



**MINUTES OF THE REGULAR SESSION OF THE
LINN COUNTY BOARD OF COMMISSIONERS
TUESDAY MEETING
FAIR & EXPO CENTER
3700 KNOX BUTTE RD, NE, ALBANY
CONFERENCE ROOMS 3 & 4
JANUARY 24, 2023**

The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, January 24, 2023.

Those present at various times for the matters as indicated below were: Steve Wills, Linn County Planning and Building Director; Alyssa Boles, Planning Manager, Linn County Planning and Building Department; Steve Braaten, Linn County ITS Director; Pegge McGuire, Executive Director, Community Services Consortium; Eluidi Issangya, Bishop of Tanzania (Guest of Commissioner Tucker); numerous audience members in attendance for the Public Hearing and Alex Paul, Linn County Communications Officer.

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; Will Tucker, Vice-Chair and Commissioner Sherrie Sprenger were present, as well as, Darrin Lane, Linn County Administrative Officer and Marsha Meyer, Recorder for the Board of Commissioners.

4. Approval of Agenda.

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

5. Reports of Staff and Committees: None.

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

7. Special Orders:

A. Personnel Action Forms.

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

B. Discussion and possible action on the submission of a letter to the Oregon Office of Emergency Management requesting Linn County be included in homelessness funding per Executive Order 23-02.

Commissioner Nyquist stated that Governor Kotek had declared an emergency with an Executive Order to create an opportunity for funding for the homelessness problem in the State. He stated the direction of the funds appeared to be more for urban areas and this agenda item existed, in part, based upon her comments last week in the Willamette Week about consideration of including other areas upon request. Commissioner Nyquist stated that Darrin Lane, Linn County Administrative Officer, had talked with Oregon Emergency Management last week and asked that he inform the Board about that conversation.

Mr. Lane stated that he contacted the office of Emergency Management in Salem and spoke to Interim Director, Matt Garrett. He stated that Mr. Garrett suggested that it would not be timely to declare an emergency right now as this matter was still unfolding. He did suggest that the County write a letter to OEM indicating the County's needs and what they've done in response to this issue and/or what the County would like to do; he recommended the County "get in the queue". Mr. Lane stated that the County could put OEM on notice that they were interested.

Commissioner Nyquist stated that his preference would be for the County to apply for the funds with some intent around what would be done with the funds if received. He stated that, for him, it would be a pass through to the various agencies and non-profits in Linn County that were delivering services to the homeless. If there was consensus about what the County would do with the funds if received, he recommended that the Board delegate Mr. Lane to write a letter to OEM. A lengthy discussion followed.

Commissioner Sprenger stated that she was concerned that the funds would have strings attached but that the Board would be remised if they didn't, at least, put themselves "in the queue" as indicated by Mr. Lane.

Commissioner Tucker stated that the County uses other agencies, such as the Community Services Consortium (CSC), to help distribute funds to other organizations who work with the homeless and that he would like to hear from Pegge McGuire, Executive Director, CSC who was in the audience. Commissioner Tucker also stated if the County sent a letter making a request for the funds, he was not positive it would get in the right "queue" at the right place versus preparing a Resolution and Order.

Mr. Lane stated that he understood Commissioner Tucker's concern as he was not clear what Mr. Garrett meant by "getting in the queue" and the normal procedure would be for the Board to declare an emergency and make a request through the County's normal emergency management process. He did reiterate that he was advised that it would not be timely to do a declaration of emergency, at this time, but they could do what Mr. Garrett advised and send a letter asking what action the Board would need to take to move forward in the process.

Commissioner Nyquist asked if there was consensus from the Board to delegate authority to Mr. Lane to prepare and send such correspondence per his conversation with Mr. Garrett. Commissioner Nyquist stated, for the record, that the Board agreed and that Mr. Lane would get Commissioner Tucker's input in writing the letter.

8. Unfinished Business and General Orders:

A. Calendar Update: The Commissioners updated their calendars. Commissioner Tucker stated that all three Board members would be attending a CSC meeting on Thursday, January 26, 2023 at 9:00 a.m.

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

10. Announcements: There were no announcements.

11. Business from the Public (3-minute limit per speaker): There was no one present from the public wishing to use this forum neither in person or telephonically.

Commissioner Tucker introduced Eluidi Issangya, Bishop of Tanzania, as his guest at today's Board meeting.

Next, Commissioner Nyquist recognized Pegge McGuire, Executive Director, Community Services Consortium (CSC). As requested by Commissioner Tucker earlier, Ms. McGuire spoke in regard to Executive Order 23-02.

Ms. McGuire stated that she was happy about the opportunity for Linn County to "get in the queue" and hoped that the County would continue to put pressure on OEM to include Linn County in Executive Order 23-02.

Ms. McGuire stated that she would like to talk to the Board further, as a representative of CSC, about separating from the Rural Oregon Continuum of Care and forming a Linn, Benton and Lincoln continuum. Commissioner Tucker encouraged everyone to be watching for the materials on this information. With three counties willing to form their own continuum of care, he thought that it should be considered. Commissioner Tucker then thanked Ms. McGuire for her work.

Commissioner Sprenger asked Ms. McGuire if she had concerns that perhaps Linn County would not receive any of the funds from the Executive Order. Ms. McGuire stated, yes, she did have concerns and then provided more of an explanation why. Commissioner Sprenger asked that as Mr. Lane crafted his letter to OEM that he used the word "equity" since the word was used frequently out of the Governor's office and she wanted Linn County to be treated equitably. Commissioner Tucker stated that he worried about action; we cannot have the legislature take two years to figure out a process for money and needed to emphasize that it needs to be a speedy process.

