



## BOARD OF COMMISSIONERS

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

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# BOCC MEETING MINUTES

9:00 AM

**WEDNESDAY August 9, 2023**

Barnes Sawyer Rooms  
Live Streamed Video

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

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**

**CITIZEN INPUT:** None

Commissioner Adair reported that a local family is hosting a Ukranian family with three children and offered to put interested persons in touch with the organizer.

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

1. Approval of Deschutes County Behavioral Health Advisory Board Bylaws
2. Approval of a Memorandum of Understanding with the American Federation of State, County and Municipal Employees to formalize Juvenile Community Justice Position Pay Differentials

3. Approval of a contract with Iris Telehealth to provide tele-psychiatric treatment services
4. Approval of Document No. 2023-740 to authorize the purchase of a Caterpillar 938M Loader for the Solid Waste Department
5. Approval of a lease with Getz Properties, LLC for space at 2100 NE Wyatt Court
6. Approval of Document No. 2023-646, an amendment extending the services contract with Clean Earth Environmental Solutions, Inc.
7. Approval of an amendment to the contract with HHPR, Inc. for Phase 2 of the Downtown Campus Parking Project
8. Approval of a Notice of Intent to Award a contract for the paving of Old Bend-Redmond Hwy: US 20 to Tumalo Rd Project
9. Approval of a Notice of Intent to Award a contract for engineering services for the Hamehook Road Bridge Replacement Project
10. Approval of Resolution No. 2023-047, appropriating a \$300,000 grant from the Oregon Department of Energy for a biomass facility at Mt. Bachelor
11. Acceptance of an Oregon Department of Energy Community Renewable Energy Grant Award
12. Approval of an amendment to a grant from the Oregon Health Authority (#173133-10)
13. Consideration of Board Signature on letters reappointing Alysha DeLorto, Chris Perry, Drew Norris, Jared Jeffcott and Jared Earnest for service on the Deschutes County Ambulance Service Area Committee
14. Approval of the minutes of the June 21, 26 and 28 and July 5, 10 and 12, 2023 BOCC meetings

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

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

Commissioner Chang said having served on the advisory board for the State's community renewable energy grant program, he was pleased to see funds being

awarded to innovative projects including the Mt. Bachelor biomass facility and another project at the Deschutes County Fairgrounds.

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## **ACTION ITEMS:**

### **15. First reading of a revised ordinance amending Deschutes County Code relative to camping and other sleeping associated activity on public property**

Dave Doyle, County Counsel, advised a new first reading of this ordinance as revisions were made to the proposed text after the initial first reading to add a new section 11.04.065 concerning "extra jurisdictional application." Doyle explained the purpose of this section is to make it expressly clear that enforcement on public non-county property in the unincorporated areas would only be allowed upon agreement with the governmental entity (whether city, state or federal) which owned the property.

Commissioner Chang asked to know the status of any negotiations happening with respect to this provision, saying these should be conducted at the Board level and not behind closed doors.

Doyle shared that County Legal responded to a request from an attorney representing the Forest Service who asked for a copy of the draft code. Staff further provided the requestor with previous communications regarding Elk Lake and the understanding which was reached for County enforcement of noise regulations on federal property in that area.

Commissioner Adair said Congressman Benz was in China Hat on Sunday engaging with many residents, at which time he indicated his willingness to work with the USFS on these issues. She added that she will meet with Governor Kotek and the mayors of Redmond and Bend this Friday to seek land use flexibility needed to allow sanctioned camps outside of the UGB.

Commissioner Chang wanted to be involved in any discussions of potential agreements between the Forest Service and DCSO on this subject. County Administrator Nick Lelack agreed to share his request and added that any such agreement would require Board approval.

ADAIR:	Move approval of first reading of Ordinance No. 2013-013 amending Title 11 .04, Public Use, 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.

Commissioner Chang said two weeks ago, the media got details wrong while reporting on this subject. Doyle offered to make sure that all media who ask receive the correct updated document.

#### **16. Public Hearing on a request to vacate a portion of Schibel Road**

County Engineer/Assistant Road Director Cody Smith announced that some parties interested in this matter have asked that the public hearing, which was noticed to occur on August 9<sup>th</sup>, be postponed to next week. In light of those requests, Smith asked that the public hearing be opened and subsequently continued to next Wednesday August 16<sup>th</sup>.

