

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, December 9, 2020
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Sam Brentano and Commissioner Kevin Cameron. Also present were Jan Fritz, chief administrative officer, Jane Vetto as county counsel, and Brenda Koenig as recorder.

ABSENT: Commissioner Colm Willis

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

PUBLIC COMMENT

None.

PRESENTATION

(Video Time 00:00:48)

Circuit Court Operation Update –Honorable Tracy Prall, Presiding Judge and Marion County Sheriff Joe Kast

Judge Tracy Prall:

- In March of 2020, a Chief Justice Order was issued reducing court operations due to the COVID-19 pandemic:
 - Court judges and support staff were reduced to an estimated 50 percent;
 - Courtroom and office spaces located within the Marion County Courthouse were reviewed and modified to allow for six feet social distancing restrictions; and
 - A system was developed that would allow jury trials to continue for some of the following:
 - Criminal cases for:
 - Individuals in custody; and
 - Individuals not in custody.
 - Dependency cases;
 - Delinquency cases;
 - Domestic relations cases; and
 - Civil cases:
 - Jury trials and bench trials were restricted.

- Housing for individuals in custody at the Marion County Jail was reduced to single cell occupancy;
- A pre-trial release program has been discussed by court judges;
- Relationships developed prior to the pandemic allowed the following entities to collaborate and develop a system for operating:
 - Court judges;
 - The Marion County District Attorney's (DA) Office;
 - Defense attorneys;
 - Prosecutors; and
 - The Marion County Sheriff's Office.
- Weekly meetings attended by the following are held via telephone in order to problem solve processes for trials during the pandemic:
 - Presiding Judge Prall;
 - District Attorney Clarkson;
 - The Marion County Jail Commander;
 - Deputies from the DA's office; and
 - Representatives from both defense consortiums:
 - The Marion County Association of Defenders (MCAD); and
 - The Public Defender of Marion County (PDMC).
- Individuals held in custody are entitled to a trial within 60 days from the date of their arrest:
 - Prior to the pandemic, Oregon statute allowed for an individual to be held in custody for a time period up to 180 days;
 - The pandemic compelled courts in other jurisdictions to proceed with the following:
 - Holding all individuals in custody for the time period of 180days; or
 - Releasing the individuals.
 - After the start of the pandemic Oregon passed legislation that allowed jurisdictions to hold individuals in custody for a period of 240 days;
 - Marion County Circuit Court justice processes and standards after the start of the pandemic remained the same:
 - Judges were not willing to release individuals in custody prior to trial; and
 - Courts undertook the challenge of ensuring individuals in custody received a trial within the 60 day time period from arrest.
 - Multiple individuals in custody within the county have waived their right to a trial within 60 days to allow for additional investigation by their attorneys; and
 - No trials have been bumped.
- Marion County Circuit Courts are able to hold in-custody jury trials and still follow Oregon's social distancing guidelines:
 - One floor is used for jury assembly;
 - There are three courtrooms; and
 - There is one conference room.
- Individuals in custody within the county have the following requirements:
 - Contact with their attorney; and

- Appear in court:
 - A warrant is issued if individuals in custody fail to appear in court.
- The courts fulfilled the requirements for the July 1, 2020, Phase 1 deadline which expanded the standard operation processes to allow for COVID-19 social distancing requirements;
- Phase 2 further expanded the operation process to allow for out-of-custody criminal cases:
 - The courts, with the assistance of COVID-19 funding provided by the county, have reserved and utilized off premise locations to conduct remote hearings:
 - Space was secured at the Salem's Historic Grand in which hearings were conducted during the following months in 2020:
 - July;
 - August;
 - October; and
 - November:
 - It is estimated that over 600 cases were heard at Salem's Historic Grand during the cumulative four month period.
 - Space was secured at the Mission Mill Museum in Salem in order to conduct a five day bench trial for a civil probate case; and
 - Space has been reserved at the Salem Historic Grand for the following months in which to conduct hearings:
 - February, 2021; and
 - March, 2021.
 - Audio and video conferencing has been utilized for the following cases:
 - Domestic;
 - Domestic Relations;
 - Juvenile dependency;
 - Protective Orders;
 - Probate matters;
 - Civil;
 - Landlord-Tenant; and
 - Small claims.
- During Phase 1 of the court process judges moved from an individual docket system to a master docket system:
 - The individual docket system allowed judges to hear a variety of cases:
 - Judges were responsible for their own dockets.
 - The master docket system focused on a judge hearing a specific style of case:
 - A judge that was an expert in one case style was able to hear more cases within a designated period of time.
 - With the aid of web-conferencing and teleconferencing, court judges were able to utilize remote hearings and move into Phase 3 of the court process in November, 2020:
 - This allowed the courts to resume the individual court docket system.

