The outdoor mass gathering permit does not prohibit permanent structures:
    - The outdoor mass gathering permit itself does not authorize permanent structures that would otherwise require land use approval.
  - The application is not dependent on the well.
- The outdoor mass gathering statute does not allow the county to impose conditional use permit criteria or other land use criteria merely because it will have more than 3,000 people:
  - ORS 433.763 states that when there is a gathering that has more than 3,000 people, and will be more than 120 hours, then the provisions of ORS 433.763 kick in and the county can bring in land use approval standards.
- Feels like the ordinance is outdated and does not follow state statute:
  - The state statute preempts local land use legislation; and
  - Is outside of ORS 215, the Exclusive Farm Use statute.
- The outdoor mass gathering statute does not make a distinction on the zone of where an outdoor mass gathering can be located;
- The statute defines an outdoor mass gathering:
  - The statute allows the county to define outdoor mass gathering more broadly by bringing in gatherings that are less than 3,000 people;
  - Once the county determines that an event is an outdoor mass gathering, the health and safety provisions of ORS 433.750 are in place:
    - Does not allow for a conditional use permit or any other type of land use criteria.
- The applicant is applying for an outdoor mass gathering, not an extended gathering:
  - If the applicant applies for an extended gathering, then ORS 433.763 would kick in.
- The county suggested the applicant apply for a conditional use permit under the county's ordinance:
  - As the applicant analyzed the case law and state statute, it became clear that the county cannot require the applicant to go through the conditional use permit process; and
  - The applicant has spent countless hours and a lot of expense to hire a traffic consultant to study the impacts to farmers in the area.
- Cleanup and setup of the event is not included in the 120 hours;
- The hearings officer stated that the EFU statute may prohibit the outdoor mass gathering, which the applicant feels is incorrect;
- It is wrong to suggest that if there will be more than 3,000 people, the county can impose land use criteria:
  - Does not feel that the county can impose that because the outdoor mass gathering is a First Amendment issue;
  - The First Amendment requires that government cannot impose unreasonable time, place, and manner restrictions;



- Believes it is unreasonable to impose a conditional use criteria that requires that there be no significant impact on the farm use:
    - It is a discretionary call.
- The legislature provided the Oregon Health Authority the authority to impose health and safety requirements;
- The applicant has gone through a lot of time and effort to make sure the festival will be run in a way that meets health and safety standards, and will mitigate potential impacts to the neighbors and the farmers;
- The applicant interviewed farmers and business owners to determine when the harvest season takes place:
  - Types of equipment being used; and
  - Provided a table of analysis showing very little impacts to the farmers.
- Provided letters of recommendation from the following:
  - Linn County Sheriff's Office; and
  - Curry County.
- Commissioner Nyquist voted in favor of the five-year extension mass gathering in Linn County;
- There will be impacts to development or use when there is a mass gathering this large;
- The applicant wants to be good neighbors and good community partners; and
- The applicant will not satisfy everyone.

***Board discussion:***

- In ORS 433.763 subsection C, compatibility with existing land uses would require the board to consider whether or not the impacts are significant enough to make it so the 3,000 or more people that attend the mass gathering genuinely should be there;
- The applicant is proposing an outdoor mass gathering as defined by ORS 433.735, which requires adherence to ORS 433.750, not ORS 433.763:
  - If an outdoor mass gathering of more than 3,000 people was proposed for more than 120 hours, then ORS 433.763 would apply.
- ORS 433.765 requires that the county regulations regarding outdoor mass gatherings be consistent with the standards of the statute;
- To interpret the Marion County Code to say that an outdoor mass gathering is something other than that, because there will be weeks of set up and weeks of take down after the event, is an impermissible reading of the statute;
- ORS 433.735 is the definitions section:
  - Once an outdoor mass gathering is defined, then follow ORS 433.750;
  - If there are more than 3,000 people, less than five days, health and safety measures need to be available;
  - The outdoor mass gathering is less than 120 hours:
    - Set up and take down is not part of the 120 hours.
- Mr. Reeder stated that Marion County Code exceeds the authority granted by ORS 433 and OAR 333.

