

**POLK COUNTY BOARD OF COMMISSIONERS**  
**MINUTES May 17, 2017**

**1. CALL TO ORDER & ATTENDANCE**

At 9:00 a.m., Commissioner Pope declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Ainsworth and Commissioner Wheeler were present.

Staff present:           Greg Hansen, Administrative Officer  
                              Morgan Smith, County Counsel  
                              Austin McGuigan, Community Development Director  
                              Mark Bernard, Senior Planner

**2. ANNOUNCEMENTS**

Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. The meetings are held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda.

Department Head/staff meetings with the Board of Commissioners are held on Monday, Thursday, and Friday. The meetings are held in the Board of Commissioners' Office Conference Room and are conducted between 9:00 a.m. and 5:00 p.m. The principal subjects anticipated to be considered are on-going, upcoming, and new matters bearing on County operations. Pursuant to ORS 192.640, the Board of Commissioners may consider and take action on subjects not listed within this announcement.

The Polk County Budget Committee will meet Wednesday, May 17, 2017 at 10 a.m. in the Courthouse conference room.

**3. COMMENTS (FOR ITEMS NOT ON THIS AGENDA)**

**4. APPROVAL OF AGENDA**

**MOTION: COMMISSIONER AINSWORTH MOVED, COMMISSIONER WHEELER SECONDED, TO APPROVE THE AGENDA.**

**MOTION PASSED UNANIMOUSLY**

**5. APPROVAL OF CONSENT CALENDAR**

**MOTION: COMMISSIONER WHEELER MOVED, COMMISSIONER AINSWORTH SECONDED, TO APPROVE THE CONSENT CALENDAR.**

**MOTION PASSED UNANIMOUSLY**

**6. APPROVAL OF MINUTES OF BOARD MEETING OF MAY 10, 2017**

**MOTION: COMMISSIONER AINSWORTH MOVED, COMMISSIONER WHEELER SECONDED, TO APPROVE THE MINUTES OF MAY 10, 2017.**

**MOTION PASSED UNANIMOUSLY**

**7. PUBLIC HEARING - ZONE CHANGE 16-01**

Commissioner Pope announced the Board will consider testimony on Zone Change 16-01.

Staff reported that the applicant is proposing to change the existing zoning designation of the subject property from SR to AR-5. The net effect of these proposed changes would be to allow farm use in addition to the residential uses associated with the SR zone.

The proposed change would allow the applicant to engage in farm uses, which would permit farm uses that are controlled in the SR zone. The applicant states that a specific farm use, raising swine, is currently occurring on the subject property. However, swine are not permitted in the SR zone, pursuant to PCZO 127.020(D)(2), on tracts of land less than 10 acres in size. The proposed zone change to AR-5 would allow the applicant to keep swine on the subject property, and would cure a land use violation. The proposed zone change does not involve a Comprehensive Plan amendment, as the underlying Comprehensive Plan Map designation is Urban Reserve which supports both the SR and AR-5 zones.

The subject property is located south of Hoffman Road between Riddell Road and South Pacific Hwy. within the Urban Growth Boundary (UGB) of Monmouth. The applicant is not proposing any development as part of this application.

Notice of the April 19, 2017 public hearing before the Hearings Officer and the May 17, 2017 public hearing before the Board of Commissioners was provided as required by PCZO 111.340-111.370. Notice was mailed to property owners located within 250 feet of the outside perimeter of the subject property on March 28, 2017. Notice was printed in the local Itemizer-Observer newspaper on March 29, 2017. Notice was posted on the subject property on March 29, 2017.

The Polk County Hearings Officer held a hearing on April 19, 2017 and received testimony in favor of, in opposition to and neutral to, the applicant's proposal, and made a recommendation in favor of the application on May 4, 2017.

Commissioner Pope opened the public hearing.

Applicant Richard Evans, 9940 Hoffman Road, Monmouth, and Wally Lien, Legal Counsel for the applicant, 693 Chemeketa St. NE, Salem, testified in support of the Board adopting the Hearings Officer's recommendation. Mr. Lien explained that all of the criteria for the zone change have been addressed, and the City of Monmouth, County staff, and the Hearing's Officer have all recommended approval of the zone change.

Bob Gray, 9950 Hoffman Rd., Monmouth testified in opposition of the proposed zone change. Mr. Gray explained that this is not a dispute between neighbors, and feels that he has been labeled as a complainer, when he actually has valid concerns. Mr. Gray explained that his main concern is the moderate threat to groundwater contamination outlined in an Oregon Department of Agriculture (ODA) investigation report completed in December (copy provided for public record). Mr. Gray explained that his well is 32 feet deep. His well is located 85 feet from the Evans' barn, 75 feet from the old waste pile, and 94 feet to a new waste pile. Mr. Gray claims that these waste piles were left uncovered all winter, and were only covered with tarps after the ODA investigation.

The ODA report also contained recommendations to stop hosing out the swine stalls (allowing runoff to go into the ground), and to move the manure piles out of standing ground water. Mr. Gray provided pictures from earlier this year (after the report was issued) of the waste piles on tarps and covered with tarps. However, the tarps have holes, which Mr. Gray feels defeats the purpose of using them since the holes still allow the waste to seep out.

Mr. Gray went onto explain previous water restrictions on Mr. Gray's property that has restricted him from being able to do any additional development on his 7-acre parcel. At this time, Mr. Gray

has not yet had his well water tested for contamination.

Mr. Gray read the SR zoning regulations, which says that keeping livestock shall be done in a reasonable manner that should not constitute a nuisance, by reason including odor, water pollution, or other actions that attract rodents, flies or insects. Mr. Gray argued that this nuisance description matches his complaints.