Commissioner Nyquist recessed the regularly Board meeting at 9:51 a.m.

Commissioner Nyquist reconvened the regularly Board meeting at 10:02 a.m.

12. Public Hearing – PLN 2022-00807: concurrent applications by the City of Millersburg for a Comprehensive Plan (Plan) Map Amendment and Zoning Map Amendment. The amendments are proposed as part of an Urban Growth Boundary (UGB) amendment approved by Millersburg to add and remove properties within the Millersburg UGB. The total area to be added to the UGB is 162.89 acres. The total area to be removed from the UGB is 167.46 acres. The amendments would change the Plan designation and Zoning Map designation on five properties – Alyssa Boles, Planning Manager, Linn County Planning and Building Department.

Commissioner Nyquist asked the Board to declare any ex parte communication or conflict of interest. Commissioners Tucker and Sprenger both stated that they had none. Commissioner Nyquist stated that he had ex parte communication over the last six months as the Millersburg application, although it was not referred to as the Millersburg application, it had come up during economic development meetings or discussions in conversations with Wayne Kreitman, City Manager for the City of Millersburg. He also stated that he had initiated a call on Friday, January 20, 2023 to Peter Kenagy who, in discussion with Staff, wanted to check in with someone who had testified at the Planning Commission hearing over the issue of whether or not the Board would follow the regular order of normal land use hearings.

Commissioner Nyquist stated that he owned property 1,500 feet from the parcel which he did not know until someone told him. The properties were separated by a river and in another county. He stated that he had no financial stake in the decision and would follow and base his decision on the criteria.

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

Ms. Boles reviewed her Staff Report and indicated that she had received seven additional comments after her Staff Report was submitted to the Board and that the Board had received those comments prior to the hearing.

Ms. Boles stated that the Planning Commission held a meeting on Tuesday, January 10, 2023 and adopted a motion to recommend the Board of Commissioners deny the applications. She stated that, at the close of today's hearing, the Board would need to decide to either approve, deny or modify the application. Commissioner Tucker noted that there were two maps that were submitted from the City of Millersburg just before the hearing.

Commissioner Nyquist clarified that when Ms. Boles stated "at the close of the hearing" she was not referring to the close of the hearing today but after the process was completed. Ms. Boles agreed. Commissioner Nyquist stated that, after receiving additional documents this morning, he did not expect that the Board would decide today without reading all the comments.

Commissioner Nyquist then read into the record the process for the hearing and time limitations for testimony.

Commissioner Nyquist then called upon the Applicant.

Alan Sorem, 250 Church St, SE, Salem, OR – Special Counsel for the City of Millersburg – Applicant.

Mr. Sorem addressed comments in regard to the procedures. He stated that notices had been provided for four public hearings; this one being the fourth. All of them had been done pursuant to the procedure code for the applicable jurisdiction. Mr. Sorem stated that there was a conflict between what the most current and updated procedural ordinance required for having public hearings and what was called for in the UGMA (Urban Growth Management Agreement). He stated that staff and other officials got together and determined they would follow the adopted procedure ordinance for both jurisdictions and everyone had received notices and he did not believe that there were any procedural errors.

Mr. Sorem stated that a lot of the comments provided in the record at the Planning Commission hearing focused on assertions that the properties were not equal in their ability to be farmed; one had constraints regarding access and floodplain and another property had been currently farmed and didn't have as many of those constraints. You would say the property to be brought into the UGB (Urban Growth Boundary) was more valuable farmland but that was not what the criteria called for and not an appropriate question to ask. Mr. Sorem stated that they have to follow the criteria and the statewide planning goals in Goal 14 and Administrative Rules that are adopted.

Mr. Sorem stated that the City has, within the record for this case, the alternative site analysis and it explored all the property surrounding the City of Millersburg and went through the four priorities which were: whether or not there was an urban reserve area; any marginal lands or exception areas; any properties with predominately low value farm soil; and, properties that were all predominately high value farm soil. He stated that's what they compared; it was a like-for-like comparison under the state criteria which focuses on the soil and classification. Mr. Sorem stated that any comments from the 1000 Friends of Oregon or others that those processes were not followed was not accurate and all of those documents were in the record. He then reserved the rest of his comments for rebuttal.

Matt Straite, City of Millersburg, 4222 Old Salem Rd, Albany, 97321.

Mr. Straite gave background information on when this process started back in March, 2022. He stated that the City met with the County to discuss how it should be structured to make sure the public's needs were met and that there were adequate hearings moving forward in the process. He stated that the City adopted an ordinance and then they came before the Linn County Planning Commission.

Mr. Straite stated that an alternative analysis was done using the State requirements and it included a study area, looked at the constraints and pulled out the properties that didn't meet the requirements for new industrial areas. They then compared the different properties that were left inside the study area and identified three possible contenders that, not only met the State outlined requirements, but also met the City requirements

for growing the urban industrial area. Mr. Straite stated that they established a preferred alternative and soils were part of that process in the alternative analysis and not part of the swap aspect of what they were trying to do. In regard to showing need, the State gave a couple of options to use. They can use an Economic Opportunities Analysis to show that the City needed more jobs to meet the population and regional demands or they could do a land exchange which they opted to do.

Mr. Straite stated that when land exchange is chosen, it kicks in Rule 70 from the State's code. Rule 70 speaks specifically to the ability to exchange properties and swap. He then explained the two requirements for Rule 70: 1.) the two properties have to be of equal size to swap them; and, 2.) they had to have similar designations once swapped. Mr. Straite stated that Rule 70 did not speak to farm quality.

