



BOARD OF COMMISSIONERS

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

FOR RECORDING STAMP ONLY

BOCC MEETING MINUTES

9:00 AM

WEDNESDAY April 10, 2024

Barnes Sawyer Rooms
Live Streamed Video

Present were Commissioners Patti Adair, Tony DeBone and Phil Chang. Also present were County Administrator Nick Lelack, County Counsel David Doyle 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: None

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

1. Approval of Chair Signature of Document No. 2024-037, a Notice of Intent to Award Contract for the Slurry Seal 2024 - Bend Maintenance Zone Project
2. Approval of Order No. 2024-012, setting a temporary speed limit of 35 MPH on portions of Dickey Road and Nelson Road
3. Approval of an amendment to the contract with Kirby Nagelhout Construction Company for the Negus Transfer Station project*

4. Approval of minutes of the BOCC March 27, 2024 meeting

DEBONE: Move approval of the Consent Agenda as amended to remove item 3. for separate consideration

CHANG: Second

VOTE: CHANG: Yes

DEBONE: Yes

ADAIR: Chair votes yes. Motion Carried

*See page 6 for the separate consideration of Item 3.

ACTION ITEMS:

5. Recognition of Eric Ballinger, Application Systems Analyst --10 years of service

IT Director Tania Mahood and Applications Manager Shad Campbell shared their appreciation for Eric Ballinger and his invaluable service to the County. Ballinger was described as a cornerstone of the IT team and praised for his easygoing demeanor and vast knowledge.

6. Public Hearing: Draft 2020-2040 Deschutes County Comprehensive Plan

Nicole Mardell, Senior Planner, introduced the public hearing on the 2020-2040 Comprehensive Plan Update, explaining that the Plan defines the community's vision for housing, recreation, transportation, and land use, among other elements. She recounted the extensive community outreach undertaken in developing the update as well as the Planning Commission's in-depth review, which included three public hearings. Major themes of the public input received thus far include the rezoning of farmland, protection of wildlife, dark skies, private property rights and water management.

The Planning Commission recommended several revisions relating to: balancing regulations with incentives; exploring a new zoning category to balance high desert resources with housing; revising Policy 8.1.2 (collaboration among recreation agencies and property owners for trail projects); and deleting Policy 5.1 regarding the consideration of impacts to water quality and quantity for destination resorts and other large-scale developments.

Mardell summarized comments submitted by agencies and members of the public in advance of today's hearing.

Commissioner DeBone noted this process started in April of 2022 recognized the large amount of work accomplished since then.

County Administrator Nick Lelack announced that staff won a statewide award for the community engagement done on this project.

The public hearing was opened at 9:31 am.

- Daniel Baca said according to the State, his property, which is zoned Exclusive Farm Use, must be in tax deferment in order to qualify as a farm. Saying this requirement poses a barrier to his ability to farm or improve his property, he urged the removal of language which is aimed at preventing the wrongful use of agricultural buildings but in reality prevents farming on land that has structures.
- Ken Katzaroff, representing 710 Properties, LLC et al., asked that when the Comp Plan update is adopted, any new or changed provisions apply only to land use applications filed after the date of Plan adoption and not to existing applications. Katzaroff further urged that the Plan retain language regarding the designation of non-resource lands as RREA, specifically as this involves exemptions from Goal 14. He additionally sought changes to the stated aquifer recharge rate in terms of acre feet per year, emphasizing that water use involves the whole system and is not limited to the amount of groundwater withdrawn. He asked that CDD produce a memo of Commissioner Chang's requested edits to the draft Plan as those are shared.

Commissioner Chang concurred that almost all streamflow comes from groundwater, and some recharged water becomes surface water. He said the Plan should clearly state this and also state how this water is used and by whom.

- Rory Isbell, Central Oregon LandWatch (COLW), expressed concern about the loss of agricultural land and spoke against spot zoning such lands for non-agricultural uses. He encouraged updating wildlife habitat inventories on a regular basis and providing for the protection of these areas, and stated his support for limiting new development in areas affected by declining groundwater levels.

Discussion ensued regarding wildlife inventories and their purpose. In response to Commissioner Adair, Isbell agreed that 30 years ago, Deschutes County did not have a wolf population.

Commissioner Chang said the decline in the mule deer population is attributable to poor/inadequate nutrition, which is affected by habitat loss and the lack of sufficient habitat connectivity.

Commissioner Chang suggested numerous changes to the draft Plan:

- On page 2-10 in policy 2.2.6, add community wildfire protection to the list of efforts requiring collaboration with federal agencies. He added that the section which discusses public lands refers to the “output” of forests, but efforts to make forests more resilient to wildfires is not an “output.”
- On page 3-2, reference the function of public lands on agriculture (i.e., successful livestock operations which require grazing on public lands would not be viable if this was not available).

