Present were Commissioners Anthony DeBone and Tammy Baney; Commissioner Alan Unger was present for a portion of the meeting. Also present were Tom Anderson, County Administrator; Erik Kropp, Deputy County Administrator; Nick Lelack, Peter Gutowsky and Will Groves, CDD; and David Doyle and Laurie Craghead, County Counsel. Also present was Ted Shorack, representing The Bulletin.

Chair DeBone opened the meeting at 1:30 p.m.

1. Discussion of Memo and Draft Letter regarding Agricultural Lands and HB 2229.

Peter Gutowsky said he met with Jim Rue and others of DLCD on April 17. Two Commissioners and representatives of the Bend City Council also attended. The Bend UGB was discussed as well as HB 2229, and the County’s ability to rezone agricultural land.

Mr. Rue was very frank, and said that applying HB 2229 to lands like Haner Park is not applicable and there are no mapping errors. There were conversations going back into the 1970’s about designating resource lands. Planning staff had thought initiating a Goal 3 committed exception might be possible. Mr. Rue told them that Deschutes County had allowed development through zoning requirements under forestlands, and those entitlements cannot be used as the basis for a committed exception.
In many respects they explored other opportunities to address numerous rural areas that the County feels are mis-designated, but the State says this cannot be done. A letter has been drafted to the LCDC to initiate rulemaking for the purpose of clarifying HB 2229, regional approaches and updating farm and forestlands. The Planning Commission made this recommendation after listening to experiences over the last 18 months and in view of conversations with Mr. Rue.

Mr. Rue said there is a schedule for rulemaking, and HB 2229 is on that schedule, so will be addressed relatively soon. It is basically on their work plan.

Chair DeBone met with Haner Park owners to learn more. It sounds like it used to be one large lot, maybe two. It was divided many years ago and much of it has not changed hands since. When that happens, there will be issues with the title.

Commissioner Baney asked if Mr. Rue offered any suggestions. Mr. Lelack said that rulemaking might be the only path forward. Commissioner Baney stated that rulemaking is more general and global. It is difficult to tell the property owners to wait or hope for the best. This needs to be isolated without broad implications.

Mr. Lelack said the southern Oregon counties pursued this and the Governor agreed to it, but there were many iterations of the bills before that happened. This is more broadly relating to non-resource lands.

Mr. Anderson said they might be able to add specifics to this. Mr. Lelack said it could take 12 to 24 months to start, and then another one to three years for rulemaking. It is a long process.

Mr. Gutowsky said another option might be Section 11 in the DSL, saying the property does not meet the definition of forestlands. It is an expensive process and still may not work. There does not seem to be consensus. Mr. Anderson said this was explored with Jon Jennings years ago, and there are a lot of requirements to get there when dealing with a resource zone. It may be nearly impossible. Mr. Gutowsky stated that Mr. Rue was also very direct when addressing the Bend urban growth boundary, and this was not a positive discussion either. He was consistent to all involved in the meeting.
Commissioner Baney asked if they could go for a Haner Park legislative fix specifically. This problem needs to be addressed somehow. Mr. Lelack stated that Planning Commissioner Ed Criss spoke about changing setbacks in Haner Park, which might help to address some of the problems there. This will be proposed as part of the CDD work plan as a narrowly worded text amendment. This will avoid unintended consequences. HB 2229 has been considered for a long time, with the counties being very patient about it.

The Commissioners are supportive of the letter and exploring other ways to address this issue.

BANEY: Support Board signature of the letter.
DEBONE: Second.

VOTE: BANEY: Yes.
DEBONE: Chair votes yes.

Commissioner Baney asked about the UGB and urban reserve discussion. Mr. Lelack said the City talked about imitating the urban reserve discussion, but they are not yet prepared to commit. Resources will be allocated to it when needed. Mr. Rue had questions about the UGB and urban reserve and the necessity for either.