*Opposition:*

James Buchal, attorney for the opposition:

- The hearings officer stated that in ORS 433.735 it says, “unless otherwise defined by the county”;
- The attorney for the applicant believes that there needs to be limit to the authority for a constitutional right making money to sell concert ticket:
  - There is no case authority on that.
- Left with the bare language of ORS 433.735, which states that the county can define mass gatherings:
  - The hearings officer hung her decision almost entirely on that language.
- Wants to strengthen the hearings officer’s decision by asking the board to expressly find that the impact is longer than 120 hours;
- The code expressly says that the event coordinator adds onto public performance time, time in excess of 48 hours necessary to set up the event, or cleanup afterwards;
- Country music festival in Linn County interfered with farming operations weeks before the festival started and weeks after the festival ended;
- Asking the board to follow the plain language of the Marion County Code and define it in a way that makes it clear that it is longer than 120 hours;
- The Marion County Code is completely legal as far as how it defines small and large mass gatherings;
- Appropriate for the applicant to go through the conditional use process;
- The mass gathering will cause traffic issues:
  - Hearings officer found that the traffic control plan was inadequate;
  - Forces significant changes in farm practice; and
  - Will cause a crippling back up on Interstate 5.
- Concerned that the 30,000 person limit is not a limit the applicant will be abiding by, which will make traffic worse:
  - The applicant started off asking for a permit for 60,000 attendees.
- There is a long history with this festival and a certain amount of people that come every year;
- There are hundreds of people who staff the event;
- 1,000 Friends of Marion County has testified recently about a disastrous event in Crook County;
- Linn County history shows that the applicant had continuous problems with numbers of attendees;
- The Linn County Commissioners stated that they had not had a year that demonstrated the applicant understood their obligations:
  - Conducted aerial photography to show the amount of attendees exceeded the permitted use.
- There is no control of the number of attendees;
- The hearings officer found incompatibility with the wildlife refuge:
  - There are endangered species in the vicinity.
- The farmers in the area are under tight restrictions because of the irrigation district:
  - The irrigation ditch that run through the property is essential salmon habitat;
  - Critical habitat for listed fish; and

- These concerns have been blown off.
- There are issues under the Endangered Species Act;
- The applicant is obligated to comply under the Oregon Health Authority rules:
  - Needs to be roads of all-weather construction to get attendees in and out of the property;
  - An un-graveled dirt road is not permitted; and
  - Will need to provide a permanent well.
- All the improvements needed for the mass gathering are incompatible with the EFU zone;
- Significant issues with compliance with Health Authority's water supply rules;
- The current well is unable to produce the amount of water needed;
- The applicants plan does not show enough water that is needed to be trucked in;
- Wants the commissioners to follow the land use law:
  - It protects the farmers.

***Board discussion:***

- Linn County's ordinance interprets land use laws differently.

***Support:***

Mike Reeder, attorney for the applicant:

- Mr. Reeder submitted a letter to the hearings officer on February 21, 2018, that the hearings officer did not discuss:
  - Went through the analysis of the application in great detail;
  - In the Jackson County case, Jackson County had a different ordinance than Marion County:
    - Jackson County made a distinction between an outdoor mass gathering and an extended mass gathering;
    - Marion County does not make that distinction:
      - Defines a large gathering and a small gathering as an outdoor mass gathering.
  - The outdoor mass gathering statute ORS 433 says that the rules adopted by the county cannot be inconsistent with the other provisions of the statute;
- It is incorrect to include cleanup and setup time:
  - Any mass gathering will have more than 48 hours of setup time.
- It makes no sense to cherry pick meeting minutes from 2013 that states the country music festival wore out its welcome, or exceeded the number of people allowed for the festival:
  - Whatever issues that were addresses in 2013, are not an issue currently.
- The Linn County Sheriff's Office received no calls for trespass:
  - Very few calls for DUII; and
  - A small number of Minors in Possession.
- The concern with exceeding the 30,000 people is off-base; and
- Entered three letters into the record stating that the wildlife refuge will not be affected by the festival.

Del Huntington, Huntington Traffic Solutions:

- Conducted the traffic analysis in coordination with the county, Oregon Department of Transportation (ODOT), and Oregon Department of Transportation Rail;
- Had over a dozen face-to-face and teleconference meetings with ODOT and the county;
- Had numerous calls with ODOT Rail and Portland Western Railroad;
- Issues with the February 20, 2018 Transportation Impact Study (TIA):
  - ODOT and the county found problems with the proposal to mitigate traffic;
  - Based on additional meetings, a revised TIA was developed and submitted on April 6, 2018:
    - The hearings officer omitted that ODOT had responded to the revised TIA;
    - Submitted a letter, along with the revised TIA to the board on June 16, 2018;
    - Public Works is not opposed to the revised TIA, providing mitigation measures are met; and
    - ODOT has requested they wait until data is collected from the festival in Brownsville, OR before they approve the final traffic control plan.