- The courts will remain in Phase 3 until after the pandemic has ended.
- Staffing issues related to the COVID-19 virus continue to be an issue and may impact court proceedings:
 - The courts do not have resources available for staff to remote work; and
 - Social distancing requirements continue to assist with on-site employment:
 - Face masks are worn; and
 - Barriers have been added.
- Judge Prall reported the following for court caseloads:
 - Jury trials, civil cases, and landlord-tenant cases continue to be a challenge for the courts:
 - A moratorium related to housing is currently in effect until the end of December.
 - Small claims cases may increase as the statute of limitations expires;
 - Criminal case filings have decreased;
 - Post-conviction cases have increased by an estimated 131 percent;
 - Habeas corpus cases have increased by an estimated 94 percent:
 - Individuals in custody have reported concerns with COVID-19 exposure.
 - Domestic relations cases have decreased by an estimated 15 percent; and
 - Juvenile dependency cases have decreased by an estimated 35 percent:
 - The case reduction is a concern; and
 - Children in domestic environments that are receiving remote education may not be protected from abuse because it is harder to detect:
 - Teachers are not able to see the abuse;
 - School resource officers are not able to see the abuse;
 - Community members are not able to see the abuse; and
 - Doctors may not be able to see the abuse.

Sheriff Kast:

- The collaboration and teamwork from some of the following departments has made the court operations process a success during the pandemic:
 - Marion County Circuit Courts;
 - The DA's Office;
 - Defense attorneys;
 - The Marion County Jail;
 - The Justice Security Unit Department; and
 - The Board of Commissioner's Office.

Board discussion:

- The commissioners expressed their appreciation to Judge Prall for her leadership and efforts to continue with court proceedings:
 - The COVID-19 virus has impacted the criminal justice system;
 - There are still consequences for individuals that commit a crime; and
 - If possible, the county would like to continue to assist with court operations if it is needed.

- The commissioners expressed their appreciation to Sheriff Kast for his leadership;
- The county has a pre-trial release system that has been in effect for over two years that has assisted with transitioning during the pandemic;
- The suspension of the Jail Management Plan during the pandemic has provided flexibility;
- Utilizing the following has achieved a positive impact on the county's public safety system:
 - Forward thinking;
 - Initiative; and
 - Creativity.
- Future funding initiatives may entail lobbying the state for public safety dollars.

(Video Time 00:25:02)

Mid-Willamette Valley Council of Governments: Renata Wakeley, Mid-Willamette Valley of Council Executive Director and Community Development Director

- Ms. Wakeley was present on behalf of the Mid-Willamette Valley Council of Governments (MWVCOG) to award Commissioner Sam Brentano with a certificate for his years of service to the organization;
- During the MWVCOG Annual Dinner held earlier in 2020, Commissioner Brentano was presented with a Lifetime Achievement Award;
- Ms. Wakely reflected on Commissioner Brentano's service expressing the following:
 - For an estimated 20 years, Commissioner Brentano provided dedication and continued support to the MWVCOG as a participant on the Board of Directors;
 - Commissioner Brentano provided an estimated 40 years of service to the region by participating with the following:
 - Various MWVCOG Board committees;
 - Various MWVCOG programs; and
 - As a MWVCOG representative for the following:
 - Small cities located within the county; and
 - Marion County.
 - Commissioner Brentano has had a positive impact on the region by providing the following:
 - Ideas;
 - Input;
 - Experience; and
 - Enthusiasm.
 - Commissioner Brentano is a founding member of the Valley Development Initiatives; and
 - Commissioner Brentano has served on the Revolving Loan Fund Board in 1983.
- Ms. Wakely awarded Commissioner Brentano with a certificate; and
- Commissioner Sam Brentano expressed his appreciation to Ms. Wakely and reflected on the role the MWVCOG played during his years in service.

