



## BOARD OF COMMISSIONERS

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

FOR RECORDING STAMP ONLY

# BOCC MEETING MINUTES

8:00 AM

WEDNESDAY July 24, 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](http://www.deschutes.org/meetings).

**CALL TO ORDER:** Chair Adair called the meeting to order at 8:00 a.m.

### PLEDGE OF ALLEGIANCE

### CITIZEN INPUT:

- Carl Shoemaker spoke to the only effective way to remove weeds from landscaping.

Commissioner Adair acknowledged the number of fires burning across the state and said many people are losing homes, pets, and their way of life.

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

1. Approval of consent to easements associated with property conveyed to Administrative School District #1 (Bend La Pine School District)
2. Acceptance of funding from the Oregon Health Authority to support a Secure Residential Treatment Facility, IGA #PO-44300-00026008-3

3. Approval of the purchase of Commercial Property Insurance
4. Approval of Document No. 2024-496 renewing the contract with Iris Telehealth
5. Consideration of Board Signature on letter appointing Beth Bailey for service on the Upper Deschutes Watershed Council
6. Approval of minutes of the BOCC June 5, 2024 meeting

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

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

Commissioner DeBone commented on the funding being accepted from the Oregon Health Authority to construct and operate a secure residential treatment facility. Commissioner Adair said these facilities should be able to have more than 16 beds.

**ACTION ITEMS:**

**7. Public Hearing: Remand of 710 Properties/Eden Properties Plan Amendment and Zone Change application**

Haleigh King, Associate Planner, explained that under County Code, only persons who were entitled to receive notice of a land use application or who took part in the prior County process can participate in a public hearing regarding a remand. Adding that the scope of today's public hearing is limited to the five specified issues on remand from the Oregon Land Use Board of Appeals (LUBA), she said new evidence is allowed, but only if it pertains to the issues on remand.

Commissioner DeBone reminded that the Board had originally approved the recommendation of the Hearings Officer to approve the applications for this Comprehensive Plan amendment and Zoning change. The Board's decision was then appealed and has now come back on remand by LUBA.

Continuing, King listed the five specific issues on remand from LUBA, 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.

*The public hearing was opened at 8:13 am.*

Representing the applicant, Kenneth Katzaroff referred to additional materials which were submitted into the record yesterday.

Dale Stockham, the property owner, spoke to his reasons for applying for the Comprehensive Plan and Zoning changes, saying the property is not resource land and has no known history of farm use. He described his plans to initiate a thoughtful development for the community's benefit, saying that all profits generated by any development will benefit non-profit organizations in Central Oregon.

Katzaroff then shared photos of the property, noting it directly adjoins land to the north which is zoned RR-10 and has five-acre lots. He described the property as isolated, noted the presence of significant vertical slopes measuring 200 feet or higher, and reviewed a map showing the zoning of other properties in the area.

Katzaroff then specifically addressed the five issues on remand, as follows:

1. The property is not suitable for livestock grazing, and a livestock operation would result in financial losses.

In response to Commissioner Chang, Katzaroff said the applicant has provided supplemental information to buttress the record on this question.

2. The property cannot be used in conjunction with nearby/adjacent farm uses such that it is "suitable" for farm use, because nearby and adjacent farm uses are hay, grass, and other irrigated pastureland operations, and the property lacks sufficient irrigation water rights.
3. The property is not suitable as a site for construction and maintenance of farm equipment and facilities because the land use pattern of the area does not support this use, and it would not be commercially viable. Also, the

property lacks urban services and transportation access that would be needed for these uses.

4. It is not necessary for the property to retain EFU zoning in order to permit farm practices on adjacent or nearby agricultural lands.
5. The EFU zoning of the property does not have to be maintained to preserve and maintain agricultural lands and the agricultural industry.

Katzaroff added that no challenge was made to the water analysis conducted by GSI Water Solutions which was previously submitted by the applicant. Further, the amount of water use projected for the proposed residential development is not significant.