Kevin Kreitman, City Manager, City of Millersburg, 4222 Old Salem Rd, Albany, 97321.

Mr. Kreitman provided background information and context in regard to the City's request.

He stated that 50 years ago the City of Albany adopted a new comprehensive plan that included heavy industrial property which was now the City of Millersburg. A petition for incorporation of a new city went to the Board of Commissioners in 1972. A hearing was held before the Board and the vote of incorporation passed by the residents 76-74 and the City of Millersburg was established and incorporated in 1974. He continued providing additional history and shared some points from the 1980 Millersburg Comprehensive Plan that he believed would provide key historical context, as well as, the intent of the Board of Commissioners when they placed the incorporation of the City before the citizens and when they approved the City's first comprehensive plan.

Mr. Kreitman continued his testimony about Millersburg's industrial growth. He stated that the concentration of industrial development was due to a number of factors: outstanding transportation advantages, the availability of large predominately flat sites suitable for industrial development with the availability of water and sewage facilities; and, contains some of the best industrial sites in the Albany-Millersburg area that had better access than sites elsewhere.

Next, Mr. Kreitman shared some population and economy goals such as maintaining Millersburg's role as the major employment center for the Albany-Millersburg urban area, Linn County and the State of Oregon; and, to work cooperatively with the City of Albany and Linn County to ensure a continuing improved economy for the residents of Linn County. He then discussed urbanization and highlighted Section 4 and 5 of the Comprehensive Plan and presented a map that was in the industrial area in Albany in 1971. He stated that all the property being talked about was in the Albany's Comprehensive Plan at the time of incorporation which was adopted in 1980. There was no handout given to the Board of the maps that were referred to by Mr. Kreitman. Mr. Kreitman stated that the City's motto was "a city linking agriculture and industry" and they were proud of their agriculture and industrial background. He stated that the County recognized that it was an important industrial hub and employment center for

the Albany-Millersburg area and Linn County. The City recognized the concerns of the farmers in the area but stated it was important to highlight that the property being discussed for the UGB swap had been recognized since the City's first adopted comprehensive plan in 1980 as within the planning area for future expansion of the City's UGB.

Mr. Kreitman stated that Commissioner Nyquist came to speak to the City of Millersburg's City Council in March, 2018 regarding support for the intermodal center and the Council subsequently passed two Resolutions in support and actively supported the project for funding and reviewed and approved the land use application for that project. He stated that the City recognized the value of the intermodal center to the agricultural communities which would likely be the largest group benefiting from that facility. Additionally, Mr. Kreitman stated that the City recognized that the intermodal facility would be a driver for industrial development. He stated that they had seen large companies interested in the Millersburg area and Millersburg was one of the few areas in the State that could currently accommodate large power needs for industries. Mr. Kreitman stated that it was clear that the County, by actions 50 years ago, recognized the value Millersburg would provide to the Albany-Millersburg area through jobs and tax revenue.

Mr. Kreitman stated that they believed the history of the property involved and the request for UGB swap clearly demonstrated the property had been planned for eventual inclusion within the Millersburg UGB and ultimately industrial development. He stated that the City of Millersburg requested the approval of the UGB swap and thanked the Board for their consideration.

Scott Cowan, resident and Mayor of the City of Millersburg.

Mr. Cowan stated that he had been on the City Council for the last 22 years and was currently the Mayor of Millersburg and was representing the City Council at the hearing.

He stated that staff had provided the Board with information that he thought was a straightforward comprehensive request. Mr. Cowan stated that the City of Millersburg strived to be compatible in both agricultural and industry and would continue to partner with those groups as they grow.

Mr. Cowan stated that this was a swap and not a takeover of property to continue to grow the community that would stimulate future growth for agriculture and industry providing, potentially, more higher paying jobs. Mr. Cowan stated that this would utilize the overall advantages of the two properties; the future and economic growth was tied to the future of the two properties. He and his staff were there to answer any questions or concerns.

Commissioner Nyquist stated that concluded the presentation by the Applicant.

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

Forrest Reid – Support.

Mr. Reid stated that he serves as a Judge for the City of Albany and, in that capacity, he had a very similar job as the Board which was to listen to the facts, take the facts in, apply the facts to the law and then come up with a ruling. Mr. Reid asked the Board, believing the City was well within the position and if the correct ruling was applied to the facts before them, that they would allow for the swap to occur. It may not be 100 percent supported by the community but he believed, in allowing the swap to occur, it would bring new industry into the area and would continue to grow and have a positive impact for the Albany-Millersburg area that would extend to all of Linn, Benton and maybe Marion County as well.

John Bridges, Representative for Willamette Valley Lands, 515 E. First St, Newberg, 97132 – Supporter.

Mr. Bridges stated that Willamette Valley Lands owned the property that was being proposed to be swapped. He also stated that he represented Creekside Valley Farm which was Paul Kuehne's farming operating company.

Mr. Bridges stated that he had been practicing for 32 years and a large part of what he did was land use. He stated that there was a four-step priority analysis when considering expanding or changing the UGB and two of the priorities were marginal lands and no value farmlands; they don't exist around Newberg and they don't exist around Millersburg. He stated that, as a result, if you needed to utilize high value farmland to engage in urban uses, there were economic goals, as well as, farm goals. The balance was to provide urban areas with the ability to create jobs. Mr. Bridges stated that the property proposed to swap out would not provide that and this was clearly the best way to get living wage jobs by creating industrial land.