(Video Time 00:29:53)

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

- Ms. Rothenberger reported the following updates for the COVID-19 pandemic as of 8:00 a.m. on Wednesday, December 9, 2020:
 - There have been an estimated 10,786 cases within the county from the start of the pandemic;
 - An estimated 170,000 cumulative tests have been performed;
 - An estimated 172 individuals have died from symptoms related to COVID-19; and
 - An estimated 56 individuals have been admitted to the hospital and are currently being monitored.
- Marion County along with the following counties are considered part of Region 2 for Oregon’s emergency response:
 - Benton;
 - Lincoln;
 - Linn;
 - Polk; and
 - Yamhill.
- The Oregon Health Authority (OHA) website reported the most current hospital capacity within Region 2 as of January 8, 2020:
 - The region has an estimated 693 cumulative non Intensive Care Unit (ICU) hospital beds that are currently occupied:
 - An estimated 134 non ICU hospital beds are available.
 - The region has an estimated 71 cumulative ICU hospital beds that are currently occupied:
 - An estimated 56 ICU hospital beds are available.
- Oregon’s requirements for COVID-19 test reporting have changed:
 - Testing is currently based off of the following:
 - The percent positivity rate; and
 - The number of tests.
 - Prior testing was based off of an individual person count:
 - One individual may have received multiple tests, but it was reported as one test only that had been received.
 - The county is no longer able to report testing levels by zip codes; and
 - COVID-19 testing reports can be found on the following websites:
 - The OHA; and
 - Marion County.
- The county’s percent positivity rate has decreased to an estimated 8.5 percent:
 - Oregon’s percent positivity rate is currently estimated at 5.6 percent.
- The county’s COVID-19 cases have increased an estimated 18 percent over the past two week time period;

- A large majority of positive cases have been reported for zip codes in the following locations:
 - Central and Northeast Salem;
 - The City of Woodburn; and
 - The City of Brooks.
- Marion County Health and Human Services (MCHHS) is collaborating with the University of Oregon to establish six sites within Marion County to sponsor weekly testing events:
 - The testing events will be held starting in January, 2021, and extend through August, 2021.
- A testing event is currently scheduled for Monday, December 14, 2020:
 - The event will be held at the Oregon State Fairgrounds; and
 - Testing hours are scheduled from 11:00 a.m. to 1:00 p.m.
- Oregon is anticipating receiving doses of the Pfizer COVID-19 vaccine within one to two weeks:
 - MCHHS has been collaborating with community partners to prepare for vaccine distribution:
 - The COVID-19 vaccine will be monitored to track doses that have been received and doses that have been distributed.
 - Limited doses will be available for the following:
 - Healthcare personnel; and
 - Residents of long term care facilities.
- MCHHS anticipates reporting some of the following information for the COVID-19 vaccine:
 - Negative or adverse reactions to the vaccine; and
 - Counts showing the number of individuals that have received the vaccine.
- Wide spread availability for the COVID-19 vaccine may take several months;
- A vaccine advisory committee will assemble in January to determine the vaccine allocation process for the following:
 - Phase 1B;
 - Phase 2;
 - Phase 3; and
 - Currently vaccine doses are only available for individuals qualified for Phase 1A:
 - Healthcare employees working directly with COVID-19 patients; and
 - Residents of long term care facilities.
- MCHHS continues to encourage community members to engage in the following when in a public setting:
 - Wearing face masks;
 - Practicing six feet social distancing;
 - Washing hands frequently; and
 - Remaining at home if individuals are sick.
- MCHHS has the following suggestions for individuals that wish to holiday shop:
 - Shop locally;

- Take precautions when shopping in public settings;
- Minimize time when shopping in department stores;
- Shop alone or in a small group;
- Shop in the early hours of the day in order to avoid crowds;
- Shop on-line over the internet;
- Have packages delivered to your home address; or
- Plan for curbside pickup at department store locations.
- Individuals that have tested positive for the COVID-19 virus are encouraged to self-contact trace:
 - Stay home if test results are positive;
 - Contact a medical physician; and
 - Communicate positive test results to all individuals where contact was made.
- Individuals requiring COVID-19 resources or a place to self-isolate are encouraged to call the county's warm-line.

Board discussion:

- Current COVID-19 testing reports detail the number of positive tests by zip code:
 - The report does not detail how many individuals within the zip code have actually been tested.
- Changes to the COVID-19 reporting on the statewide data base have improved operations and accelerated information response times;
- Commissioner Brentano expressed his concerns regarding the steep increase of positive COVID-19 cases that have been reported over the prior weeks;
- Commissioner Cameron encouraged community members to conduct their own contact tracing and self-isolation if they have been exposed or test positive for COVID-19:
 - He encouraged family or community members to support the COVID-19 patient by assisting with errands that are outside of the self-isolation dwelling; and
 - He encouraged individuals to continue with hand sanitizing, mask wearing, and practicing six foot social distancing.
- Community members have been educated and are aware of the social distancing requirements needed to assist with slowing the spread of the COVID-19 virus.

(Video Time 00:44:52)

MOTION: Commissioner Cameron moved to add an item to the Action Agenda under Public Works: Consider discussing a building permit waiver fee for secondary dwellings affected by the recent wildfires. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

CONSENT

(Video Time 00:45:43)

HEALTH AND HUMAN SERVICES

Approve an order reappointing Brian Butler to the Ambulance Service Area Advisory Committee with a term ending December 31, 2023.

