



## BOARD OF COMMISSIONERS

1300 NW Wall Street, Bend, Oregon  
(541) 388-6570

FOR RECORDING STAMP ONLY

# BOCC MEETING MINUTES

9:00 AM

**WEDNESDAY August 16, 2023**

Barnes Sawyer Rooms  
Live Streamed Video

Present were Commissioners Tony DeBone, Patti Adair and Phil Chang. Also present were County Administrator Nick Lelack; Assistant County Counsel Kim Riley; and BOCC Executive Assistant Brenda Fritsvold.

This meeting was audio and video recorded and can be accessed at the Deschutes County Meeting Portal website [www.deschutes.org/meetings](http://www.deschutes.org/meetings).

**CALL TO ORDER:** Chair DeBone called the meeting to order at 9:00 a.m.

### PLEDGE OF ALLEGIANCE

Commissioner DeBone disclosed that on August 12<sup>th</sup>, both he and Commissioner Chang attended a wildfire briefing hosted by U.S. Sen. Ron Wyden and local fire officials at Deschutes National Forest Headquarters in Bend. As their joint attendance was not noticed in advance, he wished to disclose at this time in the interest of transparency.

**CITIZEN INPUT:** None

Commissioner Adair commented on the death toll in Maui from the recent wildfire in Lahaina and urged Deschutes County residents to sign up for emergency alerts at <https://www.deschutes.org/911>, noting these are issued according to location.

Commissioner DeBone added that the State Interoperability Executive Council is working to ensure that each county has the capability to issue emergency alerts as Deschutes County does.

Commissioner Chang said it is important to address fuel loads on both public and private lands.

**CONSENT AGENDA: Before the Board was Consideration of the Consent Agenda.**

1. Consideration of Board Signature on letters appointing Denney Kelley and reappointing Tony De Alicante to the Sunriver Service District Managing Board
2. Consideration of Board Signature on letters thanking Robert Foster and Gerhard Beenen for their service on the Sunriver Service District Managing Board
3. Consideration of Board Signature on letter reappointing Tami Pike for service on the Deschutes County Public Health Advisory Board
4. Consideration of Board Signature on letter appointing Sabrina Haggerty for service on the Deschutes County Bicycle-Pedestrian Advisory Board
5. Approval of minutes of the June 17 and 19, 2023 BOCC meetings

ADAIR: Move approval of the Consent Agenda as presented  
CHANG: Second

VOTE:           ADAIR:       Yes  
                  CHANG:     Yes  
                  DEBONE:   Chair votes yes. Motion Carried

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**ACTION ITEMS:**

**6. Public Hearing to receive testimony regarding proposed revisions to the County contracting code**

Dave Doyle, County Counsel, explained that SB 1047, enacted recently, made substantive changes to public contracting requirements. These changes, along with others as identified by County staff, have prompted revisions to the County's contracting code effective January 1, 2024.

*The public hearing was opened at 9:07 am. There being no one who wished to testify, the public hearing was closed at 9:07 am.*

ADAIR: Move approval of first reading of Ordinance No. 2023-012 amending Title 2.36 and Title 2.37, Contracting, of the Deschutes County Code by title only  
CHANG: Second  
VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

Chair DeBone read the title of the ordinance into the record.

**7. Public Hearing on a request to vacate a portion of Schibel Road**  
(continued from 8/09/2023)

County Engineer/Assistant Road Director Cody Smith reminded that because some parties interested in this matter asked that the public hearing—which was noticed to occur on August 9<sup>th</sup>—be postponed from last week, the Board had opened the public hearing, heard some testimony, and subsequently continued the hearing to this day.

Smith shared maps showing the location and vicinity of the proposed vacation of a portion of Schibel Road. Smith listed the parties who signed the vacation petition, noted that two other abutting property owners are not petitioners, and provided background information. Based on all of the information submitted, the Road Department has concluded that the proposed vacation is in the public interest.

*The public hearing was opened at 9:28 am.*

- Liz Dixon, attorney for chief vacation petitioners Jeff and Kathy Gates, presented an annotated county tax map showing all of the affected parcels and an aerial photograph of the location and surrounding area. Dixon said the party opposed to the vacation, John O'Leary, has at least one and possibly two alternate accesses to his property: one via Old Bend Redmond Highway and the other via Highway 20.

Dixon said this portion of Schibel Road was dedicated in 1994, has never been improved, and does not have historical public benefit. Dixon noted that last year when O'Leary applied for and received approval for access to Old Bend-Redmond Highway, he had claimed that no other access existed for his property.

