



BOARD OF COMMISSIONERS

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

FOR RECORDING STAMP ONLY

BOCC MEETING MINUTES

1:00 PM

MONDAY July 22, 2024

Allen Room
Live Streamed Video

Present were Commissioners Patti Adair, Tony DeBone and Phil Chang. Also present were County Administrator Nick Lelack; Deputy County Administrator Whitney Hale; Senior 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 webpage www.deschutes.org/meetings.

CALL TO ORDER: Chair Adair called the meeting to order at 1:01 pm.

CITIZEN INPUT:

- Becca Rohleder expressed concern about the growing population of unhomed persons around La Pine. She shared the results of informal surveys which indicate the presence of 191 unhomed persons and said most are homeless due to COVID, unemployment, lack of affordable housing, and/or addiction. 63% have been homeless for two or more years, and some for up to eight years. Saying that some homeless persons in La Pine have relocated from Bend or Redmond, she asked for help from the Board in addressing this situation.

Commissioner Adair thanked Ms. Rohleder for her work on this issue and for compiling the statistics.

AGENDA ITEMS:

1. Proclamation: Support for Restricting the Sale of Flavored Tobacco Products

Jessica Jacks, Public Health Program Manager, reported that the drug most often used by high school students is e-cigarettes. She spoke to the importance of delaying youth from experimenting with or using drugs, which makes it less likely that they will ever become addicted.

Jasmine Gerraty, Community Health Specialist, said the County offers tobacco cessation groups for smokers, many of whom wish they had never started smoking. Saying that 9 out of 10 adults who smoke started before the age of 18, she noted that vaping is now the preferred way for youth to consume tobacco, and many youth favor using a flavored tobacco product.

Kari Hampton, Grassroots Manager American Cancer Society, said the American Cancer Society strongly supports the removal of flavored tobacco products from the market.

Commissioner DeBone said he will not support the proclamation because it is up to the State legislature to decide whether to prohibit the sale of flavored tobacco products.

Commissioner Chang said the proclamation does not constitute a regulatory action but rather supports a potential regulation.

CHANG: Move approval of Document No. 2024-648, a proclamation supporting restrictions on the sale of flavored tobacco products

ADAIR: Second

VOTE: CHANG: Yes

DEBONE: No

ADAIR: Chair votes yes. Motion Carried 2 - 1

Commissioners Adair and Chang read the proclamation into the record.

2. Oregon Department of Education Office of Juvenile Justice and Delinquency Prevention Title II Formula Grant Application

Trevor Stephens, Community Justice Business Manager, sought authorization to apply for a grant from the Oregon Department of Education Office of Juvenile Justice and Delinquency Prevention, explaining that the funds would be used to address the various causes of juvenile delinquency in an effort to reduce the

involvement of juveniles in the justice system. Some funds would be used to expand youth mentoring and after-school and arts-based programming, while others would go to develop a substance use disorder treatment program.

Saying the grant application is due today, Stephens said Community Justice requests Board authorization to apply for a total of \$250,000. He concluded that no new staff would be hired with any awarded funds.

CHANG: Move approval for the Community Justice Department to apply for a Oregon Department of Education Office of Juvenile Justice and Delinquency Prevention Title II Formula Grant

DEBONE: Second

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

DEBONE: Move to authorize either Community Justice Director Deevy Holcomb or Deputy County Administrator Erik Kropp to sign the required certificate of compliance

CHANG: Second

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

3. Work Session in preparation for a public hearing on the remand of the 710 Properties/Eden Properties Plan Amendment and Zone Change application

Haleigh King, Associate Planner, said a public hearing has been scheduled for July 24th on the remand by the Oregon Land Use Board of Appeals (LUBA) pertaining to the application to change the Comprehensive Plan designation and zoning of approximately 710 acres owned by Eden Central Properties. King reminded that after this application was approved by the Board on December 14, 2022, it was appealed to LUBA in January of 2023. LUBA subsequently remanded this matter to the Board; a final County decision is due no later than October 24, 2024.

Commissioner DeBorne noted that he had testified in front of LUBA on this appeal.