Commissioner Adair added that Central Oregon has the second shortest growing season in the state, which also impacts agriculture.

Commissioner Chang continued to suggest changes to the draft Plan:

- On page 3-2, acknowledge that one reason for the declining forest products industry aside from species protections, new technologies and international competition is that Central Oregon’s timber was previously harvested at unsustainable rates with the result that mature, high-value timber was liquidated in a short amount of time for short-term profits.
- On page 3.3, state that water conservation efforts could make more water available and potentially shift some marginal agricultural operations to the status of being viable.
- On page 3-5, recognize the need for community wildfire protection of forest lands.
- On page 3-7, add language stating that compost from the County landfill could help improve marginal soils, thereby increasing productivity and water use efficiency. Commissioner Adair agreed this would be a win-win and result in less water usage.
- On page 3-8, section 3.3.4: elaborate on the language regarding accessory farm dwelling requirements to address the labor challenges experienced by farmers. Remove the size threshold in these requirements so this criteria is not a barrier, or replace it with a profitability threshold or a total amount of production in terms of economic value threshold.
- On page 3-9, section 3.4.6: add language regarding coordinating with the US Forest Service and the Bureau of Land Management on community wildfire protection and the provision of wildlife habitat as well as the need to connect federal habitat areas with others.

Commissioner DeBone spoke to the need for prescribed burns and the importance of offering grazing opportunities for all species. Commissioner Adair

commented that junipers crowd out the native bitterbrush, which mule deer rely on for sustenance.

Commissioner Chang continued to suggest changes to the draft Plan:

- On page 3-10, section 3.4.10.c: change this wording to say “Enhance and retain” fish and wildlife habitat.
- On page 5-3 regarding water resources—correct this to reflect that groundwater level declines require conservation on the part of all users (e.g., residential, municipal, destination resorts), since water savings cannot be achieved through addressing surface water supply limitations.
- On page 5-5, recognize the safety zones created by natural hazards such as fire as well as flooding and include carbon sequestration as a co-benefit of open space.
- On page 5-6, clarify the difference between surface water and groundwater; emphasize the decline in precipitation; and state that the second highest reason for groundwater level declines is groundwater usage. Further emphasize that the cost of deepening a well can be up to \$100,000, and thousands of individual domestic wells could go dry in upcoming decades. State the need to focus on conservation to avoid this from happening.

Commissioner DeBone said he does not necessarily agree that climate change effects will result in less water.

Commissioner Chang said the only way to free up water outside of existing permits is by conservation.

Commissioner Chang continued to suggest changes to the draft Plan:

- On page 5-7, correct the erroneous statement that no long-term water level declines are attributable to groundwater usage in the Deschutes Basin.
- On page 5-8, correct the reference to reservoirs to indicate that most water flow does not come from stored water, and most irrigation districts are not dependent on reservoirs.
- On page 5-9, add the following entities which the County should work with on water distribution: USDA, Bureau of Reclamation, other key non-governmental organizations.
- Under goals and principles regarding in-stream flows and water rights holders, include language on the need to ensure adequate flows for habitat and to help those with junior water rights fulfill those rights.
- Under goal 5.2, add language to encourage improving efficiencies and conserving groundwater for users including homeowners and businesses.

- Policy 5.4.4: Mention the Oregon spotted frog in the list regarding habitat conservation efforts.
- On page 5-14, add a reference to hunting as a valued activity that should receive protection efforts.

Commissioner Chang and staff agreed to communicate the remainder of his suggested revisions outside of the Board meeting—those will be listed in a memo and thereby made available for others to review.

The public hearing was closed at 10:32 am. Future public hearings are planned for Sunriver and Sisters.

3. Approval of an amendment to the contract with Kirby Nagelhout Construction Company for the Negus Transfer Station project (from page 2)

In response to Commissioner Adair, Tim Brownell, Director of Solid Waste, confirmed that the change orders for this project together totaled more than \$1 million. Brownell explained that in the course of the excavation conducted for the project, trash was discovered in unexpected areas which required the removal of that material and the subsequent backfilling of those areas. Other change orders involved additional grading and the need to add bollards to protect door jambs (these supports were not identified in the project plans), and other necessary work items.

County Administrator Nick Lelack added that the project as a whole is still coming in substantially under budget.

DEBONE: Move approval of Document No. 2024-291 amending the contract with Kirby Nagelhout Construction Co. relating to change orders and extension of the completion date for the Negus Transfer Station project

CHANG: Second

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

A break was announced at 10:36 am. The meeting resumed at 10:39 am.

