



BOARD OF COMMISSIONERS

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

FOR RECORDING STAMP ONLY

BOCC MEETING MINUTES

9:00 AM

WEDNESDAY July 17, 2024

Barnes Sawyer Rooms
Live Streamed Video

Present were Commissioners Patti Adair, Tony DeBone and Phil Chang. Also present were County Administrator Nick Lelack, Senior Assistant Legal 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 9:00 a.m.

PLEDGE OF ALLEGIANCE

CITIZEN INPUT:

- George Potter stated his concerns about wildfires and their potentially catastrophic results. Saying he lives in La Pine where the recent Darlene 3 fire originated, he spoke to the increase of the transient population living in encampments on BLM property, some within 200 yards of his house. Although BLM allows camping in one spot for a limited period, some camps have been in the same spot for two or more years. Nearby residents have been threatened with violence and are at risk of having their property burglarized or vandalized, and it is no longer safe to walk the trails near their homes as those are now used for vehicle access to encampments.
- Fallon Bandemer shared that she lives in La Pine and owns property that borders BLM land, less than one mile from where the Darlene 3 fire started. Saying that the concept of public land is sacred to her, she said she has been followed home and

threatened with weapons and dogs, and once had to file a CPS report after witnessing the mistreatment of a child in the encampments. She said her family has had to prepare to evacuate three different times due to fires, and asked for the Board's assistance in addressing these problems.

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

1. Approval of Excess General Liability and Cyber Security Insurance Renewal
2. Authorization to purchase a Schwarze M6 Avalanche Street Sweeper
3. Approval of Service Partner Agreements with EDCO and United Way of Central Oregon
4. Approval of Interlocal Agreement between Deschutes County 4-H and Extension Service District and Oregon State University
5. Approval of minutes of the Budget Committee May 21 and 23, 2024 meetings

CHANG: Move approval of the Consent Agenda as presented

DEBONE: Second

VOTE: CHANG: Yes

DEBONE: Yes

ADAIR: Chair votes yes. Motion Carried

Commissioner DeBone acknowledged the purchase of insurance for cybersecurity and related efforts on the part of the County to shore up these defenses.

Commissioner Chang said next year, the Board should evaluate its allocation of funds to United Way, which are in turn distributed to other organizations. It might be better to directly allocate funds to those recipient organizations unless utilizing United Way as a pass-through gains some benefit.

Commissioner Adair suggested inviting United Way to present information to the Board regarding how it expends these funds.

ACTION ITEMS:

- 6. Notice of Intent to Award a contract for Market Research and Strategic Master Plan Design Services for the Deschutes County Fair & Expo**

Geoff Hinds, Fair & Expo Director, said after a Request for Proposals was issued seeking a qualified individual or agency to provide market research and master plan design services to the Fair & Expo, four proposals were received. The proposals were scored using a qualifications-based review process, with the department selecting Populous Architect, P.C. as the top-ranked proposer.

Hinds explained that the selected consultant will be contracted to perform the following tasks:

1. Explore current market conditions, customer demographics, and future trends impacting the event and fair industry, and assist with preparing and planning for the future of the Deschutes County Fair & Expo property.
2. Develop a comprehensive master plan for the Deschutes County Fair & Expo facility that lays out a clear, well-defined and actionable strategy for the future development and use of the facility.

Commissioner DeBone spoke to the many opportunities available and expressed appreciation that the County is investing in the future of the Fair & Expo by doing this work. Hinds agreed that the goal is to carefully and comprehensively evaluate the potential uses of the Fair & Expo property and how it can benefit as many parties as possible.

Commissioner Chang was concerned that the County is not any closer to finalizing the desired land exchange with DSL than it has been in the past. He questioned proceeding with planning for property that is anticipated to be acquired if it isn't realistic that the land exchange will happen any time soon.

Hinds agreed this timeframe is unclear, and said this was accounted for in the RFP which refers to the possibility of proceeding in two phases if necessary.

Commissioner DeBone was ready to move forward with addressing the unsanctioned camping happening on County-owned land, which must be cleared and cleaned up before it can be developed for economic development purposes.

