

MINUTES

WASHINGTON COUNTY BOARD OF COMMISSIONERS

MAY 18, 2010

CONVENED: 10:06 a.m.

BOARD OF COMMISSIONERS:

Chairman Tom Brian (participated by telephone)
Vice Chair Desari Strader (participated by telephone)
Commissioner Dick Schouten
Commissioner Roy Rogers (out of town for business purposes)
Chair Pro Tem Andy Duyck

STAFF:

Robert Davis, County Administrator
Rob Massar, Assistant County Administrator
Dennis Mulvihill, Government Affairs Manager
Dan Olsen, County Counsel
Andrew Singelakis, Director, LUT
Brent Curtis, Planning Division Manager, LUT
Joanne Rice, Principal Planner, LUT
Aischa Willits, Senior Planner, LUT
Mike Dahlstrom, Program Educator, LUT
Greg Miller, County Engineer, LUT
Steve Kelley, Senior Planner, LUT
Anne Elvers, Associate Planner, LUT
Jonathan Chin, EMS Supervisor
Bill Gaffi, General Manager, CWS
Nora Curtis, Conveyance Systems, CWS
Margot Barnett, CPO Coordinator
Jim Thiessen, Audiovisual Technician
Barbara Hejtmanek, Recording Secretary

PRESS:

Kurt Eckert, *Hillsboro Argus*

APPROVAL OF MINUTES:

May 4, 2010

Chairman Brian participated by telephone from home, as he continues to recuperate from knee surgery. Vice Chair Strader participated by telephone as she traveled back to town from a business trip. Commissioner Rogers was out of town on business today and had volunteered to participate by telephone, if needed. Chair Pro Tem Duyck chaired today's meeting.

1. CONSENT AGENDA

It was moved to adopt the Consent Agenda.

Motion – Schouten

2nd – Strader

Vote – 3-0

(Brian's phone connection had not yet been made)

CLEAN WATER SERVICES

1.a.

CWS MO 10-39

Accept Construction of the Twin 24-Inch Force Mains Corrosion Improvements Impressed Current Cathodic Protection System Project No. 6404 as Complete and Release Retainage to Northwest Earthmovers, Inc. (CPO 9) (Approved Under Consent Agenda)

BOARD OF COUNTY COMMISSIONERS

1.b.

MO 10-150

Change Schedule of June 8 and 22, 2010 Board Meetings (All CPOs) (Approved Under Consent Agenda)

COMMUNITY DEVELOPMENT

1.c.

MO 10-151

Approve Subrecipient Agreement with Willamette West Habitat for Humanity, Inc. for the Neighborhood Stabilization Program (Approved Under Consent Agenda)

SUPPORT SERVICES

1.d.

MO 10-152

Accept Proposal/Award Contract for Congregate and Home Delivered Meal Services (Approved Under Consent Agenda)

SERVICE DISTRICT FOR LIGHTING NO. 1-A COUNTY SERVICE DISTRICT

1.e.

SDL RO 10-1

Approve Street Lighting Assessments for 2010-2011 (All CPOs) (Approved Under Consent Agenda)

1.f.

SDL RO 10-2

Form Assessment Area, Authorize Maximum Annual Assessment and Impose a First Year Assessment for Arbor Lakes 2C-1 (CPO 7) (Approved Under Consent Agenda)

1.g.

SDL MO 10-1

Set Public Hearing on Changes to Street Lighting Assessment Areas (All CPOs) (Approved Under Consent Agenda)

2. ORAL COMMUNICATION (2 MINUTE OPPORTUNITY)

None.

3. PROCLAMATION

3.a.

MO 10-147

Proclaim May 16-22, 2010 as Emergency Medical Services Week

The Clerk of the Board read the proclamation into the record.

Jan Lee, Manager, Ambulance Department, Metro West Ambulance, indicated that she is also a paramedic. On behalf of Metro West, she stated that the company is honored that the Board has entrusted it to provide medical care for Washington County. Ms. Lee said that as providers of pre-hospital care in Washington County, Metro West Ambulance EMTs are part of the team of professionals that provide emergency health care to citizens. She stated that Metro West strives every day to earn the trust of citizens. Ms. Lee remarked that due to the Board's commitment and support of EMS, Washington County enjoys one of the finest emergency health care systems in Oregon. She listed the EMS partners as police, fire, emergency room, and many others. Ms. Lee reported that the goal is to meet all of the emergency needs of all the communities throughout Washington County. On behalf of all of the EMS workers in the county, she thanked the Board very much for its support.

Jonathan Chin thanked Metro West for continuing service to the county and expressed appreciation to the Board for support during the revision of government documents over the past several years.

Jan Lee and Jonathan Chin met Chair Pro Tem Duyck and Commissioner Schouten in front of the dais so that presentation of a plaque from Metro West Ambulance to the Board could be on camera. Chair Pro Tem Duyck read the words on the plaque:

Metro West Ambulance recognizes Washington County Commissioners for your continued support of emergency medical services personnel in Washington County. National EMS Week May 16-22, 2010

It was moved to proclaim the week of May 16-22, 2010 as Emergency Medical Services Week in Washington County.

Motion – Schouten

2nd – Strader

Vote – 4-0

Chairman Brian commented that Metro West provides the best service he knows that he hopes he never has to actually use.

Chair Pro Tem Duyck joined the Chair in those sentiments.

4. PUBLIC HEARING – LAND USE AND TRANSPORTATION

4.a.

RO 10-43

Conduct Public Hearing to Vacate NW 322nd Avenue and a Portion of NW Jackson Street, Vacation 486 (CPO 8)

Greg Miller stated that both of these roads are what are called “paper roads”, that exist legally but they do not exist on the ground. He said that both of them lie underneath the McKay Creek Golf Course within the McKay Creek floodplain. Mr. Miller added that they are currently under water. He stated that if any new development was to take place in this area, that new development would dedicate new roads in appropriate locations. Mr. Miller reported that three of the four adjacent property owners have signed a petition requesting this action. He recommended that the Board vacate those two streets, as shown in the agenda item.

The public hearing was opened.