PUBLIC WORKS

Approve the Scott Mills License and Encroachment Agreement with Douglas and Jodee Burgoyne that allows the homeowner to install and maintain a fence and other improvements in the fence line of Scotts Mills Park to curb trespassing from park visitors onto the homeowner's property.

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

ACTION

(Video Time 00:46:32)

1. Consider adopting an administrative ordinance granting Comprehensive Plan Amendment/Zone Change/Partition (CP/ZC/P) Case #19-003/Patrick and Taisia Alagoz.

–Joe Fennimore

Summary of presentation:

- The application entails the following:
 - The current parcel is zoned Acreage Residential with a 10-acre minimum;
 - The request is to change the zone to Acreage Residential with a 2-acre minimum; and
 - Incorporate a Comprehensive Plan (CP) Amendment to allow for an exception to Goal #14, Urbanization, for a parcel that is 5-acres in size:
 - The 5-acre parcel will be divided into the following two separate parcels:
 - A 2-acre parcel; and
 - A 3-acre parcel.
- The hearings officer conducted a public hearing on April 3, 2019;
- On September 26, 2019, the hearings officer recommended the board deny the application based on the existing record at the time;
- The board held a duly noticed public hearing for the application on November 4, 2020;
- After considering all the arguments and testimony in the record, the board approved the request subject to conditions:
 - The standard partition conditions entail some of the following:
 - Platting requirements;
 - Filing of declaratory statements;
 - Well water measurements; and

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- Access requirements.
- The ordinance and findings were prepared;
- Notice of adoption was published on December 2, 2020;
- The ordinance is now set for formal adoption;
- The board has the options:
 - Adopt the ordinance as written;
 - Direct staff to prepare a modified ordinance; or
 - Choose not to adopt an ordinance at this time.
- Staff recommends the board adopt the ordinance as written.

Board discussion:

- The application has been reviewed and discussed at prior meetings; and
- Approval of the administrative order is the final step in the process.

MOTION: Commissioner Cameron moved to adopt an administrative ordinance granting Comprehensive Plan Amendment/Zone Change/Partition (CP/ZC/P) Case #19-003/Patrick and Taisia Alagoz. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

(Video Time 00:48:50)

***Recess as Board of Commissioners.
Convene as Contract Review Board.***

**CONTRACT REVIEW BOARD
ACTION**

INFORMATION TECHNOLOGY

1. Consider an order approving the Sole Source Procurement for an Oracle e-Business Suite (EBS) Clone Module, CT Clone for a database virtualization software license subscription with Clonetab. –Scott Emry and Camber Schlag

Summary of presentation:

- The Information Technology (IT) Department is requesting to purchase computer software that will assist with managing changes within the existing Oracle e-Business Suite of enterprise applications;
- The existing software supports some of county’s workflow for the following:
 - Finances;
 - Human Resources;
 - Payroll; and
 - Purchasing.
- Maintaining the following can be an increasingly complex and time consuming challenge when multiple computer systems require updating:
 - The Oracle system;

- Software changes;
- Critical system patches; and
- Security updates.
- The proposed software will accelerate the process by analyzing changes to a base line computer:
 - The system will then propagate the exact clone of the changes to other related systems.
- The vendor Clonetab is an Oracle partner:
 - Clonetab is the only vendor in the market place that provides tight end-to-end change management integration for multiple components of the business suite; and
 - This justifies the vendor Clonetab as the sole source selection.
- The software license subscription will start on December 23, 2020;
- The contract total is estimated to be \$118,245; and
- Included in the contract is software maintenance and support for one year.

Board discussion:

- The county has been investing in information technology for multiple years;
- The IT Department has researched alternative vendor solutions; and
- It was determined that Clonetab is the only company that provides end-to-end services.

MOTION: Commissioner Cameron moved to approve an order approving the Sole Source Procurement for an Oracle e-Business Suite (EBS) Clone Module, CT Clone for a database virtualization software license subscription with Clonetab. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

***Adjourn as Contract Review Board.
Reconvene as Board of Commissioners.***

(Video Time 00:53:19)

ACTION

1. Consider discussing a building permit waiver fee for secondary dwellings affected by the recent wildfires. –Brandon Reich

Board discussion:

Commissioner Kevin Cameron:

- On October 14, 2020, the board approved an order that temporarily waived county building and septic permit fees for primary residences damaged or destroyed by the wildfires in September, 2020:
 - The order focuses on individuals who are unable to shelter because their dwelling was either damaged or destroyed;
 - The individuals do not have a second dwelling that can be used for shelter; and
 - The order assists with the opportunity to rebuild as quickly as possible and regain their lives.
- The income generated from the building permit fees funds the county's building division:
 - The building division is not funded by the following:
 - The county's general fund; or
 - The state of Oregon.
- The fee waiver for each primary residence was estimated to be \$2,000:
 - The estimate is based off of an average 1,600 square foot home;
 - A septic permit fee estimated to be \$500 was also waived; and
 - It is estimated that each primary residence would save an estimated \$2,500 in county fees with the waiver.
- Public feedback was received expressing concerns for secondary dwellings as well;
- Commissioner Cameron expressed concerns with fund availability for employee salaries if a building permit waiver fee is granted for secondary dwellings:
 - The building permit fees assist with funding the county's building division; and
 - A decrease in permit fees may impact the county's ability to compensate employees.
- The county encourages victims of the wildfires to rebuild:
 - It helps the property owner;
 - It helps the community; and
 - It helps the tax base.
- Property owners that lost their homes due to the wildfires may notice a property tax decrease on their tax statements; and
- Commissioner Cameron suggests granting a permit fee waiver to individuals with secondary homes that were destroyed or damaged by the wildfires:
 - The application for the permit fee waiver for secondary homes may have a reduced time frame.

Commissioner Sam Brentano:

- Commissioner Brentano is in support of individuals rebuilding and regaining their lives;
- Commissioner Brentano expressed concerns with fund availability for employee salaries if a building permit waiver fee is granted for secondary dwellings:
 - He requested more analysis to ensure the building permit fee waiver for secondary dwellings will not impact the county's building division:
 - The permit fees are applied to reserves that have been set up to ensure staffing is available for the county's building division;
 - The county has not raised taxes that can be applied to the building division;
 - The county relies on community growth to fund the building division; and
 - Everything needs to be in place to facilitate growth within the county.
 - Department spending policies may need to be reviewed to ensure spending limits for reserve funds are approved by the board; and
 - The long term effects on staffing and the general fund, if any, will need to be analyzed.

Commissioner Kevin Cameron:

- County departments have contingency funds available:
 - The spending of contingency funds is reported in each department's supplemental budget.
- It is estimated that the county's building division revenue may decrease with the waiver of the permit fees for both primary dwellings and secondary dwellings affected by the wildfires:
 - The revenue loss for approximately 450 primary homes only is estimated to be \$1.2 million; and
 - More analysis may be needed to determine the impacts to the following if permit fees are waived for individuals with secondary homes affected by the wildfires:
 - Department reserves; and
 - Ending fund balances.

Jan Fritz, Marion County Chief Administrative Officer:

- Ms. Fritz suggested extending the request for a permit waiver fee for secondary homes to a future meeting date pending further analysis.

Brandon Reich, Marion County Public Works, Building and Planning Division Manager:

- An estimated 300 secondary dwellings were either damaged or destroyed by the wildfires:
 - The loss in revenue for a 100 percent permit fee waiver is estimated to be \$800,000; and
 - The loss in revenue for a 50 percent permit fee waiver is estimated to be \$400,000.
- The permit fee waiver analysis was based on the following considerations:

- Available resources;
- Available revenue; and
- Available staffing to conduct the permitting work.
- Mr. Reich estimated that revenue is available through the end of the fiscal year for permit fee waivers for secondary dwellings:
 - Currently staff and resources are available to process the permits:
 - The ending networking capital for the 2020 fiscal year was higher than originally anticipated:
 - An increase in individuals working remotely from home has allowed more time for home remodel projects.
 - A revenue impact may be noticed during the summer months of 2021 if the rebuilding economy declines;
 - The use of reserve money or networking capital may be an option to retain staff in a revenue decline; and
 - It is estimated that there is time to react and make any necessary adjustments if a decline occurs.

Commissioner Sam Brentano:

- Commissioner Brentano requested the following:
 - Further discussion at a future meeting;
 - More analysis;
 - Long term revenue effects if any;
 - Who will be able to apply for the permit fee waiver; and
 - How long the permit fee waiver will be in effect.

Commissioner Kevin Cameron:

- Commissioner Cameron suggested a time limit be implemented for a fee waiver for secondary dwellings;
- Property owners that apply for a permit after the time limit has expired will be required to pay the full fee; and
- Residents with secondary dwellings are already in the cleanup and rebuild process:
 - They are not waiting for the Federal Emergency Management Agency (FEMA); and
 - Residents that have already started the process will take advantage of the permit fee waiver.
- No action related to the permit fee waiver for secondary dwellings will be taken at this board session; and
- The request will be discussed further at a future Management Update meeting.

