



**MINUTES OF THE REGULAR SESSION OF THE  
LINN COUNTY BOARD OF COMMISSIONERS  
TUESDAY MEETING  
LINN COUNTY COURTHOUSE – ROOM 200  
SEPTEMBER 24, 2019**

**The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, September 24, 2019.**

Those present at various times for the matters as indicated below were: Fred Abousleman, Executive Director, Cascades West Council of Governments; Jim Yon, Linn County Sheriff; Torri Lynn, Linn County Juvenile Department Director; Darrin Lane, Linn County Roadmaster; Todd Noble, Linn County Health Services Administrator; Mark Volmert, Linn County Special/Rural Transportation Coordinator; Steve Barnett, GIS Program Manager; Robert Wheeldon, Linn County Planning and Building Director; Alyssa Boles, Senior Planner, Linn County Planning and Building Department; Joel Kalberer, Attorney for Applicant; Johannes Farr, Applicant; Nick Farr; David Coulombe, Attorney for Appellant; Ken Wachal; other audience members; Rich Kellum; Alan Kwan and Alex Paul, Reporter for the *Democrat-Herald*.

1, 2, 3. At 9:30 a.m. Chairman Nyquist called the meeting to order. The flag salute and roll call followed. Commissioners Roger Nyquist, Chairman; John K. Lindsey, Vice-Chairman and Will Tucker were present, as well as, Ralph Wyatt, Linn County Administrative Officer and Marsha Meyer, Recorder for the Board of Commissioners.

4. Approval of Agenda.

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

5. COG Update – Fred Abousleman, Executive Director, Cascades West Council of Governments.

Mr. Abousleman provided a COG Update for the Board and stated that there was nothing outstanding. He then asked the Board if they had any questions and Commissioner Tucker responded that he felt comfortable with how things were going.

Mr. Abousleman informed the Board that COG would be having a Linn County celebration and regional awards event on Thursday, October 24, 2019 at the Albany Carousel. He stated that they will be celebrating a great group of people and will be giving out awards and the Board was invited to attend.

Lastly, Mr. Abousleman announced that this would be his last COG Update as he had resigned his position at the Executive Director for COG. He thanked the Board for their support; it has been a great opportunity and he looked forward to the future. He stated that he would still be in the region and would be available. His last day would be Friday, December 6, 2019. Commissioner Nyquist asked if Mr. Abousleman would prepare an “exit” paper and inform the Board of what his observations and experience has been and what he has learned in his time at COG. Mr. Abousleman stated that he would be happy to provide that information to the Board. The Board thanked him for his service and wished him good luck moving forward.

6. Sheriff’s Office – Jim Yon, Linn County Sheriff.

A. Resolution & Order 2019-265 approving an Intergovernmental Agreement for 911-Dispatch Services between the **City of Albany Fire Department** and Linn County.

**Action Taken Below.**

B. Resolution & Order 2019-266 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Brownsville Rural Fire Protection District** and Linn County.

**Action Taken Below.**

C. Resolution & Order 2019-267 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Halsey-Shedd Rural Fire Protection District** and Linn County.

**Action Taken Below.**

D. Resolution & Order 2019-268 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Harrisburg Fire/Rescue District** and Linn County.

**Action Taken Below.**

E. Resolution & Order 2019-269 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Lebanon Fire District** and Linn County.

**Action Taken Below.**

F. Resolution & Order 2019-270 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Scio Rural Fire Protection District** and Linn County.

**Action Taken Below.**

G. Resolution & Order 2019-271 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Sweet Home Fire and Ambulance District** and Linn County.

**Action Taken Below.**

H. Resolution & Order 2019-272 approving an Intergovernmental Agreement for 911-Dispatch Services between the **Tangent Rural Fire Protection District** and Linn County.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Orders 2019-265, 266, 267, 268, 269, 270, 271 and 272. The vote was called. The motion passed unanimously.**

Commissioner Tucker stated that he appreciated the relationship the Sheriff has with the rural agencies and asked how it was going with the other jurisdictions. Sheriff Yon stated that one issue was with the State of Oregon Emergency Management. He then discussed with the Board the issue with getting the funding to replace the 911 system. The system was meant to be replaced every five years, however, in January, 2020 the current system will be seven years old. The replacement was scheduled for August, 2018 but the State indicated they did not have the money at that time. Discussion followed.

7. Reports of Staff and Committees:

A. Juvenile Update – Torri Lynn, Linn County Juvenile Department Director.

Mr. Lynn provided a Juvenile Update for August, 2019. A copy of his report is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Commissioner Tucker asked how long the Yamhill Measure 11 youth had been at the Juvenile Detention Center and Mr. Lynn stated that it was a year as of June, 2019 so over a year and a few months. The youth's sentencing was supposed to be in August, 2019 but was set out again. Commissioner Lindsey confirmed that the case is set in Yamhill County and that Linn County was just holding the youth. Mr. Lynn concurred.