King listed the five issue areas identified by LUBA for the Board to address, as follows:

- Findings related to the ability to use the subject property for farm use in conjunction with other property;
- Findings related to the source of feed for farm uses involving animals;
- Findings related to whether the subject property is suitable for farm use as a site for the construction and maintenance of equipment and facilities used for farm activities;
- Findings related to whether retaining the property's agricultural designation is necessary to permit farm practices on adjacent or nearby lands; and
- Findings related to impacts on surrounding land use in accordance with comprehensive plan policies and zoning ordinances, specifically, water, wastewater, and traffic impacts on surrounding agricultural lands and the agricultural industry.

King said the applicant has requested that the record be re-opened to allow the submission of new information pertinent to these issue areas. Staff recommends that the Board approve this request.

King added that under County Code, only persons who were entitled to receive notice or who participated in the prior County process can participate in a public hearing regarding a remand. In addition, the evidence presented must be relevant to the issues on remand.

The Board was in consensus to re-open the record in the limited manner described.

Discussion ensued regarding how to ensure that any comments received at the public hearing are limited to those who are eligible to participate. Stephanie Marshall, Senior Assistant Legal Counsel, cautioned of the risk of a procedural objection if testimony is provided by non-eligible persons, or by eligible persons on non-eligible topics.

In response to Commissioner Chang, Marshall said LUBA has indicated that further decision-making is required on this matter. She advised that the Commissioners bring an open mind to the specific issues which will again be before it, and carefully consider all new evidence which is presented. She summarized that LUBA does not see sufficient support in the record on these five issues.

Responding again to Commissioner Chang, Marshall said the Board will be able to ask questions of the applicant at the public hearing.

King added that there is no appellant in this situation, and the applicant is only responding to the remand issued by LUBA.

In response to Commissioner Chang, Marshall said an interested party, including the applicant, could appeal the Board's upcoming decision to LUBA. Outside of that, however, LUBA will not take further action on the Board's decision.

Will Groves, Planning Manager, characterized the remand as a "show your homework" assignment from LUBA. He said new evidence is allowed to be presented at this time because LUBA was not able to determine if the decision reached by the Board is wrong or right based on what was previously submitted.

4. **Discussion of DCC 11.04 following the Grants Pass USSC decision**

Dave Doyle, County Counsel, summarized the decision of the United States Supreme Court in *Grant Pass v. Johnson* in which the Court determined it is not cruel or unusual to arrest someone for unsanctioned camping. Saying this decision supports Deschutes County Code section 11.04 regarding the removal of persons and property from unsanctioned encampments, Doyle added that if the County decides to take action in reliance on DCC 11.04, notice provisions would apply, ADA accommodations would have to be offered for disabled persons, and the County must be able to direct removed persons to an alternate site.

Commissioner Adair referred to a program in Eugene which has been very successful in offering supportive services to homeless persons for 90 days.

Continuing, Doyle said it would be best to give plenty of due process and opportunity to challenge the removal of an encampment. He shared that the County drafted the code to allow for enforcement on federal land should the federal jurisdiction provide authorization.

Commissioner Chang asked if the US Forest Service could selectively enforce the clearing of encampments on some of its lands but not others. Doyle said this could result in legal challenges unless specific, unique situations were shown.

Commissioner DeBone spoke to unsanctioned encampments on County-owned property in east Redmond and north Bend and supported proceeding with implementing DCC 11.04 at this time. He viewed this as an opportunity to assist homeless persons, saying it is better for them to be in a sanctioned place and able to receive supportive services.

Commissioner Chang said the County has not yet established one or more alternate locations where people could relocate to when displaced.

Doyle referred to different opinions on what would constitute an alternate site and said the question is what is objectively reasonable.

Commissioner DeBone supported encouraging people to camp only in certain locations and abide by community norms. He noted that the County is spending an estimated \$14,000 each month at Juniper Ridge, with no end in sight. He said the County could utilize the 45 acres owned by it in Redmond and work with the City to give 90-days' notice before clearing encampments.

Erik Kropp, Deputy County Administrator, said Redmond's City Code requires a six-foot fence, a code of conduct, some type of case management services, a phone number to call during the day, and a phone number to call in off-hours. The County would have to pay the service providers.