DEBONE: Move approval of Chair signature of Document No. 2024-590, a Notice of Intent to Award a contract for Market Research and Strategic Master Plan Design Services for the Deschutes County Fair & Expo

CHANG: Second

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

Commissioner DeBone commented that hotels have been constructed in proximity to the Fairgrounds, which enhances the possibility of conventions or similar events and activities.

7. Application for a grant from the Criminal Justice Commission to combat organized retail theft

Kathleen Meehan Coop, District Attorney's Office, explained that if awarded, the District Attorney's Office would use the grant to partner with the Bend Police Department to combat organized retail theft. The goals of this partnership would be to establish relationships with key retailers and develop a plan on how best to address organized retail theft.

In response to Commissioner Adair, District Attorney Steve Gunnels confirmed that organized retail theft happens in Deschutes County, and poses a challenge for both retail loss prevention and law enforcement. Gunnels said it's intended to address this challenge with training and collaboration between law enforcement and retail businesses, adding that if the profitability of organized retail theft can be reduced, these incidents will decrease.

Responding to Commissioner Chang, Gunnels said the most problematic incidents involve large-scale shoplifting schemes with multiple persons taking large amounts of items in a very short time, which often results in tremendous losses for the affected retailers.

DEBONE: Move to authorize the submittal of an application for a Criminal Justice Commission Organized Retail Theft Grant

CHANG: Second

VOTE: CHANG: Yes

DEBONE: Yes

ADAIR: Chair votes yes. Motion Carried

8. Resolution No. 2024-037 imposing public use fire restrictions on unprotected lands and County-owned lands

Kevin Moriarty, County Forester, said beginning in 2014, Deschutes County has imposed public use restrictions to help prevent wildfire starts on unprotected lands and lands owned by Deschutes County. Saying that Resolution No. 2024-037 would impose these restrictions in the interest of public safety, Moriarty gave examples of some of the restrictions relating to smoking, open fires, chainsaws, fireworks and all-terrain vehicles, among other activities.

Commissioner Adair asked to know when the County approved these restrictions last year. Moriarty said the restrictions were not adopted last year, due to him having recently arrived to the position of County Forester and not being aware of the County's annual adoption of legislation to impose public use fire restrictions in alignment with similar restrictions imposed by the Oregon Department of Forestry.

Commissioner Chang asked how these restrictions will be publicized. Moriarty said the County can issue a press release and also share the information with the Sheriff's Office and Project Wildfire to help disseminate it.

Commissioner Chang supported adequate communication of the restrictions, saying this would have a positive impact on compliance.

Commissioner Adair agreed on the need for more public messaging, given that most wildfires are started by humans. She said next year, this resolution should be brought to the Board in May to allow more time to get the word out.

Commissioner DeBone noted this resolution would be in effect until October 15th unless otherwise extended.

CHANG: Move approval of Resolution No. 2024-037 declaring a state of emergency and imposing public use fire restrictions

DEBONE: Second

VOTE: CHANG: Yes

DEBONE: Yes

ADAIR: Chair votes yes. Motion Carried

9. Chair-initiated discussion on Sunbreak Ranch and Lane County Pilot Program

Commissioner Adair shared that she reached out to the governor's office asking for a re-evaluation of the Gales property outside of Bend's Urban Growth Boundary for siting a managed homeless camp. She also sent the governor a packet of information regarding the experiences of residents whose homes are in proximity to encampments in the China Hat area. In response, the State's Housing and Homelessness Initiative Director has asked that Commissioner Adair provide more information.

Saying that the County should establish a managed camp on the Gales property, Commissioner Adair noted the availability of \$1.1 million in State funds to construct pods for homeless persons. She suggested that the Board send a letter

to the governor's office urging action on this proposal while stressing the importance of providing case management services. She acknowledged the efforts of Chuck Hemingway to realize a managed camp on the Gales property.

Commissioner Chang referred to his multi-year advocacy for siting some kind of homeless shelter on the Gales property, noting that the Board previously approved a safe parking ordinance which specifically allows this type of program on properties within one mile of the UGB and could be pursued on the Gales property without State involvement if that property was rezoned.

Commissioner Adair spoke to the risk of fires starting in encampments, which can quickly spread and jeopardize others.