Michelle Nunez, President of the Jefferson Area Chamber of Commerce:

- Represents the voices of over 100 businesses around the greater Jefferson area;
- Would like to ask the board approve and support the music festival coming into the community;
- Believes that applicant has tried to mitigate issues;
- This festival offers the small community an increase in the local economy:
  - Non-profits;
  - Schools; and
  - Citywide improvements.
- Believes the impacts to the community can be mitigated;
- Ankeny Wildlife Refuge will not be affected;
- Wants to respect the farmers and their needs too; and
- Overall opinion of the festival is supportive.

Robert Rossider:

- Has 22 years' experience in the transportation industry:
  - 10 years of driving for MCR Western, which is a luxury motor coach line based out of Seattle Washington.
- The festival should look into offsite parking with shuttle buses to alleviate some of the traffic issues; and
- Believes conditions should be imposed by the board to protect the attendees.

John Bishop, Oregon Sheriff's Association:

- Volunteered with the country music festival the last eight years;
- Helped start several other music festivals;
- Works with security;
- Working with festivals:
  - Has seen worse behavior at a college football game.

- There are impacts;
- All sheriff's offices have stated that the problems in the venue are few;
- Lack of DUI's:
  - Oregon State Police does not bring their mobile van; and
  - Most people that partake in alcohol, camp overnight.
- Would not be part of the company if there were issues.

Brian Mereng, Wetlands and Wildlife, LLC:

- Private consultant specializing in land use conflicts with natural resources;
- Submitted three letters into the record discussing why the proposed festival is not expected to adversely impact fish, wildlife, wildlife habitat, or critical habitat;
- Submitted information related to Ankeny Wildlife Refuge and clarified the intent of the U.S. Fish and Wildlife Service letter;
- In terms of opposition, many comments have claimed that there would be adverse impacts to wildlife;
- The refuge stated that there were no issues;
- The applicant reached out to the wildlife refuge and it is reasonable to expect that this coordination will continue;
- There are no comments on the record that substantiates impacts to fish, wildlife, wildlife habitat, or critical habitat; and
- Recommends conditioning the approval of the proposed use in coordination with the U.S. Fish and Wildlife Service.

Judy Cellerini:

- Believes there is misleading information submitted by those opposing the festival;
- The Gross family farm farms more acres in the area than each of the opponent farms combined;
- Harvest is well over by the middle of August each year, including the removal of straw bales;
- Some of the fields outlined are not in close proximity to the proposed festival site;
- Farms 250 acres of the Ankeny Wildlife Refuge:
  - Presence has little to no issue with the wildlife.

Pete O'Rourke:

- Retired lieutenant with the Oregon Liquor Control Commission (OLCC);
- Any gathering over 1,000 people, he approved liquor licenses;
- Since the festival has been in operation, he has approved their liquor license:
  - Never given a warning;
  - After retirement, volunteered at the festival;
  - Responsible for alcohol service and security; and
  - Alcohol violations have decreased.
- The festival has a zero tolerance for alcohol violations;
- Increased security;
- Included training for all servers;
- Makes every effort to make sure the venue is lawful and abiding; and
- Alcohol violations during the festival are decreasing.

Tim Flowerday, Operations Manager for the Bi-Mart Country Music Festival:

- Managed festivals for 25 years;
- Oversees the setup, tear down, and smooth operation of the events production time;
- Best operations team in the festival business;
- Safety is an overriding concern;
- Manages sanitation:
  - Security teams.
- Linn County faced a lot of the same issues; and
- Created an ordinance that benefitted the county, but would be well understood for festivals going forward.

Scott McDowell, City Administrator, City of Brownsville:

- Has not received any financial benefit from the music festival;
- Linn County did not have any history or track record when first approving the music festival;
- There is a track record of excellence when working with the music festival;
- Traffic impact:
  - Organizers have always met and exceeded the requirements put forth from the county.
- Provides a lot of opportunity to the broader community;
- Helped the school district and fire department; and
- There are positive economic opportunities.