Mr. Evans and Mr. Lien rebutted the opponents' testimony. They explained that they have raised swine on the property since 2003, and currently have four swine they are raising. The manure is stored during the winter, and some of it is spread on the Evans' fields during the summer, and the rest is hauled off of the property to be spread on an acquaintance's fields.

The Evans only learned last August that swine are not permitted on properties zoned SR. Since that time, they have been working with the ODA on voluntary compliance with the Confined Animal Feeding Operation (CAFO) regulations, while they go through the zone change process. Mr. Evans went on to explain that he currently does not fall under CAFO because his property needs to have a land use compatibility statement, which he will only get after the zone change. Once the zone change is complete, the property would then fall under ODA CAFO regulations, making it eligible for Soil & Water Conservation District grants to build a better barn/waste storage facility, and the property would be regulated and inspected by the ODA. The CAFO process will help to mitigate the risk or perceived risk of damage to water quality.

Mr. Lien explained that the issue at hand is a land use issue only. ODA is the agency that regulates issues surrounding livestock and CAFO, not the County. The Hearings officer and staff have gone through all of the criteria for this land use issue very carefully, and have found that this application meets all of the zone change criteria.

Commissioner Wheeler stated that impacts to adjacent farm uses are relevant when considering a zone change. Although she would not like living near pigs, it is not impacting adjacent farm use, and livestock odor is simply a part of living in the country. Jennifer voiced support of approving the Hearings Officer's recommendation.

Commissioner Ainsworth expressed concern that the Evans' have lived on the property, raising swine out of compliance for 15+ years, regardless of whether they knew they were out of compliance or not.

Staff explained that all livestock but swine is a permitted use in the existing SR zoning on this 5-acre parcel, but would be allowed on the same 5-acre parcel if zoned AR-5. The difference has to do with density. SR zone lots can be smaller than 5 acres, and the impact of swine is greater the denser the properties get. However, the effect would be the same with any livestock, but those would not be regulated. In this instance, the City of Monmouth limits new parcels in this area to 5-acres or smaller (unless there is a waiver).

Staff also explained that the CAFO regulations that the Evans' would need to follow if the zone change occurs are much stricter than the voluntary standards they have been following since last August. If the zone change doesn't pass, the Community Development department, the Evans would then have a zoning violation and would have to remove the swine from the property.

Commissioner Pope commented that his concern revolves around water quality issues, but at this point there is no evidence of impact to the water quality. However, there are still other thresholds covered by other jurisdictions that will take place beyond the decision of the Board of Commissioners. When asked about putting conditions on the zone change, staff answered that the

zone change allows multiple uses.

Hearing no further testimony, Commissioner Pope closed the record and the public hearing.

Staff explained that there are three options, the Board can make a motion to approve the zone change, make a motion to deny the zone change, or impose conditions on a zone change through a limited use overlay, which is not something that has been done in the past and may be a difficult process for county staff to manage.

When asked about groundwater issues, staff informed the Board that the Department of Water Resources does not have these properties listed as a groundwater restricted area or groundwater limited area. This doesn't mean that there couldn't be impacts from poor agricultural practices, either from swine or from any other livestock allowed regardless of whether the zone change is allowed, there is an equal risk. The County doesn't dispute the potential for groundwater contamination. However, the County assumes that a landowner will be following the CAFO and water pollution control facility protocols to mitigate those water quality impacts.

In his own experience, Commissioner Pope is used to having conditions for agricultural uses. He feels it is irregular that a parcel is regulated from swine operations, and without changing the acreage, allow the activity that is regulated on the same size parcel; in addition to neighbor disputes and potentials for water quality issues (which Commissioner Pope understands falls under ODA, DEQ, etc.). Commissioner Pope would like to say yes with the condition that they meet the CAFO standards within a period of time, and demonstrate water quality standards to mitigate the concerns of the neighbors. Staff explained that they would have to, it would be an enforcement issue through the ODA for a CAFO permit, with stricter penalties.

Commissioner Ainsworth again expressed concern that the Evans' have lived on the property, raising swine out of compliance with the land use law for 15 years.

**MOTION: COMMISSIONER WHEELER MOVED, COMMISSIONER POPE SECONDED, TO ADOPT THE FINDINGS FOR ZONE CHANGE ZC 16-01 LOCATED IN THE HEARINGS OFFICER'S RECOMMENDATION AND APPROVE ZC 16-01.**

**MOTION FAILED WITH COMMISSIONER WHEELER VOTING IN FAVOR, COMMISSIONERS POPE AND AINSWORTH VOTING IN OPPOSITION.**

At 10:08 a.m., Commissioner Pope asked if there was a need for executive session. Staff answered that there was not and the meeting was adjourned.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

**(a) ORDINANCE NO. 17-01**

Adopt Ordinance 17-01 in the matter of Legislative Amendment LA 16-01; Dallas Urban Growth Boundary Amendment and Amendments to the Polk County Comprehensive Plan and Zoning maps.

**(b) PERSONNEL – CONTRACT 17-56**

Approve Contract 17-56, employment agreement with Jodi Merritt, Community Corrections Director.

**(c) PUBLIC WORKS – CONTRACT 17-57**

Approve Contract 17-57 with Salem Road & Driveway for the 2017 overlay award.

**POLK COUNTY BOARD OF COMMISSIONERS**

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Craig Pope, Chair

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Mike Ainsworth, Commissioner

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Jennifer Wheeler, Commissioner

Minutes: Heather Chase  
Approved: May 24, 2017