Fritz Paulus, Metro, 600 NE Grand, Portland, Oregon, represented Metro today, which owns approximately 93 acres adjacent to NW Jackson and NW 322nd. He told the Board that Metro was one of the petitioners to vacate the road and that Michael Jordan signed that petition. Mr. Paulus urged the Board to vacate this road because of the public interest. He stated that the road cannot be used because it is in the floodplain and said that the vacation will allow Metro to restore the adjacent lands and return them to a better functioning wetland, which will improve wildlife habitat and water quality. Mr. Paulus related that these are the goals of Metro’s natural area program and added that Metro bought the adjacent property for that purpose.

John Reding, 339 NE Lenox Street, Hillsboro, Oregon, represented McKay Creek Properties, located at 1416 NW Jackson Street. He explained that this LLC group owns the property that McKay Creek Golf Course is on and supports this vacation because it cleans up a situation that was platted in 1911 on roads that will never be built for a

number of reasons. Mr. Reding said that today's action will allow them to make lot line adjustments, to make larger lots, and to conform more to the zoning regulations in the AF-20 zone.

Marvin Weaver, 1340 NW Caven's Lane, Hillsboro, Oregon, represented his parents, who live at the north end of McKay Creek Golf Course. He stated that the area is not flooded at this time. Mr. Weaver was against this proposal due to the debris that comes off from the golf course and because of public urination. He said that ducks can choke on the golf balls that get cut up. Mr. Weaver brought a backpack full of debris that came from the golf course. He asked that things stay the way they are now. Mr. Weaver felt that if water supply to the house is given back to each individual, later on if dirt/fill is moved against the fence line, then the higher water level would take over the water pump. He stated that the water pump already had to be replaced once before. Mr. Weaver said that when the golf course bought acreage from his mother, she expected an 8-foot fence to be placed around the golf course. He stated that he is one of the beneficiaries of these five acres and he wants this to stay the way it is.

Chair Pro Tem Duyck said that the County currently has a right-of-way across there for a road that does not currently exist. He wanted to understand how changing the vacation will change the debris situation for Mr. Weaver. Chair Pro Tem Duyck reasoned that currently if there is no road there, the County is not maintaining it now.

Mr. Weaver said the debris comes from the golf course. He reported that he has picked up beer bottles, etc., placed them in plastic bags and hung them over the fence. However, Mr. Weaver then received a letter from Metro asking him to stay off the property after they purchased it.

Commissioner Schouten wondered how relevant Mr. Weaver's issue is to the issue of the vacation.

Greg Miller stated that the vacation itself will not have any effect on the issues raised by Mr. Weaver, whether it stays like it is or whether the right-of-way is vacated.

Commissioner Schouten gathered that Mr. Weaver would still have access to his land.

Mr. Weaver affirmed that he does access at the north end of the road.

Chairman Brian noted that this being made private may actually help Mr. Weaver in terms of keeping people out of there.

Mr. Weaver stated that when the water is filled up, people in canoes come onto the property.

Chairman Brian commented that none of that is affected by the vacation of the right-of-way.

It was moved to vacate NW 322nd Avenue and a portion of NW Jackson Street situated in the West one-half of Section 36, T1N, R3W, W.M., Washington County, Oregon, Vacation No. 486.

Motion – Schouten

2nd – Strader

Vote – 4-0

PLAN AMENDMENTS

Chair Pro Tem Duyck announced that a couple of today's plan amendments are eligible for expedited hearings. Therefore, he asked legal counsel to fulfill the requirement to read the rules for the expedited hearing process. Chair Pro Tem Duyck said that if these plan amendments conform to the requirements, then the Board will hold expedited hearings.

Dan Olsen read into the record the rules for expedited hearings process, which can apply to hearings where no member of the public has comments either for or against the application and staff has not identified any issues. These rules specify that an expedited hearing process can be used if all of the following four conditions are met:

1. Staff must recommend approval, either with or without conditions.
2. The applicant must have no objection.
3. There must be no one in the audience who wishes to testify for or against the amendment.
4. There must be no objection from any member of the Board of County Commissioners.

Mr. Olsen stated that under an expedited process, the Board will rely on the written record that is presented, including the record forwarded from the Planning Commission. He said that the Board will open the hearing, dispense with the verbal staff report and will place on the record the fact that neither the applicant nor anyone in the audience wishes to testify for or against the proposal. Mr. Olsen stated that if there are no objections or questions from the Board, the public hearing will be closed and the Board will begin deliberation.

4.b.

RO 10-40

Consider Plan Amendment 10-062-PA to Change the Plan Designation from EFU to Rural Commercial for an Approximate 0.50 Acre Portion of a 19.81 Acre Property; Requires an Exception to Statewide Planning Goal 3 (Agricultural Lands) (CPO 10)

Chair Pro Tem Duyck proceeded through the steps recited by Dan Olsen to explore whether this matter qualifies for an expedited hearing process.

Ty Wyman, representative for the applicant, did not object.

Finding that this plan amendment request met the criteria for an expedited hearing process, Chair Pro Tem Duyck dispensed with the staff report.

It was moved to approve the proposed plan amendment based on evidence and findings in the staff report and the applicant's submittal. Included in the motion was authorization for the Chair to sign the Resolution and Order approving Plan Amendment 10-062-PA.

Motion – Schouten

2nd – Brian

Vote – 4-0

4.c.

RO 10-41

Consider Plan Amendment 10-057-PA to Change the Plan Designation from AF-20 to EFC for Four Parcels totaling 78.05 Acres (CPOs 8 and 14)

Again, Dan Olsen read into the record the rules for the expedited hearing process.

Chair Pro Tem Duyck followed the steps to determine that this plan amendment request qualifies for the expedited hearings process.

The applicant's representative voiced no objections.

The staff report was dispensed with.

It was moved to approve the proposed plan amendment based on evidence and findings in the staff report and the applicant's submittal. Included in the motion was authorization for the Chair to sign the Resolution and Order approving the Plan Amendment 10-057-PA.

Motion – Schouten

2nd – Strader

Vote – 4-0

4.d.