Brian Rabe, soil scientist representing the applicant, stated that the property is primarily rock, and it would be challenging to attempt to use the site for grazing due to its geology and topography as well as the prevalence of juniper trees.

Joe Bestman, representing the applicant with regard to transportation criteria, said the property does not connect to or abut Lower Bridge Way and its access is from Coyner Avenue.

Commissioner Chang asked if this land was zoned EFU when it was purchased a few years ago, which Katzaroff confirmed. Katzaroff said he did not know if the property would have been worth more if it had been zoned for residential development.

Angie Brewer, representing the Oregon Department of Land Use and Conservation Development (DLCD), said because DLCD did not have sufficient time to respond to the new information which was submitted by the applicant late yesterday, it requests that the record remain open following the public hearing to allow adequate time for a response.

Charles Thomas stated he lives on the property and could attest that it has never been a problem to encounter farm equipment on the road, which happens on a regular basis. Saying that farm uses and residential uses are symbiotic, he noted that this land was zoned EFU without anyone having viewed it in person. He believed that the proposed development could be done in a responsible manner that would benefit the community.

In response to Commissioner DeBone, Thomas spoke to the amount of water consumed by juniper trees, saying that if the juniper was removed, the area

would realize a net gain of groundwater volume. He said the development will encourage less use of groundwater than allowed by law.

Billy Buchanan said he lives next to the property and uses his own 40 acres for agricultural purposes. He opposed adding 71 new homes to the area, saying this would negatively affect nearby residents in terms of increased traffic and groundwater usage. He believed the 710/Eden property could be used for grazing if properly managed.

Responding to Commissioner Chang, Buchanan disputed that the property is too steep and rocky to be used for grazing. He spoke to available effective strategies to enable using this property for farming uses, saying it is possible to introduce grasses and easy to haul water in. He noted the presence of non-native grasses on the property which are a viable feed source and questioned how those were introduced.

In response to questions from Commissioners, Buchanan addressed the profitability of his farm's operations, which are not high-volume commercial but rather serve specialty markets. He confirmed that he has grazed livestock on land that had less forage and was steeper and rockier than the 710/Eden property.

Tim Phillips objected that rezoning the property to RR10 would enable not just residential development, but also ADUs, saying this would dramatically change the traffic and groundwater usage impacts. He was concerned about the availability of water and noted that all water in the area is sourced from groundwater, and droughts affect both domestic and irrigation wells. He knew of approximately 25 wells in the immediate area that have either gone dry or had to be redrilled to a greater depth since 2017. He was also concerned about the potential for negative impacts from increased traffic, noting that Spruce Road, the main connection to Deschutes Crossing, is an unmaintained dirt road.

Del Johnson said he has raised cattle near the subject property for a number of years. He stated his support for protecting EFU land, which he deemed important for seasonal grazing, and said the property does have forage material growing on it. Saying that rezoning to RR10 would have a significant impact on the EFU land in the nearby area, he said the 710/Eden property is usable farmland and can be used in conjunction with other agricultural entities, meaning it does not have to be a standalone profitable piece of agricultural property. He shared his concerns about the availability of water and declining groundwater levels and the incompatibility of increasing residential traffic on roads heavily used by farm equipment.

Ryder Redfield noted the overwhelming amount of public opposition to this rezone proposal and listed particular concerns that could result, including increased traffic and the loss of farmland. He questioned if any evidence exists that the proposed rezone would be beneficial to the community.

Lori Johnson was surprised at having to defend EFU zoning in Oregon against developers, who have more resources to fight the protection of farmland from development and urban sprawl. Saying that the proposed rezone is exactly the reason that relevant regulations were adopted, she objected that rezoning this property would not protect Oregon farmland or the agricultural way of life. She concluded that more RR10-zoned land is not needed since more than 24 square miles of undeveloped RR10-zoned land is already available in Deschutes County.

Elizabeth Buchanan spoke as the owner and resident of adjacent property, where she and her family raise restaurant-quality all-natural grass-fed beef. She said the 710/Eden property would be perfect for the expansion of these operations as it is suitable for various farming uses, including outbuildings and equipment storage.