Helen Funk, President, Central Point Chamber of Commerce and Director of Jackson County Expo:

- This is something to be celebrated;
- Will bring business to businesses in the area;
- Bring education and visibility to the area;
- Emergency preparedness:
  - 15 different agencies came together to put together the incident command center at their festival.
- Country Crossings Music Festival met the mass gathering conditions.

Dan Gilmour:

- Lived in the area for over 63 years;
- The music festival will set a precedent in Marion County;
- Will have impact on the neighborhood;
- Overall a very positive thing for the community;
- Gross family members are hardworking people:
  - Farmers first;
  - Farms 4,000 acres; and
  - Have 4-5 employees.
- Hopes the board will approve the music festival.

Reid Anderson:

- Farmer in Brownsville;
- Held the music festival on his property;
- There are a lot of considerations that have to be made;
- Entertained the idea in 2008 to bring attention to the area;
- Grew substantially over the years;
- The promoter was always very transparent;
- The applicant is very professional and has gotten more professional over the years;
- Impact:
  - No impact;
  - Harvest is done;
  - Animals are at the home property; and
  - Value bringing people into agriculture.

Jimmy Gross:

- Owns the land that the festival wants to move to;
- Farms 4,000 acres;
- 1,800 acres is in the vicinity of the Jefferson/Talbot/Ankeny Refuge area;
- No impacts to farming capabilities; and
- Looking forward to having the festival on his property.

Peter Yoakum:

- Works for the company the festival has hired to bring in the most state of the art sound equipment;
- Brings little impact beyond the boundaries of the festival;
- Able to keep the concert venues at a loud level, but not beyond the property boundary; and
- Same sound company for the Hollywood Bowl sound system.

Anne Hankins:

- Promoter for the event;
- Part of the Endeavor Company:
  - Largest entertainment company in the world;
  - Puts on over 800 events a year in 38 different countries;
  - Owns UFC:
    - Professional bull riding; and
    - Country Thunder, which are country music festivals in the Midwest.
- Country music fans are heartfelt and genuine:
  - 85 percent own homes; and
  - Average income is \$85,000 a year.
- The festival has held their own liquor license for several years;
- Commissioner Nyquist congratulated the festival at the 2017 and 2018 debriefings on what a great event it is; and
- It takes a week to set up the event and a week to tear down the event.

*Opposition:*

Brogan Oswald:

- During the harvest season, they bring everything back to their headquarters every day;
- Operates Oswald Farms off of Talbot Road;
- There has been a lot of emotional and passionate testimony in support of and in opposition of the music festival;
- This hearing is about the criteria set forth by state statute and Marion County Code for a mass gathering and conditional use permit;
- For more than four decades, Oregon has maintained a strong policy to protect farmland:
  - The policy was adopted by the legislature in 1973.
- The current EFU zones and ordinances gives farmers confidence to harvest, invest and continue to grow their farm;
- The first criteria of the conditional use permit states that the use will not force a significant change in, or significantly increase the cost of accepted farm or forest practices;
- Mr. Oswald's farm operates on small profit margins; and
- The rumor that farmers in the area are inflating the number of impacted farms is not true.

George Meyer:

- Co-owner of GM Meyer Farms, LLC;
- Opposed to application;
- Testified at prior hearings;
- Fourth generation farmer in the Talbot area;
- Farms approximately 2,000 acres of high value, mostly irrigated land in Jefferson and surrounding areas;
- Grows turf type tall fescue perineal rye grass:
  - Straw export turf rye grass;
  - Green beans;
  - White clover; and
  - Hazelnuts.
- The main farm headquarters is located at, 2535 Talbot Road S, Jefferson, OR:
  - Been in that location for 41 years.
- Harvest is determined by mother nature;
- Annual rye grass is the first to be cut;
- Beans are harvested from July-September, depending on planning dates;
- The cannery harvests green beans on a very tight schedule and if it is delayed, they can choose to bypass that farm;
- Would cost \$150,000 in expenses if the music festival is moved into the area;
- Would not be able to irrigate fields; and
- Believes it would costs the farmers in the area over \$1 million.