Commissioner Adair said it would not be necessary to fence the entire 45 acres. Kropp said if any area is fenced, on-site management would be needed in the fenced section.

Discussion continued on utilizing part of the County-owned 45 acres in Redmond for a sanctioned camp. Doyle noted that some populations have different needs than others—for example, people with children or pet owners. He said it is not known what a court might require be provided for an alternate location.

Commissioner Chang spoke to focusing on what is effective and addresses key requirements. Noting that safe parking programs are highly space-efficient, he said leadership from the community (e.g., non-profits) is needed.

Commissioner DeBone supported making a clear decision to move people from other areas to one area. Saying his goal is to not have unsanctioned camping, which results in environmental damage and an ongoing threat of wildfires, he said moving camps to a sanctioned area would help consolidate a big, spread-out problem and allow addressing it in a more controlled fashion.

Commissioner Adair wanted to hear input from service providers.

Commissioner DeBone suggested offering relocated persons six months of free camping, potable water, and trash pick-up. Commissioner Adair supported offering these services for 90 days rather than six months.

5. **Treasury Report for June 2024**

Bill Kuhn, County Treasurer, presented the Treasury Report for June of 2024.

A break was announced at 3:01 pm. The meeting resumed at 3:09 pm.

6. **Finance Report for June 2024**

Robert Tintle, Chief Financial Officer, presented the preliminary Finance Report for June of 2024.

7. **Deliberation #1: Deschutes County 2040 Comprehensive Plan Update – Chapter 3, Farm and Forest Resources**

Nicole Mardell, Senior Planner, reviewed the process approved by the Board to deliberate on changes to the 2040 Comprehensive Plan and invited the Board to suggest revisions to Chapter 3—Farm and Forest Resources.

In response to Commissioner DeBone, Mardell said the document currently before the Board is the second draft of this chapter, dated March 15th, which was presented prior to the Board’s initial public hearing. She noted that simple scrivener’s errors will not constitute policy decisions.

Commissioners Adair and DeBone supported adding a third data point to the graphic on page 3-3 which illustrates the number of days over 90 degrees in Brothers to include the number of days this happened in 1973.

On page 3-2, “Opportunities, Challenges and Considerations,” Commissioner Chang suggested adding language regarding declining forest products to state this is due to “unsustainable harvest levels” or “overharvesting” which has reduced the overall footprint of the timber industry in Central Oregon. Commissioners DeBone and Adair concurred in adding this language.

Regarding the section titled “Marginal or Low Productivity Soils,” Commissioner Chang suggested adding sentences to reflect that substantial dry land grazing occurs which is not dependent on high quality soils or irrigation.

Commissioner DeBone did not support adding this language, saying that dry land grazing has never been viable. He opposed including any political statement that could involve private property rights.

On page 3-3, Commissioner Chang suggested adding the following sentence to the section titled “Water Supply and Irrigation”: “Canal piping and on-farm efficiency measures can improve water supply reliability for junior water rights holders, but additional conservation measures and investments in updated infrastructure are needed.”

Commissioner DeBone said it is not questioned that water is valuable and hence that conservation is good. Commissioner Chang saw tremendous opportunities to conserve more than is currently being done.

On page 3-4, Commissioner Adair asked that the map legend reflect the dates on which these districts were awarded water rights.

On page 3-5, Commissioner Chang suggested modifying the sentence which reads "As timber harvesting decreases, other priorities for forest land are emerging" to add "including the need to manage for community wildfire protection." Commissioner DeBone said community wildfire protection is not a use of federal lands, but rather an activity.

On page 3-6, Commissioner DeBone questioned the statement about Skyline Forest, which is privately owned, and a subsequent statement about the efforts of the Deschutes Land Trust to facilitate a community visioning process to identify preferred community uses if any of this land were to be purchased as a privately held recreational asset. He noted that these referenced efforts pertain to the goals of a private organization.

The Board was in consensus to remove the references to Skyline Forest.

Commissioner Adair said the sentence which states that "The proximity of federal forests for hiking, mountain biking, skiing, hunting, fishing, wildlife viewing and other outdoor recreation draws tourists and residents alike" conflicts with the reality of what residents near China Hat are experiencing. Mardell said language can be added regarding how homeless encampments affect the recreational use of federal forests.