Steve Ahlberg did not want his neighborhood to experience urban sprawl. He spoke to statewide protections for farmland and said rezoning is a serious issue and not to be taken lightly. He quoted a goal of the Department of Land Conservation and Development which states that wasteland in an EFU zone which is neither economically tillable nor grazable may yet under certain conditions still be considered current employment of land for farm use. Ahlberg lastly expressed concerns about water availability, saying his own well went dry three years ago, and questioned the motivations of the property owner in seeking this rezone.

Carol MacBeth, representing Central Oregon Land Watch, spoke to what she characterized as the sweeping definition of the term "agricultural land," which is protected in Oregon. Saying that under certain conditions, even wasteland can be considered agricultural land, she argued that LUBA remanded this matter in part for the Board to properly weigh the question of profitability. Along that line, she said a horse riding/training/exercising facility is a farm use, and the property could be used to raise goats or fowl. She concluded that stock watering is an exempt well use.

In response to Commissioner Chang, MacBeth referenced pages 35-37 of the decision from LUBA regarding the question of profitability of farm use on the property. MacBeth stressed that dry land grazing is not the only available agricultural use of the property.

Amin Patel, who signed up to submit testimony, was determined to be ineligible to participate in the proceedings as he did not meet the eligibility requirements as described at the outset of the hearing.

Megan Martin, the executive director of Furnish Hope, supported the proposed rezone, saying the property owner is not a land developer and has pledged to distribute any development proceeds to non-profit organizations which would benefit many in the community.

Jamie Howsley, representing Redside Restoration Project One, LLC, said the burden of proof is on the applicant to demonstrate that the rezone proposal meets all required criteria. Howsley commented on possible negative consequences of adding new residences to this area, which would increase traffic and reduce the availability of groundwater.

*A break was announced at 10:21 am. The meeting resumed at 10:26 am.*

In rebuttal for the applicant, Kenneth Kataroff clarified the high standard determined by the Court of Appeals on the question of "necessary to nearby farms," saying that a determination that farming is merely useful or desirable is insufficient. He said State law precludes allowing ADUs on this property because the applicant is not seeking and thus will not have a Goal 3 exception.

Continuing, Kataroff said the subject of groundwater recharge in this area is addressed in the GIS report. He disputed that there is 24 square miles of undeveloped RR10 land in Deschutes County and also disputed the statement that wasteland can qualify as agricultural land.

King acknowledged the receipt of additional written testimony which has been submitted today for the record.

*The public hearing was closed at 10:34 pm.*

Commissioner DeBone asked that DLCD make clear how this rezone is different from others.

King reminded that the 120-day clock cannot be extended, and a final decision from the County is due on October 24<sup>th</sup>.

The Board was in consensus to establish the following deadlines for the submission of new materials into the record: additional comments due by 4 pm on August 7<sup>th</sup>; applicant rebuttal evidence and testimony due by 4 pm on August 14<sup>th</sup>, and the applicant's final argument due by 4 pm on August 21<sup>st</sup>.

## **8. Public Hearing: Plan Amendment and Zone Change at 19975 Destiny Court**

Anthony Raguine, Principal Planner, described the request to change the Comprehensive Plan designation of approximately 65 acres at 19975 Destiny Court from Agricultural to Multiple Use Agricultural (MUA10) and a corresponding Zone Change to rezone the subject property from Exclusive Farm Use (EFU) to Rural Residential Exception Area. Raguine said 12 comments have thus far been received in opposition to the proposed changes, reflecting concerns about traffic impacts and the potential loss of open space.

Raguine shared a map showing the zoning of other properties in the area and said the soil study that was conducted concluded that the property does not meet the statutory definition of agricultural soil.

Commissioner Chang asked when the adjacent urban area reserve was established. Raguine said this likely happened in 1990.

*The public hearing was opened at 10:55 am.*

Liz Dixon, representing the applicant, said the property, which extends from OB Reilly Road to the Deschutes River, is comprised of 65.1 acres of unimproved, rocky, unlevel land with extreme elevation changes. Saying that adjacent properties are neither farmed nor in farm deferral, she spoke to property line adjustments which were made to remove the floodplain area and transfer it to a neighboring property owner.