Commissioner Baney asked if these could be run concurrently. Mr. Lelack stated he asked them to make a statement on how they will do this and whether they are going to commit, so the public can participate. Mr. Lelack feels that the UGB expansion needs to be done soon, immediately followed by the UR, and another UGB expansion.

2. Discussion of Widgi Creek Appeals (‘Pool’ and ‘Fairway’).

Will Groves said these two appeals are separate but overlap in many ways. The first is in response to a Hearings Officer’s decision regarding a nine-lot zero-lot-line development. The 150-day clock is a concern but the appellant will provide adequate time. It was denied due to the location of the proposed subdivision, marked ‘out of bounds’ as part of the golf course.
Widgi Creek was master planned in the F-3 zone, and in 2001 it was upgraded to a resort community, with a Goal 4 exception as well. The existing master plan was eliminated at that time, although another case involving this plan is currently at LUBA.

In the 2001 goal exception, certain statements were made and some related to development of the site. Some were designated for residential use as well as future residential use, and open space. A comprehensive plan policy designated open space is to remain as such, including golf courses. There is significant debate as to whether this area is part of the golf course.

The other high point is the configuration of the property. It is a confusing intersection already and development would make it worse.

The applicant appealed on eight issues, and the Board can either hear the appeal or not. If there is Code interpretation, the Board would probably choose to hear it; also if it needs to be reinforced. CDD and Legal feel the Hearings Officer’s decision is well written and clear. There is the issue of the master plan in one case that was designated for development, but is now being appealed based on the master plan. This decision could impact this case.

The parties can also challenge this appeal at LUBA if desired. It is not the end of the road for this process.

Commissioner Baney feels there is typically a responsibility to hear appeals especially if there is an interpretation to be made. The LUBA case has some bearing and she does not want to use others’ time and funds for nothing. Mr. Groves said they could ask the applicant to toll the clock to come up with sufficient time to do so.

Chair DeBone wants to start with not hearing it; he would rather add value by having the other case being decided first.

Mr. Groves stated they can say they are uncertain and would wait for the other LUBA decision. David Doyle feels they are close. However, the prevailing party at the hearing would be put in limbo.
Commissioner Baney said the Board is given deference, so it could go either way. Chair DeBone supports not hearing it unless there is a lot of value doing so at this point. Mr. Groves stated these are predominately local code issues, and he would like to see the position bolstered prior to going to LUBA.

Ms. Craghead said that the LUBA decision would probably be provided within a month. Mr. Groves said in either case, it will go to LUBA and there will be delays.

Mr. Groves said that he would ask the applicant’s attorney if they would toll the clock until the other LUBA decision is known.

The other application is somewhat different. It is not on a fairway but is in a common area, where the pool facility is located. They want to remodel and add some condos. It is more complicated than the fairway application, but also depends on the decision regarding the master plan.

3. **Other Items.**

Mr. Lelack said the postings for the Planning Commission positions closed, one for Bend and one at large. There are three or four applicants. In the past, a Commissioner participated in the selection process. Chair DeBone stated that he would participate if scheduling allows. Mr. Lelack said that they would like to have appointments made by early June. Commissioner Baney would like to review the applications. A citizen has asked if they can sit in on the interviews; she will tell them this is not appropriate but the names can be shared.

_________________________________________________________________________

*The Board went into executive session under ORS 192.660(2)(e), real estate negotiations.*

_________________________________________________________________________

Commissioner Baney stated there was a request from the Trade Promotion Authority for a letter of support for Senator Wyden and trade. Chair DeBone wanted some time to review it.

_________________________________________________________________________
Commissioner Baney indicated there was a request for the Board to acknowledge National Children’s Mental Health Awareness Day, May 7. This area has the highest youth suicide rate for the State and she feels it is appropriate. Commissioner Baney read the proclamation at this time, and it will be prepared for signature.