MO 10-153

Consider Plan Amendment 09-360-PA to Change the Plan Designation from AF-20 to AF-10 for a 58.2 Acre Parcel; Requires an Exception to Statewide Planning Goad 3 (Agricultural Lands) (CPO 10)

Dan Olsen read into the record the quasi-judicial plan amendment hearing procedures.

Aischa Willits read into the record the applicable regulations for this casefile.

Anne Elvers stated that today's plan amendment request involves property owned by KCL Incorporated and is located in the Bald Peak area of Washington County. She reported that the applicant is requesting an irrevocably committed or committed exception to Statewide Planning Goal 3 (Agricultural Lands). Ms. Elvers related that the property is 58.2 acres and is designated as Agricultural-Forest-20 (AF-20)—one of the county's two exclusive farm use districts. She stated that the property is subject to a restrictive covenant, which renders it ineligible for a dwelling due to a condition of approval from a land use casefile in 1984. Ms. Elvers specified that the entire property is high value farm land as defined by the state. She mentioned that there is currently an unmanaged stand of Christmas trees growing on the property. Ms. Elvers reviewed that the property has been in farm deferral since 1980 and is surrounded by other AF-20 designated parcels. She stated that the site is located within the Chehalem Mountain groundwater limited area and there are no significant natural resources on the site. Ms. Elvers recalled that the Board continued its April 20th hearing to today in order to allow opponents additional time to address the Planning Commission's recommendation to approve this request and to respond to testimony and new evidence that the applicant provided at the Planning Commission's March 17th hearing. She reviewed that at the April 20th Board hearing, two property owners testified in opposition to the request. Ms. Elvers added that since the April 20th hearing, additional letters of opposition were received—including a letter from each of the property owners who testified on April 20, 2010. She stated that Oregon Administrative Rule 660, Division 4, Section 28 provides the framework for requesting exceptions to statewide planning goals. Ms. Elvers cited the rule:

“Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it.”

Ms. Elvers stated that in order to qualify for a committed exception, the applicant must prove that activities occurring on adjacent properties make farm and forest uses impracticable on the subject property. She said that once the applicant establishes this relationship, they must go a step further and prove how that relationship makes farm and forest uses impracticable. Ms. Elvers told the Board that the State Land Use Board of Appeals has previously ruled that the impracticability standard is a demanding one. She said that this standard is intentionally high in order to protect valuable farm and forest lands. Ms. Elvers stated that the factors cited by the applicant, such as slope and aspect of the property, its proximity to a waterway, and market price fluctuations for crops and timber products, cannot be used to justify committed exception because they are not influenced by adjacent properties. She clarified that when requesting a committed exception, an applicant is required to provide evidence that these farm and forest uses are impracticable because of these impacts from adjacent uses. Ms. Elvers stated that the applicant focuses mainly on physical characteristics of the site rather than this crucial relationship that needs to be proven between the subject property and adjacent uses. She reported that the Department of Land Conservation and Development and Oregon

Department of Agricultural have asked for denial of this request. (Letters from these agencies have been provided to the Board.) Ms. Elvers said that as stated in the April 20, 2010 staff report, staff has found that the subject property is properly designated as AF-20 because it meets the description of AF-20 lands found in Policy 17 of the Rural Natural Resource Plan. She summarized that Policy 17 states that AF-20 lands are those above 350 feet in elevation and were zoned AF-5 or AF-10 by the 1973 Washington County Comprehensive Framework Plan. Ms. Elvers indicated that they are foothill lands—somewhat limited for large scale farming due to slope, existing parcelization and lack of sufficient water for irrigation. She stated that the bulk of AF-20 lands are found in the southeast corner of the county in the Chehalem Mountains. Ms. Elvers said that disadvantages cited by farmers were soil erosion, slopes occasionally too steep to farm safely or economically cultivate, lack of water for irrigation, and irregular topography. She reported that staff has found that the subject property meets this description perfectly and has described how it meets that description in the April 20th staff report.

Ms. Elvers told the Board that staff continues to recommend denial of this application because the applicant has not provided sufficient evidence to justify an irrevocable exception under OAR 660, Division 4. She recommended that the Board conduct the public hearing and at the conclusion of testimony, leave the record open until 5:00 p.m. on May 25, 2010 to allow any participant to submit additional written evidence, arguments or testimony. Ms. Elvers recommended that the Board—unless waived by the applicant—allow the applicant to submit final written arguments in support of the application no later than 5:00 p.m. on June 1, 2010. She proposed that final Board consideration of the request be continued to June 22, 2010. Ms. Elvers said that staff will prepare a staff report with staff's final recommendation for the Board for its June 22nd hearing, that will address all application materials, public testimony and the applicant's final written arguments.

Ms. Elvers narrated a series of slides, which may be found in the Meeting File. Slides included aerial views of the property and a slope map.

APPLICANT (12 Minutes)

John Junkin, Lawyer, Garvey Schubert Barer, 111 SW 1st Avenue, Portland, Oregon, represented the applicant today. Due to the limited testimony time period today, he appreciated the opportunity to submit material subsequent to this. Mr. Junkin reviewed that he appeared before the Planning Commission and received a recommendation of approval. He understood that some concern was raised that perhaps the applicant had an advantage at the Planning Commission because of the amount of time allotted by the Chair for presentation of the issues. Mr. Junkin recalled that the Planning Commission Chair allowed the applicant 40 minutes, 38 of which were used. He emphasized that the Chair also was willing to allow the opponents as much time as they needed; only one opponent appeared. Mr. Junkin explained that the applicant's amount of testimony time at the Planning Commission was due to the fact that they were there, prepared and were allowed the time; they received no special advantage.

Regarding the process that we are going forward with now, Mr. Junkin was agreeable with it. He did say that it is important that the entire Board consider this matter. Mr. Junkin asked for a change to staff's proposal, namely, that the applicant be allowed to submit written argument by June 8th (rather than June 1st as proposed by staff) because Mr. Junkin will be out of the country from May 26 to June 6, 2010.

Chair Pro Tem Duyck asked staff if it is possible to do what Mr. Junkin is requesting.