Dixon next addressed questions raised regarding the proposal's compliance with mandated goals, speaking to how agricultural land is defined in eastern Oregon. She shared the results of the soil survey, which determined that 65.8% of soils on the property are Class 7 or 8.

Dixon said other factors such as existing land use patterns must also be taken into consideration when determining if a property is agricultural. She summarized existing land uses in proximity to the property, saying none of these are zoned EFU and farmed.

Referring to Statewide Planning Goal 14, Dixon spoke to factors which determine if property is rural or urban—these include parcel size, intensity of use, and urban facilities (e.g., domestic wells and septic systems).

Commissioner Chang asked to know how many acres would remain in open space if the plan is to utilize 35% of the acreage for 14 homes. Commissioner



Adair answered that according to that proposal, 42 acres would remain as open space.

Commissioner Chang noted that the Deschutes River Trail runs along the edge of this property. Dixon said the property owners granted a permanent easement to Oregon State Parks & Recreation to ensure continued public use of the trail.

Discussion ensued about the planned PUD development on the property, should the rezone be approved.

Carol MacBeth, Central Oregon Land Watch, claimed proof that 25 head of cattle have grazed on irrigated land in the southern pasture of this property and said the northern pasture is twice as large. Noting that this property is rural land outside of the Urban Growth Boundary, she said 29.4 acres of it are irrigated and have been since 2009. She argued that a zone cannot be rural or urban, only a use can, and said Deschutes County Code does not consider profitability in terms of whether land zoned for agriculture is used for farming.

Dorinne Tye said developers should not dictate where rezones happen, as this would result in urban sprawl. She said the fact that farmland exists throughout this area shows that it's possible. She urged the Board to scrutinize the application and the applicant's arguments, advocate for the community and its future, and protect smaller farms.

In rebuttal for the applicant, Liz Dixon ask that the record be left open to allow for additional comments, a rebuttal, and a final legal argument. She also asked that the photos shared today be formally placed into the record along with information on each photo indicating the date it was taken. She disputed the claim of irrigation on the property, said it is not being irrigated, and requested that proof be given if anyone claims otherwise. With regard to whether the property is rural or urban, she advised applying the Shaffer test to this question and said the Curry decision is also a relevant standard. She said because the property is not profitably farmable, agriculture is not its highest and best use.

Commissioner Chang asked to be provided with information to resolve the discrepancy as to whether or not any of the property is being irrigated.

*The public hearing was closed at 12:05 pm.*

The Board was in consensus to close the oral portion of the hearing and leave the written record open until 4 pm on August 7, 2024. The applicant's rebuttal will be due on August 14th and its final legal argument due on August 21<sup>st</sup>.

**9. Design-Build Findings of Fact for the Courthouse Expansion Project PV Solar Technology System at the Deschutes County Fair and Expo Center**

Eric Nielsen, Capital Improvement Manager, explained that public entities which spend \$5 million or more on a capital project must allocate 1.5% of the total contract price to green energy technology or an alternative. The County's Courthouse Expansion project is subject to this requirement; however, due to limitations of the Courthouse site and the building's roof area, Facilities proposes that the solar technology system originally planned for the Courthouse be developed at the Fair & Expo property instead.

Nielsen said the recommended Findings of Facts presented for the Board's consideration would establish the basis for the use of the Design-Build method of contracting as an alternative method for this project. He explained this method is preferred in light of current market conditions (e.g., labor shortages and long-lead items) as well as the specialized expertise needed for this type of project.

In response to Commissioner DeBone, Facilities Director Lee Randall said if the Board authorizes this approach, staff will utilize an RFP process to select the contractor who will deliver the best project for the County.

Responding to Commissioner Chang, Nielsen confirmed that the funding needed for the solar technology system was budgeted in the courthouse expansion project.