7. Public Hearing: Commercial activity in conjunction with farm use (winery) in the Multiple Use Agricultural Zone

Nathaniel Miller, Associate Planner, introduced the matter concerning the appeal of a conditional use permit which was approved by the Hearings Officer for commercial activity in conjunction with farm use (winery) at 20520 Bowery Lane.

Commissioner Chang shared that he was notified of concerns regarding his receipt of campaign contributions from Toby Bayard, the appellant in this matter. Although County legal counsel has confirmed that campaign contributions do not necessarily result in bias or prejudice, and he was, in fact, able to participate so long as he can state that he will remain fair and impartial, he was open to recusing himself to avoid the appearance of bias. Commissioner Chang asked that if he recuses himself, his fellow Commissioners commit to doing the same in other proceedings where campaign contributions were received by them.

Commissioner DeBone declined to comment on Commissioner Chang's statements.

Commissioner Adair said she had no conflict of interest in this matter.

Elaine Albrich, an attorney representing the applicant, confirmed that the applicant questions Commissioner Chang's ability to be unbiased in this matter considering that the appellant has contributed considerable funds to his re-election campaign. She clarified that the applicant is not asking that Commissioner Chang recuse himself, but if he does not, the applicant wishes to preserve its legal right to challenge the Board's decision on the basis of bias.

Commissioner Chang believed it reasonable for every Commissioner to recuse themselves from matters involving campaign contributors.

County Counsel David Doyle said there is no absolute requirement that Commissioner Chang recuse himself. Adding that Commissioner Chang has stated he can be impartial in this matter, Doyle said it is up to the commissioner whether to recuse himself.

Commissioner Chang said given the concern about perception of bias and the threat of a possible legal challenge, he was willing to recuse himself from participating in the discussion of and any action on this matter. Encouraging his fellow Commissioners to do the same in similar cases, he exited the dais and room at 10:55 am.

The public hearing was opened at 10:55 am.

Continuing, Miller presented a staff report summarizing the application for a conditional use permit for a commercial activity in conjunction with farm use to establish a winery with associated uses in the Multiple Use Agricultural Zone (MUA10). The applicant proposes to convert a portion of an existing accessory building into a tasting room and office space and convert an existing barn for small-scale wine production and wine storage. The application further sought approval to host wine-related events such as tastings, dinners, and other events directly related to the sale and promotion of wine produced from the vineyard. The Hearings Officer approved the application upon 33 conditions. That decision was subsequently appealed.

Elaine Albrich from Davis Wright Tremaine, representing the applicants, said this proposal was specifically timed to coincide with the Hunnell Road improvements so traffic to the property could be diverted away from Bowery Lane. She requested that at the conclusion of the public hearing, the record be left open for additional written materials.

Albrich shared a map showing the location of the property and listed other uses allowed as commercial uses in the MUA10 zone.

Duane Barber said he and Deena Barber have owned this 5.43 acre property since 1998, raising cattle and hogs and planting grape vines in 2012. Saying that rocky slopes are suitable for growing grapes, he said the property now has 4,000 vines and the resulting wines have won numerous awards. The Barbers seek to be able to sell their wine directly to consumers, which requires having a conditional use permit to allow this commercial activity. Noting that its vineyard is organic, regenerative and sustainable, he hoped to set an example for others to follow.

Albrich gave an overview of the planned operations, saying these are envisioned to occur in existing buildings. Noting that the proposed activities are described in detail in the application for the permit—including the amount of off-street parking and anticipated seasonal hours of operation—she referred to a list of planned events, noting all will be offered by invitation only and all of them limited to 25 or fewer people.

Albrich then addressed water rights and explained how wastewater will be managed.

Joe Bessman, transportation consultant, spoke to the existing access routes and said the intention is to encourage visitors to use Highway 20 to Rogers and Hunnell, not Highway 97. He described plans to move the property's driveway

and said the location of the new access gate will ensure adequate sight distance as required. He concluded that the site is expected to generate 37 trips per day.

Albrich then addressed staff-identified conditions which warrant further discussion and confirmed that the applicant is working on an updated site plan. She said there is substantial evidence to demonstrate that the conditions required by the Hearings Officer have either been met or can be met prior to the winery commencing the added operations.

In response to Commissioner Adair, Albrich said work is underway to remove all right-of-way encroachments.

Deena Barber addressed statements previously raised by the appellant, saying no real evidence exists that wine tastings have been conducted on the property. She said Lava Terrace Cellars has not produced wine on-site but has bought and stored winemaking equipment. Disputing that a winery cannot be located other than on EFU-zoned land, she spoke to her outstanding reputation in the business community.