Mr. Bridges stated that the City of Millersburg should be commended for doing a very thorough alternatives analysis. They analyzed 1800 acres, almost completely surrounding the City, to compare and contrast. When they were done with their analysis, they concluded that his client's property was the best replacement property. Mr. Bridges asked the Board to understand that the property being swapped out was one his client was interested in farming. It has Class I soils and he would take every opportunity to farm that property and had reached out to International Paper to lease or buy the property and, if they were able to sale the property as industrial land, he was positive that his client would exchange it and would utilize farming elsewhere.

Paul Kuehne, Owner of Willamette Valley Land and Creekside Valley Farms, 515 E. First St, Newberg, 97132 – Supporter.

Mr. Kuehne stated that the property being discussed to swap was currently zoned industrial which was his existing property on Conser Road. He stated that they could farm that property; we farm on the other side of the river just south of there. He stated that he looked at elevations for flooding concerns and it was similar elevations to the property he had which they were currently growing grass seed. Mr. Kuehne stated that

the aerial image of the property showed it didn't have much open area; there's some brush and trees but there were areas that were open and farmable in its current state.

Mr. Kuehne stated that he was in support of the City and it seemed that the City was not trying to grow, they're just taking the current existing zoning and applying it to an area they could utilize to provide jobs for the City. He stated that he was willing to answer any questions.

Patrick Wingard, Oregon Department of Land Conservation Development, 1715 Franklin Blvd, Eugene, 97401 – Support.

Mr. Wingard stated that he had submitted a letter for the record to the City of Millersburg supporting the proposal. He stated that his main purpose for speaking was to let the Board know that he was present and was happy to answer any questions but he did not have any additional testimony to provide.

Commissioner Nyquist then called upon the names listed on the sign-in sheet who wanted to speak in opposition.

Steve Nofziger, 31935 Rolland Dr., Tangent, 97389 – Opposed.

Mr. Nofziger stated that for the City of Millersburg to try and pass off this land as light ground was mistaken. He stated that his father purchased that ground in 1950 and that the City wanted to do the swap from EFU to Industrial which he had farmed with his father until the early 1980's and it was productive ground where they raised rye grass, wheat, clover and, currently, was an established hazelnut orchard. Mr. Nofziger stated that the question he had for the City of Millersburg was, if this was light ground, then why hasn't it been farmed yet; it has never been farmed. They can call it EFU but it wasn't and, as Mr. Kuehne stated, there was a lot of brush and slough and not much farmable ground. Mr. Nofziger stated that the ground the City of Millersburg wanted to swap with industrial wetland that had never been farmed; he used to hunt ducks there and respectfully asked the Board to reject the City of Millersburg's proposal.

Tim Hubert, 38884 Conser Rd, Albany, 97321 – Opposed.

Mr. Hubert stated that he had lived in Dever-Conner for 56 years and had heard people talk about Albany and Millersburg but people that were going to be impacted was the members and community of Dever-Conner with their own unique heritage and traditions. He stated that Millersburg had been a good neighbor but now they were creeping into their neighborhood and wanting to save productive farm ground and switch it out with ground that, originally, Willamette Industries used as a wetland reservoir for conservation and now they want to turn it into farm ground. You won't have the same PH levels, base saturation or same soil types it would take to farm that ground. Mr. Hubert stated that they would have to spend a lot of money and there was not a lot of money to be made in most commodity crops raised here in the valley; it was not a fair exchange at all. Mr. Hubert stated that the community of Dever-Conner was being misrepresented or, at least, not represented at this point. No one asked them about this and if he would have known about the first hearing, he would have been

there. Mr. Hubert stated that they heard about it finally, but he did not want there to be collateral damage in order for Millersburg to expand but there are people who live here and it was their home and their lives. Mr. Hubert stated that he had been there all of his life and he was in opposition of the applications.

Commissioner Nyquist called upon Eric Chambers, who signed up on the sign-in sheet, however, Mr. Chambers stated that he was passed.

**Peter Kenagy, 1650 NE Nebergall Loop, Albany, 97321 – Opposed.
& Dave Nofziger, 38018 Conser Rd, Albany, 97321– Opposed.**

Mr. Kenagy and Mr. Nofziger both testified at the same time.

Mr. Kenagy stated that they had come before the Board in regard to the proposed Millersburg UGB swap and on behalf of the farmers, landowners and community members who had signed onto this testimony. Mr. Nofziger stated there were over 70 signatures.

Mr. Kenagy stated that they wanted to hit the key points which should be all the Board needed in order to unanimously deny the poorly thought out application.

Mr. Nofziger stated that the proposed like-for-like UGB swap was nothing of the kind and, in reality, was an expansion. It falls under Goal 14 and deserved a much greater degree of public engagement, scrutiny and a lot more community thought into the ramifications.

Mr. Kenagy stated that no way did 160 acres of industrial swamp equate to 160 acres of productive, irrigated Class 1 farmland with an established perennial crop. He then quoted the Oregon State Agricultural Land Use Policy ORS 215.243(2).

Mr. Nofziger referenced Linn County Code 921.874(A)(2) and stated that jumping across the railroad tracks on Conser Road with industrial use would materially alter the long-term stability and integrity of a very unique and remarkably well-preserved, cohesive farm community and preserve, long-term, their future generations. In addition, it would be an asset for the City, the people of Millersburg, as well as, those who manage the lands.

Next, Mr. Kenagy stated that they all do business in Millersburg and wanted to see it continue to be a valuable part of the larger community. They all support the new intermodal center and were hopeful it would be a benefit to the greater community.

