



**MINUTES OF THE REGULAR SESSION OF THE
LINN COUNTY BOARD OF COMMISSIONERS
LINN COUNTY COURTHOUSE – ROOM 200
TUESDAY, AUGUST 29, 2023**

The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, August 29, 2023.

Those present at various times for the matters as indicated below were: Sophie; Adams, Interim Economic Development Manager, City of Albany; Wayne Mink, Linn County Roadmaster; Daineal Malone, County Engineer, Linn County Road Department; Steve Wills, Linn County Planning and Building Director; Alyssa Boles, Planning Manager, Linn County Planning and Building Department; Michelle Hawkins, Linn County Treasurer; Phil Van Leuven, Deputy County Attorney for Linn County; John Pascone, President, Linn Economic Development Group; Rebecca Grizzle, Executive Director, Lebanon Chamber of Commerce; Alysia Rodgers, Economic Development Catalyst, City of Lebanon; other audience members; Alex Paul, Linn County Communications Officer and Shayla Escudero, Reporter for Democrat-Herald.

1, 2, 3. At 9:30 a.m. Chair Nyquist called the meeting to order. The flag salute and roll call followed. Commissioners Roger Nyquist, Chair and Will Tucker, Vice-Chair and were present, as well as, Darrin Lane, Linn County Administrative Officer and Marsha Meyer, Recorder for the Board of Commissioners. Commissioner Sherrie Sprenger was excused.

4. Approval of Agenda.

Action – Commissioner Tucker moved to approve the agenda. The vote was called. The motion passed.

5. Approval of the August 22, 2023 Commissioners' Meeting Minutes.

Action – Commissioner Tucker moved to approve the August 22, 2023 Commissioners' Meeting Minutes. The vote was called. The motion passed.

6. Reports of Staff and Committees: There were no reports of staff and committees to come before the Board.

7. Resolution & Order 2023-325 approving an Extended Property Tax Abatement Agreement between Linn County a Cosponsor of the Albany Enterprise Zone and CorrQuest Automation, Inc. – Sophie Adams, Interim Economic Development Manager, City of Albany.

Ms. Adams provided the Board with information regarding this item.

Action – Commissioner Tucker moved to approve Resolution & Order 2023-325. The vote was called. The motion passed.

8. Road Department – Wayne Mink, Linn County Roadmaster.

Mr. Mink stated that the following two items were in regard to the entry into Selmet which they've been working on for some time.

A. Resolution & Order 2023-215 accepting and recording certain real property granted to Linn County for road purposes (County Road Number 0011, Seven Mile Lane).

Action Taken Below.

B. Resolution & Order 2023-217 accepting and recording certain real property granted to Linn County for road purposes (County Road Number 0011, Seven Mile Lane).

Action – Commissioner Tucker moved to approve Resolution & Orders 2023-215 and 217. The vote was called. The motion passed.

C. Resolution 2023-308 approving the use of County roads, North River Drive (County Road Number 0035) and Quartzville Road (County Road Numbers 0932 and 0912) by Best in the West Events for a "Best in the West Triathlon Festival".

Action – Commissioner Tucker moved to approve Resolution 2023-308. The vote was called. The motion passed.

D. Ordinance 2023-327 approving an Ordinance establishing Surface Waters Code Codified at Linn County Code Chapter 860 and declaring an emergency.

Mr. Mink stated that this was for an emergency adoption of Linn County Code Chapter 860 specifically for the Surface Water Code for MSF and NPDES Permit run-off required by DEQ and their Service Water Management. He stated that their deadline was Friday, September 1, 2023 and that they were requesting the Board to declare an emergency in order to get immediately implementation of this Code. Phil Van Leuven, Deputy County Attorney for Linn County, stated that because this was being adopted by declaring an emergency, he would read the title of the Code twice for the purpose of this hearing. Mr. Van Leuven then read the title of the Code into the record two times.

Action – Commissioner Tucker moved to approve Ordinance 2023-327.

Commissioner Nyquist confirmed that, by declaring that he owns property inside this area, Mr. Van Leuven's advice was that he could vote on this matter. Mr. Van Leuven

stated yes and that Commissioner Nyquist would still go through the same process as any other citizen who applied. Commissioner Nyquist then stated, for the record, that he didn't like it and it would probably cost him money but that he would vote for it anyway.

The vote was called. The motion passed.

E. Resolution & Order 2023-330 amending certain County Fees amending Resolution & Order 2023-210.

Action – Commissioner Tucker moved to approve Resolution & Order 2023-330.

Commissioner Nyquist then stated again, for the record, that he owns property inside this area that could impact him; he didn't like it and it would probably cost him money but that he would vote for it anyway.

The vote was called. The motion passed.

9. Correspondence: There was no correspondence to come before the Board.

10. Special Orders:

A. Personnel Action Forms.

Action – Commissioner Tucker moved to accept the Personnel Action Forms list as Exhibit 1. The vote was called. The motion passed.

B. Resolution & Order 2023-314 approving a First-Time Youth Wage Grant Agreement between Linn County and Cook Family Farms.

Action Taken Below.

C. Resolution & Order 2023-315 approving a First-Time Youth Wage Grant Agreement between Linn County and Cascade Timber Consulting, Inc.

Action Taken Below.

D. Resolution & Order 2023-326 approving a First-Time Youth Wage Grant Agreement between Linn County and Irvinville Enterprises, LLC.

Action Taken Below.

E. Resolution & Order 2023-328 approving a First-Time Youth Wage Grant Agreement between Linn County and Phelan Enterprises, LLC.