Gabrile Whitaker, J2 Farms, Inc.:

- Lives and farms in the Jefferson/Talbot area;
- All farms are close to the music festival site, or along the proposed traffic routes;



- Ms. Whitaker is a fourth generation farmer who farms her own property;
- Three crops would be negatively impacted by the music festival presence in Jefferson;
- The crops would be harvested and processed during the festival dates;
- Submitted a letter with a potential economic loss of the crops;
- It is Ms. Whitaker's understanding that one of the five criteria to review a conditional use permit is that a use would not force a significant change in, or significantly increase costs of accepted forest or farm practices;
- Ms. Whitaker harvests peppermint that is harvested at the beginning of August and runs through the end of August, depending on mother nature;
- Peppermint must be harvested at the correct bloom percentage or the plant produces a chemical called methylfuran:
  - Once the chemical is in the plant, there is no way to take it out;
  - When the buyers test the oil that is produced and there is high levels of methylfuran, the oil can be rejected or taken at a discounted rate; and
  - To avoid the production of methylfuran, 5-6 mint trucks are operated hauling mint to and from the field.
- Has farming equipment that is 16 feet wide:
  - Has irrigation crews and regular transportation activity on the roads.
- If harvesting equipment or trucks are delayed, costs increase significantly;
- All farmers in the area operate differently; and
- The economic losses that this event would cause are something that must be considered.

Dina Jensen:

- Farms on Talbot Road and throughout the Jefferson area;
- All of Ms. Jensen's fields are along the proposed traffic routes;
- Raises three crops that would be greatly affected by the music festival;
- Most of the crops are contracted, which means if she does not produce the best quality of crops, or if something happens and the crop is damaged, Ms. Jensen will lose her contracts;
- Having contracts are her way of making a living;
- Contracts are very hard to get and passed down from generation to generation;
- Opposed to the music festival, because of the devastating financial impact to her business;
- Has anywhere from \$300-\$1,500 per acre invested in growing crops;
- If Ms. Jensen is unable to harvest her land or the crops get ruined, she would be going backwards financially and unable to recover;
- There are five crops that Ms. Jensen would love to grow in the future, but if this festival were to move to Jefferson, it would cause unnecessary challenges to grow them;
- The country music festival should not be allowed to limit harvest;
- During the festival times, Ms. Jensen is not only harvesting, but is irrigating:
  - Working the ground;
  - Mouse baiting; and
  - Hauling straw.
- Every year, the crops are different due to crop rotation;
- The music festival worked in Brownsville, OR because the farming is dryland and annual rye grass, or other dryland grasses that are harvested by the end of July;

- In Jefferson, there are many crops that are not harvested until the middle to end of August; and
- The land owners of the proposed venue commented to the public that the amount of trips the mint trucks take daily, yet they do not grow mint in Jefferson.

Wes Pilcher:

- Third generation farmer;
- If the proposed traffic routes are along Highway 99E, the fields will be inaccessible if there is an accident;
- Cannot conceive this event happening without detrimental impacts to the farmers in the area;
- Grows peppermint and green beans;
- Economic impact is \$10,000 if the crops are not harvested on time;
- Represents the Sydney Irrigation Cooperative; and
- Very concerned with possible pollution by 30,000 people crossing over the ditch.

Laurel Hines:

- Lives in Spring Lake Estates, which is adjacent to the Ankeny Wildlife Refuge;
- The festival poses serious risks to the wooded, dense rural communities;
- This endangers far more health and safety risk than the former location in Brownsville;
- Violates Marion County Comprehensive Plan, Section II-H, Fish and Wildlife Natural Areas;
- Spring Lake Estates has 97 properties:
  - Heavily wooded and brushy;
  - Two access routes:
    - One off of Ankeny Hill Road and Liberty Road.
- Stone Crest Hill Homes have 50 homes with one access road;
- 30,000 people flooding the area for three or four days will create serious risks to the community; and
- The roads are curvy and hilly.

Roger Kaye, President, Friends of Marion County:

- Submitted numerous testimony several times throughout this process;
- The event will exceed 120 hours;
- Consider impact on farmland itself where the festival will be taking place;
- Cannot guarantee event attendance;
- Parking areas are not controlled;
- The testimony from farmers of potential losses should be considered;
- Water policy should be addressed;
- Believes that there is a threat to public safety;
- In 2013, the applicant created a prohibition of minors in possession:
  - In 2015, there were 18;
  - In 2016, there were 51; and
  - The cases of the minors in possession increased over that time.
- Believes the permit should be denied based on there not being legal access over the ditch:

- The traffic plan is inadequate and has not been approved.