**DEBONE:** Move signature of the Proclamation.

**BANEY:** Second.

**VOTE:**

**DEBONE:** Yes.

**BANEY:** Chair votes yes.

___________________________

*Commissioner Unger joined the meeting at this point.*

___________________________

Commissioner Baney said she needs to be at a transportation meeting in Portland the afternoon of May 18. Mr. Anderson directed that the work session be scheduled for the morning instead of the afternoon.

___________________________

Commissioner Baney stated that she spoke with a dentist who may want to work out a program through the new health plan to provide dental care to inmates, rather than have these individuals deal with untreated dental issues that lead to the use of pain medications, that can then be subject to abuse. She will keep the Board advised of further discussions.

___________________________

Chair DeBone spoke about a request from Jim Schell regarding the Board supporting the Looking Forward Team that wants the OSU campus to be located next to COCC, as planned. Chair DeBone thought this might be premature at this time. However, EDCO supports this, so the County does indirectly.

Tom Anderson noted that some people may thing that the County is trying to increase the value of its land in that area by doing so. This could be a credibility issue. Commissioner Unger said the County is stuck with remediation and cleanup anyway. Erik Kropp noted that there is nothing wrong with this; it is ethical but might be political. The taxpayers, not the Commissioners, gain from whatever can be brought in.
Commissioner Unger said that the need for a four-year university outweighs all else. The area in question needs to be managed to be better whether or not the County owns part of it.

Chair DeBone noted that some people still want the campus to be in Juniper Ridge. He supports the chosen area as an education hub. He does not see a downside to making this clear.

Commissioner Baney stated that this is not a popularity contest; it is land use. They want the Commissioners’ names on an ad, which indicates they believe public pressure will make it happen. Land use laws should be guiding this. Most feel it is the best site, and that should be enough.

Mr. Anderson noted that they want to drown out some of the loud minority opponents. The City has already weighed in on this. Mr. Kropp added that it might be losing legislative support since it is taking so long.

Commissioner Baney said there are other sites on the west side, but they would have to be purchased. Commissioner Unger said he is about ready to shout down the ‘truth in site’ group, since they are self-serving and twisting the facts. He wants this to move forward.

Chair DeBone stated that he will step up as well. He worries about the level of indecision in Bend. They need to move forward.

David Doyle said he is concerned about supporting this outright and then in the future having to make land use decisions about the properties. It is not a legal issue, but might be political.

Commissioner Unger emphasized that he does not think the County will make any money off its property anyway. Commissioner Baney said she will advise Jim Schell that the Board as a group supports the letter.

Being no other items discussed, the meeting was adjourned at 4:10 p.m.
DATED this 13th Day of May 2015 for the Deschutes County Board of Commissioners.

Anthony DeBone, Chair

Alan Unger, Vice Chair

Tammy Baney, Commissioner

ATTEST:

Recording Secretary
WORK SESSION AGENDA

DESCHUTES COUNTY BOARD OF COMMISSIONERS

1:30 P.M., WEDNESDAY, MAY 6, 2015

1. Discussion of Memo and Draft Letter regarding Agricultural Lands and HB 2229 – Nick Lelack

2. Discussion of Widgi Creek Appeals (‘Pool’ and ‘Fairway’) – Will Groves

3. Other Items
<table>
<thead>
<tr>
<th>Name</th>
<th>Agency</th>
<th>Mailing Address</th>
<th>City</th>
<th>Zip</th>
<th>Phone #</th>
<th>e-mail address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paul Lipscomb</td>
<td>OLA WA</td>
<td>P.O. Box 679</td>
<td>Sisters</td>
<td>97762</td>
<td>503-551-7222</td>
<td><a href="mailto:judge.lipscomb@att.net">judge.lipscomb@att.net</a></td>
</tr>
<tr>
<td>Mara Stein</td>
<td>Pamir Properties</td>
<td>65761-20</td>
<td>Bend</td>
<td>97701</td>
<td>541-420-3700</td>
<td><a href="mailto:mara@pamirproperties.com">mara@pamirproperties.com</a></td>
</tr>
<tr>
<td>Michael McGeean</td>
<td></td>
<td>1148 NW Hill St.</td>
<td>Bend</td>
<td></td>
<td>541-389-5010</td>
<td><a href="mailto:mike@FrancisHansen.com">mike@FrancisHansen.com</a></td>
</tr>
</tbody>
</table>
Memorandum