Action Taken Below.

F. Resolution & Order 2023-329 approving a First-Time Youth Wage Grant Agreement between Linn County and D2 Farms, LLC.

Action – Commissioner Tucker moved to approve Resolution & Orders 2023-314, 315, 326, 328 and 329. The vote was called. The motion passed.

Darrin Lane, Linn County Administrative Officer, provided information for the following two items. He stated that these two items were mediation contracts. Linn County receives the funding and pays for the mediations but mediations are run by the State Circuit Court.

G. Resolution & Order 2023-319 approving a Personal Services Contract for Mediation Services between Clarity Mediation & Facilitation, LLC and Linn County.

Action Taken Below.

H. Resolution & Order 2023-320 approving a Personal Services Contract for Mediation Services between Elizabeth Aronoff and Linn County.

Action – Commissioner Tucker moved to approve Resolution & Orders 2023-319 and 320. The vote was called. The motion passed.

11. Unfinished Business and General Orders:

A. Calendar Update: The Commissioners updated their calendars. Commissioner Tucker stated that there would be a daily Cooperators meeting on the wildfires and that both he and Commissioner Sprenger have alternated attending the meetings. There may be a time when both of them would be on the same telephone conference but, historically, neither of them gives input but receive information given to them during the calls.

12. New Business: There was no new business to come before the Board.

13. Announcements: There was no announcements.

14. Business from the Public (3-minute limit per speaker): Commissioner Nyquist asked if there was anyone in person or telephonically wanting to speak.

Commissioner Nyquist recognized Starla Becker Tillinghast, 41546 Hwy 226, Scio, Oregon.

Ms. Tillinghast stated that she was a former dairy worker and a current nurse who lives on Thomas Creek. She stated that she attended and participated in the hearings at the Capitol this year regarding Senate Bill 85. She stated that her concerns were regarding pollution in the water, damage to health and mitigation of fire risks which were all documented from other states and countries. Ms. Tillinghast indicated that all of these known damages could be mitigated with adequate setbacks; people from other areas

were surprised that the County's setbacks were at 50 feet which is the lowest in the nation.

Ms. Tillinghast stated that she had gathered a lot of material and that she was very motivated to help in the process, to protect the farmers and community, and would love to share her information with the County.

Commissioner Tucker stated that he would be happy to review Ms. Tillinghast's material and asked her to send him the information. Commissioner Nyquist stated that he would follow up with staff on this matter and that it begged the question that the legislature passed a statute addressing setbacks; he was clearly eager to get the rulemaking process started. He then called upon Alyssa Boles, Planning Manager, Linn County Planning and Building Department, who provided the process regarding this matter and stated that staff had been doing research and obtaining information regarding the preparation of code updates to bring before the Board for their review and approval. Ms. Boles continued to provide information regarding the hearings process. Commissioner Nyquist asked Ms. Boles when that information would come before the Board and she stated that staff needed to finishing drafting the documents but she hoped it would be soon.

Commissioner Tucker noted that Senate Bill 85 was not retroactive. Commissioner Nyquist stated that that was a matter of law amongst attorneys. Commissioner Tucker stated that the County Attorney for Linn County had already been asked that question.

There was no one else wishing to speak.

Commissioner Nyquist recessed the regular Board meeting at 9:44 a.m.

Commissioner Nyquist reconvened the regular Board meeting at 10:00 a.m.

15. Public Hearing – BC19-0002 – A hearing on remand from the Oregon Land use Board of Appeals (LUBA) of Linn County Ordinance 2021-397 and Resolution & Order 2021-396, which approved applications by Ronald & Virginia Henthorne for a Comprehensive Plan (Plan) Map Amendment and Zoning Map Amendment on a 108.59-acre property – Alyssa Boles, Planning Manager, Linn County Planning and Building Department.

Commissioner Tucker stated that he had no exparte communication or conflict of interest. Commissioner Nyquist stated that he didn't own property in that area and didn't know how he could have a financial interest in this matter before him. He had no exparte communication, however, he disclosed that he didn't believe that he participated in the initial hearing on this matter but he did participate in the previous remand hearing.

Commissioner Nyquist called upon Ms. Boles to review her Staff Report with the Board. A copy of her report is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Ms. Boles stated that the hearing today was in regard to a hearing on remand from the Oregon Land Use Board of Appeals (LUBA) regarding a Comprehensive Plan Map and Zoning Map Amendments.

Ms. Boles stated it was a remand on a Board's decision to approve the applications back in 2021; the Board originally approved the applications in August, 2019. Ms. Boles stated that the main issue before the Board today was the interpretation of two plan policies affecting peripheral wildlife habitat areas that were found in Linn County Code 903.510(B)(7) and (8) and stated that approximately 90-acres of the property was within a mapped peripheral big game habitat. She then read Code 903.510(B)(7) and (8). Ms. Boles stated that the other issue before the Board was a condition that was placed on the 2021 remand decision which was a condition proposed by the Applicant to address issues raised regarding potential future development of the subject property. Condition one of that decision was adopted as an additional measure to address public concerns to any proposed future development of the property that would exceed the wildlife density dwelling requirements. Ms. Boles stated this matter was back before the Board for additional analysis. Condition one limited the development of the subject property within the peripheral habitat to ten (10) dwellings.