Dan Olsen responded that the Board could determine to leave the record open for seven days to submit new evidence, which would be May 25, 2010, and then could make the deadline June 8th instead of June 1st. He clarified that the latter is the deadline for the applicant's final argument. Mr. Olsen did not know if this would push the Board's decision on June 15th back a week; this would be up to the Board if it felt one week is enough time to review materials.

John Junkin thought that June 22, 2010 was the Board's deliberation and decision date.

Aischa Willits clarified that staff has recommended holding the record open until May 25th, getting final written argument from the applicant on June 1st, and then holding the hearing on June 22, 2010.

Dan Olsen stated that the Board could provide the applicant an extra seven days for final argument, should it choose to do so.

Chair Pro Tem Duyck said he misunderstood that there could be no final arguments once the record was closed.

Dan Olsen responded that the statute provides for a convoluted process after the Board receives oral testimony in the hearing today. He stated that the statute provides that if it is requested, both the applicant and opponent have an additional seven days (in this case until May 25, 2010) to submit written testimony. Mr. Olsen said that although it is not part of the oral record, it goes into the record of the Board's decision. He summarized that the Board would be closing the hearing for purposes of oral testimony and continuing it solely for purposes of receiving written submittals to May 25th. Mr. Olsen went on to say that once those submittals are in, under the statute the applicant is given seven days to submit final argument; the Board could choose to extend that to June 8, 2010.

Commissioner Schouten asked what County Counsel means by 'final argument'.

Mr. Olsen clarified that he is referring to *written* final argument, once today's hearing is completed.

John Junkin requested that he be provided until June 8th to accommodate his schedule.

Joanne Rice stated that if the Board chooses to allow final argument to be provided until June 8th, then staff would request that the date be moved for the final meeting until July 6, 2010. She explained that staff is now juggling so many of these plan amendments that they need the time in order to prepare all the staff reports. Ms. Rice said that July 6th would be the last date available for the Board under the current schedule for Ordinance 733, in terms of the applicability of reserves.

John Junkin resumed his testimony by providing some history about this property. He referenced staff's map showing that the subject property and surrounding properties are AF-20. Mr. Junkin reviewed that back in 1984, when the county adopted its Rural Comprehensive Plan, the county basically identified, based on soil classifications, all properties similar in soil classification to this as AF-20. He referenced his map, which showed that the area was already pretty much parcelized back then. Mr. Junkin said that there were a number of parcels created much smaller than the area required for AF-20 but they still maintained AF-20 designation as well as the subject property. He disagreed with staff that the applicant has not focused on the impacts of adjacent properties to the ability to farm this property; this is exactly what the applicant has focused on. Mr. Junkin explained that what has happened and what is shown on this map is that since 1984, a number of these properties surrounding the applicant's property have gone through a marginal lands process and now have what are referred to as "non-farm dwellings". He specified that these are no longer in agricultural resource use; they are in residential non-farm dwelling use. Mr. Junkin stated that they may still be heavily wooded because a person may have a house up there and want to maintain forest or open space. However, he emphasized that they have changed quite a bit in the last 26 years. Mr. Junkin indicated that the map he provided shows the surrounding properties (submittal may be found in the Meeting File.) He said that when you see marginal land, it means that they came in and obtained a building permit and have built a non-farm dwelling since the designation in 1984. Mr. Junkin recognized that there has been some confusion as to the number of parcels we are talking about; it depends if you are talking about just contiguous parcels or parcels within the area. He said that if you talk about parcels within the area (this goes out about one mile and this area is bordered by existing exception areas) and if you look at all the area between the exception areas, there are 28 parcels. Mr. Junkin indicated that they are all AF-20. He said that of the 28 parcels, 20 of them have had dwellings placed on them since 1984; 71 percent of the area has had non-farm dwellings placed on them since 1984. Mr. Junkin then focused down on the subject property and those properties contiguous around it: there are 12 contiguous properties, including the properties across the road, which are now being farmed. He reported that of those 12 properties, ten have had non-farm dwellings placed on them since 1984. Mr. Junkin summarized that there has been a change in this area; it is all AF-20 but the area has been developed with residential uses basically surrounding the subject property over the last 26 years. He stated that those changes have impacted the ability to farm this property, as will be discussed in some detail today but even more in the detail provided subsequent to this hearing.

Mr. Junkin reported that there was a commercial Christmas tree farm on that property for a number of years. He indicated that the record shows that the Planning Commission acknowledged that and also the fact that the commercial Christmas tree farm (there is a letter from the previous owner) did not continue to operate profitably for a number of reasons and stopped production some years ago. Mr. Junkin stated that the applicant acquired this property since he has property adjacent to this property and did investigate the ability to maintain it as a Christmas tree farm and bringing it to other agricultural uses. He told the Board that the applicant brought in experts and found that because of the impacts of adjacent properties and the unique situation of this property, it was no longer practical to farm this site. Mr. Junkin stated that there has been some encroachment—not only do we have the surrounding residential uses changing the dynamics of this area so that it no longer can be practicably farmed but there have actually been some encroachments by some of these non-farm uses. He referenced another map in his submittal today, which shows the encroachment of a driveway for non-farm uses to the north of this site onto the applicant's property. Mr. Junkin said that, interestingly, this encroachment with this non-farm use is by two of the opponents to this plan amendment. He was not asking the county to get involved in a squabble as far as encroachments but wished to point out that not only has the surrounding area changed and impacted this but the surrounding area has changed and the non-farm uses have actually encroached onto the subject property.

Mr. Junkin recalled that during the Planning Commission meeting, the applicant had five experts available—four in person and one by writing—to provide testimony and evidence as to the practicability of farming or using this property for forest uses. He listed the experts:

- Mr. Grimes, a Viticulturist. He spent a number of hours on the property examining it for purposes of its opportunity to grow grapes.
- Mr. Ricks reviewed the property for purposes of the continuation of Christmas trees and discovered that there were serious soil conditions with this property that would take at least five years to recover before it could be put to any agricultural purposes.
- Mr. Wurley (name may be misspelled), a Forester, was not present before the Planning Commission but is here today. He reviewed the property, was on site and provided his opinion that it was no longer practicable for commercial forest uses.
- Mr. Cropp, an active farmer, farms his own land and leases land throughout the county. He was on the site and gave his opinion that it is no longer practicable for farming purposes.