*The public hearing was opened at 9:20 am.*

- Liz Dixon, attorney representing the petitioners Jeff and Kathy Gates, stated that she preferred to testify next week if the hearing is continued.
- Terry Renning said the property owner who opposes the proposed road vacation has unobscured access to Highway 97 for ingress and egress.
- Marlene Renning supported the proposed vacation and said the road is not needed for public access.

*There being no one else who wished to testify at the time, the public hearing was continued to August 16<sup>th</sup>.*

#### **17. Public Hearing: Repeal of the Conventional Housing Combining Zone**

Rachel Vickers, Associate Planner, presented the staff report on the County-initiated proposal to amend Deschutes County Code to repeal the Conventional Housing Combining Zone, which restricts the placement of manufactured or prefabricated homes in specific areas east of Tumalo, west of Tumalo and east of Bend.

Responding to Commissioner Chang, Vickers confirmed that most of the affected properties are ten acres or larger.



*The public hearing was opened at 9:41 am. There being no one who wished to testify, the public hearing was closed at 9:41 am.*

Nicole Mardell, Senior Planner, said because materials from the Planning Commission's consideration of this repeal were not uploaded to the project website until this morning, staff suggests that the Board leave the written record open for a time to allow interested parties the opportunity to comment on those.

The Board was in concurrence to leave the written record open until 4:00 pm on August 16<sup>th</sup> and conduct deliberations on August 23<sup>rd</sup>.

**18. Public Hearing on Land Use File Nos. 247-23-000162-CU, 23-516-A: Secondary Accessory Farm Dwelling**

Haleigh King, Associate Planner, introduced the matter involving a decision by the Hearings Officer to deny a secondary accessory farm dwelling at 19825 Connarn Road.

Commissioner Adair disclosed that in the past, she purchased lavender from this business before its ownership changed hands.

*The public hearing was opened at 9:49 am.*

King said the decision of the Hearings Officer to deny the request for a conditional use permit to allow a secondary dwelling was based on an interpretation that Deschutes County Code section 18.116.070 (A)(1) requires that Class A manufactured homes be used as primary dwellings and thus cannot be used as secondary dwellings. King presented a chart describing the differences between Class A, Class B and Class C mobile homes.

Adam Smith, an attorney representing the applicant, said the essential question before the Board is whether a Class A manufactured home can be used as a secondary use farm dwelling in the MUA-10 zone. He argued that because Class A manufactured homes are also Class C manufactured homes, which are allowed, it follows that a Class A manufactured home is allowed. Smith differentiated Class D, Class C, Class B and Class A manufactured homes and noted that DCC 18.116.070(B)(2) specifically states that a Class C manufactured home is permitted as a secondary accessory farm dwelling. He agreed that ORS 174.010 controls and said the Hearings Officer failed to take DCC 18.116.050 into account as well as DCC 18.116.070(B)(2).

Smith continued that no policy basis exists for requiring an inferior manufactured home to be used as a secondary accessory farm dwelling when an applicant seeks approval of a higher quality structure.

Commissioner Chang agreed the Code is unclear, was concerned about potential policy implications, and supported modifying the Code to clarify what the County wants to allow or prohibit in terms of secondary dwellings on MUA-10 property.

*There being no one else who wished to speak to this matter, the public hearing was closed at 10:28 am.*

The Board was in consensus to close the record along with the public hearing and commence deliberations at this time.

Commissioner Chang said the applicant presented a compelling argument that this use is allowed by Code. Commissioners Adair and DeBone concurred and noted that this property has a history of past and current farm use.

ADAIR:	Move to reverse the Hearings Officer decision and allow a Conditional Use Permit for a secondary accessory farm dwelling at 19825 Connarn Road
CHANG:	Second
VOTE:	ADAIR: Yes
	CHANG: Yes
	DEBONE: Chair votes yes. Motion Carried

Commissioner Change stated his desire to revisit this issue at the policy level when these proceedings are complete.

**19. Public Hearing on a declaratory ruling to determine if the marijuana production facility approved under file no. 247-17-000907-AD has been initiated**

Avery Johnson, Assistant Planner, said the question before the Board is to determine if the decision of the Hearings Officer to approve an applicant's request was correct after the applicant submitted for land use approval of a marijuana production facility at 26295 Willard Road but conducted substantial construction work before the approval was granted. Johnson said approximately 90-95% of the work needed to establish the use was completed prior to the property owner receiving land use approval.