Ms. Boles stated that LUBA's remand was limited to the Board interpreting the dwelling density standards in those two plan policies and to explain how they would be complied with if the property was zoned to non-resource. LUBA instructed the County to do three things:

1. Interpret how the County's density standards in those two plan policies work; is the dwelling density counted based on dwellings located within the mapped habitat area or counted based upon the dwellings within in the entire section;
2. If condition of approval from the 2021 decision was re-imposed to limit future development, the County needed to explain how the ten dwelling density limit was consistent with the plan policies; and,
3. If the condition was re-imposed, the County needed to explain how it would work and be triggered to bind a subdivision or a partition of the property to that dwelling density standard.

Ms. Boles stated that written notice was sent to the surrounding property owners and parties with standing. There were no comments received as of the date of the Staff Report but she did receive one comment yesterday, Monday, August 28, 2023 from a surrounding property owner and an additional comment from the Department of Fish and Wildlife and both were provided to the Board. She received two agency comments as part of the Staff Report from the County Road Department and Environmental Health Department indicating no comment.

Ms. Boles then clarified the procedures for a hearing on remand which is conducted on the existing record and any new argument and evidence addressing just the specific issues on remand. The existing record and previous adopted findings were in effect so the only thing before the Board was considering were the three specific questions that

LUBA was asking the Board to review. Next, she stated that the scope of the hearing was limited to the assignments of error in LUBA's final opinion Order 2022-003/004; all other elements of the County's findings in the 2021 and 2019 decision were final and not under review. Therefore, argument, evidence and testimony today were limited to issues identified in the LUBA Order and Staff Report and no other evidence, argument or testimony should be accepted for consideration. Commissioner Nyquist stated that it was a matter of whether or not the testimony was applicable to the Board's decision-making process; anyone testifying can use their time to say whatever they wanted.

Commissioner Nyquist read into the record the hearing process and time limits for testimony. He then opened the Public Hearing.

Commissioner Nyquist called upon the Applicant for testimony.

Wendie Kellington, Attorney for Applicant, P.O. Box 2209, Lake Oswego, OR 97034 – Support.

Ms. Kellington provided background information since Commissioner Nyquist was not present for the initial hearing in 2019. She stated that the Board won more at LUBA then lost and this was one of those cases. She hoped the application would be consistent with and not alter the intent of the Comprehensive Plan because the current zoning district didn't facilitate what it was meant to do.

Ms. Kellington then stated the things that were not an issue with LUBA and affirmed the Board's determination that the Statewide Planning Goal 5 and Oregon Department of Fish and Wildlife (ODFW) Administrative Rules didn't apply; this is simply a modest remand for the Board to interpret their own Comprehensive Plan provisions to explain how they applied and then LUBA was required to defer to the Board's decision. Ms. Kellington stated that the Board's determination today about how the County's code applied would require LUBA to affirm it.

Ms. Kellington went through the three issues LUBA was asking the Board to determine (which Ms. Boles outlined for the Board earlier). She stated that when the Board of Commissioners' decided what the rules would be for habitat protection and dwelling density, it set it up that there were standards that would apply in the major habitat and standards that would apply to peripheral habitat; areas that weren't covered would not be bound by those rules which apply to designated habitat.

In regard to condition one, Ms. Kellington stated that it wasn't really necessary. What they were trying to do was provide some assurance that, notwithstanding, that the section could have an additional 16.7 new dwelling units just because of the current zone that applied and could only get one more dwelling other than the subject property in this section. Ms. Kellington stated that, with Mr. Callaway's dwelling, which is the only other dwelling that is in this section that was approved under these standards, the maximum you could ever get with that condition was 12 dwellings which left a little wiggle room. The reason for the condition of approval was to look at the outside and, no matter what, there would never be more than ten dwellings on the peripheral habitat,

which is part of the Henthorne/Merrill property, even though there could probably be more; there's space for actually 14 dwellings in that section.

Next, she stated that LUBA agreed that if the property were to be subdivided in the future, the County's density standards would apply. When the Applicant comes in and says he'd like to get a preliminary subdivision plat approved, he'll have to show compliance with the density standard; what is the density situation right now on the peripheral habitat part of the section; how many dwellings are there currently; how many have been approved and could you have anymore and, if so, how many. Ms. Kellington stated that LUBA agreed that the density standard would have to be applied for a subdivision put was unsure of how it would apply for a partition. She stated that the pinch point for a partition, which no one disputes, that you have to apply your density standard to a partition if there isn't something called recognized access. Ms. Kellington stated that what they were asking the Board of Commissioners to do was to make a specific finding that there is no recognized access on this property so if the Applicant were to go forward with a partition, he would still have to comply with the density standard.

Ms. Kellington stated that what the Applicant was asking the Board to do was to interpret the standard consistent with the actual words on the page which are applied as they are written. She stated that Ms. Boles had provided the Board with a copy of what the density standard states in Linn County Code 903.510(B)(7) and (8) and then she read part of the code to the Board. Ms. Kellington stated that County staff has said that their interpretation of how it worked was plausible. She stated that it was more than plausible; the County was not saying that all the sections in all the County, regardless of whether they're in some type of habitat designation either major or peripheral, you have to have the dwelling density. She believed what the County was saying was, within the peripheral habitat, there's a dwelling density standard and it was not per acre, but says the dwelling density was worked out per section so most of the sections in the County that have habitat, the whole section was covered. Ms. Kellington stated that, in regard to the Applicant, there was a part of the section, 332 acres, that was covered by the peripheral habitat, so, what do you do. She stated, in this situation, you would divide the 332 acres by a 20-acre dwelling density and that's how you would come up with the 16.7. Ms. Kellington stated that the County's staff recommendation on how the standard would apply was to take out the word peripheral habitat and just say that the County recognized that ODFW recommended density in a section. Ms. Kellington stated that, if they said they applied it that way in the past, it was because it really hadn't mattered.