Mr. Nofziger stated that it was their contention that Millersburg had more than enough unused or underused land within its UGB and, if thoughtfully planned and judiciously used, there was no need for expansion.

Mr. Kenagy stated that the County also needed to be aware of what they were getting for this proposed like-for-like exchange. He stated that the County was going to inherit

industrial brownfield and asked that they be aware of the potential long-term clean-up cost they, or the County, may be on the hook for.

Mr. Nofziger stated that their humble ask was that the Commissioners unanimously deny the application and discourage Millersburg from appealing. We don't want to have to fight this at the Land Use Board of Appeals (LUBA) or in the courts as it would be a waste of everyone's time; there were much better ways to move forward to ensure long-term integrity for our community, city, land and land base.

Paul Harcombe, 30680 Horseshoe SW, Albany, 97321 – Opposed.

Mr. Harcombe stated that he was present on his own behalf, as well as, 1000 Friends of Oregon and Friends of Linn County. He stated that both organizations were dedicated to the protection of farmland in the State of Oregon.

Mr. Harcombe stated, in respect to the letter of the law, the one piece of information he would offer in rebuttal to what had been offered this morning was whether or not the land proposed for exchange could be classified as exclusive farm use land. He stated that a much more detailed analysis of the soil types on each of the properties would indicate that there were significant differences in the productive capacity of those lands that would make this an inappropriate comparison.

Mr. Harcombe stated that, on a larger scale, the previous speaker hit the high points and that high-quality farmland in Oregon was a precious commodity and not one to be squandered and dispensed with lightly. He stated that, if there was a real serious need, you do what you have to do and, in this case, no serious need had been shown. In fact, in the section of the Staff Report that dealt with compatible use of adjacent lands was required, they said, of course, it would be compatible; we'll make it that way when we figure out what we want to do with it. Mr. Harcombe stated that that didn't speak well for planning or efficient utilization of the land that they have. This goes beyond just this property, it threatened the agricultural enterprise of the Dever-Connor area and it threatened an increasingly rare community of families that have been farming in the same area for a long time. Under state-wide planning goals, social conditions should be considered.

Mr. Harcombe stated that perhaps it was time to acknowledge that the constraint they were up against was one that said you have to consider the carrying capacity of the air, land and water; the carrying capacity of this area for industrial use was limited. It's surrounded by very high-quality farmland and he submitted that there were other places in the Albany-Millersburg area, or in Linn County, which would be better suited for industrial uses to protect this irreplaceable soil resource.

Commissioner Nyquist stated that concluded the list of people who signed up to testify in opposition and asked if there was anyone else who wanted to speak in opposition.

Matthew Cook, 32073 Dever-Connor Road, Albany, 97321 - Opposed.

Mr. Cook stated that he was a fourth-generation farmer in the Dever-Conner area.

He stated that EFU was a proud thing for the State of Oregon; we've worked very hard to protect our farmland and it needed to remain protected. He stated that was the only way his children could continue to grow in the future of agriculture. Mr. Cook stated that Millersburg had said that this would help the agricultural economic situation and that was not true; the only thing that would help the economic situation in agriculture was more land, not taking it away.

Mr. Cook stated that Millersburg said that Rule 70 says a designation was an EFU and, later on, the Planner said eventually designated as EFU. Mr. Cook asked for clarification and wanted to know if the rule says "eventually designated as EFU" or "currently designated as EFU" and if that applied to the swap in Rule 70.

He stated that Millersburg had continually spoken about how they had plans but their plans could change; farmland cannot change back to farmland once it goes to industrial use. We should continue to protect our farmland. Millersburg stated their model was to support agriculture; taking farmland does not support agriculture.

Mr. Cook stated that farmland was, in his opinion, an endangered species. Our families have been there for many generations and we've worked hard to maintain it; we've been good stewards and wanted to protect the Willamette River. The farmland worked as a filter for any industrial waste that didn't get dumped and we work hard to protect the land to feed people in our communities and we do not want that taken away for our future generations.

Mr. Cook then stated that it would be a good move for Millersburg, if they thought it was a good farmable land, that they should prepare the ground and put in as much work as those who put in that orchard to make it a place that could be farmable and remediate any potential chemical waste that had been dumped on it. They should make the effort to turn it into farmland before they come and ask to take good farmland out and say that it's like-for-like. Mr. Cook stated that Millersburg Special Council admitted that, once they got their boots on the ground, it may not be like-for-like. So, let's get our boots on the ground and take action; as you could see in the pictures, it's not farmable ground. Mr. Cook then asked the Board to consider all of that and protect their farmland for his kids and the future agriculture in the community to bring in jobs and create a lot of opportunity.

Burt Morris, 38733 Conser Rd, Albany, 97321 – Opposed.

Mr. Morris stated that he had been farming in the Dever-Conner area for the last 25 years and, tagging onto what Mr. Cook said, the difference in perspective. He stated that the folks that proposed this economic development meant that someone was going to make some money and move onto the next piece of ground they wanted and make more money. Mr. Morris stated that the dirt had been there for a long time and all the money these folks were going to make and the development that was going to happen, none of it you could eat. If you continue to take away farmland one piece at a time, sooner or later someone was going to get hungry because you can't eat light industrials and homes that are planted on farmland. If you applied this to the law, the attorneys were right, this was all permissible, but you can't eat the law. Mr. Morris asked if it was

in the spirit of what the land use laws were put into effect for; any attorney could justify the law in court but was it in the spirit.