Mr. Junkin indicated that these individuals are all here today and are ready to provide testimony, should the Board have questions. He offered to have farmer Cropp come up to talk about the farming issues.

In response to the applicant's position on impracticability, where the applicant put experts before the Planning Commission and Board on how the adjacent uses are impacting the ability to practicably farm this area, Mr. Junkin observed that there have been a number of letters from opponents. He noted that, interestingly, some of these letters are not from farmers, but rather from people who live in non-farming residences in the adjacent area. Mr. Junkin said that in land use, people get sort of a position and attitude about things. He stated that that is what is happening in this case. Mr. Junkin commented that the people up there who have built their homes (non-farm dwellings) since 1984 do not want to see any change on a neighboring property. He appreciated that but said that the fact of the matter is that they have added to these changes in the uses up there over the last 26 years and have made it impracticable to farm this area. Mr. Junkin said he has focused and will continue to focus on the relationship between this property and the surrounding properties and on the impracticability of farming. He asked that the Board review in detail the minutes provided in his submittal from the Planning Commission. Mr. Junkin reported that the Planning Commission took a look at this through practicability and they saw that it was no longer practicable to farm this—as the applicant had presented in all of its evidence—because of the adjacent uses. He specifically called the Board's attention to Planning Commissioner Matt Larrabee's analysis relative to the practicability of farming that area (page 12 of the minutes). Mr. Junkin informed the Board that Matt Larrabee is an MAI appraiser and very knowledgeable. He stated that Commissioner Larrabee, as an appraiser, looked at the area and at the information provided, and responded to fears of a domino effect by saying that this is not the first domino to fall but rather more likely the last domino to fall. Mr. Junkin stated that this area has committed and will continue to be committed to these uses for a number of years. He said that the applicant's property is basically surrounded by these adjacent uses that make it impracticable to continue to farm. Mr. Junkin reported that the applicant received a 5-3 recommendation for approval from the Planning Commission of this plan amendment. He believed that the applicant has addressed all of the criteria required under the OAR.

Mr. Junkin reiterated his offer for his four experts in the audience to respond to Board questions.

Mike Cropp, 34059 NW Mountaindale Road, North Plains, Oregon, identified himself as a farmer farming in Washington County. Looking at the map, he pointed out that the entire property is completely surrounded by high-value residential. Mr. Cropp wondered which day he could spray because he always looks for wind direction. He stated that on this parcel, there may never be a day. Mr. Cropp said that the steepest slope is 23 percent and that over 50 percent of the property is steeper than Washington County would allow a road. He went on to say that over 70 percent of the property is steeper than the railroad could run a railroad and yet the county is asking them to farm it. Mr. Cropp added that when they do farm it, because they are trying to farm it, the erosion process takes place. He explained that the dirt is going to go downhill. Mr. Cropp regarded this as a problem that is insurmountable.

The Board had no questions at this time for any of Mr. Junkin's other experts.

IN FAVOR OF APPLICANT

Roger Harris, 13005 SW Brighton Lane, Hillsboro, Oregon, read a letter into the record, which was signed by residents and he intended to submit additional letters from neighbors. (Submittals from Mr. Schlottman, Mr. Dockin, Mr. Hall, and Mr. Chrisman may be found in the Meeting File.)

Letter from Mr. Harris was signed by numerous property owners who live in the vicinity of KCL, Incorporated and who support the request to rezone the property from AF-20 to AF-10. Residents asked the Board to agree with the Planning Commission's recommendation to approve the zone change. They wanted the Board to find that this parcel is not suitable for farm or forest use. Residents stated that neighbors have developed their small parcels for residential use in their homes and think ancillary uses impact the full use of the subject parcel, as many homes are built close to the subject parcel's property line. They said that the impact is greater than just a few homes but also includes impacts from 11 non-farm dwellings and their associated uses, combined with 12 lots that surround the subject parcel as well as three private access roads that abut the parcel. Residents maintained that these are impacts that limit the use of the parcel. They stated that the eastern end of the parcel has a steep slope of 20-30%, which is highly erodible and not suitable for farming—especially where a creek is located at the bottom of the slope. Residents stated that these are offsite and onsite impacts and constraints which, taken together, reduce full utilization of the parcel. They said that as a result of reduced acreage available for productive use, the profitability and economics of scale associated with farm and forest production are lost. Residents regarded this as a straightforward analysis.

Letter stated that the immediate neighbors who oppose the application are only using arguments to preserve their views of the Cascade Range, neighboring open space and to have fewer impacts to a private road. Residents said that their letters are silent on the matter of growing timber, wheat, nuts or other products for profit. They allege that the opponents only want the Board to believe that if they can grow something such as trees or wheat, the subject parcel can too. Residents stated that the application provides much on-the-ground information and analysis of surrounding areas to show that growing crops or timber is simply not practicable on this site. They said that the only reason there are trees or wheat on adjacent areas is to keep their land in tax deferral. Residents stated that these adjacent uses are not commercial for profit agricultural or timber uses on a stand-alone parcel. They said that the surrounding area is developed with very large, upscale custom built homes, where they put the remaining land to use as hobby farms to keep the property in farm or forest deferral. Residents stated that the area of Bald Peak is developed and committed to non-farm uses, to the extent that the subject parcel is impacted by a residential neighborhood and that, today, it is impracticable to put the subject parcel to farm or forest uses.

IN OPPOSITION TO APPLICANT

Chair Pro Tem Duyck stated that there is a request by four opponents to come up together and have one individual speak on their behalf. He asked each person to state their name and address for the record. Chair Pro Tem Duyck said that while this is a bit unusual, the Board has decided to permit this.

Commissioner Schouten said that each individual would have been entitled to three minutes and four times three equals 12 minutes for the representative speaker.

The representative asked that one individual be allowed to speak before the group presentation.