Ms. Kellington stated that one of the approvals she wanted to include in the record was Mr. Callaway's approval. The part that deals with this particular standard was on page four in paragraph three and it stated that the property was located in the peripheral habitat, the density standard and states that section eight appeared to be clustered then states that the proposed dwelling would be the 21st dwelling in section eight and the dwelling density didn't cause this section to become impacted. Ms. Kellington stated that she didn't think it really mattered in that situation. She didn't think the County had some sort of longstanding interpretation to unwind that the words on the page have been applied differently than they were written by the original Board of Commissioners' who adopted them; what you really worry about is how many dwellings there are in a

particular section regardless whether or not its designated as habitat. She stated that she thought it hadn't really mattered that much in the past and, if staff was to look at it critically, they would agree that the interpretation that the Applicant made of the standard made more sense.

Ms. Kellington referred to the condition of approval; condition one. She stated that the Board could leave it in or take it out as it didn't really matter. The Applicant would like to leave it in as they thought it provided an extra measure of protection and assured that, no matter what on this property within the peripheral habitat, there would never be more than ten dwelling units no matter if the Applicant could persuade otherwise, there just couldn't be more. She stated, mostly, it was to provide comfort to the opponents to assure that they weren't going to do something more nefarious and to make them feel better that the maximum they could ever be allowed would be ten dwellings.

In regard to code section 924.250 which LUBA was talking about with regard to partitions that have recognized access that don't have to comply with the density standard, Ms. Kellington asked the Board to interpret that section to apply to this application should they partition the property. As well as to say that the Applicant did not have recognized access because they didn't right now; you always have to comply with the density standard.

A final new condition of approval that Ms. Kellington stated she thought would make LUBA happy, would be that, regardless of what happened, the County interpreted their code to require that when this property develops, regardless of whether it is a subdivision or partition, that it would have to comply with the density standard. She stated there are various ways of making sure that the density standard being properly interpreted would never be exceeded on this property. Ms. Kellington stated that some people have argued that the allowance of this property going NR would cause the property to become impacted because it would exceed the density standard and, again, it couldn't because of all the levels of protection. This property could have no more than ten peripheral habitat dwelling units so it could never be impacted habitat. The extra measure of protection that the property doesn't have recognized access, which is another reason it would have to comply with the plan. A new condition of approval that no matter what this property must comply with the County's density standard when it goes to be developed.

Commissioner Nyquist asked, for this proceeding, if Ms. Kellington knew of a legal definition of the term cluster or was it just what the Board interpreted. She stated that she did not know the legal definition but thought it meant that you have houses that are fairly close together, close to a road or close to impacted areas of human settlement that would potentially be bothersome to wildlife. She stated that that's what she thought it meant but that the County didn't have a particular interpretation and, because the Board is the governing body, they get to interpret what that means should they desire to do so.

Commissioner Tucker stated that the Applicant didn't like the way the Board interpreted their code in regard to looking at the whole section and doing the math. Doing the math that way would still allow 11 dwellings inside of that section by taking the 32 and

subtracting 21 that are already built and leaving one for the other farm forest possible piece as the people who own it are in the forest conservation world and they happen to be zoned farm forest. Commissioner Tucker stated that remembering back to the discussions that were had, the quantity of ten dwellings left one additional dwelling for that piece of property that gave them a number that was of value and could make the development work in terms of cost and development and that ten was a reasonable compromise. He appreciated that the Applicant wanted to stay with ten dwellings as it was a way to ensure the Board that they would not be taking all 11 and doing something that would cause another property owner to not have inside the section. He stated that he would like to stay consistent and the what the Board purposed last time met the Applicant's criteria; it needed to be clearer on how they arrived at that number.

Ms. Kellington stated that the difference was that the ten dwellings were in the peripheral habitat and stated that Commissioner Tucker was right that it wasn't just about this property but was about moving forward. It had been brought to the Board's attention that it was important to have an interpretation of the code because it was not consistent with the words on the page which was the problem. If someone looks at the words on the page within the peripheral habitat that the recommended density was a certain number, it doesn't say within all sections of the County. Commissioner Tucker stated that it does talk about per section in the unimpacted peripheral habitat so, to him, it did apply here. In regard to the unimproved access declaration, Commissioner Tucker stated that he would have to talk to County staff.

Commissioner Nyquist then asked if there was anyone wishing to speak in support.

Lynn Merrill, 3215 Hannah Ave, SE, Albany, OR 97322 – Applicant.

Mr. Merrill stated that he would speak in support of his application.

He stated that clustering was mentioned but hadn't been dealt with much in Linn County. There are about 1,500 sections in the County and two-thirds of them were completely or primarily big game habitat and a huge chunk of them were farmland EFU zoned that were considered non-sensitive so there is relatively few that fall within this area of non-sensitive and peripheral habitat and they're split. He stated that he started in this in the early 90's and they used to have the big game habitats on a paper map so in those days you looked at how many homes were in a section and if that didn't meet the high threshold of dwellings, there was no need to go look at how many were in or outside the habitat. Mr. Merrill stated that he didn't think this issue had been brought up too many times; there's only been a handful of times where a section met that limit even under the County's stricter interpretation. In those cases, a variance was done.