Zac Taylor, 38264 Conser Rd, Albany, 97321 – Opposed.

Mr. Taylor asked whether or not the land they wanted to swap was ever a super fund cleanup site like the one they're trying to swap. He stated it was a question to think about and he didn't understand why they wanted to develop that part of the land when they had so much land on the east side of the tracks that could be developed that wouldn't encroach or take away from the other side. Mr. Taylor said the lawyers like technicalities but a lot of the time technicalities can let criminals off injustice too. Sometimes technicalities don't always work the best in situations.

Phillip Calloway, 38717 Crawfordsville Dr, Sweet Home, 97386 – Opposed.

Mr. Calloway stated that he was not a farmer like everyone else but he needed what farmers provide. The point he wanted to make was that the Millersburg Planner stated that there were two ways they could go; they could do an economic needs analysis or they could do a land swap. Instead of showing that there was an economic need, they were willing to do a shortcut and do a land swap. Then they said the land swap was needed for economic growth. They should be required to do an economic needs analysis showing that there was no choice but to take this prime farmland. Don't let them take this shortcut; make them show that there was an economic need to do this.

Commissioner Nyquist asked if there was anyone else wanting to speak in opposition. There being none, he then asked if there was anyone else wanting to speak that was not taking a position or had neutral input and/or questions not raised or thought of yet. There being none, Commissioner Nyquist then called upon the Applicant for rebuttal of testimony in opposition.

Alan Sorem, Special Council for the City of Millersburg.

Mr. Sorem stated that this was not a shortcut and that the City was following its comprehensive plan, goals and mandates. The land use process in Oregon was one of compromise and its often said that the best compromise was where everyone was a little bit unhappy and/or a little bit happy. We have not had unmitigated urban sprawl in the last 50 years. Mr. Sorem stated that this was not an expansion of the urban growth boundary so they had property that, if you go back 50 years ago in the industrial era where the primary industry was timber, you could go ahead and make beneficial economic use of those lands related to the paper industry; however, that was no longer the case.

The need for the City was to go ahead and do an adjustment to remove some of the land from the urban growth boundary and expand others so that they could continue to have efficient use of the urban planning without an expansion; that was not an opinion, there were definitions that were written into the state laws and so, as Councilor Reid laid out, they have to apply the facts to the laws. The definition of expansion was provided when a community modified its urban growth boundary and had a similar amount of

acreage going in and out which, in this case, the urban growth boundary would be reduced net by about 5 acres and would end up having the same zoning. That was not an expansion it was an exchange of the boundary and has been part of the rules all along.

Next, Mr. Sorem stated that, going back to the comprehensive plan and whether or not there were significant impacts from the properties, they were doing an expansion of a property of a swap of the boundary of two substantially similar related properties; they are both large track and both are immediately adjacent to that. So, while we will lose one current operation it was not the kind of change that was going to change the land use pattern of the greater area. We are not changing, for example, a highly parceled area where there are ten or 20 parcels in exchange for two tax lots. Its three versus two and they are all immediately well dense adjacent to the boundary of the property. Mr. Sorem stated that the City of Millersburg land use planning process, through site planning review zoning regulations, would ensure that, through setbacks and other applications of public improvements that are needed to offset impacts from any development and they would occur in an orderly manner. He stated that, right now, they didn't have an actual development proposal in front of them so they were only looking at it from a usage point which there was evidence in the record to substantiate that.

Mr. Sorem stated there was testimony in the record as to what the uses were; it's only held treated waste water for the related mill; there was no known environmental concerns and any future development of the replacement property would require DEQ and the State regulatory processes through the permitting processes.

Commissioner Nyquist asked if the City, in the initial notice of the hearings, did they notice properties outside of the City of Millersburg. Mr. Sorem responded that they were noticed in the paper; there was a Tech 4 land use application so it was noticed in the paper. Commissioner Nyquist stated so it was not by direct communication by letter and Mr. Sorem stated no. Commissioner Nyquist asked if the community or residents inside the City of Millersburg were noticed by mail and Matt Straite responded, no, that they thought it was best to stick with what their code required for Tech 4 which was direct to newspaper and in direct mailers to the citizens. Mr. Straite stated that they knew the County's requirements were going to notify the neighbors directly through mailers. Commissioner Nyquist stated that, he didn't know if it gets to the decision criteria or not, but part of the problem was by the time folks outside the City became aware or learned about it, the process was under way. He stated that the people in Dever-Conner were good and decent people and pillars of our farming community and he was concerned about that. Commissioner Nyquist stated that the newspaper that the City advertised this in was not exactly booming with sales and readership these days; but, we can't un-ring that bell and we are where we were in the process.

Commissioner Nyquist stated to the issue that there was no actual development proposal there was substantial fear of the unknown and it was probably warranted. He then asked how the City could determine, by approving the amendment, that they would be compatible with adjacent uses and would not adversely impact the overall land use pattern in the area when they didn't know what they were going to do there, at least,

having shared that with the public at this point. Mr. Straite responded that they needed to keep in mind that the process was designed, when you change an urban growth boundary, to just change the boundary itself; you're supposed to look at the analysis of what that designation is eventually supposed to be which, in this case, was general industrial. Without a project in front of them they don't have a way to specifically dive in and analyze those impacts. Mr. Straite stated that their code had safeguards and provisions for when a project did come in. If you brought a project forward and applied that project at the same time, that would almost be against what the urban growth boundary process was supposed to be about. Commissioner Nyquist stated that the way he read their decision criteria it was required to know that it would be compatible; he didn't know how to get there.