DEBONE: Move approval of Order No. 2024-028 adopting Findings of Fact to exempt from competitive bidding and authorize the use of design build services of contracting for the Courthouse Expansion Project PV Solar Technology System at the Deschutes County Fair and Expo Center

CHANG: Second

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

*A recess was announced at 12:20 pm. The meeting resumed at 1:00 pm.*

**10. Senate Bill 80 – Draft Statewide Wildfire Hazard Mapping and Rules Discussion**

Will Groves, Planning Manager, reported that last week, the State released the latest draft version of the Statewide Wildfire Hazard Map. No action is required from the Board at this time.

Kevin Moriarty, County Forester, said the Oregon Department of Forestry (ODF) anticipates that a final version of the map—along with all associated regulatory standards—will be released on October 1, 2024. The draft map classifies all land as low, moderate, or high hazard in terms of wildfire risk, and also designates some areas as wildland-urban interface.

Saying that property owners can expect some areas to be newly subject to hardening standards, Groves noted that the Deschutes River Woods area was mapped as moderate hazard due to the treatments conducted on adjacent forest service land.

Moriarty commented on significant concerns about the extent of fuels reduction work which occurs in DRW.

Commissioner Chang said areas designated as high wildfire hazard will receive more assistance from the State to address the risks.

In response to Commissioner Adair, Kyle Collins, Associate Planner, said the areas shown on the map as irrigated were not based on self-reporting—rather, these were identified from a state registry associated with irrigated lands. OSU extrapolated that information and then incorporated it into the wildfire hazard mapping work.

Commissioner DeBone acknowledged this map is a State effort, and potential requirements to build to fire-hardening standards have been discussed for many years. He added it's possible that defensible space requirements might be applied to existing construction.

Commissioner Adair spoke to the widespread issue of property owners not being able to get homeowners insurance or having to pay exorbitantly high premiums.

Moriarty said it's likely that properties in designated high hazard areas will be subject to certain regulations such as defensible space standards as determined by the State Fire Marshal. He shared information on upcoming public hearings and said the open public comment period for the draft map will close on August 15<sup>th</sup>.

Responding to Commissioner Chang, Moriarty said the owners of properties subject to new regulations (those designated to be high hazard and within the wildland-urban interface area) will receive notification, after which they will have 60 days to appeal one or both designations to ODF.

Groves said it may take up to a year to work through all of the appeals.

Collins said it's not yet known when property owners will be required to comply with the new higher standards, if determined to be subject to them. He added that the new regulations will not take effect until a final map is adopted, which will likely happen sometime in 2025.

Collins stressed that if a property owner were to take defensible space actions, it would not change the risk classification of the property.

Commissioner DeBone summarized that best practices and standards may now be required, whereas before these were simply communicated and recommended.

In response to Commissioner Adair, Collins said today's meeting materials include links to more information, including pertinent decision dates.

Saying that the hazard map may underestimate hazard levels, Commissioner Chang said creating defensible space protects neighbors as well as one's own property.

#### **11. Deliberation #2: Deschutes County 2040 Comprehensive Plan Update – Chapter 5, Natural Resources**

Nicole Mardell, Senior Planner, presented Chapter 5 of the draft Comprehensive Plan update for the Board's consideration and edits.

Saying that a large number of wildlife is killed in collisions with motor vehicles, Commissioner Adair suggested adding language acknowledging this to the last paragraph of the "Protected Wildlife Resources" section on page 5-2.

Commissioner DeBone clarified that The 2010 Greenprint document was not a work product of Deschutes County.

Referring to the "Water Resources" section on page 5-3, Commissioner Chang objected to language which inappropriately connects water supply and allocation. He said it is not accurate to state that irrigation districts are involved with groundwater although they do attempt to conserve surface water. He stressed the need to delineate between groundwater and surface water.

Commissioner DeBone supported breaking the large paragraph on this page into two.

Commissioner Adair referred to the statement on page 5-3 that "... groundwater levels ... are declining ... by as much as 50 feet ..." and asked that context be added for this statement to identify where and when this reduction was measured.