B. Resolution & Order 2019-289 approving an Intergovernmental Agreement for a Parent Education Program between Linn Benton Lincoln Education Services District and Linn County.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-289. The vote was called. The motion passed unanimously.**

C. Resolution & Order 2019-313 approving an Amendment No. 2 to an Intergovernmental Agreement for the Youth Development Division between the State of Oregon Department of Education (Contract No. 11081-A2) and Linn County and delegating authority to execute originals.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-313. The vote was called. The motion passed unanimously.**

Commissioner Nyquist asked Mr. Lynn how it was going in regard to marijuana MIP's and whether or not there had been an up-tick since the beginning of the school year. Commissioner Nyquist indicated that Mr. Lynn could provide him with a report later. Mr. Lynn stated that they were dealing with some tough kids right now and that there were 19 youth in detention last night, Monday, September 23, 2019.

8. Road Department – Darrin Lane, Linn County Roadmaster.

A. Resolution & Order 2019-317 naming a private road to-wit: Raccoon Lane.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-317. The vote was called. The motion passed unanimously.**

B. Resolution & Order 2019-339 approving an Amendment to the Intergovernmental Agreement for the OR22: Bad Banks Creek Culvert Project between the State of Oregon Department of Transportation (ODOT) and Linn County.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-339. The vote was called. The motion passed unanimously.**

9. Health Department – Todd Noble, Linn County Health Services Administrator.

Mr. Noble provided a brief description of each item listed below:

A. Resolution & Order 2019-252 approving a Personal Services Contract between Pelton and Linn County.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-252. The vote was called. The motion passed unanimously.**

B. Resolution & Order 2019-331 approving an Intergovernmental Agreement between the Oregon Health Authority (Agreement No. 161581) and Linn County and delegating authority to execute originals.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-331. The vote was called. The motion passed unanimously.**

C. Resolution & Order 2019-332 approving an Intergovernmental Agreement between the Oregon Health Authority (Agreement No. 161221) and Linn County and delegating authority to execute originals.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-332. The vote was called. The motion passed unanimously.**

10. Special Transportation – Mark Volmert, Linn County Special/Rural Transportation Coordinator.

Mr. Volmert provided the Board with information regarding the following Resolution & Orders.

He informed the Board that there were corrections to be made to Resolution & Orders 2019-301 (Lebanon Dial-A-Bus) and 2019-302 (Oregon Cascades West Council of Governments [COG]). Mr. Volmert stated that the annual amounts were correct but in Section 2 of the agreements the quarterly amounts were not correct. He asked that this be noted in the minutes and that the Board approve the two agreements then be set aside for the County Attorney's Office to make those two small corrections. Commissioner Tucker recommended that the incorrect amounts in Section 2 be stricken through and the correct amounts be added. Mr. Volmert stated that whatever the Board preferred was what he would do. He noted, for the record, that Section 2 for 2019-301 should be \$43,082 for \$10,770 per quarter; and, for 2019-302 it should be \$16,000 for \$4,000 per quarter.

Commissioner Tucker recommended that Mr. Volmert work with staff after the meeting to make the corrections.

A. Resolution & Order 2019-298 approving an Intergovernmental Agreement for Special Transportation Services between **Benton County** and Linn County.

**Action Taken Below.**

B. Resolution & Order 2019-299 approving an Intergovernmental Agreement for Special Transportation Services between the **City of Albany Call-A-Ride** and Linn County.

**Action Taken Below.**

C. Resolution & Order 2019-300 approving an Intergovernmental Agreement for Special Transportation Services between the **City of Albany Linn-Benton Loop** and Linn County.

**Action Taken Below.**

D. Resolution & Order 2019-301 approving an Intergovernmental Agreement for Special Transportation Services between the **City of Lebanon Dial-A-Bus** and Linn County.

**Action Taken Below.**

E. Resolution & Order 2019-302 approving an Intergovernmental Agreement for Special Transportation Services between **OCWCOG Senior and Disability Services** and Linn County.

**Action Taken Below.**

F. Resolution & Order 2019-303 approving an Intergovernmental Agreement for Special Transportation Services between the **Chamberlin House** and Linn County.

**Action Taken Below.**

G. Resolution & Order 2019-306 approving an Intergovernmental Agreement for Special Transportation Services between the **Oregon Mennonite Residential Services** and Linn County.

**Action Taken Below.**

H. Resolution & Order 2019-307 approving an Intergovernmental Agreement for Special Transportation Services between the **Volunteer Caregivers** and Linn County.

**Action Taken Below.**

I. Resolution & Order 2019-309 approving an Intergovernmental Agreement for Special Transportation Services between the **Senior Citizens of Sweet Home dba Linn Shuttle** and Linn County.

**Action Taken Below.**

J. Resolution & Order 2019-310 approving an Intergovernmental Agreement for Special Transportation Services between the **Senior Citizens of Sweet Home dba Sweet Home Dial-A-Bus** and Linn County.

**Action Taken Below.**

K. Resolution & Order 2019-311 approving an Intergovernmental Agreement for Special Transportation Services between the **Sunshine Industries** and Linn County.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Orders 2019-298, 299, 300, 301, 302, 303, 306, 307, 309, 310 and 311. The vote was called. The motion passed unanimously.**

Commissioner Nyquist stated that he has had multiple conversations with multiple people about the new transit tax, the “go” date and buying buses. He talked with Oregon Transportation Commission (OTC) Commissioner Julie Brown from Rogue River who said there was a process to get pre-approval from ODOT to buy the buses. Commissioner Nyquist then stated that he had talked with Councilman Alex Johnson with the City of Albany who said he was interested in getting more information about this issue and asked what Mr. Volmert suggested.