Mr. Sorem stated that they needed to start thinking about the common impacts or concerns stated with both uses. He then stated, in regard to traffic, if they went ahead and had 160 acres of development to the south and continued developing that land, traffic would be substantially similar whether or not industrial development was at the current site or site B. The City's transportation system plan contemplated the levels of long-term planning in the system as a whole so that was part of the staff's analysis. Mr. Sorem stated that when you think about noise or light, those regulations were addressed by the City's general applicable ordinances. When there is concern that's related to setback standards, those were applied toward the site plan review and that was how the staff addressed the problem. Mr. Sorem stated that, when they're doing long range planning, they are always talking about general uses allowed and how they fit with one another. If you look at the properties, there's not dense residential uses located immediately adjacent to the boundary line of the proposed adjusted property; livestock immediately adjacent or any other specific testimony that would indicate that there was a concern or impact that hadn't been addressed.

In regard to concerns about ground, water, air quality, Mr. Sorem stated that all industrial development required both DEQ discharge and if there was any kind of air emissions, those also required state regulatory permits. So, through that process, whether or not that development happens on site A or site B, it was going to be regulated and any impacts would appropriately be mitigated. Mr. Sorem stated that was how they approached that problem. It may not be satisfactory, but he just wanted to explain the problem-solving methodology to try to address that question in the context of just long-range planning.

Mr. Straite stated that it was worth noting that they have had agriculture and industry side-by-side in Millersburg since long before Millersburg was formed. It doesn't mean that there's going to be an easy inherent conflict in those two kinds of land uses. Commissioner Nyquist stated that was true but he thought, intuitively, it felt like, once you get west of the railroad tracks, it's a different conversation. Mr. Straite stated that the City of Millersburg recently approved an industrial project on the west side of the railroad tracks in property that's already in the City so they've already had some industrial development on that side and were planning roads and networks to be sure that it could get services as well.

Mr. Straite stated that having the adjacency of the industrial on the west side to the industrial on the east side made a lot of sense. He stated that they could see in the maps shown by Kevin Kreitman, even back as far as 1971, there was a plan for industrial to stay south of Conser. They were trying to stay adherent to that original intent in keeping the industrial south of Conser but there's farmland on the east side of the City, as well as, south of Conser and so if they didn't expand to the farmland there they would have to expand to the farmland on the east side of the City. If they need to expand, it's going to impact farmland.

Commissioner Nyquist stated that he didn't even know if it was part of the decision criteria but he thought the farmers in the room would tell them that expansion east would be a lower quality ground that was already committed to the urban use because of the interstate running through it, however, he didn't hear that testimony. Commissioner Nyquist then stated that he had a question in reference to the 71 planning documents; isn't that prior to land use as we know it today. Mr. Straite stated that it was but what Mr. Kreitman was trying to show was the general intent of that area even as far back and predating the current land use system. Commissioner Nyquist stated fair enough.

Mr. Straite stated that he wanted to touch on what Mr. Cook asked about what "eventually" EFU meant; the County Planner may have a better response to that than he would. Mr. Straite believed that what he was referring to was the fact that the County Planner was hoping to put an interim designation on the 160 acres along Conser until such time it was annexed. It's a separate designation that makes it very clear that that property was eventually going to be industrial but would be EFU until it was annexed into the City. I think that's where the confusion may have been.

Mr. Sorem stated that his last comment would be that, if the Commissioners thought that there were concerns with how the proceedings were handled to where they had to go ahead and say no and didn't want to move forward, the original comments about approved, deny or modified and what modification would look like, he stated it would have to be a joint process between the City and the County. Denying it out right and saying this isn't going to happen categorically and were not going to move the UGB at all, that's not entirely within Linn County's jurisdiction. The commitment to do an expansion was there. If the Board wanted to hit the reset button and have hearings all over again, Mr. Sorem stated that he didn't think that was needed under the code and didn't think that would be a good use of everyone's time and money; but, that is what the modification would look like if concerns regarding notice or procedures were, in his opinion, the cause to not approve the project. We would, essentially, have to start the process over again for the modification UGB but we would lose a lot of time and work product. In their opinion, it was not needed. However, he stated that's for the Board to ultimately decide in their evaluation and consultation with their staff.

Commissioner Nyquist stated that, as Council Reid pointed out today, they were wearing the hat of judicial nature and not that of all the other things we do together which was part of the awkwardness of this position in this hearing. Mr. Sorem agreed and the interpretation that was made that set us on this trajectory was the procedure code for how to have a type 4 land use application with the City and type 4 application

with the County and that's what they followed. If you were saying that, no, those were inconsistent with the UGMA process and we're going to have the UGMA process overrule the standard procedure code, then that would be an interpretation the County would make. Mr. Sorem stated that they believed the interpretation the City made was reasonable given the attention between the two ordinances; the Board may disagree and so that was their judicial capacity of interpreting those. Saying you can't apply both sets of rules exactly and only have one policy so they decide to have four hearings instead of two and follow the adopted procedures ordinance in lieu of specific following of the procedures in the UGMA which would have led us to the same type of situation where people would be saying that the City didn't follow the procedures code and they have a procedural problem. It wasn't that this issue was ignored, it was the question of interpretation and how to address conflicting ordinances. That's what the City and staff and the County decided to do. If you disagree and want to start the process over, that could be done but we would still be at the same place and would have joint hearings to continue this matter.