Johnson explained possible unintended consequences of allowing work to proceed before a desired land use is approved and presented staff's recommendation that the term "holder of land use approval" be specified as the person or entity which possesses approval of a land use decision after that approval has been finalized.

*The public hearing was opened at 10:42 am.*

- John Watson said he purchased this property for this specific purpose and received a license from the State in 2018 to produce marijuana; subsequently, his land use application to the County was approved by the Hearings Officer. Watson stated that he has capitalized the project completely at this point.
- Michael Hughes, an attorney representing the applicant, said no problems were anticipated with the needed land use approval and no neighbors challenged the application or expressed opposition. He said this situation is unique because it involves marijuana production, and the State is no longer issuing those licenses. Hughes said Deschutes County Code does not address expenditures made in advance of land use approval, and the Hearings Officer indicated that applicants should be allowed to incur expenditures prior to obtaining such approval. He disputed that the public was deprived of the opportunity to provide input in the process and concluded that all of the elements of the use initiation have been met.

*There being no one else who wished to speak, the public hearing was closed at 11:03 am.*

Anthony Raguine, Principal Planner, said part of the work done by Code enforcement is to stop applicants from proceeding with development before all necessary approvals are received—these include land use approvals as well as permits.

County Administrator Nick Lelack expressed concern with statements made by the applicant that conversations with staff led him to believe that the land use approval would be granted.

Commissioner Chang asked about the issuance of needed building permits for this use and also asked if other plants could be grown in the constructed greenhouses that would not require land use approval.

Raguine confirmed that agriculture-exempt permits are not reviewed by the planning department and instead are issued at the sole discretion of the building

official. He said any other crop could be grown in the greenhouses without any land use approval required.

The Board was in concurrence to close the record at this time and conduct deliberations in a week or two.

*A lunch recess was announced at 11:15 pm; the meeting resumed at 1:32 pm.*

**20. Consideration of Document No. 2023-710, a Collective Bargaining Agreement with the International Union of Operating Engineers (IUOE), Local 701**

Whitney Hale, Deputy County Administrator, presented the negotiated collective bargaining agreement with the International Union of Operating Engineers, Local 701. Noting this three-year agreement includes a 4% cost of living adjustment effective July 1, 2023, Hale summarized other components of the agreement and listed those who bargained on both sides.

The Commissioners expressed appreciation for the efforts of those who negotiated the agreement.

ADAIR: Move approval of Board signature of Document No. 2023- 710, a Collective Bargaining Agreement with the International Union of Operating Engineers, Local 701

CHANG: Second

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

**21. Oregon Health Authority funding for Medical Reserve Corps**

Emily Horton, Program Manager for Emergency Response and COVID Recovery, described the work being done to establish a Medical Reserve Corps (MRC) for the County and sought approval of a \$297,000 grant of federal funds administered by the Oregon Health Authority for this program. Horton said staff proposes that most of these funds be used to add a 1.0 regular FTE position to serve as a MRC unit coordinator starting September 1<sup>st</sup>; funds not used for this position would be utilized for materials, supplies and contracted services.

Commissioner DeBone noted this grant will facilitate the development of many valuable relationships throughout the County over the next two years.



CHANG: Move to accept funding from the Oregon Health Authority under  
Program Element 12 for Medical Reserve Corps  
ADAIR: Second

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

CHANG: Move approval of Resolution No. 2023-043 adding 1.0 regular FTE  
position and increasing appropriations within the Health Services  
Fund and the 2023-24 Deschutes County budget  
ADAIR: Second

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

## **22. Deliberations: Rural Accessory Dwelling Unit (ADU) Text Amendments**

Will Groves, Planning Manager, referred to public comments recently received on the proposal to establish local provisions for rural accessory dwelling units (ADUs), and presented a decision matrix with several outstanding questions to be considered and decided by the Board.

1. Should rural ADUs be prohibited, or allowed with additional standards?

A majority of the Board was in consensus to allow rural ADUs with additional standards.

2. How should the term “useable floor area” be defined?

A majority of the Board was in consensus to define the term “useable floor area” as the area of the accessory dwelling unit included within the surrounding insulated exterior walls, exclusive of garages, carports, decks and porch covers.

3. How should the 100-foot siting distance requirement be interpreted?

A majority of the Board was in consensus that an existing nonconforming use could possibly be made conforming but new construction must be within 100 feet of the existing single-family dwelling.