Mr. Volmert stated, for clarification, that the Senior Citizens of Sweet Home have already been using the new service. The City of Albany for Linn-Benton Loop and Albany Transit needed new buses which were allocated and approved in the new Special Transportation Improvement Plan. He stated that the Transportation Advisory Committee (TAC) suggested last spring that ODOT and the City of Albany go ahead and order the new buses with no down payment due. Mr. Volmert stated that he has had numerous conversations with City of Albany staff over the last nine months and they have said that they were not going to order the buses until the agreement was approved. OTC approved the allocations last week so, hopefully, in the next several months the City of Albany will, presumably, go ahead and order the buses.

Mr. Volmert stated that there was a glitch because the buses can only be purchased off the State list which had now expired so it will take another two to three months for the State to come up with a new list. This will cause a delay in the services for Linn-Benton Loop and City of Albany because the new buses won't arrive until early 2021. There were numerous conversations with the City of Albany regarding them ordering their new buses, due to the lead time, but they repeatedly decided not to do so.

Commissioner Tucker, with Mr. Volmert present, moved to Agenda Item No. 13-G under "Special Orders": Notice of Intent to Award RFP No. 20-01 - Special Transportation Fund Program Management. He stated that the County received quotes and the Notice states that the intent was to award the RFP to Mark Volmert.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve the Notice of Intent to Award and initialing the Notice. The vote was called. The motion passed unanimously.**

*Commissioner Nyquist recessed the regular Board meeting at 9:57 a.m.*

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

11. Public Hearing – PD17-0220; Resolution No. 2018-030; Remand by the Land Use Board of Appeals (LUBA) of Resolution No. 2018-030, which approved a conditional use permit for a farm-relative dwelling issued by Johannes Farr (Applicant) – Alyssa Boles, Senior Planner, Linn County Planning and Building Department.

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

Commissioner Nyquist asked the Board to declare any potential conflict of interest or ex parte communication in this matter. Commissioner Tucker stated that Joel Kalberer is an Attorney with Weatherford Thomson and the Attorney for the Applicant in this case.

He stated that Mr. Kalberer's firm provides legal advice for both a trust he operates, as well as, personal and legal issues. Commissioner Tucker stated that he has not seen or interacted with Mr. Kalberer in his office other than a few years ago and does not have any dealings with Mr. Kalberer. He did not believe that he had any conflict of interest or ex parte communication regarding this matter. Commissioner Lindsey stated that he had no interest in the area and no discussions with anyone related to this case outside of Staff. He stated that he is involved in an ongoing legal procedure in which an employee of Weatherford Thomas is part of the other side and that he must make that public. Commissioner Nyquist asked if Commissioner Lindsey, given that disclosure, believed he could make a fair and impartial decision. Commissioner Lindsey stated absolutely.

Commissioner Nyquist stated that he had no financial interest in this matter and had received no ex parte communication and could act in a fair and impartial manner.

Commissioner Nyquist then read the hearing procedures for a land use matter and the time frame for testimony for the record. At that time, Commissioner Nyquist did clarify with Ms. Boles that the Applicant was still the Applicant and not the Appellant and Ms. Boles stated that that was correct. He stated that the spirit of the Land Use Hearing Code was one of fair play and allowed them to conduct the public's business in this matter in no more than an hour. He stated that there appeared to be only one opponent present today and proposed to the Board that the opposition, or their counsel, get the same amount of time that the Applicant would take in their presentation of this matter should they choose to take it. The Board agreed.

Commissioner Nyquist then called upon the Applicant for his testimony.

**Joe Kalberer, P.O. Box 667, Albany OR 97321 – Attorney for the Applicant.**

Mr. Kalberer stated that he was representing the Applicant, Johannes (Sonny) Farr and his son Nicholas Farr. Mr. Farr is the Applicant for a farm-relative dwelling permit which they have already gone through the process before the Board initially in March, 2018. Since that time, Mr. Farr has defended himself at the Land Use Board of Appeals (LUBA) and the Court of Appeals. He has completed all the building permits for the farm-relative dwelling which included obtaining septic approval, driveway approval and building permits for the dwelling. Everything about the property has been permitted through the County.

Mr. Kalberer stated that, on remand, there were only four issues: whether there was sufficient well water on the property which they submitted a well flow test report showing a well of over 10 gallons per minute and the potable water test was submitted, in the original application, showing that the water was potable; the 100-year floodplain

analysis and whether or not the septic, driveway and water lines complied with standards within the Code regarding the building within this floodway. He stated that the permits were obtained by Mr. Farr and the County had made some pretty good statements, which were included in the Staff Report, and they agree with those findings. Commissioner Nyquist asked that Mr. Kalberer clarify if it was “floodplain” or “floodway” and Mr. Kalberer responded that it was “floodplain”.