Brian Krebs, representing Santiam Farms, Inc.:

- Opposing the conditional use permit for the outdoor mass gathering application;
- Farms the area around Talbot Road/Buena Vista and the Independence area east on River Road;
- The county roads between the two areas are winding two lane roads with a railroad underpass with a height restriction;
- Main concern with the traffic plans:
  - It will interfere with the daily flow, both between farm locations and moving equipment.
- With GPS technology, the attendees will follow the path of least resistance to and from the venue, making it impossible to travel the roads with modern farm equipment at the same time as the music festival;
- Farm work activities during the weekend of the music festival are:
  - Grass straw baling;
  - Irrigation of grass fields; and
  - Tilling of harvested grounds in preparation of planting tall fescue.
- Employees responsible for irrigation will make 2-3 trips daily to each field to move or monitor irrigation equipment;
- Irrigation equipment typically runs on a 22.5 hour cycle, which gives farmers an hour and a half window to reset the equipment:
  - These windows are staggered throughout the day;
  - Any increase in travel time will make it impossible to complete the work in a timely manner; and
  - Additional man hours at additional costs will be required to avoid the delay.
- The planting window for tall fescue to maximize potential to yield in the first year is August 25<sup>th</sup> -September 5<sup>th</sup>:
  - Planting after September 5<sup>th</sup> will have a reduced yield the first year; and
  - Every effort is made to plant as early as possible weather permitting.
- Mr. Krebs will be harvesting his crops during the weekend of the festival, which will cause increased travel times to deliver seed and vegetable crops, and will cause a downstream risk to harvested acres occurring days after the festival;
- Green beans harvest starts around July 10<sup>th</sup> and ends the first week of September:
  - This schedule is based on Norpac Foods planning schedule.

Audrey Raschein:

- Owns property next to the camping area;
- The field is planted for turf type tall fescue;
- Works full time for parents farm;
- The traffic backup and delays will cause a problem with getting to work in the morning and home in the evening;
- Purchased a tractor for harvest:
  - Tractor runs a 30 foot flail.
- After the seed is harvested, the straw is baled for export;

- If the flail inadvertently starts a fire on the field adjoining the festival camping area, there isn't enough insurance to cover a catastrophic event;
- Mr. and Ms. Raschein has worked very hard to get where they are today and don't want a catastrophic event to take away everything they have worked so hard for;
- Projecting extra costs from the festival will be upwards of \$20,000:
  - There isn't enough money in their budget to cover the extra costs.
- Farming start time changes every day depending on the weather;
- In the mass gathering criteria required by the State of Oregon, it states that there needs to be roads of all-weather construction:
  - The roads need to be graded; and
  - Un-graveled dirt roads are not considered all weather roads.

Dustin Raschein:

- Owns Lulay Farms;
- Waits all year long to harvest crops;
- Works very hard all year long so the crops can produce enough to keep the farm running;
- The roads to be used for the permit are not sufficient to handle farm equipment and 30,000 people at the same time;
- Tractors used on the fields is eleven feet, six inches wide;
- The chopper is over 13 feet wide when in transport mode;
- Aside from farming, they co-own Farmland Tractor Supply in Tangent, OR:
  - Tractor salvage yard; and
  - Regular business during the summer, Mr. Raschein goes out to retrieve tractors that have been in accidents.

Suzanne Oswald:

- Support the findings of the hearings officer's recommendation denying the application;
- Oregon and Marion County has done a great job of protecting the agricultural land to preserve it for generations to come; and
- Ms. Oswald is the only family member who has attended the concert in Brownsville, which was in 2014.

Rick Nye:

- Works for Greenlight Engineering:
  - Registered professional engineer; and
  - Was hired to analyze the transportation impacts of the music festival.
- Unusual to be this far in the process and not have an approved TIA;
- The approval of the application is not timely:
  - Not providing the traffic impacts of the project for the public to review.
- Most people may not be aware that the traffic routing plan has changed within the past two weeks:
  - Was not analyzed to the level of detail as the previous traffic routing, which also had many omissions included.
- There are a number of Marion County staff requirements that have not been met:
  - Vehicle cueing during peak and off peak periods.
- The applicant has proposed flagging at several intersections;

- As of June 11<sup>th</sup>, Marion County submitted a five page critique of the detailed traffic control plan;
- There is not substantial evidence in the record that establishes how the intersections will operate;
- Applicant didn't collect traffic counts at the study intersections during the egress period; and
- The applicant suggest that local traffic will be allowed to travel on a route west of Ankeny Hill Road, and the remainder of the traffic will head east.