Mr. Merrill stated that, in this process, a designation had been taken to great extremes because of the bigger political fight over the project. In other counties, if this were one parcel and we were putting a dwelling on it, they would count this entirely different if this home was on the portion in the big game habitat or on the portion that's not on the big game habitat. Its differentiated within a particular piece of property where that home is in the big game habitat.

Mr. Merrill quoted one of the comments in a letter from Fish and Wildlife that stated "the department believes that the dwellings located outside of the big game overlay should have no bearing when determining whether the section is impacted". He stated they deal with other jurisdictions and they probably know that and that's how it typically was. He stated that what he's protecting was peripheral and major habitat; they were not protecting the non-sensitive habitat not the EFU farmland or residential. If you take this interpretation that homes outside of the habitat count towards impacts inside the habitat, it would be a scenario where you have a rural trailer park with 35-40 mobiles that make up a few acres of a 648-acre section and you could make an argument that the whole section was impacted and throw it out that there is no more houses there. Mr. Merrill stated that the standard applied to the area of habitat and Fish and Wildlife had said that. If you read the County code, there is no place in there where it says county houses outside the habitat. It always refers to the habitat.

Mr. Merrill stated that, in regard to clustering which he's done in other counties, you stick a road in the middle of the project and you try to cluster the lots to the road and the driveways are fairly short with one main road. Visually, when you look at it, it looks like everything looks like a light bulb around the road. He stated that, in this case the upper portion both the east and west sides, border forest conservation management which automatically has a 300-foot setback for structures and already starts to squeeze things. Mr. Merrill stated that it was in their interest when they cut down and offered to reduce to what they thought could've been 15, they reduced it to ten because they ran the numbers and said, if they shorten that road and stub it lower and squeezed them in, they could leave that other area up there and bypass all the cost to expand that area.

Commissioner Nyquist noted that Mr. Merrill had used his time. Mr. Merrill stated that, if the Board had any questions, he would answer during his rebuttal.

Commissioner Nyquist asked if there was anyone else wishing to speak in support of the application who did not sign in on the sign-in sheet. Hearing none, Commissioner Nyquist stated that there were only three who signed up to speak in opposition.

Phillip Callaway, P.O. Box 243, Crawfordville, OR 97336 – Opposed.

Mr. Callaway thanked the Board for running the remand hearing in a way that gave people a chance to speak, unlike the previous remand hearing. He asked the Board to not make a decision today as a lot of comments got submitted at the last minute and so he asked that they give themselves time to read all the comments submitted and that all the comments be posted to the website, as well as, there being an opportunity for rebuttal before they made their decision.

He stated that it was not made clear when Commissioner Tucker asked his question; the Applicant does not want to just build ten dwellings they want to build whatever else they can squeeze in the area outside of the habitat. There is 18-acres outside of habitat and they are going to squeeze in another three or four; the Applicant was wanting to build more like 14 dwellings. Mr. Callaway stated that, currently, the policy as explained on page eight and nine of the Staff Report states that no more than 11 can be built anywhere on the Henthorne Ranch before that limit was reached. He stated that the

Applicant was trying to work around that by asking the Board how they interpret their code and only count dwellings inside habitat; they are not happy with 11 they want 13 or however many they can squeeze in habitat. This is important.

Mr. Callaway stated that the code that's being talked about refers to an ODFW recommended density. If you want to know how it should be interpreted, ask ODFW. They've been trying to tell the Board in their comment at the first remand hearing are trying to tell you again in their second comment to this hearing that it should not be interpreted that it's okay to destroy this habitat in this part of the section as long as there is still good habitat in that part of the section. He then stated that Joe Stack, the habitat person from Adair Village, was in the audience and could tell the Board how ODFW thought that standard should be interpreted.

Mr. Callaway stated that the question the Board had about clustering was very important. He stated that when Ms. Boles talked about clustering she said "close to existing roads". There were no existing roads into Henthorne Ranch. He stated that he thought the correct standard would be the 40-acres per dwelling because the Applicant was going clear in behind him and wrap around his property into the designated habitat. Mr. Callaway stated that the correct response to the remand would be to fix condition one and modify it to say a maximum of four dwellings would be allowed inside habitat if they're clustered. He stated that he didn't think you could call houses clear back in there clustered so the standard that would apply would be the 40-acres per dwelling un-clustered and it should only be two dwellings allowed inside habitat. He asked the Board to change condition one to state that.

Commissioner Nyquist asked Mr. Callaway that his impression was that the agency thought that ten dwellings maximum was more restrictive then they thought it should be because the County didn't have a methodology to back up the ten. You believe that their intent was to tell the Board that ten was too many. Mr. Callaway stated yes, absolutely. Commissioner Nyquist then asked how he arrived at the 40-acres. Mr. Callaway stated that the code states that ODFW's recommended density was one unit for 40-acres not clustered and it's one acre per 20-acres if it is clustered. Commissioner thanked Mr. Callaway for his clarification.

Brenda Wilson, P.O. Box 247, Crawfordsville, OR 97336 – Opposed.

Ms. Wilson thanked Phil Callaway and stated that his testimony was spot on and asked the Board to consider what he presented to them today.

Ms. Wilson stated that the property that was for the proposed development was farmed forest property and had been, from what she could tell, for over 100 years and is pretty historic. She stated that the property owner had been negligent and the entire time that she had lived in that area for 20 plus years, he had done nothing to make his land useable. It had laid fallowed and nothing had happened to it and she didn't know how he could try to send someone in here to try and say that he couldn't develop his property and or do anything with it; he's done nothing to improve his property.