4. Are specific limitations warranted for Southern Deschutes County groundwater protection?

A majority of the Board was in consensus to allow rural ADUs on lots or parcels measuring at least two acres in size in southern Deschutes County.

5. Do the current amendments and ESEE analysis adequately address and protect Goal 5 and natural resources?

A majority of the Board was in consensus that current amendments and ESEE analysis adequately address and protect Goal 5 and Natural Resources.

6. Do the current amendments adequately address Senate Bill 762 and wildfire mitigation?

A majority of the Board was in consensus that the current amendments adequately address Senate Bill 762 and wildfire mitigation.

7. Should ADUs be allowed in the Westside Transect Zone?

A majority of the Board was in consensus that ADUs should be allowed in the Westside Transect Zone.

8. Should vacation occupancy be prohibited in the existing residence as well as in the ADU?

A majority of the Board was in consensus to prohibit both the existing single-family dwelling and the ADU for vacation occupancy use, as defined in ORS 90.100.

Commissioner Chang noted his disagreement with how some of the policy questions were decided by a majority of the Board, in particular with respect to defining the term “useable floor area” and reducing the minimum lot size from five to two acres in Southern Deschutes County.

ADAIR: Move approval of County-initiated Legislative Text Amendments to Deschutes County’s Zoning Code (File No. 247-22-000671-TA), with modifications, to establish local provisions for rural accessory dwelling units (ADUs)

DEBONE: Second

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

**23. First reading of Ordinance 2023-009 relating to Destination Resort Text Amendments**

Commissioner Adair announced her wish to reconsider the vote previously taken on this matter.

ADAIR: Move to reconsider the motion that was previously acted on with respect to an applicant-initiated legislative text amendment; file no. 247-22-000835-TA

DEBONE: Second

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

ADAIR: Move to deny the applicant-initiated legislative text amendment; file no. 247-22-000835-TA

DEBONE: Second

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

**24. Accepting a petition to incorporate a new City of Mountain View and setting the date for a public hearing**

Nicole Mardell, Senior Planner, presented an order for the Board's consideration to accept a petition to incorporate the City of Mountain View and setting a public hearing to consider the petition as submitted.

ADAIR: Move approval of Board signature of Order No. 2023-023 accepting a petition to incorporate the City of Mountain View and setting a public hearing on September 20, 2023 on the petition

CHANG: Second

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

**OTHER ITEMS:**

- Whitney Hale, Deputy County Administrator, distributed a draft letter of support to the US Department of Transportation for COIC's 2023 PROTECT

grant application. If awarded, the grant will be used to identify areas at highest risk of natural hazards and surface transportation disruptions, analyze how evacuation routes could be improved in the region's most vulnerable areas, and support the community in evacuation planning and emergency preparedness. Hale said Jefferson and Crook Counties along with the City of Bend have already issued letters of support.

Commissioner Adair advised that the letter include an accurate number of annual visitors to Central Oregon.

ADAIR: Move to submit a letter of support to ODOT on behalf of COIC's application for a 2023 PROTECT grant

CHANG: Second

VOTE: ADAIR: Yes

CHANG: Yes

DEBONE: Chair votes yes. Motion Carried

- Commissioner DeBone reported on his lunch meeting earlier in the day at which representatives from the Federal Reserve Bank of San Francisco were hosted by EDCO and the Central Oregon Workforce Consortium.
- Commissioner DeBone encouraged prayers for those affected by the wildfire in Lahaina on Maui.

#### **EXECUTIVE SESSION:**

At 3:01 p.m., the Board went into executive session under ORS 192.660 (2) (e) Real Property Negotiations.

The Board moved out of executive session at 3:18 p.m. to direct staff to proceed as directed.

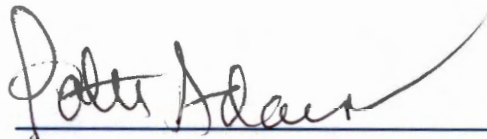
#### **ADJOURN:**

Being no further items to come before the Board, the meeting was adjourned at 3:18 pm.

DATED this 13<sup>th</sup> day of Sept. 2023 for the Deschutes County Board of Commissioners.

  
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**ANTHONY DEBONE, CHAIR**



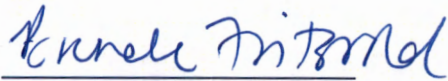


**PATTI ADAIR, VICE CHAIR**

**ATTEST:**



**PHIL CHANG, COMMISSIONER**



**RECORDING SECRETARY**