Mr. Kalberer stated that the main component of the case was dealing with the farm operation on the property. Part of the issue with LUBA was whether this was considered a commercial farm operation. Originally, when Mr. Farr presented his application, he was conducting primarily hay and his application did say that he may be doing additional seed crop. Since that time, Mr. Farr has switched his primary farm crop to hemp. It is pretty common in this community for a farmer to switch out crops and pursue something that is more lucrative; and, that was what Mr. Farr was pursuing right now. Mr. Kalberer stated that the Applicant did submit statements describing the work that was involved in the hemp operation, as well as, photographs of the hemp operation. It has been extremely vigorous and time consuming in the amount of time he and his son has to put into it. Mr. Kalberer stated that he would have Mr. Farr and his son testify as to what they do regarding that crop.

Mr. Kalberer stated that he wanted to supplement the record with an additional written statement to be submitted into the record; he then handed copies to the Recorder to be distributed to the Board. Commissioner Nyquist directed the Recorder to enter the document into the record in a manner she deemed appropriate. Mr. Kalberer stated that this document provided more details of the work Mr. Farr did with the hay operation on this property and, now, what he does in regard to the hemp operation. He stated that the written statement speaks for itself.

Mr. Kalberer asked the Board for five minutes to rebut after the opposing party was done with their presentation. He noted that he received a 27-page memorandum with attached declarations and exhibits which he had only received yesterday, Monday, September 23, 2019 and would ask for the written record to remain open for a week in order to have an opportunity to determine if they need to respond with additional evidence.

Mr. Kalberer then turned to Nicolas Farr, Applicant’s son and farm-relative, living on the property, to give more details about the business of the hemp operation and what they are doing on the acreage of that land.

**Nicolas Farr, 41277 Oupor Drive, Scio OR 97374 – Support.**

Mr. Farr stated that the operation was running 25-acres of hemp and they have plans for the future so they did not use up all the square footage of the property. It is a daily watering between six different zones and two different fields. He also stated that it has an independent zone with its own injection system for running nutrients to produce a better and bigger product. Besides the hemp, they have tractor work, running the pump and getting water lines up and making sure there are no leaks; you have to double check each time you switch zones. It's a constant running from one area to another and repetitively doing the same thing back and forth. Mr. Farr stated, next year, there were plans to get a pull-barn or an out-building to dry in and setting up five green houses to grow starts and cloning that are not utilized right now for plant growth. There continues to be daily repairs of equipment and getting equipment up and running. The plastic mulch and drip tape in the fields have to be removed every year.

Commissioner Nyquist referred to the statement that counsel mentioned rotation of crop; is hemp a crop you have to rotate out or can you grow year-after-year. Mr. Farr stated that you can grow hemp repetitively year-after-year but you have to go in and re-fertilize and re-lime. He stated that, as of now, he hasn't heard anything from anyone that there is a life-span on the same field. You still need to re-cultivate to get fresh ground before re-fertilizing and putting down lime again.

Commissioner Tucker asked how long the irrigation runs were for the drip lines. Mr. Farr stated that the longest run he has is approximately 780 feet to 500 feet. Commissioner Tucker asked how good the tape was once he rolled it back up and Mr. Farr replied that he preferred not to use it again; most guys don't just because you have to make sure it is completely 100 percent dry so there is no place for bacteria to grow so it doesn't get into the plant. There is a significant investment on the plastic mulch and drip tape every year but you save time and effort in not repairing it. Commissioner Lindsey asked how much it cost for a foot of drip tape. Mr. Farr stated that it varied; buying in bulk was about 18 cents a foot.

Commissioner Tucker stated that it was a substantial change in their offsite operations; you're working more onsite and Mr. Farr stated that it was basically all onsite. The hemp harvest comes at the same time as hay harvest so there is not enough time to deal with the volume of product. He did say that they do supply hay to some close friends but the large scale hay operation, when the hemp is coming to full effect, the profit was way greater than hay so they made the decision to scale back on the hay industry and give the hemp production the best chance they could to have a viable business.

**Johannes Farr, 41277 Oupor Drive, Scio OR 97374 – Applicant.**

Mr. Farr stated that they invested \$250,000 to \$300,000 so that was a great amount of money invested and they don't want to lose it. He said he hoped the money he expected to get this year would pay for it plus his expenses. He stated that, if they were lucky, they could make anywhere from \$30,000 to \$60,000 an acre if everything goes good. We're farmers and it could all go bad tomorrow. Mr. Farr stated that they hoped to be able to expand more next year.

Commissioner Nyquist asked if there was anyone else wishing to speak in support and there was no response. He then asked if there was anyone wishing to speak in opposition and called upon the opponent's counsel.

**David Coulombe, 456 SW Monroe, Corvallis OR 97330 – Attorney for the Opponent.**

Mr. Coulombe stated that there were a couple of Exhibits that he hoped would help to give a view of what was going on which he would explain a little more later. He noted that there was some evidence in support of the application that was submitted during the Applicant's presentation that he had not seen and noted that the Applicant had 209 days, since the LUBA opinion, to provide that evidence. Mr. Coulombe stated that he objected to the receipt of additional evidence since he hadn't had a chance to review and respond to it. He also noted, procedurally, that Chairman Nyquist indicated 15 minutes for response and wanted to note that the Applicant's representative also asked for 5 minutes of rebuttal so that would be a total time of 20 minutes; not 15 minutes.