Commissioner Chang agreed that the State should be asked to support expanded case management, which has proven effective in helping to transition people out of homelessness.

Commissioner DeBone noted that the Gales property is privately owned. He did not support taking action to rezone someone's private land unless they directly seek such assistance.

Discussion ensued regarding sending a letter to the governor on these subjects. The Board was in consensus to direct staff to draft a letter for its review.

Commissioner DeBone asked that the Gales be involved in the drafting of any letter to the governor which concerns their property.

10. Public Hearing: Appeal of Psilocybin Service Center

Audrey Stuart, Associate Planner, presented a brief background of the application for a conditional use permit and site plan review to establish a psilocybin service center within the Juniper Preserve destination resort (formerly Pronghorn). The decision of the Hearings Officer denied the application based on: the screening of the parking lot; clearance areas for service drives; and the adequacy of transportation access. Saying that about 220 public comments have been received, Stuart summarized key issues raised in opposition and in support.

The public hearing was opened at 10:39 am.

Corinne Celko, representing the applicant, Juniper Institute LLC, reviewed that after Deschutes County voters twice approved allowing psilocybin use, the Board amended County Code to allow psilocybin service centers in destination resorts. When Juniper Institute applied for a license via a conditional use permit, the

Hearings Officer found that the proposed service center is compatible with the surrounding area. Three issues are the sole focus of today's appeal hearing: screening, clear vision areas, and adequacy of transportation access.

Saying that the matters of screening and clear vision areas can be met through conditions of approval, Celko stated disagreement with the decision of the Hearings Officer regarding the adequacy of the transportation access, referring to the submission of a letter which fully describes the applicant's argument against the Hearings Officer's decision. Celko argued that the scope of the access to the service center property does not include the Bureau of Land Management's (BLM) right-of-way to the resort. Noting that the Hearings Officer found that the internal resort transportation access from Nicklaus Drive and Pronghorn Drive is adequate for the center, Celko disputed that the Hearings Officer was correct to question the adequacy of access from the BLM road.

Commissioner DeBone clarified that the question at hand pertains to the transport of psilocybin along a federally-owned road.

Celko argued that the law is clear that the County cannot involve itself in a dispute between two private property owners, and neither can it interpret the meaning of terms or conditions of a private contract. She said it is wrong for the Hearings Officer to assert that the applicant cannot transport certain material across BLM property when there is no contractual provision which states this.

Celko continued that the easement granted by the BLM to the resort does not refer to the Controlled Substances Act, although it does state that the holder of the easement must comply with all applicable laws, which are listed in the easement. She said it's likely that many people have transported cannabis along this road, which has not led to an automatic breach or termination of the BLM ROW easement.

Celko added that the BLM was notified of this application and appeal, and has not specifically commented on it although BLM did note that the transport of psilocybin across federal land is not legal. Saying it is not the intent of the applicant to threaten the viability of the entire resort, she said because the Oregon Health Authority allows a licensee who grows and manufactures psilocybin to transport it, the applicant for the conditional use permit at Juniper Preserve would not be transporting this material itself.

Celko then explained the applicant's responses to the matters of screening and clear vision areas and its proposals for amending its application to comply with the decision of the Hearings Officer with respect to these.

Bill Walsh, representing the owners of Juniper Preserve, stated his availability to answer any questions from the Board.

Melissa Sanchez, representing the applicant, said the company is committed to implementing robust safety measures.

In response to Commissioner Chang, Celko said the townhomes adjacent to the service center are owned by the resort and not by permanent residents.

Commissioner Chang asked if there is an alternative road access to Juniper Preserve. Noting that cannabis can be transported over I-5, Celko said there is no alternative to using the BLM road to access the resort.