Commissioner Chang agreed it would be reasonable to refer to this without charged language but simply by saying that homeless encampments on federal lands affect recreational use.

Also on page 3-6, the Board was in consensus to move the second bulleted sentence regarding the strong support of the community for water conservation and efficiency measures to be the top bullet.

Commissioner Adair asked that a photo of a Galloway cow be added to page 3-7.

The Board was in consensus to add a new policy statement 3.2.10 regarding the promotion of compost from County solid waste for agricultural use to improve soils productivity.

The Board was in consensus that the wording of Policy 3.2.5, "Support efforts to control noxious weeds and invasive species," should be made stronger.

On page 3-8, Commissioner Chang asked about Policy 3.3.4 which reads "Continue to work with the State to review and revise accessory farm dwelling requirements to address the needs of local farmers." Mardell said the words "Continue to" could be removed, which Commissioner Chang agreed would be appropriate. He added that this sentence could also refer to the reduction or removal of parcel size restrictions.

On page 3-9, the Board was in consensus to revise Policy 3.4.6 to refer to community wildfire projects, habitat enhancement work as advocated by hunters, and the management of homeless encampments.

On page 3-10, the Board was in consensus to revise section 3.4.10.c to read "Retain and enhance fish and wildlife habitat."

Mardell said the Board will next take up potential revisions to Chapter 5 on Wednesday.

OTHER ITEMS:

- Commissioner Chang spoke to legislation that was proposed but not approved in 2023 regarding child psychiatric emergency centers. Because St. Charles in Bend has been identified as a possible location for such a facility, he has organized a tour and discussion on August 1st and invited all County State legislators along with Congressional staffers to attend.
- Commissioner DeBone attended the Eastern Oregon Counties Association meeting last week; representatives from Jefferson and Crook Counties were also in attendance.
- Commissioner Adair reported on the two workshops held by the Coordinated Homeless Response Office last week.
- Commissioner DeBone announced a community meeting next Monday in South Deschutes County, hosted by the Newberry Regional Partnership.
- Commissioner Adair attended a RootedHomes ribbon cutting in Sisters last Friday.
- Erik Kropp, Deputy County Administrator, presented a draft letter from the Board to Governor Kotek regarding the possible use of property owned by the Gales family for a managed camp.

Commissioner Adair distributed a letter from Laurie and Craig Gales on this same subject.

Noting that the draft letter from the Board to the governor does not ask for anything specific, Commissioner Chang said it would be appropriate to ask that the State pay the required \$25,000 to rezone the property owned by the Gales, or allow them to hire legal assistance to accomplish that.

Discussion ensued about what is allowed in the Rural Residential and Rural Commercial zones. Commissioner Chang summarized that the Rural Commercial zone allows a safe parking operation, but not pods or tiny houses, whereas Rural Residential does allow pods and tiny houses. He foresaw two decisions: first, determine the proper zone for what the Gales want to do, and then decide how best to pursue the desired rezone.

Peter Gutowsky, Community Development Director, said CDD is not in a position to waive fees unless a party is indigent or on behalf of a non-profit organization, but in either case the fee waiver cap is \$5,000.

Commissioner Chang wanted to understand how the governor could assist in this matter. Commissioner Adair shared that Representative Emerson-Levy has indicated that she would support what Deschutes County is asking from the governor.

County Administrator Nick Lelack said the governor could direct that DLCD adopt emergency administrative rules to allow the use of the Gales property for a managed camp. The County could request that the governor make this property available for a managed camp through any means possible.

Commissioner DeBone suggested that the address of the Gales property be included in the letter, and that the reference to Mountain View Community Development's safe parking program make clear that this is located in Redmond. Commissioner Adair said the letter should also state that the Veterans Village project has recently added seven more cabins.

EXECUTIVE SESSION: None

ADJOURN:

Being no further items to come before the Board, the meeting was adjourned at 5:33 pm.

DATED this 4th day of Sept. 2024 for the Deschutes County Board of Commissioners.


PATTI ADAIR, CHAIR

ATTEST:


RECORDING SECRETARY


ANTHONY DEBONE, VICE CHAIR


PHIL CHANG, COMMISSIONER