(Video Time 01:12:59)

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS

A. Public hearing to consider an appeal of the hearings officer's decision approving Floodplain/Greenway Case #20-003/Marion County Friends of Historic Butteville.

–Brandon Reich

Summary of presentation:

Brandon Reich:

- The county received a permit request to install a dock at the Butteville Landing located on the Willamette River;
- The hearings officer conducted a public hearing related to the request on June 18, 2020:
 - The record was left open until July 27, 2020.
- On September 9, 2020, the hearings officer issued a decision approving the request;
- The hearings officer's decision was appealed on September 24, 2020, declaring the following arguments:
 - The use of a right-of-way is improper for a dock;
 - The use of the land has negatively impacted nearby property owners; and
 - The hearings officer improperly allowed evidence into the record.
- The board has the following options:
 - Continue the public hearing:
 - This would require an agreement from the applicant to extend the 150 day decision making deadline to January 21, 2021.
 - Close the public hearing and leave the record open;
 - Remand the matter back to the hearings officer:
 - This would require an agreement from the applicant to extend the 150 day decision making deadline.
 - Close the public hearing and approve or deny the application; or
 - Close the public hearing and approve a modified proposal.
- Staff recommended the following conditions if the applicant's request was approved:
 - The applicant shall obtain any permits required by the Marion County Building Inspection Division;
 - The Marion County Public Works Director will sign the application on behalf of the county;
 - All development shall comply with floodplain requirements; and
 - The natural vegetation on the subject property must be maintained.

Board discussion:

- The commissioners have received a request by the opponents to continue the public hearing to a later date in the future;
- Commissioner Brentano expressed the following:
 - A public hearing was requested;

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- Today's date of December 9, 2020, was set for the public hearing;
- Individuals were provided with the following options to testify during the public hearing:
 - Submit written testimony;
 - Provide testimony via telephone; or
 - Provide in-person testimony.
- The county received no requests to provide testimony via telephone; and
- Two individuals have signed up to provide in-person testimony.
- Ms. Vetto stated the following:
 - The 150 day timeline occurs in January;
 - The appellants have requested a continuance of the public hearing due to the COVID-19 pandemic;
 - The board had the option to reschedule the public hearing as long as the date is within the 150 day timeline;
 - The appellant is present and has the opportunity to provide testimony at the December 9, 2020, public hearing; and
 - The appellant was provided the opportunity to provide testimony via telephone.
- Commissioner Cameron expressed that COVID-19 was not a justifiable argument to continue the public hearing to a later date in the future; and
- The county is currently practicing social distancing requirements and has procedures in place to allow for public hearings during the COVID-19 pandemic.

Peter Koehler:

- Mr. Koehler is a board member for the Friends of Historic Butteville (FOHB);
- Mr. Koehler expressed the following:
 - He is representing the party applying for the permit;
 - He supports the hearings officer's decision;
 - He believes the project is a good example of a public and private partnership;
 - The appellants are neighbors on either side of the right-of-way;
 - The appellants maintain their own private docks; and
 - The public right-of-way has gone into disuse and has become overgrown with vegetation.
- Mr. Koehler addressed the following appeal items that were submitted by the appellant:
 - The appellants believe the property has been developed into a park and is not a right-of-way:
 - Mr. Koehler expressed that the county has an easement for a public road that provides an ingress to the property and an egress from the property by vehicles or any other means:
 - This can include pedestrians; or
 - Pedestrians with paddle craft.
 - The appellants believe that the property is a park based off of some of the amenities that are located on the right-of-way property:

- Mr. Koehler expressed that amenities have been installed on the property for the benefit of enhancing and assisting with the ingress to the property and an egress from the property:
 - He stated grassy areas located on the property were installed in order to meet the Americans with Disabilities Act (ADA) compliance; and
 - The grassy areas also serve as a staging area for individuals removing paddle craft and other gear from the Willamette River.
- The appellants believe that the development of the right-of-way has resulted in unwanted behavior by members of the public:
 - Garbage has been left on the property; and
 - Criminal activity may be occurring on the property:
 - The hearings officer found that there was a one week period of time where there was an increase in after-hours activities occurring on the right-of-way property;
 - Other parks located within the area were closed due to COVID-19 restrictions; and
 - The Marion County Sheriff's Office (MCSO) had received telephone calls from concerned citizens:
 - Mr. Koehler expressed the following in reference to the appellant's concerns:
 - There have been no calls to the MCSO since the beginning of July, 2020; and
 - Photographs of garbage quantities in the two garbage cans located on the right-of-way property were submitted weekly:
 - Garbage can fill rates are an indicator of public use; and
 - Garbage can fill rates from the month of July through the month of October are minimal.
- A vehicle was reported to be blocking access to a private driveway:
 - Mr. Koehler believes that leaving the access open to the public will eliminate this issue.
- A gentleman residing in a nearby gated community reported an individual was seen walking around the community and had reportedly trespassed on private property:
 - Mr. Koehler believes that there is no connection between the trespassing on private property incident and the right-of-way landing.
- In April of 2018, the State Historic Preservation Office (SHPO) submitted a letter with questions and concerns:
 - The agency expressed the following concerns in the letter:
 - If the gangway was resting on the dated foundation remnants then the historic attributes of the foundation may be impacted;