Jay Melican, 33460 SW Larkins Mill Road, spoke about vineyard suitability. He stated that the applicant has claimed that it is impossible to grow grapes on the parcel due to restricted groundwater use in the area and due to the possibility of drift from nearby residences of residential herbicides. Mr. Melican recalled that Bob Grimes presented testimony before the Planning Commission that the site is unsuitable for vineyards based on overly high elevation, unfavorable exposure and residual effects of the existing Christmas tree farm. He stated that the quality of the laurelwood C, D and E class soils has never been questioned; they are considered high quality soils for vineyards in the area. Mr. Melican said that he has a soil report that he will submit, which also notes that the subject property is farm land of statewide importance. (Report was not submitted to Clerk and may not be found in the Meeting File.) He stated that he previously submitted for the record a letter from Matt Novak, a vineyard suitability consultant, who currently manages 800 acres of vineyards in Oregon. Mr. Melican reports that Mr. Novak states that he evaluated the subject property in 2008 at the applicant's request and concluded that the site "has all the attributes to produce very high quality grapes." He said that Mr. Novak sees no potential negative impact from current Christmas tree farm or adjacent residences. Mr. Melican stated that the article that was presented as part of the application regarding herbicide drift is actually about the many ways that you can prevent injury to grape vines from herbicide drift. He said that he would today submit another letter from John Albin (name may be misspelled), who owns the Laurel vineyard and J. Albin Winery on Bald Peak. (Letter was not submitted to Clerk and may not be found in the Meeting File.) Mr. Melican reported that Mr. Albin has a site with similar soil composition and exposure and his property is actually higher (850 to 1050 feet). He stated that Mr. Albin's personal evaluation of the site is that it is very well suited to production of premium wine grapes. Mr. Melican has also spoken with people in the neighborhood who have just installed a vineyard and who have secured a temporary drip irrigation right. He indicated that he would submit the permit process documentation. (This was not submitted to the Clerk and is not in the Meeting File.) Mr. Melican told the Board that he will submit an easement for the driveway that he shares Lila Ashenbrenner and Ali Sadri, which is 30 feet to the south of the property line from the western to eastern end of the property. (This was not submitted to Clerk and may not be found in the Meeting File.)

The four individuals who wished to donate their testimony time now came forward and identified themselves, as follows:

- Lila Ashenbrenner, 33480 SW Larkins Mill Road
- JoAnn Wiltrakis, 12635 SW Brighton Lane, Hillsboro, Oregon (owner of Tax Lot 100). She questioned whether it was marginal lands.
- Nancy Andrews, 34405 SW Larkins Mill Road
- Gary Andrews, 35505 SW Larkins Mill Road

Daniel Kearns, Attorney, 621 SW Morrison Street, Suite 1225, Portland, Oregon, represented the group of neighbors listed above, who surround the subject parcel. He expressed agreement with the staff report and said that staff has thoroughly analyzed the approval criteria that apply here. Mr. Kearns did not have any explanation as to why the Planning Commission reached the conclusion that it did because there is plenty of evidence in the record to show that farm and forest uses are perfectly practicable on this parcel. He agreed with staff that there are two criteria that are fundamental in order to approve this and pointed out that this is a matter that is controlled entirely by the state legal criteria. Mr. Kearns stated that unlike the urban reserves process where there is extreme detail and which has a lot of policy implications to be evaluated by the Board, this case is entirely the legal criteria that are established by state law and Goal 3. He said that what is being asked here is that this property be exempted from Goal 3 application, taken out of EFU category. Mr. Kearns recited the two criteria, as follows:

1. The applicant has to show that farm and forest uses are impracticable on this property.
2. It must be shown that that impracticability is a direct result of the adjacent properties. State law is clear that it is adjacent properties and not the surrounding area.

Mr. Kearns stated that all of the adjacent properties are also EFU zoned AF-20 properties. He said that Mr. Leahy purchased this property approximately two years ago; for the prior 25 years, it was a Christmas tree farm. Mr. Kearns considered this proof positive that farm and forestry uses are perfectly possible and practicable on this property. He told the Board that that evidence alone makes this application a “non-starter”. Mr. Kearns stated that since then, the Board has additional evidence about the suitability of this property for wine grape culture. He said that the Board has heard testimony from the applicant’s attorney regarding houses that are in the area but remarked that there is nothing about those houses that precludes the use of this property for the use it had been put to for the prior 25 years—for growing and harvesting Christmas trees—or for wine grapes. Mr. Kearns commented that one of the arguments against wine grapes (and also reenacting the Christmas tree farm) is aerial application of pesticides would be difficult to do. He stated that this is why ground application of pesticides is always the preferred method in these instances. Mr. Kearns mentioned that the Oregon Department of Land Conservation and Development and the Agriculture Department both submitted individual letters, as well as a combined letter, going through the buffers required for

different kinds of pesticides. He stated that this property for sure can meet those buffers, especially if these are hand-applied pesticides—the usual routine in Christmas tree production and wine grape production. Mr. Kearns said that another argument they raised is lack of water. He related that under state law, water is available: 5,000 gallons per day is exempt from the water resources permitting requirements and there is a special provision in state law that allows one to get a permit for five years, 5,000 gallons a day for drip irrigation to establish crops such as wine grapes. Mr. Kearns said there is no mention of Oregon's right to farm law, whereby people who build houses on farm land (such as the surrounding AF-20 parcels) are precluded from bringing any kind of nuisance lawsuits against traditional and accepted farming practices. He indicated that this land has been in that for the past 25 years, until the Christmas trees were harvested. Mr. Kearns stated that this land is for sure farmable and can be put to forest uses, as it has been for a long time. He believed that those facts alone make this a non-starter of an application. Mr. Kearns agreed with the open record schedule requested by the applicant's lawyer and had no objection to it.

REBUTTAL (Three Minutes)

John Junkin spoke on behalf of the applicant. Regarding Ms. Wiltrakis' questioning of the marginal land designation on her property, he reported that the applicant's review of county records shows that her property has a non-farm dwelling on it that was placed there under the marginal land process in 1989. Mr. Junkin stated that the applicant's map shows that over the last 26 years, there have been a lot of changes out there as far as residential non-farm uses. He noted that Mr. Kearns made the comment that it is proof positive that if it is farmed once, it is still farmable. Mr. Junkin observed that things do change. He said that the applicant has put on the record how things have changed out there and the impracticability of maintaining farming as it has been in the past on that site.