Appellant Toby Bayard said both Oregon law and Deschutes County Code clearly state that wineries are restricted to EFU-zoned properties of at least 15 acres in size. Saying she does not oppose the vineyard part of this operation, she argued that the property owners cannot legally produce wine using their grapes or grapes from elsewhere. Citing generally to State and County regulations, she said the property owners also cannot offer wine tastings or sell wine. Emphasizing that the applicants are only allowed to grow grapes and have someone else manufacture the wine, she objected that they have been advertising wine tastings for some time and said they have hosted at least one wedding.

Jeffrey Kleinman, representing the appellant, said the proposed use is not allowed in the MUA10 zone. Referring to an exception statement pertaining to resource areas which was issued at the time the Comprehensive Plan was last adopted, he read the statement which allowed for non-commercial uses only. Noting that the Hearings Officer had acknowledged the proposal involves industrial use (i.e., the processing of grapes into wine), Kleinman said this falls outside of the allowed exception as does any commercial use, and no new exception can be approved.

Kleinman also spoke to access issues, saying the bridge is a designated historically significant resource which would risk being negatively affected by traffic to and from the winery. Saying that people will be directed by GPS to use the bridge, he suggested that all traffic to Lava Terrace Cellars be prohibited from using this route. He doubted that the required clear sight distance can be

established once all of the required setbacks are met, said that the existing barn extends into the right-of-way of Bowery Lane, and concluded that the proposed uses are not compatible with a residential neighborhood.

Michele Bayard described potential impacts to the neighborhood from the wastewater that would issue from winery operations, saying that between three and ten gallons of water would be needed per gallon of wine produced just to clean the materials and equipment. Saying this would result in 35,000 gallons of water needed for cleaning alone, he said untreated wastewater can contaminate the aquifer and also release bad odors into the surrounding neighborhood. He was additionally concerned about the potential for dramatic traffic increases on Bowery Lane, which has no sidewalk for pedestrians, and said the covered bridge could be damaged by increased traffic.

A break was announced at 12:04 pm. The meeting resumed at 12:10 pm.

- Michele Forbes stated she is a neighbor who supports the proposed use as a small-scale, agricultural community operation which will connect people to the land and to each other. She viewed the proposal as a local project for locals and said it would be an attractive use of the property.
- Calli Riley shared that she owns and operates a small lavender farm across the street from the proposed use. She stated her support for the application and the applicants.
- Cole Whitfield-Ferguson supported the proposal as an appropriate use of the property.
- Aaron Dixon said he lives directly north of the property, described the property owners as driven and dedicated, and said he has never had issues or been inconvenienced as a result of living in proximity to them. Noting that the MUA zone is "Mixed Use Agricultural," he said the property owners support the community in many ways. He believed the traffic impacts from the commercial activity will be negligible.
- Shana Pitman relayed how she came to meet the applicants and expressed her appreciation that the farm is based on permaculture, which is designed to be sustainable. She viewed the proposal as a positive use of the property.
- Kerry Damon shared his experience in developing and managing vineyards in California and Oregon and said the proposed use would be environmentally conscious, using no herbicides or pesticides and employing water conservation techniques for good land stewardship. He praised the proposed use as economically sustainable and community-minded agri-tourism.
- Sterling Respass represented various veteran and non-profit organizations which support this proposal of Lava Terrace Cellars and appreciate the company's involvement in the community.

- Crystal Dollhausen, who lives next door to the proposed use, stated her support for the conditional use permit. She explained that she is refusing to pay her HOA dues out of principle.
- Grace Cooper, an employee of Redside Vineyards, read a letter from Megan Hernandez of Bayard Fox Selections supporting the proposed use.
- Jesus Hernandez, a winemaker from the Napa Valley, supported the proposal which will utilize regenerative farming practices for environmental sustainability. He said chemicals associated with winemaking are negligible and do not harm the environment.
- Kyle Forbes said he owns a small hobby farm in the area of Lava Terrace Cellars and expressed support for the conditional use permit, saying these kinds of uses enrich the community.
- Elektra Smith, who is employed by the Barkers, spoke highly of their characters and said they are excellent employers.
- Blakley Weber, previously employed by the Barkers, hoped that the conditional use permit will be approved.
- Rick Lloyd said the CCRs for the neighborhood state that it is a residential community with some agricultural zoning. Although the Barkers are nice people and what they propose is good for small businesses and the agricultural community, this proposal is sited in a residential area and the proposed wine production and associated commercial activity has divided the neighborhood. Noting that the HOA voted against allowing this, he asked if an exception will be made for additional commercial activity in the MUA10 zone.
- Loel Jensen said the opposition to this proposal is not a vendetta or personal, but simply based on the unlawfulness of the proposed use. She was concerned that other non-residential uses might also be attempted, said some HOA members have been talked into not paying their dues, and concluded that commercial operations which could impact the neighborhood in a negative way should not be allowed.