- Piper Lucas wondered if transporting psilocybin on BLM land would open the County to liability and saw no reason that the owners of the resort would put the resort at risk. She supported the proposal and encouraged the Board to approve it.
- Andrew Stamp, speaking on behalf of the Pronghorn Community Association (PCA), said the PCA opposes this application due to the non-compliance with federal law as far as transporting psilocybin across BLM land. He said there is no proof that the BLM right-of-way is a contract and that this access is more akin to a license or a permit, and thus revocable by the BLM. He said while the federal government has specifically said it will not enforce cannabis laws, it has not said the same for psilocybin.
- Jeff Finnigan differentiated between transporting cannabis for personal use and transporting psilocybin for commercial purposes. He was concerned with the possible negative impacts a service center might have on property values if the use is considered to be illegal or questionable and potential sellers are required to disclose an illicit operation to potential buyers.
- Cara Golden said approving the service center would be in violation of federal law. She objected that the proposal directly impacts residents of Pronghorn, but the applicant is not a resident and therefore not similarly affected. She worried that the BLM right-of-way could be unilaterally rescinded and stressed that the BLM has stated it is illegal to transport psilocybin on its road. She urged that the appeal be denied.
- Patricia Lucas spoke to the access issue, saying that although the applicant argues that the BLM right-of-way is not part of the access consideration since the property is directly accessed from Pronghorn Drive and Nicklaus Drive, it nevertheless acknowledges that the primary access to the resort is via a road owned by BLM. She asked that the Board reject the appeal.

- Paul Golden said the primary access to the resort is the BLM-permitted road over federal land, and that road must be used in compliance with federal law. He urged that the Board reject the appeal.
- Carey Brennan said the “applicable law” is not undefined and cannot be taken to mean “Oregon law.” Adding that the BLM permit for transportation access was granted in association with the federal Land Policy and Management Act and the right-of-way must be used in accordance with federal law, he said the holder of a grant remains responsible for all third-party users and their compliance with federal law. He was concerned that allowing the service center would risk the termination of the BLM right-of-way for everyone.
- Nunzie Gould noted there is no platted road to the building, and the County has never deeded a road through this property. She opposed the proposal on the basis of the deficiency of the proposed transportation access.

In rebuttal, Celko reiterated the applicant’s position that the BLM grant of right-of-way is a contract, and a private contract is outside of the authority of land use decisions. She said cannabis and psilocybin are both similarly situated and illegal under federal law, yet the federal government has not stated it will not not enforce cannabis regulations.

Celko added that because both Oregon and Deschutes County have authorized psilocybin service centers, even though psilocybin is not legal under federal law, the federal illegality issue should not be considered and the application should not be denied on that basis.

Celko concluded that the BLM ROW grant is between the BLM and the holder, which is the owner of the resort, and the resort owner is not made responsible for ensuring that cannabis is not transported to the resort over the BLM road.

In response to Commissioner DeBone, Celko said the revised site plan shows compliance with the clear area vision requirements and the screening requirements.

Stuart said if the Board decides to leave the written record open, all comments will be uploaded to the record and the Board will need to determine which of them can be considered in deliberations, due to the limited *de novo* nature of the hearing of the appeal.

The public hearing was closed at 12:06 pm.

The Board was in consensus to close the oral portion of the hearing and leave the written record open until 4 pm on July 24th. The applicant's rebuttal will be due on July 31st and its final legal argument due on August 7th.

A recess was announced at 12:07 pm. The meeting was reconvened at 1:00 pm.

11. Public Hearing to consider accepting a petition to form the Tumalo Basin Sewer District

Dave Doyle, County Counsel, introduced the proposal to form the Tumalo Basin Sewer District, saying that the required second hearing has been scheduled on August 7th. Noting there are 90 registered electors within the proposed boundaries of the district, he said if at least 14 of them submit a request to call for an election, that would happen in November. No such requests have yet been received.

The public hearing was opened at 1:04 pm.

Robert Fish, one of the chief petitioners for the formation of the district, reviewed the history of the Tumalo area, which over time has come to be substantially developed with very few undeveloped properties remaining. He explained that the effort to establish a sewer district was sparked by the Tumalo 2040 Community Plan update which highlighted the desire for local input and control over development and infrastructure. Fish said reasons for forming the sewer district include environmental stewardship and economic considerations.

Nancy Blankenship outlined the legal process followed for the formation of the sanitary district, saying that supporters secured far more than the needed minimum number of signatures from landowners.

Linda Swearingen described the public outreach conducted thus far, including an open house in February. She explained how the proposed district boundary was determined, with anyone who asked to be excluded left outside of the boundary.