- Jeff Eager, attorney representing John O'Leary, said the proposed vacation is not in the public interest and the Board could determine that access to O'Leary's property via Schibel Road is necessary. He raised the issue of adverse possession, saying that sometime after the road was dedicated in 1994, a gate was installed and used to block access. Eager said O'Leary's access to Old Bend-Redmond Highway was obtained by accident, based on a false belief that it was needed to secure an address for the property. Eager noted safety concerns related to requiring access off of either highway and said because Schibel Road terminates at O'Leary's property, it was clearly intended to provide access to his property. Eager concluded that O'Leary is willing to agree that the current public right-of-way be shifted to the east to lessen the impact on the petitioner's properties.
- John O'Leary said the petitioners have blocked access to his property from Schibel Road. He explained that he did not seek access off of Old Bend Redmond Highway as he already had access off of Schibel Road; rather, what he sought was the assignment of an address for his property. He denied that he is interested in developing his property.
- Peggy Lee Combs, speaking for John O'Leary, said the published public notice was in error as it did not show that the proposed vacation extends to O'Leary's property. She noted that the easement granted by O'Leary was 60 feet in accordance with the required width of the public road that was dedicated and said approving the vacation would amount to favoring one property owner over another for no good reason.
- Alfred Heston said the only feasible access to O'Leary's property is via Schibel Road. He said it is in the best interest of the public to maintain this road as public and not vacate it, in part because this road dramatically reduces public safety response time to the adjacent properties.
- In rebuttal, Liz Dixon submitted additional exhibits including the Road Maintenance Agreement, saying this does not reference Tax Lot 100 because that lot was not considered a benefitting property. She denied that the petitioners are claiming adverse possession and said that Schibel did not object to the gate being installed in 1994.

*There being no one else who wished to testify, the public hearing was closed at 10:13 am.*

Commissioner Adair asked that the large exhibit be entered into the record.

In response to Commissioner Chang, Assistant County Counsel Kim Riley said the Board must decide whether the proposed vacation is in the public interest and it is his decision on what to consider in making his determination. Another factor is whether the vacation would eliminate the only access to a property, or if alternate access is available.



Commissioner Chang noted the various important concerns and interests at stake and said it is difficult to say if this matter involving a local access road is a question of public interest even though it is of great importance to individual property owners.

Commissioner DeBone thanked everyone for their participation in this matter. He acknowledged the recommendation of the Road Department and questioned if any justification exists to not accept staff's recommendation.

In response to Commissioner Chang, Smith said according to Oregon statute, the Board must determine if the proposed vacation is in the public interest and decide whether or not to grant the request.

Chair DeBone stated that the record was now closed and the Board will conduct its deliberations on this matter next week.

#### **8. First reading of Ordinance 2023-018 – Griffin Plan Amendment/Zone Change**

Rachel Vickers, Associate Planner, said the ordinance presented for action by the Board would approve a request for a Plan Amendment and Zone Change for property totaling approximately 40 acres to the east of Bend and south of Highway 20; the Plan Amendment would re-designate the property from Agriculture to Rural Residential Exception Area and the Zoning Map Amendment would rezone the property from Exclusive Farm Use to Multiple Use Agricultural.

ADAIR: Move approval of first reading of Ordinance No. 2023-018  
by title only

CHANG: Second

VOTE: ADAIR: Yes  
CHANG: Yes  
DEBONE: Chair votes yes. Motion Carried

Chair DeBone read the title of the ordinance into the record.

#### **9. Deliberations: Remand of LBNW LLC Plan Amendment and Zone Change**

Tarik Rawlings, Senior Transportation Planner, distributed a decision matrix to guide the Board in its deliberations of a remand decision of the Oregon Land Use Board of Appeals regarding a Plan Amendment and Zone Change application proposed by LBNW LLC and originally approved by the Board under files 247-21-

000881-PA, 882-ZC. Rawlings reminded that the 120-day deadline for the Board to render a decision on this matter is September 14, 2023.

1. Does LUBA's remand require the County to conduct an analysis beyond considering the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties?

Rawlings explained the purpose of this question is to determine if the remand issue is broad or narrow in scope. Stephanie Marshall, Senior Assistant Legal Counsel, added that the intent of addressing highly specific questions is to make the record as clear as possible and also to demonstrate that each of the issues raised by LUBA and the opponent have been fully considered by the Board, given that LUBA faulted the Board for not making sufficient findings to support its initial decision.