Mr. Coulombe stated there were several issues to respond to and most of the arguments were set out with additional clarity and a Memorandum of Law. He stated that there were some colored photos that he identified as Exhibits and provided so the Board could get a pictorial view of the property and how it had already been constructed and urbanized including the loss of close to an additional six acres of farmland. He then stated that he wanted to discuss the legal issues.

Mr. Coulombe stated that, with respect to the 933.310(B)(2) criteria, LUBA said they were not satisfied and remanded on that basis. He stated that part of what the Applicant was saying is was that they got building permits and the other County departments to buy off so these special flood hazard area requirements were satisfied because of that. Mr. Coulombe stated that there was nothing in the Code that delegated the authority of the Floodplain Administrator to any other County agency to make that decision, nor was there anything in the Code in that section that authorizes or delegates that decision making analysis and judgment from the Floodplain Director to anyone else. He stated, more importantly, that LUBA rejected that approach when in the original order from this Board conditioned the application on getting some of the permits. Mr. Coulombe stated that LUBA said that doesn't work unless you provide an opportunity for notice and participation by anyone who is interested in the application.

He stated that the building permits were granted without any notice or opportunity to be challenged nor any opportunity to participate. Mr. Coulombe stated that relying on those is no different than conditioning. The same issues are relevant with respect to a condition of approval; that is, relying on evidence from some other department which was never subject to any scrutiny by Mr. Wachal or any other surrounding farmers; no one had that opportunity, so you can't rely on that as valid evidence.

Commissioner Nyquist stated that he wanted to make sure Mr. Coulombe's contention was that, when the County's Environmental Health Department issues separate permits, they should give notice and hold a Public Hearing every time they issue a septic permit. Mr. Coulombe stated, no, and that his contention was that the specific analysis that's required under 933.310(B) about hazard mitigation subject to LCC 870 had to be done under the previews of those code provisions and not under some other code provisions. Using some other code revisions to say, well, the other departments have said it is okay doesn't mean that the Floodplain Administrator has said oh, I have analyzed your case under the criteria that you provided to me and is required under the code which includes pre- and post-elevation; there was no post-elevation and no development application; at least no evidence of that. Mr. Coulombe made a public records request asking for it to see if there was any and there was none, or at least, they weren't provided to him. We either didn't get the information as requested or it doesn't exist. If it doesn't exist, how can that Floodplain Director make the analysis when there were no pre-development application materials which include pre- and post-development of the site.

Commissioner Lindsey asked Mr. Coulombe if he, by chance, knew who the Floodplain Administrator was for Linn County. Mr. Coulombe stated that he believed that, under the Linn County Code, it was delegated to the Building Official. Commissioner Lindsey stated that that was right and it was signed off by the Building Official. Mr. Coulombe said he has to make a particular analysis before signing off and the point was that there was nothing in the record, today, to demonstrate that that analysis ever occurred. Just signing off on a form that says, your driveway is okay doesn't mean that it qualifies to the Floodplain regulations; that is the problem, it does not. Commissioner Lindsey stated that Mr. Coulombe was contending that Linn County never did an elevation on the property and that he asked for a public records request for this specific application, the pre- and post-elevation and all the materials related to that decision and there were none or none was provided. Mr. Coulombe stated that, if there were some, they weren't provided. If there are none then that analysis had not occurred. Commissioner Nyquist stated point taken.

Mr. Coulombe stated that, with respect to 660.033 0139 Subsection A, which is the Administrative Rules (similar to the County's Code) and the commercial farming operation, what the Applicant was attempting to do was substitute, more than two

years later, a different farm use than the one that was in the application. Mr. Coulombe stated that the one in the application was for hay production and the one that came before the Board and, as you may recall, Mr. Wachal argued that this was not a farm use but was a hobby farm. The Board disagreed and LUBA affirmed their position that it met statutory definition. The hay farm use is a statutory farm use and they rejected our argument because we argued that that was an issue; what is the farm use for the purpose of this hearing, it is hay production. It has been argued and decided conclusive and, as a matter of law, you can't come back two-years later and say it is a new farm use that they are just now developing. No, the farm use has already been set on remand and that's principle of law of the case doctrine Beck v. Tillamook County which stands for the proposition that, if you have issues that have been resolved, you don't get to come back at the next hearing on remand and reopen those issues. It has been litigated and the farm use is hay production and is limited to that. It would be in error that the Applicant would advise you to error as a matter of substantive law; we won't be back here again and it will just be a simple reversal. The County, however, will pay attorney fees for that kind of an error. Mr. Coulombe told the Board to be careful; it is the law. Farm use is not a cannabis grow and, as he noted in his Memorandum, that the tax between the two was identical. This is cannabis that may turn into hemp or marijuana but it all depends on the THC level of the dry weight and there was no evidence, in this proceeding, about what the actual plants were. You don't know if it will be marijuana or hemp at this time. Commissioner Lindsey stated that, if it were marijuana, the DEA would be out there pulling up the plants.