Ms. Wilson stated that Mr. Merrill was taking this opportunity to chip away at the wildlife and the land that they have roamed on long before anyone was here; this is not appropriate. She stated that Mr. Merrill had called the community names in the newspaper and accused them of various actions during meetings with the Board that were not true and that needed to stop. She hoped that she didn't see the newspaper print these ugly things he says about us when they are finished here today.

Commissioner Nyquist stated that he didn't want to get into a debate over what Mr. Merrill did or didn't say in the newspaper but said it was not part of the Board's decision criteria. Ms. Wilson asked the Board to not consider it; it's horrible.

Ms. Wilson stated that the subject property was farm forest land and invited the Board to come to her house to look for themselves to see what was happening there and, if they hadn't looked at, she asked that they do so; it may help them to form an appropriate decision whatever that may be. She stated that what she sees is a full-fledged subdivision development smack in the middle of a farm forest land that was full of abundant wildlife and land that is historic. She asked the Board if they were really okay with that; she really wondered if they were.

Ms. Wilson asked the Board to go back to the record and find Chuck Knoll's comments (former Linn County Engineer) regarding BC19-0002 as it was crucial that they understood what his perspective was on the roads and the development. She stated that somehow his report got buried and not brought up and she tried to bring it up and it didn't come out but there was a copy in her response so the Board would have it again and thanked the Board, in advance, for reviewing it.

Ms. Wilson stated that this land was truly farm forest land and changing the designation on paper would not change that, or the land, or the wildlife that lives on it. Changing the designation would kill the wildlife that current lives in that space and would change the land that has been forest land for 100's of years. She stated that Mr. Merrill simply cannot change land titles to achieve what he wants; that is farm forest land period. This is not where a development should be allowed as there is plenty of areas outside of farm forest to build developments; he's got plenty of them. Ms. Wilson asked the Board to deny the Applicant's request and stop the ongoing harassment of Mr. Merrill and Mr. Henthorne on their community.

Ms. Wilson then stated that she wanted to bring up the August 13, 2021 Department of Fish and Wildlife letter and asked the Board to please take a look at it again; it was presented to the Board during the hearings that year.

Commissioner Tucker stated that he wanted to be sure that Ms. Wilson understood that this matter was not being remanded for the Board to look at the entire piece but was being remanded for the Board to talk about density. He appreciated her wanting the Board to open the whole thing up again but that was not what was before the Board today. She stated that she understood but she was going to continue to push for it.

Corby Wilson – P.O. Box 247, Crawfordsville, OR 97336 – Opposed.

Mr. Wilson stated that he had been before the Board before but hadn't spoken to Commissioner Nyquist because he wasn't at the first meeting. He then asked where Commissioner Sprenger was as they didn't hear where she was today. Commissioner Tucker stated that she wasn't available and that they don't disclose why someone is not here but she had been excused today for a legitimate reason. Mr. Wilson stated that he found that disturbing. He stated that he understood that you may be on vacation but this was a hugely important issue that what they decided today would set precedent not only in Linn County but in other counties. Commissioner Nyquist responded that Commissioner Sprenger's husband fell out of a tree last week and was ill and she sustained some injuries and she was home this morning. Mr. Wilson stated that was fine and he didn't have any issue with that but what a huge history-making decision the two Board members were making today and, just based on that, he thought that all three of the Board members should be making the decision today.

Mr. Wilson stated that he was the one that went door-to-door to his neighbors on Crawfordsville Drive to alert them of this and what the implications were. He's stated that he's been involved in this heavily and knew how his neighbors felt. He then indicated on the map where he lived and stated that he would be hugely impacted by this but Mr. Merrill said that we wouldn't be able to see us. Mr. Wilson stated that he had been in contact with Ms. Ringo from the Department of Fish and Wildlife since the Staff Report came out. He had been pouring through it and, after talking to Ms. Ringo at Fish and Wildlife, and the fact that they can't figure this out they're confused and they have land use lawyers and biologist who should be making the decision on this and they can't figure it out exactly how this was all going to work. Mr. Wilson stated that how the Board goes forward with this when the Department of Fish and Wildlife who you are to listening to in order to make your decision can't figure it out.

Mr. Wilson stated that the sensitive bird habitat overlay, which part of it is on Mr. Callaway's property, also affected several of us that are in the bird overlay. It's the fantail pigeon and there's a mineral spring on Mr. Callaway's property as well and it's all highly sensitive and they are a huge part of the environment and a huge impact on this whole thing. He stated that, according to Nancy [?], it hadn't been addressed yet by the corporation (referring to Mr. Merrill as he is not the landowner and he has an LLC that they are fighting against). Mr. Wilson stated the site was considered a critical habitat in the pigeon site and the developers seem to rely on homes built in the overlay. He stated that this has meaning because when Mr. Callaway brought up the rest of the property that was not in the big game habitat and the County was the one that authorized the pigeon habitat. It hadn't been determined by the County or Department of Fish and Wildlife or Mr. Merrill that they are not in the zoning and he was proposing houses right in that pigeon habitat.

Mr. Wilson then referenced the comments on the residents. He stated that an article in the Democrat-Herald written by Alex Paul quoted Mr. Merrill saying "regardless of how many years it takes, we will keep chipping away until we get there" and he continued on "our opponents aren't fighting for wildlife, they are fighting to control surrounding landowners to make sure they are the last to build". Mr. Wilson stated that it was a

complete lie and not appropriate in this setting. Mr. Wilson referenced a telephone conversation where Commissioner Tucker called him, after the last meeting, where he was able to get Commissioner Tucker to admit that you can't lie in this process. No one involved in any issue with the County should fear harassment, intimidation, lies to County officials, the press or threats of violence ever; it's unacceptable. Mr. Wilson stated that it had happened to him personally, his wife and the community and there was no process to address it. He stated that they've tried to and were told that that all comes at the end; that is unacceptable when you're talking about harassment, physical violence by the "corporation" and stated that he hoped the Board would address that.