Allyson Miller:

- According to the Portland Police Bureau (PPB) and the Oregon Human Trafficking Taskforce, Portland is one of the nation's primary cities for sex trafficking, particularly children;
- PPB emphasized that the Interstate 5 corridor is one of the nation's main arteries for human trafficking;
- Tennessee is now experiencing an increase in sex trafficking at music festivals and rural settings;
- On an average of two minutes, a child is bought or sold for sex:
  - The average age is 13.
- Human trafficking is the fastest growing criminal industry, next to drug trafficking;
- Sex trafficking is a crime hidden in plain sight;
- Children ages 14-19 are the most vulnerable;
- Ms. Miller is dismayed that the school officials, families, and public officials have not considered the ideal setting for sex trafficking risks at the Bi-Mart Willamette Country Music Festival; and
- No amount of money is worth risking one child's exposure to sex trafficking.

Jonathan Sandau, Oregon Farm Bureau:

- Represents more than 7,000 farming families around the state;
- Submitted comprehensive written testimony;
- Agrees with the hearings officer's findings regarding the permits;
- Shares concerns referenced earlier by Linn County about the impacts to land on neighboring farms;
- Has numerous farmers in the area that have submitted written testimony who could not be present for the public hearing;
- Recognizes the work that has gone into the planning of the music festival;
- Recognizes the economic benefit that could be brought into the county, but having a music festival with a minimum of 30,000 attendees in active farm country is inappropriate; and
- The Oregon Farm Bureau urges the denial of the application.

Dylan Wells, Marion County Farm Bureau:

- Has more than 600 voting and supporting members in Marion County;
- Submitted written testimony;
- The impact on local farmers will be significant; and
- Liability issues for neighboring farms will be significant.

Rick Briley:

- Concerned citizen from the Talbot area;
- Has lived in the area for 38 years;
- Retired volunteer chief at the Talbot Fire Station;
- Volunteers have decreased by 50 percent since 1998, and roughly a third more calls come in a year:
  - 19 active volunteers in the district; and
  - The fire department is maxed out.
- Stayton, Aumsville, and Turner will be sending fire equipment to be used in the Talbot area; and
- Concerned about getting adequate first aid for individuals attending the music festival.

Dennis Person:

- Needs attention to the Traffic Impact Analysis for Interstate 5;
- Conducted a count on a Tuesday from 10:00 a.m. to 11:00 a.m.:
  - There were 653 tractor trailer trucks.
- Financial impact would be \$19,000 an hour for tractor trailers; and
- Ambulance services would be impacted.

Linda Peterson:

- Brownsville is in a rural area that is more suitable to handle a music festival;
- The roads in the proposed area are narrow with deep ditches on each side;
- Concerned with the un-signalized railroad crossing in the area; and
- Grass and brush fires in the area are very common during this time of the year.

Kathleen Carl:

- Sits on the Marion County Farm Bureau Board of Directors;
- Owns a 500 acre farm in Hubbard, OR;
- Wants the farm use laws to be protected;
- Timing is of utmost importance when farming;
- The festival will interfere with farmers working in the fields and transporting goods; and
- Worried about the safety of farmers driving on the road during the music festival.

Ray Temple, President of the Board of Directors, Salem Audubon Society:

- Bird conservation nature education organization;
- Partnered with the Fish and Wildlife Service at Ankeny Refuge to construct a nature center that is expected to open next summer;
- Submitted written testimony regarding concerns with adverse impact to the nature center project:
  - Impacts to wildlife.
- Forecasting impacts to wildlife from a variety of activities is a very uncertain science;
- In the history of environmental impact, the evaluations that are made tend to be lopsided and favor development; and

- Will likely never know the impacts to the Ankeny Wildlife Refuge if the music festival is approved.

Susan Lea Smith, Professor of Law at Willamette University:

- Specializes in natural resources and environmental law;
- Speaking in her personal capacity, not a representative of Willamette University;
- Ms. Smith's professional opinion that the hearings officer's recommendation to deny the permit is well reasoned, well founded in law, and the record fully supports the findings reached by the hearings officer;
- Under existing law, Ms. Smith believe that the permit must be denied;
- The proposed activity has no place in Exclusive Farm Use zone;
- There is no support in the record that this event will be less than 120 hours;
- Unrebutted testimony in the record that there will be substantial impacts on local farmers and farming practices; and
- Film and sediment that settles on the salmon spawning area will kill the fish.