Commissioner Nyquist stated that he had followed Mr. Coulombe's logic until the end in which the application was hay production. That's not what they are now doing except Mr. Coulombe was concluding that LUBA ruled in favor and they already won on that issue so why are we arguing it. Mr. Coulombe stated because it was a substantial change in their application. They didn't pursue hemp as the farming operation that had the sufficient scale and intensity at that time to constitute an existing commercial farming operation. In their application they leave out "existing". When does it have to exist; sometime in the future? Existing means at that time. It was deemed complete two-years ago in August, 2017. The existing farm use was alleged to be a commercial farming operation of hay production.

Mr. Coulombe stated that the County's own code says at LCC 921.160(B-C) that an applicable procedural code, relevant to this proceeding, the decision makers shall make a decision based only on the application as deemed complete; evidence and testimony in the record; and, on any other information that is customarily received by judicial remortice. The decision maker may not receive into the record or consider any evidence, argument or testimony that would substantially change the application as deemed complete when rendering a decision on the application (LCC 921.160; Sub Section B-C). Mr. Coulombe stated that this was consistent with Beck. You don't get to

go down this road and then say you have a problem and remedy that by changing the farm use which is what is being advanced in this case; a change in farm use from hay production to hemp.

Commissioner Nyquist asked if it was Mr. Coulombe's position that, at any time, anyone applies for a conditional use permit and they are growing a crop; and, any time they change their crop, it's a new conditional use permit. Mr. Coulombe stated, no, but there are some requirements in the County code about conditional use permits and what you have to do annually or every two-years to make the demonstration; that is a different code requirement.

Mr. Coulombe stated, in respect to a remand hearing, the whole application process was supposed to be expedited and we are now two-years away from this original application and, now, we have a change in use and that is the part invalid and has been rejected by the Oregon Supreme Court. You're not allowed to change your application; the County Code even says that. You are not supposed to take in evidence but make it based on the conditions that were in the original application when it was deemed complete; no hemp farming production was indicated, at that time, nor any evidence or allegations; no statements, nothing. It would be like I would have a conditional use permit application and I think two-years from now I am going to convert to some high intense farming use. Then, at that time, I think I would likely need help from a relative so I am going to come in and get a permit that allows me now to develop this dwelling site even though it is going to be two-years later when I think I may convert to that use. That is essentially what is happening. Mr. Coulombe stated that if you look at it from the time the application was deemed complete, this was only hypothetical and only the fact that we are now two-years removed from it has there been this change that you think why is this a change. Mr. Coulombe stated the Applicant can't make a demonstration that the mere farming of volunteer hay grass meets a commercial farming operation of any objective test. He stated that it does not and it was a pretty good indication that they couldn't win on this one so what were they going to do; change the use and we can advance that. LUBA and the Court of Appeals said no and you're the County's own code says no; you are being invited to distance yourself from your own code and reinterpret the administrative rule taking "existing" out; now, it is whatever commercial farming operation we take to adhering not the one that existed at the time of the application and not the one that existed at the time of the evidential hearing which was two-years removed. It didn't exist at the time and it doesn't. Mr. Coulombe stated there is evidence that they are moving towards something but there is no evidence that they have any gross income from this yet. He stated that it was a process; even the Commissioner stated "if it comes to pass" and that is exactly right; it hasn't come to pass and all the objective test about a commercial farming operation require at least two-years of tax returns to demonstrate a particular \$80,000 gross income level. Commissioner Lindsey stated that they were not doing an income test.

Mr. Coulombe stated if they were applying the test that LUBA said then they are to apply it. Commissioner Lindsey stated that he didn't read that and asked if it was in there. He stated that they would have to go back and reject 90 percent of the conditional use permits.

Commissioner Tucker asked Mr. Coulombe how much of the acreage were the Applicant's actually farming in hay now and Mr. Coulombe referred to two large maps mounted on a piece of foam board stamped as Exhibits 3 and 7. Both maps were entered into the record. Mr. Coulombe pointed to the map and areas where the farm land was, as well as, noting three residences, the septic system, etc. He stated the maps showed that the land had been urbanized. Commissioner Tucker stated that the Applicant was still growing roughly 40 percent of his land as hay and Mr. Coulombe stated that he did not believe that was accurate. Commissioner Tucker explained that, by looking at the fence lines, it did look like the Applicant had plowed fields up to the row of shrubs and roadway down the west side. He stated that he asked the Applicant if he was still doing hay and he said, yes, for other farmers and friends in the area. He stated that farmers do change their crops as farmers see what will make money and move to that and wisely so.

Mr. Coulombe stated that that may be relevant whether you qualify for tax exemption based on your farm use; but, in this case it is more specific. The Applicant says he needs this help from a farm-relative and, at the time that he submitted the application for the commercial farming operation, it was hay production not hemp and there is simply no substantial evidence that indicates that was needed. Mr. Coulombe stated that testimony from the Applicant states, in the record, that he still does cutting and bailing for other people offsite. If he can do it for others offsite, he can do it on his own and does not require a farm-relative dwelling assistance which is what this particular application was for. This application is set, in time, based on the application when it was deemed complete.