Mr. Wilson then, in reference to the lies, stated that it had been brought up by John Hogan on July 31, 2019 and was in the record where he addressed it specifically. He addresses Deb Branson's property who was the most affected resident in this whole thing. He stated that you can't provide false information and if you do the Board can revoke it at any time. He asked the Board to review it because, right off the bat, Mr. Merrill doesn't have the property rights worked out so you can't do anything in this process unless that's done first and the Board has been allowing it and not addressing it at all; please address it today. Mr. Wilson stated that Mr. Merrill had a meeting with Deb where he threatened to sue her over this issue. You can't go forward without addressing the issues your letting him get away with doing. He stated that the letter was on the record and Ms. Boles knows about it. If it didn't get to the Board, that was reprehensible. He asked the Board who the person was from the Department of Fish and Wildlife who wrote the comment that was read today and Commissioner Tucker responded that it was Jennifer Ringo.

Mr. Wilson reiterated his wife's request for the Board to go look at the property; it was in their power to do a site visit and they would see with their own eyes that this place wasn't appropriate for a subdivision; you have that within your power.

Commissioner Nyquist stated that concluded the testimony of those who had signed up on the sign-in sheet. He then asked if there was anyone who wished to address the Board who was either in support or opposition of this project. Hearing none, Commissioner Nyquist called upon the Applicant to give a rebuttal should they choose.

Lynn Merrill, Applicant – Rebuttal.

Mr. Merrill stated that there was discussion and Mr. Callaway brought up the idea of two or four lots in the 90-acres. What he was doing was applying the zoning density to the property itself and not the section and that was not how the code was written. They do mention average density of 20 and 40-acres in the peripheral and major habitat but it's talking about average densities and not talking about literal parcels on those sites. You can't build a cluster development of 20-acre parcels and get any clustering done; it's contradictory. He stated that Henthorne, the previous owner, was a stewardship forester and he worked for the State and worked to forest this and was part of the Willamette Valley Ponderosa Pine program where they were testing pine trees on some of the toughest ground they could find in the County; there was intense efforts to try and manage that ground and the soils just weren't there to make it work.

Mr. Merrill stated that how the County had interpreted the density in the past was that someone, probably out of convenience, just started that and others did it the same way; it pre-dated everyone here and Mr. Merrill didn't think that Planning had any deep attachment to the way things had been done; there's no reason not to read and interpret the code because he didn't think any Board had taken this up and really looked at it that hard since it was implemented.

Mr. Merrill stated that there had been a lot of bad things said about him and there was either no truth or half-truths in those things; it's a part of being in this business and having neighbors that are angry with you. This has not been a quick process and it has been studied thoroughly at each step and has been very carefully done. He stated that he had met with most of the adjacent neighbors on site trying to work out arrangements that were satisfactory with them. He had three different Fish and Wildlife officials on the site and he walked it with them. Mr. Merrill stated that Jennifer Ringo, who wrote the letter, had spent two hours with him walking the site and was encouraged that a lot of what he was trying to do was to improve habitat for wildlife by taking dead dying conifer timber and prioritizing the oaks and savannah and fruit trees and releasing them from productivity to make large spaces and travel corridors, watering holes and a number of things they are planning to do that is conserving and good for wildlife. He stated that her department's goal was fewer homes in the country but it isn't as if they haven't tried to work politely with all the different parties to get this done.

Mr. Merrill stated that they have made all kinds of concessions and detailed the hard things they're going to do to protect wildlife on the property. We voluntarily, when there was discussion about how we were going to escape the limit, we just said we will put our number right here on the table and it will be the less than what is allowed because, practically, we know there are issues with bad soils. It's going to be tough to get septic up there and we will be hunting around to find a good septic site. We are not trying to get greedy and max everything out but trying to do a project that's good for wildlife and that we're proud of. Mr. Merrill deferred the rest of his time to Ms. Kellington.

Ms. Kellington stated a couple of rebuttal matters. She stated that they had waited a very long time for a decision and there was nothing wrong with the Board closing the hearing today and deliberating and directing staff to work with the Applicant to write findings that the Board would adopt at the next meeting of their choosing. She stated that there hadn't been anything that had come into the record today that wasn't surprising or even relevant; most of the ODFW comments were things that have to do with Goal 5 and Administrative Rules that were simply not relevant to this proceeding which is limited to whether or not the proposal was consistent with and didn't alter the intent of the County's Comprehensive Plan.

Ms. Kellington stated that the Board got to interpret their own code; this isn't ODFW's call this is your call and that is what LUBA said and they're right. She stated that you don't destroy habitat by complying with your own code standard so the only question here was whether or not the words on the page of the County code that says the County recognizes that, within the peripheral habitat, that ODOT [believe she was meaning to say ODFW] recommends a particular dwelling density that standard talks about clustering in peripheral habitat. It talked about what happened when peripheral and

major habitat becomes impacted. Ms. Kellington stated that if they were to read the words "peripheral habitat or major habitat" out of the standard, then that would simply have a standard that said, within sections, here are the rules regardless of ODFW's density standards; she didn't think that was right. She stated that the Board's job, as a legislative body, was to interpret the words on the page consistent with how they're written and not to re-write them and to interpret those standards in light of their purpose, policy and context was all about protecting peripheral habitat so it made no sense to apply these standards outside of the peripheral habitat but made sense to apply the standards inside. The math is so hard; we have 32 acres of peripheral habitat to worry about and the standard basically says that, if the peripheral habitat doesn't cover the entire section, then you divide the number of dwelling units by the amount of land that's in the peripheral habitat to come up with the recommended density number.