Jeff England with Parametrix added that once the district is formed, more properties can be added at any time. England said the economic feasibility conducted assumes a \$5 million project cost and projects revenues and expenses for the first ten years of district operation. Noting that 290 total dwelling units are estimated at full build-out of the system, England said the economic feasibility

assumes a system development charge of \$8,000 per dwelling unit and monthly rates of \$80 per unit.

Ryan Rudnick with Parametrix reviewed the next steps to be taken after the district is formed, including identifying a preferred wastewater system design and pursuing grant and other funding opportunities.

- Jeannine Fraley expressed her support for this effort, which is community-driven and not imposed by a developer. Stating her desire to protect Tumalo as well as the river, she said being in the district will increase property values.
- Martha Gross feared the possibility of septic waste contaminating the ground or river and wanted the area kept pristine for future generations. She supported the proposal and said there is an immediate need in the community for a sewer district.
- Dale Peer was concerned about failing septic systems near the river and elsewhere in the community, saying these pose a risk of contamination and other grave consequences. He felt very strongly that a sewer district is needed, even though his own property is already served by a sand-filtered septic system with back-up pumps.
- Jim Dunn expressed his full support of the proposal as well as his appreciation for the leadership from Robert Fish on this initiative.
- Nunzie Gould expressed concern that property owners might someday be required to hook up to the system. Saying the big picture has not been completely presented, she referred to the established boundary of the unincorporated Tumalo area and the potential for annexation. She said intense growth follows the establishment of sewer systems and asked how the lots which have been platted at 20 feet wide will be developed.
- Tony Norris supported the proposal, saying that a new septic system costs about \$40,000 and the alternative of hooking up to a sanitary sewer system would require a much lower investment by private property owners. He did not want to see Tumalo change very much as it has over the last 20-plus years.

Doyle presented draft Board Order No. 2024-024 which would accept the formation petition and set a final public hearing on August 7th.

Commissioner DeBone noted that, if formed, a district board would oversee the new sewer district—this board would be an independent entity with no oversight by the County. Commissioner Chang confirmed that the State Department of Environmental Quality and the Oregon Health Authority would be responsible for such oversight.

The public hearing was closed at 2:04 pm.

CHANG: Move approval of Order No. 2024-024 accepting the petition to form the Tumalo Basin Sewer District and setting the final public hearing for August 7, 2024

DEBONE: Second

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

Doyle said the record will remain open on this matter up to the time of the second public hearing on August 7th.

OTHER ITEMS:

- Commissioner DeBone reported correspondence received regarding HB 4003 which directed the Oregon State Police to study ways to address Oregon's shortage of medical examiner services and report back to the legislature next year.
- Commissioner Adair said the rates for homeowner insurance policies are rising exorbitantly, and sometimes policies are outright canceled. She supported raising the limit of \$600,000 for the insured value of a home.
- Commissioner Chang reported on the recent REDI board meeting, saying many questions were posed about County zoning outside of Redmond and what is allowed or not allowed under that zoning. He suggested that someone from CDD present to REDI on this subject.
- Commissioner Adair reported on yesterday's FireFree meeting, which included a presentation from Pacific Power on adding meteorologists to assess weather conditions.
- Commissioner DeBone reported on a meeting yesterday hosted by Congressman Bentz regarding the Darlene 3 fire in La Pine, noting that Commissioner Adair was also in attendance.

EXECUTIVE SESSION:

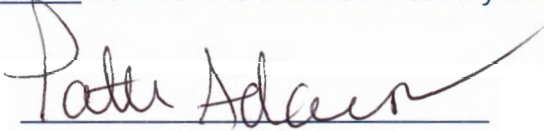
The Board entered Executive Session at 2:10 pm under ORS 192.660 (2) (e) Real Property Negotiations.

At 2:44 pm, the Board exited Executive Session to direct staff to proceed as discussed.

ADJOURN:

Being no further items to come before the Board, the meeting was adjourned at 2:45 pm.

DATED this 28th day of August 2024 for the Deschutes County Board of Commissioners.



PATTI ADAIR, CHAIR

ATTEST:



RECORDING SECRETARY



ANTHONY DEBONE, VICE CHAIR



PHIL CHANG, COMMISSIONER