Commissioner Nyquist stated that Mr. Coulombe had used his time and Mr. Coulombe asked that Mr. Wachal have an opportunity to testify. Commissioner Lindsey stated he had another question and asked Mr. Coulombe where it was in the County's code that stated that you can or cannot change farming practices; he didn't see anything in the application that said that. Mr. Coulombe stated that the conditional use procedures, for this case, was the existing commercial farming operation; it's not a farm use was about scale and intensity of a commercial farming operation that links to the need for the relative. The remand has already been conclusively determined. If the building department issued permits in error that doesn't mean that we get to error again. Mr. Coulombe stated that where they are at in remand matters in this case.

Commissioner Nyquist then asked Mr. Coulombe to remove the maps from the foam board to be put into the record.

**Ken Wachal, 41423 Oupor Drive, Scio OR 97374 – Opponent.**

Mr. Wachal stated that he bought his property two years before the Farr's did and he could see the entire back-half of his property. He stated that he had watched Mr. Farr daily and could see what went on. Until Mr. Farr changed production to hemp or marijuana in mid-2019, he, Ray and Pat James, Joe Perry and some others watched him hay by himself. He's doing hay operations, not on this land; he stopped that and plowed it under for the hemp. But until that time, he did it himself. He didn't irrigate; he didn't spray for herbicides or pesticides; he didn't cultivate or none of that stuff. It is volunteer hay grass and he did it himself and there was no need to have farm help.

Mr. Wachal stated that he also took issue with Nick Farr stating that there wasn't time to harvest both hay and hemp. That's not true; hay was done a month ago and the hemp is harvested later in September or October.

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

**Rich Kellum, 4085 E Commercial Way, Albany OR 97321 – Neutral.**

Mr. Kellum stated that he had done a piece of this in his former life and it was explained to him that he had to have a conditional use permit to put 11-acres in to farm and put a house on it. The basis of the law, as was explained to him, was that you have to have enough economic use to support yourself. He stated that he didn't know either of the folks but if cannabis/hemp crop was going to be worth more than hay, the whole reason to have the exclusion was to have a viable farm. It seemed to him, as he understood the market, hemp was worth a lot more than grass hay so he said the point was mute.

Commissioner Nyquist asked if there was anyone else who wished to speak.

Mr. Coulombe stated that Mr. Kellum's testimony was classified as "neutral" but that it was not a neutral testimony. Had it been classified correctly, as in favor, he would have had an opportunity to respond and now he was precluded from doing so. I'm just making my objection procedurally. Commissioner Nyquist allowed Mr. Coulombe to speak.

Mr. Coulombe stated that, what he understood from the argument made by the individual (Rich Kellum) speaking not in opposition but in favor of the application, was that it was okay to change a conditional use mid-stream at this point in the proceedings; that is not a correct statement of the law. It is not valid and illegal to make a change of

the use at this time. He earmarked that when he said, of course, it was more economical viable; it's a substantial change. The information in the record supports the substantial change economically speaking.

Commissioner Nyquist then called upon the Applicant's counsel if he wished to rebut the testimony heard.

Mr. Kalberer stated that the application was for a farm-relative dwelling. The question was whether the commercial farm operation could support it. He stated that there was no requirement in the code or criteria or in the statute that says your commercial farm operation had to remain static, especially, if it was appealed by an opponent and that appeal took a year and a half and your crops had changed during that period of time. Mr. Kalberer stated it was a false argument to argue that the law, rules or application was stuck with just the farm-use that was maybe identified, not as criteria, but just as helpful background in evaluating the application. He also noted that, in remand, LUBA stated that you could present new evidence and this was new evidence regarding the commercial farm operation; it is not a hay operation; not a cattle commercial farm operation. It is a commercial farm operation. You can decide what to grow or raise on the property.

Johannes Farr then spoke and stated that, since he put the application in, he's had two brand new knees "put in him" and has had a heart problem. At that time, he was doing hay and switched to hemp because it became legal to do commercial industrial hemp; at the time they started farming, it wasn't legal. The federal government made industrial hemp legal so that's why they went ahead and did it.

Commissioner Nyquist then asked the Board to close the Public Hearing.

Robert Wheeldon, Linn County Planning and Building Director, stated that, procedurally, the Applicant's representative, Joe Kalberer, had mentioned in his initial statements that he received 20-30 pages of material yesterday and did request a time extension beyond this. Commissioner Nyquist stated he was closing the hearing not the record.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to close the Public Hearing. The vote was called. The motion passed.**

Commissioner Nyquist stated the Public Hearing for testimony was now closed.

Commissioner Nyquist stated that multiple parties had indicated that they received new evidence today so there needed to be a process in which they could adequately view that information.

Commissioner Lindsey stated that there were documents to be entered into the record. He then listed the documents as follows:

1. Staff Report dated September 17, 2019;
2. Additional information from Alyssa Boles dated September 23, 2019;
3. Large photographs presented by opposing counsel;
4. A two-page document presented by Applicant, Johannes Farr.

Commissioner Tucker asked if Ms. Boles concurred with the list of documents and she did concur.