A majority of the Board was in consensus that LUBA's remand does not require more than an analysis considering the ESEE consequences of allowing uses under the RI Zone on the subject properties.

2. Is the County required to amend or modify its Goal 5 scenic view inventory under OAR 660-023-0030, or may the County rely on the existing inventory set forth in the Comprehensive Plan?

Responding to Commissioner Chang, Rawlings said the County last updated its Goal 5 scenic view inventory in 1992.

A majority of the Board was in consensus that the County can continue to rely on the existing Goal 5 scenic view inventory set forth in the Comprehensive Plan.

3. Are the conflicting uses identified pursuant to OAR 660-023- 0040(2) those uses allowed under the RI Zone that are not allowed under the EFU Zone?

Rawlings explained that the opponent to this application has argued that the conflicting uses were not adequately identified. Marshall said the question is whether any conflicting uses must be addressed other than those that have been identified.

A majority of the Board was in consensus that that the County complied with OAR 660-023-0040, ESEE Decision Process, by considering as "conflicting uses" those uses allowed under the RI Zone that are not otherwise allowed under the current EFU zoning.

Rawlings reviewed that the next question before the Board is identified as 4(a) on the decision matrix.

4(a) What does the County identify as the "impact area" pursuant to OAR 660-023-0040(3)?

A majority of the Board was in consensus that the Applicant's proposed "impact area" is consistent with OAR 660-023-0040(3).

4(b) Is there a distinction between "ESEE consequences" and the "impact area" such that consequences may be documented outside of the identified "impact area"?

A majority of the Board was in consensus that there is a distinction in the definitions set forth in OAR 660-023-0010 such that ESEE consequences were appropriately documented by the applicant even if outside of the identified "impact area."

4(c) Can the identified "impact area" be amended at a later proceeding to match the ESEE analysis?

A majority of the Board was in consensus that the "impact area" may be amended in an iterative manner along with updating the ESEE analysis pursuant to OAR 660-023-0040(1).

In response to discussion, Marshall described the standard for an acceptable ESEE analysis as set forth in OAR 660-023-0040(1), which states that an "ESEE analysis need not be lengthy or complex but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected."

Discussion ensued on the question of whether the Board wishes to allow fully, allow in a limited way, or prohibit conflicting uses under OAR 660-023-0040(5). Commissioner Chang asked if conflicting uses are allowed in a limited way, if the Board could specify which ones are to be allowed or place restrictions on the ones that would be more visually impactful.

In response to Commissioner DeBone, Planning Manager Will Groves said the applicant has asked that the Board find there are no protection measures required for conflicting uses, but rather that these be allowed outright.

*The Board was in consensus to take up the remainder of the meeting agenda items and, following a lunch break, resume working through the rest of the decision matrix on this matter (see page 9).*

## 10. 2023 Spay & Neuter Grant Program Award Recommendations

Stephanie Robinson, Administrative Analyst, explained that the County's dog licensing process invites residents to voluntarily donate to local non-profit organizations which offer spay and neuter services. Under this program, funds may be used for various purposes associated with providing, encouraging or expanding spay and neuter procedures.

Robinson said in June, the Board approved allocating a total of \$10,000 for this program in the current fiscal year. Following a solicitation, four applications were received and evaluated by the Dog Control Board of Supervisors, which scored the applications and developed award recommendations for the Board's consideration.

Commissioner Chang commented on the recommended award to the Street Dog Hero organization. Deputy County Administrator Whitney Hale said the grant agreement could make clear that the awarded funds are to be used for spay and neuter efforts in Deschutes County.

ADAIR:	Move approval of 2023 spay & neuter grant awards to program applicants as recommended by the Dog Control Board of Supervisors	
CHANG:	Second	
VOTE:	ADAIR:	Yes
	CHANG:	Yes
	DEBONE:	Chair votes yes. Motion Carried

### OTHER ITEMS:

- Commissioner DeBone shared that he has been asked to speak at the Redmond Rotary next week and asked if the Board opposes or supports his idea of speaking about possibly establishing a long-term visitor area.

Commissioner Chang supported Commissioner DeBone speaking to this subject if it is presented as his idea and not the Board's or the County's.

Discussion ensued regarding available County-owned land in Redmond, the planned land exchange with DSL, various efforts to address homelessness, and coordination with other entities including the Fair & Expo Center.