Commissioner Chang suggested adding a generic statement to the effect that conservation efforts by groundwater users can help slow the decline of groundwater levels. He also said the "Water Resources" section on page 5-3 should explain that surface water resources, which are needed for irrigation and streamflow, have been impacted by declines in precipitation and snowpack as well as by appropriation of surface water. He added that this section should also state who is dependent on surface water.

Noting the reference to a 2021 report from the Oregon Department of Water Resources (OWRD) regarding declining groundwater levels, Commissioner Chang supported mentioning all of the factors identified by OWRD in this report which are contributing to groundwater level declines, including climate change.

Commissioner Adair said another factor is the proliferation and growth of juniper trees.

Commissioner DeBone read a proposed statement on this subject, as follows: "However, studies show that drought and groundwater levels are cyclical and vary over the years; for example, conditions in the 1930s and 1970s were drier than the current conditions," and expressed his support for the concept of recognizing and acknowledging that some environmental changes are cyclical.

Discussion ensued of the language referring to "a shift (towards) overall drier conditions" and revising this to refer simply to current trends and conditions.

Commissioner Chang suggested that the last sentence of the "Water Resources" section which states that various parties help address water resource issues should refer to the Soil and Water Conservation District and other stakeholders.

Commissioner Adair said the "Scenic Views and Open Space" section on page 5-5 should reference that 80% of Deschutes County is publicly owned.

Commissioner Chang suggested adding "and wildfire" to the end of the last sentence in first paragraph of this same section regarding natural hazards. He added that another benefit of open space is carbon storage.

In that same sentence, the Board agreed to remove the words "buffers from" in front of the word "habitat."

Commissioner DeBone read from the introduction to the 1996 Upper Deschutes Wild and Scenic River and State Scenic Waterway Corridor Comprehensive Plan, which was signed by 25 different jurisdictions.

Mardell offered to edit the "Water Resources" section to include updated information such as the current recharge rate of the Deschutes aquifer.

Commissioner Chang supported adding a detailed discussion of surface water resources and issues.

Commissioner Adair asked that staff verify the statistic provided which states that the City of Bend uses five times as much water in the summer as in the winter.

The Commissioners were in agreement that the most current information available regarding water resources and usage should be reflected in the Comprehensive Plan update.

Commissioner DeBone asked that the section regarding snowpack be revised to clarify that the provided graphic refers to future expected declines in snowpack at Mt. Bachelor Ski Resort.

At 2:30 pm, the Board was in consensus to table the remainder of discussion on this chapter to its August 5<sup>th</sup> meeting.

#### **OTHER ITEMS:**

- Erik Kropp, Deputy County Administrator, distributed an updated draft of a letter to Governor Kotek regarding the potential use of the Gales property for shelter for homeless persons. Kropp reviewed revisions made since the letter was first brought to the Board on July 22nd.

Commissioner Chang suggested asking that the governor's office cover the cost of preparing and submitting an application for rezoning this property. He further suggested that the last sentence of the first paragraph state that the County seeks a more immediate solution or to expedite the process of establishing an opportunity for safe parking, managed camping, and/or tiny homes/shelter pods on the Gales property.

Commissioner DeBone advised adding language to the conclusion thanking the governor for her continued leadership to the people of the State of Oregon.

CHANG: Move approval of the letter to Governor Kotek regarding the use of the Gales property for some kind of shelter for homeless persons, with revisions as discussed

DEBONE: Second

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

**EXECUTIVE SESSION:** None

**ADJOURN:**

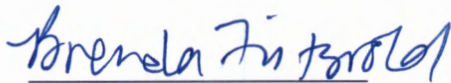
Being no further items to come before the Board, the meeting was adjourned at 2:36 pm.

DATED this 11<sup>th</sup> day of Sept. 2024 for the Deschutes County Board of Commissioners.



**PATTI ADAIR, CHAIR**


**ATTEST:**



**RECORDING SECRETARY**



**ANTHONY DEBONE, VICE CHAIR**



**PHIL CHANG, COMMISSIONER**