- Any objects located under the foundation may be of historic cultural consequence, and may be compromised;
- SHPO expressed less structural concern if the gangway were to be built above the existing foundation with no direct contact to the foundation; and
- SHPO recommended an archeologist be present on site when the gangway or dock is installed:
 - The FOHB took into consideration the concerns outlined in the letter that had been received from SHPO:
 - The design was altered so that the gangway or dock did not rest on the existing foundation structure;
 - The altered design was submitted to the United States Army Corp of Engineers (USACE);
 - In July of 2019, the USACE approved the plan submitted by the FOHB; and
 - Approval from the USACE has resulted in the Oregon Parks and Recreation Department (OPRD) approving the funding for project:
 - SHPO is affiliated with the OPRD.
 - The appellants believe that the dock project will create a rise in the Willamette River that is contrary to regulation:
 - The FOHB hired a local engineering company to conduct a survey and issue a report with respect to floodplain concerns:
 - The report indicated a potential increase of 0.02 to the floodplain surface;
 - The 0.02 rise increase is below the 0.1 that is the monitoring threshold allowed by the Federal Emergency Management Agency (FEMA); and
 - The floodplain surface of 0.02 is not considered an increase.
- Mr. Koehler reported that no new evidence has been submitted by the FOHB;
- The hearings officer's report expressed that Marion County and not the FOHB should be the signatory:
 - Mr. Koehler expressed that he had been advised by the county that the FOHB should be signatory due to funding methods;
 - The hearings officer recommended all future signatures be administered by the county; and
 - Mr. Koehler expressed that Marion County Public Works is prepared to provide future signatures if needed.
- Mr. Koehler reported that community members in support of the project have been assisting with property management.

Board discussion:

- Ms. Vetto, Marion County Legal Counsel, clarified the following:

- The applicants' attorney was not present at the December 9, 2020, board session;
- The appellants' attorney was not present at the December 9, 2020, board session; and
- Mr. Koehler signed up to present public comment at the public hearing on the county's sign-up document therefore he provided testimony as a member of the public:
 - Individuals who sign-up to present testimony during the public hearing are called to testify in the order that their names are listed on the county's public hearing sign-up document.

Julia Kraemer:

- Ms. Kraemer stated the following:
 - She is not an arbitrator;
 - She is not a mediator; and
 - She is not an attorney.
- Ms. Kraemer is present before the board to request that the public hearing be extended to another date in the future due to concerns related to the COVID-19 pandemic;
- Ms. Kraemer stated that the appellants' attorney was unable to attend the December 9, 2020, public hearing;
- Ms. Kraemer expressed that community members may be negatively impacted by the dock and gangway project;
- Ms. Kraemer believes that the subject property is a park that contains the following amenities:
 - Picnic tables;
 - A park bench;
 - Viewing areas;
 - A sidewalk leading to the river's viewing area; and
 - Areas containing grass:
 - She believes the grass areas may not be ADA compliant because the area lacks ADA hand railing.
- Ms. Kraemer stated the subject property is considered a roadway right-of-way easement;
- Ms. Kraemer expressed that the subject property's adjacent property owners are the underlying fee title owners:
 - She believes that the signatures of the adjacent property owners are required in order to move forward with any project;
 - The adjacent property owners have not been approached with a signature request; and
 - The adjacent property owners were not approached to authorize any changes that have been implemented to the subject project.
- Ms. Kraemer stated she is not opposed to public access to the Willamette River:
 - She has lived in the area for an estimated 20 years and stated there has always been an ingress to the river and an egress from the river.