DATE: April 24, 2015

TO: Deschutes County Board of Commissioners

FROM: Nick Lelack, Director
      Peter Gutowsky, Planning Manager

RE: HB 2229 / Agricultural Lands / Letter to DLCD

BACKGROUND

Staff received direction from the Board of County Commissioners (BOCC) on November 24, 2014 to explore HB 2229, also known as the Big Look Bill, as it relates to correcting mapping errors of farm and forestlands.¹ Three developments have occurred over the last several months that complicate implementing HB 2229: a January 8, 2015 Department of Land Conservation and Development (DLCD) letter, a conversation with former Community Development Director John Anderson (1978-85), and recent remarks by Jim Rue, DLCD Director during a meeting in Bend on April 17 with city and county officials.

DIRECTION

Staff seeks direction from the BOCC to initiate a letter to Director Rue respectfully requesting rulemaking for HB 2229.

Attachment:
Draft LCDC Rulemaking Letter


Quality Services Performed with Pride
Re: HB 2229 / LCDC Rulemaking

Dear Mr. Rue:

Thank you for visiting Deschutes County on April 17, 2015 to discuss among other items, non-resource lands and the challenges with implementing House Bill (HB) 2229. The Board of County Commissioners, following a recommendation from the Planning Commission, respectfully request the Land Conversation and Development Commission (LCDC) initiate rulemaking to implement the legislation and clarify processes for:

1. Updating farmlands and forestlands for land use planning;
2. Phasing;
3. Regional approaches to resolving land use problems;
4. Non-resource lands containing ecologically significant natural areas or resources;
5. Carrying capacity of the lands; and,
6. Significantly adverse effects.

HB 2229, Section 2(b)(B) directs LCDC to adopt rules that,

Consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems.

Since the law took effect, Deschutes County has continually expressed interest in implementing HB 2229, also known as the “Big Look Bill,” as evidenced by its participation in a 2010 Association of Counties panel discussion with state agency officials and subsequent conversations with the Department of Land Conservation and Development (DLCD). Most recently, Deschutes County requested input on a phased approach and clarification of key issues relating to five pre-platted subdivisions with farm and forestland designations. Rob Hallyburton, DLCD Community Services Division Manager wrote in a letter on January 8, 2015,

While we do not find that the county must review all land in the county, we would be most inclined to approve a work program that includes some major region defined by geographic characteristics rather than by property or subdivision boundaries. Additionally, the county may not pre-determine specific areas for review, as subsection 5(3) requires the county to provide an opportunity for all farm and forest land to be considered. If the county receives a request to review an area that is not included in the original proposal, the county must review it. As explained above, we believe that this area must be a geographic area of the county and not individual properties or subdivisions.
Considering other aspects of HB 2229 not related to your question, the department has been unable to determine the nature and scope of the mapping error the county intends to address. It is not apparent why the areas the county has shared with the department were incorrectly zoned at acknowledgment, and this is a fundamental aspect of the bill. If the county chooses to move forward with a work program, the county will need to demonstrate that the HB 2229 process is an appropriate vehicle for addressing the county’s needs.

Based on Mr. Hallyburton’s letter, there remain differences of opinion whether HB 2229 is targeted exclusively to properties with mapping errors or if it also applies to updating farm and forestland designations based on changed circumstances. Without administrative rules, undertaking a work plan is fraught with legal uncertainty. It is also extremely difficult to gauge staffing resources and timelines.

Thank you for considering this request.

Sincerely,

TBD