Commissioner Nyquist stated that was the reason there were, in his thought, 60 people here; all of them were good and decent people. For him, he stated that, based on what he had read and heard, he could not assure the community of Dever-Conner that this would be compatible with adjacent uses. Commissioner Nyquist stated the Board was going to leave the record open; they could submit documents addressing the issue and he looked forward to seeing how the City attempted to achieve that.

Commissioner Nyquist then asked the Board if they had any further questions. Neither Commissioners Tucker or Sprenger had questions for the Applicant.

Commissioner Sprenger stated that she had a question for staff and Ms. Boles came to the podium. Commissioner Sprenger asked Ms. Boles to go back to the definition for like-for-like in a swap and make it clear what the County's Code, ORS and OAR's said about this.

Ms. Boles stated that her reading of the Administrative Rules that govern on Urban Growth Boundary amendments in Section 70 talk about exchanges and, in those rules, there was no language that spoke that it had to be similar soil, similar uses and similar acreage. She stated that she had only done a few of these swaps and they tend to be very similar acreage but there was not any specific standard for acreage to be the same. Ms. Boles stated, as mentioned in previous testimony, there was a separate set under the Administrative Rules that talked about the alternatives site analysis in the study area that the Board looked at. It has the list of priorities where it talks about marginal lands which there are none in Linn County. In exception areas within the vicinity it must site and then the lowest priority was high value farmland; it did allow for jurisdictions to consider high value farmland under certain circumstances.

Commissioner Sprenger asked that, whether she liked the definition or not, could the size, if it was 10 acres to 100 acres, be construed as like. Ms. Boles stated that, as an exchange, yes, there's no specific criteria. If you're looking at site analysis you could process that more as an actual amendment versus an exchange but there was nothing in the rule that stated it had to be like-for-like acreage.

Commissioner Nyquist asked if it pleased the Board they would close the Public Hearing. The Board agreed. Commissioner Nyquist stated that the Public Hearing on the City of Millersburg applications was now closed and clarified that they were not closing the record.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to accept the following documents into the record: Staff Report [dated January 17, 2023]; two documents dated January 20, 2023 (one from Business Oregon and one from Vaughn Pieschl); a single document from Skip Gray [dated January 23, 2023]; third document set received today from the City of Millersburg [dated January 24, 2023]; a fourth document, also received today, from Friends of Linn County and 1000 Friends of Oregon [dated January 24, 2023]; and then handed to the Board at the beginning of the meeting were two maps [submitted from Matt Straite, Community Development Director for the City of Millersburg]. The vote was called. The motion passed unanimously.

Commissioner Nyquist asked if it was the pleasure of the Board to leave the written record open for comment. Commissioner Sprenger stated, yes, and asked Commissioner Nyquist if there would be a place where they could make comments or general questions. Commissioner Tucker stated that he would not be able to decide given the number of documents received today, as well as, the issue of the compatibility of adjacent use and the question about significant adverse impact upon transportation which he would like to receive more information on. He recommended at least seven days.

Commissioner Nyquist stated, after reviewing the calendar, that anyone could submit anything they wanted addressed to the criteria within two weeks to the Linn County Planning Department by 5:00 p.m. on Tuesday, February 7, 2023; the Applicant would have seven days to review all those submissions and respond to what they deemed as new information by Tuesday, February 14, 2023 by 5:00 p.m.; the opponents would then get to see those responses and have seven days to respond by Tuesday, February 21, 2023 by 5:00 p.m.; and, the Applicant would get the final look at the opponents response until Tuesday, February 28, 2023 at 5:00 p.m. to be submitted to the Linn County Planning Department. Commissioner Nyquist asked the Board if they wanted to continue deliberations to Tuesday, March 1st or March 8th. Commissioner Sprenger stated those dates were on Wednesdays. Commissioner Tucker stated it would be Tuesday, March 7, 2023 before they could schedule the hearing.

Commissioner Nyquist stated that the Board would continue for deliberations and, hopefully, a decision on Tuesday, March 7, 2023 at 10:00 a.m. Commissioner Tucker stated that it would be at the Fair and Expo Center and, due to availability of the room if the location needed to be moved, the Board would announce every single week at the Board meetings so the audience members should watch the website and minutes; however, they would try to hold it at the Fair and Expo Center.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to adopt the schedule as the Board had laid out above. The vote was called. The motion passed unanimously.

Commissioner Nyquist asked the Board if they had any additional comments. Commissioner Sprenger stated that one of the things she wanted to address was a comment that the Board should encourage the Applicant to not appeal. Commissioner Sprenger stated that she would never encourage or discourage anyone from using the law that was there for them whether she was vehemently opposed or not. She wanted to be clear that they would not find any of the Board saying yes you should or no shouldn't; that's just not the Board's role.


Commissioner Sprenger then stated that the other comment she wanted to address was in regard to another comment she heard. She cautioned the audience to be careful when they start defining for her what her job was and what the perimeters are; if it were easy, they wouldn't be having hearings and appeals. She thanked everyone for participating as it was an investment of time; your words were heard.

Commissioner Tucker stated that he appreciated the audience and how they reacted today. He told them that, between now and the decision date, he would not be able to meet with anyone as it would be against the law for him to have contact so, until this matter was closed, he asked that they submit their written comments.

Commissioner Nyquist thanked everyone for participating and for attending today's meeting. He then asked the Board if there was anything else to come before the Board. Hearing none, he adjourned the meeting.

13. Adjournment. There being no other business to come before the Board; the Board of Commissioners meeting was adjourned at 11:38 a.m. by unanimous consent.

The next regular public meeting of the Board of Commissioners is scheduled at 9:30 a.m. on Tuesday, January 31, 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 2-7-2023