- Ms. Kraemer believes the promotion of the subject property has negatively impacted community members:
 - The property is widely promoted as being open to the public 24-hours per day which have resulted in issues with drugs;
 - There was not an issue with drugs prior to the start of the FHOB project; and
 - She is concerned that the addition of a dock and gangway may increase the issues that community members have experienced which include:
 - An increase in crime;
 - Drug consumption; and
 - Trespassing.
- Neighborhood and community members have utilized the subject property for fishing:
 - This is not an issue for the appellants.
- Activity on the subject property has resulted in the use of security video surveillance:
 - Ms. Kraemer can submit multiple videos if requested that will provide footage of altercations that have occurred in the early morning hours;
 - She stated the winter months have provided a decrease in activity on the subject property;
 - The spring, summer, and early fall seasons have shown an increase in unfavorable activity; and
 - Due to the county's large territory and staffing issues, the MCSO is not always able to respond.
- The majority of the FOHB do not reside near the subject property:
 - Members of the FOHB are not enduring the same issues that the neighboring property owners are encountering.
- Ms. Kraemer expressed concerns with increased unfavorable activity if the dock and gangway are allowed to proceed;
- Ms. Kraemer expressed that there is not a community need for installation of a dock and gangway that will be located in a small area between two private homes:
 - Champoeg State Park has adequate boat docks to meet the community's needs and is located an estimated 3.3 miles away from the subject property;
 - Boone's Ferry Landing has adequate boat docks and is located an estimated 4.5 miles away from the subject property; and
 - French Prairie Park has adequate boat docks and is located an estimated 2.2 miles from the subject property:
 - The park location also provides the following:
 - River access; and
 - Public restrooms.
 - The park is currently closed, possibly due to a lack in funding.
- No funding is available to provide for the following:
 - Security:
 - Property owners living adjacent to the subject property have expressed concerns with the unfavorable activity and the possibility of not being able to receive assistance from the MCSO if needed.

- Management of the subject property; and
- Maintenance:
 - The subject property has not been maintained as promised since its inception in 2017:
 - Grass and weeds are overgrown during the summer months; and
 - She believes the disuse of the subject property may continue due to the concerns with the current lack of maintenance.
- Ms. Kraemer expressed that extending the public hearing date may allow for increased attendance by community members who currently have concerns with the COVID-19 pandemic:
 - She believes the appellants have not had the opportunity to express their concerns and experiences to the board.
- Ms. Kraemer stated the historical remnants have a significant role in her family's history:
 - The home she resides in and the dock on her property were built by her great grandfather and are a part of a legacy that extends back to the 1800's; and
 - She does not wish to see these historical remnants destroyed.
- Ms. Kraemer expressed that county code states there can be zero water rise;
- Ms. Kraemer is requesting the board consider her request for a public hearing postponement; and
- Ms. Kraemer requested confirmation that the documents submitted by the appellants' have been received by the county.

Board discussion:

- Documents submitted by the appellants' have been received and are on record with the county;
- Ms. Vetto clarified the following:
 - The FOHB are the applicants;
 - The board cannot extend the date past 150 day time period;
 - A public hearing continuation must be scheduled prior to January 21, 2021:
 - Oregon statute requires the county provide a decision within the 150 day time period;
 - The 150 day time period ends on January 21, 2021;
 - A request to extend the statutory deadline must be submitted by the FOHB in writing; and
 - Under the statute the appellants' cannot submit an extension request.
 - Individuals wishing to testify during the public hearing were provided with the option to present their testimony via telephone.
- Mr. Reich stated the following:
 - The applications requires the signature of an authorized agent or a public agency;
 - The county has an interest and the authority to determine how the existing right-of-way will be used; and
 - The hearings officer found that the county would be the appropriate signature on the application.

- Commissioner Cameron clarified the following:
 - The public hearing is for the addition of a dock or gangway to allow for river access; and
 - It is not about existing amenities already located on the subject property which includes some of the following:
 - Picnic tables;
 - Sidewalks; or
 - Landscaping:
 - The subject property is considered to be existing access; therefore
 - The addition of these amenities did not require any land use permits.
- The county and other government agencies are continuing business operations during the COVID-19 pandemic:
 - Procedures have been implemented to allow for social distancing; and
 - Citizens have been provided the opportunity to provide testimony via telephone during the public hearing.
- The commissioners stated that they were not in favor of continuing the public hearing to a future date; and
- The commissioners expressed that they were in favor of supporting the hearings officer's decision:
 - No written or oral testimony was provided during the public hearing that would change their decision.

MOTION: Commissioner Cameron moved close the public hearing and adopt the hearings officer's decision including the conditions for Floodplain/Greenway Case #20-003/ Marion County Friends of Historic Butteville. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous

Commissioner Brentano read the calendar.
 Commissioner Brentano adjourned the meeting at 11:13 a.m.

CHAIR

COMMISSIONER

COMMISSIONER

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