*Rebuttal:*

Mike Reeder, attorney for the applicant:

- There are many different moving parts to the application;
- The applicant stands by the testimony provided earlier;
- The outdoor mass gathering statute preempts the current Marion County Code provisions;
- Encourages the board to look at the Marion County Code provisions to see where changes can be made so it is reflective of the outdoor mass gathering statute;
- Ms. Smith stated that there is no support in the record that the event will be less than 120 hours:
  - Mr. Reeder believes that this is not true;
  - Substantial evidence was provided in the record to show that the event will be less than 120 hours;
  - The event begins when there are 3,000 people on site;
  - If set up and take down hours are considered, then the opponents would have a point; and;
  - The statute doesn't allow including set up and take down time.
- The Traffic Impact Analysis testimony:
  - The conditional use and outdoor mass gathering permits to not require a Traffic Impact Analysis.
- The applicant went through the farmers testimony to figure out how to help mitigate traffic in the area;
- The applicant wants to be a good neighbor;
- The event will not have more than 30,000 attendees:
  - There are electronic wristbands that control how many people are allowed on site.

***Board discussion:***

- The permit for the well was applied for and approval received for the potable water well:
  - The issue is whether or not a permanent structure is allowed; and
  - The well can be approved without using it for the music festival.

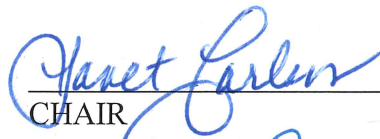
- Traffic Impact Analysis letter was submitted on April 17, 2018:
  - It stated that the revised Traffic Impact Study conducted on April 6, 2018, will adequately mitigate the traffic.
- If the mass gathering is approved, the board has the ability to make the determination that as a county board, an outdoor mass gathering permit can be approved without a conditional use permit;
- Set up and tear down time that the applicant testified to is 117 hours:
  - Subtract the 48 hours that the county allows for set up, 69 hours count for the total amount for set up; and
  - State statute does not give a set up or take down time.
- Linn County code follows state law:
  - Linn County does not require a conditional use permit.
- Marion County's code reflects the differences in farming in the area;
- A gathering of over 3,000 people is limited in a timeframe throughout the year;
- Marion County Code mirrors what is in ORS 433.763, limiting the amount of events that happen in one area;
- Marion County can adopt time standards for set up and take down time;
- Regarding a permanent structure:
  - ORS 433 states that a permit issued does not entitle the organizer, which means that this is not a permit that issues use for a permanent structure.
- The commissioners appreciate everyone who testified;
- It was a very civil public hearing;
- There were a number of letters submitted into the record;
- The applicant runs a very well organized event, and the commissioners appreciate their efforts;
- The commissioners believe they have the authority to deny the request under statute and ordinance in spite of what was said;
- The board wants to protect farming;
- Farm practices trump the event;
- There are diverse crops in the area;
- Concerned about impacts to traffic;
- Doubts there will be a 30,000 attendee cap;
- Roadways are inadequate;
- Concerned with emergency management and public safety;
- Marion County is the number one agriculture producing county in Oregon;
- Marion County has a cultural heritage that needs to be preserved;
- There is a potential impact to production;
- Biggest variety of crops in Marion County;
- Wants to protect Exclusive Farm Use zoned property;
- The cooperation between the community and the applicant was positive;
- Cannot use the permit for the mass gathering in order to get a well:
  - The property is in a sensitive groundwater overlay area.
- Believes that Marion County Code does follow the statute;
- Will stand behind the code as it is constructed;
- Exceeds the 120 hours and 3,000 people, which makes land use impacts relevant;



- Appreciates and understands the potential economic benefit for Jefferson;
- Negative impact to farming in the area was very compelling;
- Concerned by Interstate 5 impact;
- Brownsville testimony was compelling; and
- Based on testimony around the farming impacts, impacts to agriculture, and concerns with transportation, the commissioners find that it has not met requirements to approve the conditional use.

**MOTION:** Commissioner Brentano moved to close the public hearing, close the record and deny the noise variance and conditional use. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Carlson adjourned the meeting at 12:30 p.m.

  
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CHAIR

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER

**Board Sessions can be viewed on-line at:**

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