*At 11:55 am, the meeting was recessed to reconvene at 1:30 pm to continue deliberations on the remand of the LBNW LLC Plan Amendment and Zone Change.*



*The meeting was reconvened at 1:30 pm.*

**9. Deliberations: Remand of LBNW LLC Plan Amendment and Zone Change**  
(continued from page 7)

Rawlings reviewed that the next question before the Board is identified as 5(a) on the decision matrix.

- 5(a) Does the County accept and adopt as its own the Applicant's updated ESEE analysis as appropriately documenting the economic, social, environmental, and energy consequences of allowing or prohibiting the conflicting uses on the subject properties?

Following discussion, a majority of the Board was in consensus to accept and adopt as its own the Applicant's updated ESEE analysis.

- 5(b) Does the Applicant's updated ESEE analysis address the Opponent's objection that conflicting uses were inappropriately grouped together?

A majority of the Board was in consensus that the updated ESEE analysis addresses concerns regarding grouping conflicting uses together in the initial ESEE prepared by the Applicant.

- 6(a) Does the Board wish to allow fully, allow in a limited way or prohibit conflicting uses under OAR 660- 023-0040(5)?

A majority of the Board was in consensus that the conflicting uses should be allowed fully pursuant to OAR 660-023-0040(5)(c).

- 7(a) Does the ESEE analysis demonstrate that the conflicting use is of sufficient importance relative to the resource site?

Marshall explained that this question asks if the Board finds that its decision to allow the conflicting uses fully is supported by the ESEE analysis.

Following discussion, a majority of the Board was in consensus that the ESEE analysis demonstrates that the conflicting uses is of sufficient importance relative to the resource site.

- 7(b) Does the ESEE analysis demonstrate why measures to protect the Goal 5 scenic view on the subject properties should not be provided?

A majority of the Board was in consensus that the ESEE analysis demonstrates why measures to protect the Goal 5 scenic view on the subject properties should not be provided.

8. Is compliance with OAR 660-023- 0050(1) demonstrated by the Applicant's consent to the subject properties continuing to be subject to the LM Combining Zone land use regulations because there are no proposed amendments to the Comprehensive Plan and the LM Combining Zone land use regulations before the Board in the application?

A majority of the Board was in consensus that compliance with OAR 660-023-0050(1) is already achieved because the Applicant's consent to the subject properties remaining in the LM Combining Zone means that all required Comprehensive Plan provisions and land use regulations are already in place.

ADAIR: Move approval of the decisions made pertinent to the remand of LBNW LLC Plan Amendment and Zone Change application 247-21-000881-PA, 882-ZC (247-23-000398-A)

DEBONE: Second

VOTE: ADAIR: Yes  
CHANG: No  
DEBONE: Chair votes yes. Motion Carried 2 - 1

Rawlings said staff will return on August 30<sup>th</sup> with a draft ordinance for the Board's consideration.

#### **OTHER ITEMS:**

- Peter Gutowsky, Community Development Director, said on August 30<sup>th</sup>, staff will present information on potential options for the Historic Landmarks Commission which has experienced a slowdown in citizen interest and involvement.

County Administrator Nick Lelack said in many communities, the Planning Commission serves as the body which advises on issues concerning historic and cultural resources and reviews development applications for alterations to designated historic sites and structures.

- With regard to the idea discussed earlier of possibly establishing a long-term visitor area on County-owned property in Redmond, Lelack sought direction whether staff should work to further develop this concept in coordination with the Board.

Commissioner DeBone commented on efforts to address homelessness such as the Oasis Village and Veterans Village programs and a planned RV campground next to Oasis Village. He supported developing a less structured option at minimal cost, noting if the County offers this kind of sanctioned shelter, it could then enforce unsanctioned camping where that is not desirable.

Commissioner Chang was open to a rigorous and objective analysis of this concept and noted that the County has not yet decided how to use the 45 acres.

Commissioner Adair said she is meeting with the Redmond Mayor Ed Fitch later today and will take that opportunity to raise this subject at that time.

- Commissioner Adair announced that St. Charles is considering dropping the Medicare Advantage program, which would negatively affect thousands of people.

Commissioner DeBone requested an email from staff with more information.

**EXECUTIVE SESSION:** None

**ADJOURN:**

Being no further items to come before the Board, the meeting was adjourned at 2:16 pm.

DATED this 20<sup>th</sup> day of Sept. 2023 for the Deschutes County Board of Commissioners.

  
ANTHONY DEBONE, CHAIR

**ATTEST:**

  
RECORDING SECRETARY

  
PATTI ADAIR, VICE CHAIR

  
PHIL CHANG, COMMISSIONER