Ms. Kellington stated that here there was a final determination, Mr. Callaway's land use decision, that said that this area was not impacted, dwellings are clustered and so the applicable standard was the 32 and if your shooting at the 32 you do the math and divide 332 by 20 and end up with 16.7 allowed dwellings; you know you're only going to get one more at the most out of the other farm forest zoned property that is, as Commissioner Tucker pointed out, was owned by a commercial timber company and Mr. Callaway's house. So, you potentially have 14 additional dwellings that would be allowed in the peripheral habitat in this section. Ms. Kellington stated that the Board could be assured that in the peripheral habitat here there would be no more than 10 and that if someone came in behind Mr. Merrill and got an approval for something else, your decision, which I would hope would say, that that is the max and you have to comply with the County's density standards no matter what if you do a partition or subdivision; it was always going to apply. She stated that if the County did that they would set a precedent that was fair for the citizens because they were relying on the words on the page meaning what they say and you're not doing any damage to wildlife habitat because you're following ODFW's recommended density which they've told you they wanted to do. You're dealing with a piece of property that is settled no and was not good for forestry.

Ms. Kellington stated that, for all of these reasons, the Applicant would ask that the County approve the application and adopt the interpretation that was described. If you agree to that, direct staff to work with the Applicant to write findings that you could adopt as your decision.

Commissioner Nyquist then closed the Public Hearing. He then stated that there was housekeeping of documents received and to authorize the Recorder to enter them into the record.

Action – Commissioner Tucker moved to accept the following documents into the record:

- 1. Memo from Alyssa Boles dated Tuesday, August 29, 2023 that had two documents attached (Exhibit 1);**
- 2. A document received today, Tuesday, August 29, 2023 referring to a July 8, 2016 referring to a land use decision PD16-0148 (Exhibit 2);**

Commissioner Tucker was interrupted by Brenda Wilson wanting to add her document into the record. Commissioner Tucker stated that she needed to take her document back as the hearing had been closed. Commissioner Nyquist stated that he would be an advocate for accepting it. Commissioner Tucker proceeded with his motion.

3. **Written testimony with some notes received from Brenda Wilson (Exhibit 3); and,**
4. **The Staff Report dated August 20, 2023 (Exhibit 4).**

Ms. Boles stated that there was one more document that the Applicant submitted which was a land use decision as part of the testimony, PD16-0148. Commissioner Tucker stated that he included that document and then, again, read off the documents to be accepted into the record as listed above.

Mr. Callaway spoke from the audience that he had submitted a document that was not listed for the record. Ms. Boles stated that the Board had received that document and Commissioner Tucker stated that the memo given to the Board dated August 29, 2023 had two attachments which included comments from Phillip Calloway and the Oregon Department of Fish and Wildlife. Commissioner Nyquist continued with the motion.

Delegating authority to the Recorder to number those documents as she deemed appropriate. The vote was called. The motion passed.

Commissioner Nyquist stated that the Board did receive a request to leave the record open for additional written evidence or testimony. Commissioner Tucker heard that but didn't think it was an official request; having received documents today, he stated that he would like to have more time to review them. Commissioner Nyquist believed that was the intent of the request.

Commissioner Nyquist stated that the Public Hearing had been closed and documents were accepted into the record. He requested that the Board allow the record to stay open for seven days and then allow the Applicant seven days to respond to what would be any new information in that testimony. Commissioner Nyquist then requested that this matter be continued for two weeks for deliberation and possible decision on Tuesday, September 12, 2023. By request, the Board agreed to post the documents that had already been received on the County's webpage.

Commissioner Nyquist clarified that this matter would be continued to Tuesday, September 12, 2023 at 10:00 a.m. The public would be given seven days to submit any comments, however, the Board would only consider comments that were applicable to the decision criteria. Then the Applicant would be given seven days to rebut anything that would, in fact, be new testimony.

Ms. Boles asked to clarify the dates for deadlines as follows:

Tuesday, September 5th at 5:00 p.m. (due to the holiday) – comments from the public;

Monday, September 11th at 5:00 p.m. (Applicant agreed to only six days due to the holiday) – Applicant's rebuttal;

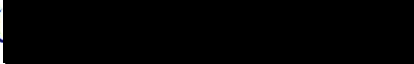
Tuesday, September 12th at 10:00 a.m. – Deliberation and possible decision.

All comments should be submitted to the Planning and Building Department.

Commissioner Nyquist stated that this concluded this matter.

13. Adjournment. There being no other business to come before the Board; the Board of Commissioners meeting was adjourned at 11:15 a.m. by unanimous consent.

The next regular public meeting of the Board of Commissioners is scheduled at 9:30 a.m. on Tuesday, September 5, 2023.

 Recorder
For Board of Commissioners
Marsha Meyer

LINN COUNTY BOARD OF COMMISSIONERS


Roger Nyquist, Chair


William C. Tucker, Vice-Chair


Sherrie Sprenger, Commissioner

Date 9-5-2023