Bob Grimes, Viticulturist, 20235 SW Edy Road, Sherwood, Oregon, testified that he has been a grape grower in Washington County for over 20 years and has consulted on a number of vineyard projects in both Washington and Yamhill counties. He stated that there has never been a question as to whether this property could be planted for grapes. Mr. Grimes said that you can plant grapes anywhere. He indicated that grapes are essentially cultivated weeds. Mr. Grimes stated that arguments that this is suitable for planting grapes is really not the true argument in this; the true argument is whether or not a vineyard at this elevation with this type of exposure can be profitable. In his opinion, with his experience on laurelwood soils, he does not recommend planting sites over 600 feet in elevation. Mr. Grimes explained that the higher the elevation of the site, the cooler the site is and you run into ripening issues as far as maturing the crop. He stated that the portion of this property that would be planted would be planted from 600 feet at the low side to 850 feet, which puts it close to the economic edge of making sense. Mr. Grimes said that some of the other problems that exist with the property that were mentioned by other experts and that he found on the site were that the site has been in Christmas trees for so many years, it has the presence of a soil pathogen that is a root rot.

He explained that problems that exist with vineyards in following older Christmas tree farms is the fact that this pathogen will affect the grape vines. He recalled that in 1995, when he planted one of his first root stock vineyards in Washington County, he lost almost 25 percent of that planting because of that pathogen. Mr. Grimes related that there are no chemical means of controlling that pathogen available to him. He reported that the best way to deal with that pathogen is to fallow the ground for three to five years, plant an alternate crop that it is not susceptible, and do an incredible job of making sure that all the root debris matter has been removed.

John Junkin said that comment was made regarding Mr. Novak, who submitted a letter and who also was a claimed viticulturist. He had a response to that and said he would place that in his written response to be submitted later, unless the Board had a question for Mr. Grimes in that regard (who did talk to Mr. Novak).

Commissioner Schouten heard Mr. Grimes say that these elevations are right up on the edge but did not hear him say “beyond the edge” of economic viability.

Mr. Grimes said that he has been asked for his professional opinion, which is that with the slope and aspect of this property, he would not recommend planting over 600 feet. He stated that you could plant over 600 feet if you have better slope and aspect to the property. Mr. Grimes told the Board that a really good example of that is a new vineyard planting about one-fourth mile to the south of this property at essentially the same elevation. However, he reported that that property has almost perfect exposure. Mr. Grimes said that when talking about exposure, this references the amount of sunlight that the given site captures because, ultimately, that will create the environment (the degree days, temperature units) that will get the crop ripe. He did not believe that the subject site would make financial sense for a commercial vineyard.

Chair Pro Tem Duyck stated that the record will be kept open for seven more days for any additional comments.

Andrew Singelakis asked the Board for a short recess to allow staff to confer about the timeframes that have been established.

RECESS: 11:24 a.m.

RECONVENE: 11:40 a.m.

Chairman Brian telephonically left the meeting during the break.

Aischa Willits said that the applicant has requested that, in order to get all five Commissioners available to participate, we deliberate and work toward a decision being made on June 15, 2010. She reported that they have agreed to having all written information submitted by May 25 and then the applicant would provide final written argument on May 28th, following which the matter would conclude on June 15, 2010.

Ms. Willits told the Board that a concern is staff's ability to get the report written and distributed in enough time and whether staff will be able to get this out seven days ahead. Her understanding was that the applicant would waive any complaint about a shortened time period to review and that the opponent's representative would as well. However, Ms. Willits did not know whether that includes every other person that testified in opposition today and so she encouraged the Board to inquire about this.

Chair Pro Tem Duyck asked if anyone in the audience has any objection to the schedule that was just laid out.

No one voiced opposition.

Chair Pro Tem Duyck announced that several Commissioners will be gone over the next few weeks and said that it is a matter of trying to work with those schedules, while giving staff adequate time to draft the report.

Commissioner Schouten asked staff to provide a summary of the schedule.

Aischa Willits summarized the following schedule:

- Every participant has the ability to submit written testimony up until 5:00 p.m. on Monday, May 25, 2010.
- The applicant's representative will provide final written arguments in support of the application no later than 5:00 p.m. on May 28, 2010.
- We will return on June 15, 2010 for a final hearing on the request. There will be no testimony submitted at that hearing. The Board will deliberate based on the findings presented. Staff will endeavor to get the Board a staff report as soon as possible and as close to that seven days ahead of the June 15th hearing as possible.

It was moved to set the following schedule for consideration of this plan amendment:

1. Leave the record open until 5:00 p.m. on May 25, 2010, to allow any participant to submit additional written evidence, arguments or testimony;
2. Allow the applicant to submit final written arguments in support of the application no later than 5:00 p.m. on May 28, 2010; and
3. Continue final Board consideration of the request to June 15, 2010.

Motion – Schouten
2nd – Strader
Vote – 3-0
(Brian, Rogers absent)

John Junkin asked if the material due by May 25th is to be in response to something that is already in the record. He wished to clarify that it would not be new evidence to the extent that it is new issues but would be in response to issues already raised.

Chair Pro Tem Duyck believed that anything could be submitted at this point.

Aischa Willits verified that Chair Pro Tem Duyck is correct.

Chair Pro Tem Duyck stated that the record is still open for anything in written testimony.

John Junkin replied that the applicant typically gets the last chance to present any responsive evidence. His understanding was that this was only being left open for parties to submit evidence in response to issues already raised.

Dan Olsen began researching the answer to this now.

Joanne Rice wished to point out that the schedule that staff provided in the staff report was previously provided to one of Mr. Junkin's colleagues. She said that it was staff's understanding that that had been agreed upon. Ms. Rice stated that staff also consulted with Chris Gilmore. She explained that since this was not the Board's first evidentiary hearing, the idea was to allow all the participants to submit any new evidence and then the applicant would have the opportunity to respond to final argument.