A break was announced at 12:52 pm. The meeting resumed at 12:56 pm.

Elaine Albrich introduced the rebuttal for the applicant, saying that the proposed use is legal in the MUA10 zone, which expressly allows commercial activities in association with farm use.

Phil Henderson confirmed that he had filed a lawsuit on behalf of the Barkers regarding updated CC&Rs which were approved by the neighborhood HOA via a non-unanimous vote and then recorded. He questioned the validity of the HOA as well of that of the updated CC&Rs and explained the controversy over the dues is because these have not been used for road maintenance as anticipated; instead, they have been used for legal fees which some residents view as inappropriate.

Responding to Commissioner DeBone, Duane Barker said Lava Terrace Cellars applied for a Type 1 home occupation permit in 2018 to allow it to sell wine off-premise as permitted by OLCC. A type 2 home occupation permit is needed to allow for on-premise activities.

The public hearing was closed at 1:06 pm.

Miller noted the receipt of comments from Larry and Nancy Green, Jesus Hernandez and Deschutes County Senior Transportation Planner Tarik Rawlings.

Will Groves, Planning Manager, encouraged all parties to submit comments regarding the conditions of approval for the permit for consideration by the Board during its deliberations. Groves clarified that agricultural uses are allowed outright on this property, and a conditional use (in this case, the requested commercial activity) may or may not be approved.

The Board was in consensus to close the oral record at this time and leave the written record open to new evidence until 4 pm on Wednesday, April 17th. The applicant can submit rebuttal information until 4 pm on Wednesday, April 24th, and is also allowed to submit final arguments until 4 pm on Wednesday, May 1st.

A lunch break was announced at 1:12 pm. The meeting reconvened at 1:45 pm.

8. Oregon Department of Energy Community Renewable Energy Grant

At staff's suggestion, the Board delayed discussion of this item to its April 17th meeting.

9. Request to Accept Grant Funds for Wolf Depredation and Financial Compensation

Jen Patterson, Strategic Initiatives Manager, said Deschutes County has been awarded grant funds in the total amount of \$32,620.75 from the State for wolf depredation and financial compensation.

CHANG: Move to accept the grant funds for Wolf Depredation and Financial Compensation

DEBONE: Second

VOTE: CHANG: Yes

DEBONE: Yes

ADAIR: Chair votes yes. Motion Carried

OTHER ITEMS:

- Commissioner DeBone reported that the annual Sunriver-La Pine Economic Development luncheon was attended by 160 people.
- Commissioner DeBone congratulated Sunriver Brewing Company on receiving numerous industry awards recently.
- Commissioner Chang testified at the State’s Central Oregon public hearing last week on the draft update of groundwater allocation rules.
- Commissioner Chang attended a meeting with Travel Oregon’s destination stewardship team in Redmond.
- Commissioner Chang visited a modular multi-family housing construction project in Bend and described the manufacturing process which results in housing that is both faster and less expensive to build.
- Commissioner Adair attended the Fair Board meeting.
- Commissioner DeBone announced that the Deschutes Cultural Coalition presented the annual Ben Westlund Memorial Award to Cate O’Hagan, executive director of Arts Central.

EXECUTIVE SESSION:

At 1:58 pm, the Board entered Executive Session under ORS 192.660 (2) (d) Labor Negotiations and ORS 192.660 (2) (e) Real Property Negotiations. Just before leaving Regular Session and convening in Executive Session, County Legal read aloud the Executive Session Announcement.

At 2:39 pm, the Executive Session concluded and the public was invited to return to the room. The meeting’s livestream feed was reactivated and the final part of the meeting recorded for the record.

The Board directed staff to proceed as discussed during the executive session.

ADJOURN:

Being no further items to come before the Board, the meeting was adjourned at 2:40 pm.

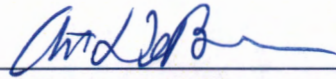
DATED this 15th day of May 2024 for the Deschutes County Board of Commissioners.


PATTI ADAIR, CHAIR

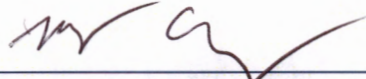
ATTEST:



RECORDING SECRETARY



ANTHONY DEBONE, VICE CHAIR



PHIL CHANG, COMMISSIONER