**Action – Commissioner Lindsey moved that the Recorder accept into the record and mark these documents as exhibits as she deemed appropriate. Commissioner Tucker seconded the motion. The vote was called. The motion passed unanimously.**

Commissioner Nyquist stated that he would be comfortable leaving the written record open for seven days for any reason and for anyone to comment; would then give the Applicant seven days to respond/rebut any information that came in that they had not yet seen; give the opposition five days to respond to what they would deem new information and the Applicant's rebuttal; and, then would give the Applicant five days to rebut any opponent's response in the previous timeline. Discussion followed in regard the calendar dates set for these timelines.

Mr. Wheeldon clarified that any party could submit comments and any party could respond to the evidence and arguments. Then the Applicant was able to give a rebuttal.

The written record was left open and final dates were set as follows:

- Tuesday, October 1, 2019 until Noon – Record open for anyone to comment;
- Tuesday, October 8, 2019 until Noon – Record open for anyone to respond to new comments;
- Tuesday, October 15, 2019 until Noon – Applicant can rebut any new evidence given as rebuttal; and,
- Tuesday, October 22, 2019 at 10:00 a.m. – Hearing continued for final decision.

It was noted that Commissioner Tucker would not be present for the final decision on Tuesday, October 22, 2019 at 10:00 a.m. and, in the event there was not two votes on this matter, the hearing would be continued to Tuesday, October 29, 2019 with a time to be set at then.

The Public Hearing concluded at 11:15 a.m.

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

13. Special Orders:

A. Personnel Action Forms were read into the record for: Acacia Schubert (Developmental Disability); Natalie Roe (General Services); Bienvenido Castillo (Health ITS); Stacey Beller (Health Services Admin); Lianne Dyche, Marcella Elliott, Lara Friederick, Macy Holmes, Patrick Hund and Meredith Rose (Mental Health); Laura Avila, April Clark, Shannon Ritz, Tina Robinson, Joshua Slayton and Brett Tetzlaff (Parks & Recreation) and Kade Boggs, Kevin Burrigh, Nicholas Donaldson, Scott Grossman, Tristen Hausmann, Parker Lemmer, Jack Linde, Kaydee McDaniel, Jason McKinnon, Ryan McNeil, Michael Olson and Carrie Simpson (Road Department).

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to accept the Personnel Action Forms as read into the record. The vote was called. The motion passed unanimously.**

Commissioner Tucker noted for the record that the PAF'S for Parks & Recreation and the Road Department were summer hires.

B. Resolution & Order 2019-333 approving a First-Time Youth Wage Grant Agreement between Linn County and **Wirth Farms, Inc.**

**Action Taken Below.**

C. Resolution & Order 2019-334 approving a First-Time Youth Wage Grant Agreement between Linn County and **Figaro's Pizza.**

**Action Taken Below.**

D. Resolution & Order 2019-335 approving a First-Time Youth Wage Grant Agreement between Linn County and **Grover Cleaning Service, Inc.**

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Orders 2019-333, 334 and 335. The vote was called. The motion passed unanimously.**

E. Resolution 2019-336 noting a vacancy and reappointing members to the Linn County Planning Commission.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approved Resolution 2019-336. The vote was called. The motion passed unanimously.**

F. Resolution 2019-338 appointing a member to the Linn County Budget Committee.

Commissioner Nyquist stated that the applicant being appointed to the Budget Committee was eligible and met the criteria, however, it was hard for him to come to the reality that a long-time Budget Committee member was being replaced and he would've liked to have seen her chair set empty for a year in acknowledgment of the contribution and work made on behalf of Linn County as an organization and for the citizens of Linn County. This Budget Committee appointment is, however, necessary and acted upon due to the passing of long-time Budget member Christine Ruck.

**Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution 2019-338. The vote was called. The motion passed unanimously.**

G. Notice of Intent to Award – RFP No. 20-01; Special Transportation Fund Program Management. *(This item was heard and approved under Agenda Item No. 10).*

14. Unfinished Business and General Orders:

A. Calendar Update: The Commissioners updated their calendars.

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

16. Announcements: Commissioner Nyquist announced that beginning the week of October 29, 2019 and through the week of Thanksgiving the Board of Commissioners would be conducting their Board meetings in the Courthouse Basement Meeting Room next to the Diner.

Commissioner Lindsey stated that he attended the Anniversary of the Lebanon Veterans' Home. It was well attended and ODVA Director, Kelly Fitzpatrick, singled the Board out, individually, in her remarks for the great work the Board of Commissioners did in support of veterans and the creation of that veterans' home.

17. Business from the Public (3 minute limit per speaker): There was no one present from the public wishing to use this forum.

18. Adjournment. There being no other business to come before the Board; the Board of Commissioners meeting was adjourned at 11:22 a.m. by unanimous consent.

The next regular public meeting of the Board of Commissioners is scheduled for Tuesday, October 1, 2019.

  
\_\_\_\_\_, Recorder  
For Board of Commissioners  
Marsha Meyer

**LINN COUNTY BOARD OF COMMISSIONERS**



William C. Tucker, Commissioner

Date 10-1-2019