Dan Olsen now summarized his understanding of the county's procedure. He said that the record is open for submittal of new evidence by anyone until May 25, 2010. Mr. Olsen stated that the applicant then has the final opportunity to argue against that evidence—but not submit new evidence—on May 28, 2010.

4.e.

MO 10-148

Proposed Ordinance No. 733 – an Ordinance Amending the Comprehensive Plan Relating to Designation and Adoption of Urban and Rural Reserves (All Rural CPOs and CPOs 9, 12F, 12C, 4B, 5 and 6)

There was a motion to read Proposed Ordinance No. 733 by title only.

Motion – Schouten

2nd – Strader

Vote – 3-0

Dan Olsen read the proposed ordinance by title.

Brent Curtis stated that Ordinance 733 would have Washington County adopt urban and rural reserves. He reviewed that the Board originally had hearings with regard to an

intergovernmental agreement with Metro and Washington County that dealt with urban reserves. Mr. Curtis clarified that those were not land use hearings. He said that based on the intergovernmental agreement with Metro, the Board is required under the IGA to make land use decisions and conform our plans to that IGA. Mr. Curtis remarked that that is what Ordinance 733 proposes to do. He recalled that at its hearing last week, the Board made tentative decisions to adjust the map that is found in the IGA to include identified staff-recommended miscellaneous technical adjustments and to add the Peterkort property and designate it urban reserve as opposed to rural reserve. Mr. Curtis said that those two tentative decisions would cause the county to invoke the provisions of the IGA, which (when deviating from the original IGA) calls for a process for the county to interact with the other local governments, namely, Multnomah County and Clackamas County, and then finally to address and respond to the concerns and see if Washington County and Metro can come to a conclusion about whether these two additional properties should be adjusted in the way described. He reviewed that staff had asked the Board to continue the ordinance to today, hoping that staff would be able to engage Metro so that they could come to a tentative conclusion, in the hope that their conclusion (hopefully agreeing with the Board) would allow the Board to engross the ordinance.

Mr. Curtis reported that both Washington County and Metro have proceeded in good faith but that the time has been too little. He let the Board know that Metro is having a Worksession this afternoon to take up these matters; they have Clackamas County's proposed amendments and they have Washington County's proposed amendments. Mr. Curtis added that Metro will also have a public hearing this Thursday. He summarized that time has been too short for Metro and Washington County to conclude that process. Mr. Curtis had originally hoped that the Board could engross the ordinance today. He revised the recommendation to urge the Board to continue the ordinance to next week (May 25, 2010), at which time staff will hopefully be able to report progress. Mr. Curtis said that if the Board does continue this matter to next week, the Board will engross the ordinance on May 25th. He stated that this will lead to notice being sent to those who are due notice and to two subsequent public hearings—one of which will be on June 8, 2010. Mr. Curtis noted that there is a Board item today that makes June 8th a regular Board meeting date and that has the meeting occur in the evening. He summarized that the Board would have its first hearing on an engrossed ordinance on June 8th and the second hearing on June 15th (day meeting). Mr. Curtis observed that June 15th is one week later than the existing IGA deadline to complete all this work. He said that another potential consequence is that by being late by a week, there is some degree of jeopardy that we would throw into disarray the process that gets us in front of LCDC by October 21st. Mr. Curtis stated that staff will continue to work with Metro and LCDC in regard to ascertaining the exact impacts on the periodic review process. He hoped that an additional week could still maintain the October path to LCDC review on the 21st. Mr. Curtis recommended that the Board continue Ordinance 733 to next week, to allow staff to continue to work with the Metro Council.

The public hearing was opened.

No public testimony was offered.

It was moved to continue this public hearing to May 25, 2010.

Motion – Schouten
2nd – Strader
Vote – 3-0
(Brian, Rogers absent)

Chair Pro Tem Duyck hoped that we would be able to stay on track because, otherwise, it will throw the process in complete disarray.

Mr. Curtis responded that today's action would put us one week late. He intended for staff to work hard with Metro and LCDC to ascertain the impact on the periodic review. Mr. Curtis hoped that with a one week delay, we can find a way to economize and still keep on track. He stated that we will find that out in the coming week.

5. LAND USE AND TRANSPORTATION

5.a.

MO 10-149

Consider an Amendment to the Intergovernmental Agreement between Washington County and Metro concerning Urban and Rural Reserves (All Rural CPOs and CPOs 9, 12F, 12C, 4B, 5 and 6)

Brent Curtis said that this is a companion item to Ordinance No. 733. He explained that the actions the Board take on Ordinance No. 733 are the things that would call for particular adjustments to the IGA. Mr. Curtis recommended that the Board continue this agenda item for one week also.

It was moved to continue this item to May 25, 2010.

Motion – Schouten
2nd – Strader
Vote – 3-0
(Brian, Rogers absent)

6. ORAL COMMUNICATION (5 MINUTE OPPORTUNITY)

None.

7. BOARD ANNOUNCEMENTS

Commissioner Schouten announced that 8:00 p.m. today is the deadline for submitting ballots for the election.

Vice Chair Strader asked about the turnout numbers for Washington County.

Chair Pro Tem Duyck had not heard the latest numbers as of today.

Vice Chair Strader asked if Philip Bransford was in the room but he was not at this time. She said that it would be nice if we could announce that.

Chair Pro Tem Duyck stated that the turnout numbers have been extremely low. He asked those watching to keep in mind that the local races are sometimes the most important ones. Chair Pro Tem Duyck urged people to please vote.

Vice Chair Strader said that as of Thursday, Washington County was still lagging behind the state voter turnout.

Commissioner Schouten noted that it is too late to put ballots in the mail. He said that ballots may be brought to the Elections Department on Murray Boulevard, as well as a number of public library sites.

8. ADJOURNMENT: 11:55 a.m.

Motion – Strader

2nd – Schouten

Vote – 3-0

(Brian, Rogers absent)

MINUTES APPROVED THIS ____ DAY _____ 2010

RECORDING SECRETARY

CHAIRMAN