

**BE IT REMEMBERED THAT** the Crook County Court met in a regularly scheduled meeting on July 25, 2018 at 9:00 a.m. in the County meeting room located at 320 NE Court Street, Prineville, Oregon 97754. In attendance were: County Judge Seth Crawford; County Commissioner Jerry Brummer; County Commissioner Brian Barney; County Counsel Jeff Wilson; Assistant County Counsel Eric Blaine and County Court Secretary Colleen Ferguson.

Members of the public signing the attendance log: Taylor Henderson, Redmond; Rand Campbell, Portland; Will Van Vactor, Bend; Debbie Roe, Redmond; Kim Smith, Redmond; Shea DeLeone-Redmond; Jerry and Dawn Chavez, Prineville; Ed and Jamie Whale, Prineville; Reverend Ron Hemphill, Prineville; Dave and Dolores Holmes, Prineville and Susan Hermreck, Paulina, Oregon.

Public notice was provided to the media.

Judge Crawford called the meeting to order and asked Caroline Ervin to lead the Pledge of Allegiance. Rev. Ron Hemphill of the New Life Bible Chapel offered the opening prayer.

Caleb Savage, summer intern in the Community Development Office and former Planning Director Bill Zelenka were introduced.

### **Consent Agenda**

1. Approve Minutes from December 12, 2017 Work Session
2. Approve Intergovernmental Agreement with Jefferson County for sharing of onsite sanitation services
3. Approve Professional Services Contract with Evergreen Energy for services associated with Transmission Line Corridor work
4. Approve Fifth Lease Extension and Amendment with Saving Grace to extend lease an additional year
5. Approve Ryan White HIV Case Management IGA for client services
6. Approve Amendment 2 to Airport Mgmt. IGA with City re Helibase Project with USFS
7. Approve Agreement with City for Plaza Maintenance cost sharing
8. Approve Commercial Lease agreement with Grimes Scene, Inc. for a 5-year term
- 8.A **Addition:** Approve Second Amendment to Construction Contract with CS Construction for the Annex Rehabilitation Project – Electrical (Change Order No. 2)
- 8.B **Addition:** Approve Professional Services Contract with Engineering Economics, Inc. for Commissioning for the Public Safety Facility  
**Addition:** Approve Order 2018-68 , appointment of Bob Lundquist to the Planning Commission.68

The Court reviewed the Consent Agenda.

### **Motion**

Commissioner Brummer moved to approve the Consent Agenda as presented with the addition of Order 2018-68, appointment of Bob Lundquist. Commissioner Barney seconded the motion. The vote was 3-0, motion carried.

### **EDCO Quarterly Report – Requester: Caroline Ervin (power point presentation)**

Prineville EDCO Coordinator (PEDCO), presented a six month, January through June, update to the County Court. There have been 15 new leads, one completed in the Enterprise zone. Ms. Ervin contacts all leads directly. These included an

insurance business, manufacturing, trade and data centers. Quarterly, there were 9 leads, 4 from RDI, 4 local and 1 networking. During the quarter, PEDCO meetings were held, the annual waffle breakfast was held and there was workforce recruitment. The EDCO regular board meeting was held in Prineville. Information on Central Oregon Internship Coordinator update was provided. There is need for \$10,000 for funding. The Stem hub Event was held. She discussed industries connecting with local educators and support of the City of Prineville Railroad with a funding application. Ms. Ervin attended the data center conference and trade show in Portland. Prineville is well known for the data centers. Ms. Ervin discussed the recently approved strategic plan for 2019-2021, criteria and opportunity for the industrial land and town. Commissioner Brummer said he would really like to see the trade school locally. There is a need for diesel mechanics for all the generators at the data centers.

**E-Commerce Zone Letter from EDCO – Requester: Caroline Ervin, and County’s Order 2018-67 for adoption if approved**

Ms. Ervin explained the need for a letter supporting the E-Commerce Zone supporting the request for funding. . This would benefit local companies. The letter needs to be submitted by August 1<sup>st</sup>.

**Motion**

Commissioner Barney moved to approved Order 2018-67, Letter of support for the E-Commerce zone. Commissioner Brummer seconded the motion. The vote was 3-0, motion carried. The letter will be sent out electronically.

**Public Hearing: Debbie Roe’s Conditional Use Request re Operation of a Residential Home Facility – Appeal of Planning Commission Denial – Hari Homestead Appeal of 217-18-000096-PLNG- Requester: Ann Beier**

Ann Beier provided the staff report, an overview of the process to this point of an application from Debbie Roe denied by the Planning Commission for an outright use for a care facility in the SR-1 Zone just outside of the City Limits in the subdivision of West Hills. At this time, Applicant Ms. Roe has the business in operation for up to 5 people. The applicant proposes to convert an existing duplex into a residential care facility (RCF) for older adults that will be licensed by the Oregon Department of Human Services (DHS). An RCF serves between 6 and 15 residents. County Code 18.160 covers all the conditional uses, the specific standards and general criteria consistent with the comp plan. The location and size for this increase would have a minimal adverse impact on the surrounding area.

County Counsel Jeff Wilson provided a list of options available to the Court in making a decision. He reviewed the hearing procedure for the Court members. Mr. Wilson provided timelines for the notice of appeal, mailing and procedure for the hearing.

Judge Crawford read the title of the hearing into the Record. This is a DeNovo appeal of the denial on April 21, 2018 by the Crook County Planning Commission regarding an application to convert an existing duplex into a residential care facility (RCF) for older adults that will be licensed by the Oregon Department of Human Services (DHS). A timely appeal was filed with 12 days. The County is required to provide a time, date and place within 10 days. The hearing was advertised on July 10, 2018 and was mailed out on July 9<sup>th</sup>, 2018 ..

Staff report is based on the previous hearing. The appellant has the burden to affirm the need to repeal the decision of the Planning Commission. Rules for the hearing were explained. Mr. Wilson explained that the Court has three options regarding any decision made today. The applicant will go first in this quasi-judicial hearing and courtesy is expected. The applicant will have 20 minutes, opposition 20 minutes and applicant will have rebuttal.

The Court was polled for any ex-parte contact. Commissioners Jerry Brummer and Brian Barney had none. Judge Crawford said he talked to the applicant and one member of the opposition. No one challenged the contact.

### **Public Hearing**

Commissioner Crawford opened the public hearing.

### **Appellant**

Will Van Vactor introduced himself, and announced that he is representing the applicant Deborah Roe. A letter was submitted that included the proposed decision. He said it is the same as previously submitted except for changes in the formatting. Ms. Van Vactor commented that Ann Beier, Planning Director, did a great job with the staff report today. He provided a summary of the property. The property is a duplex located on Knob Hill Road in the West Hills subdivision with one-half used as an adult Foster Home. There are currently five residents in the home zoned as a single family residential. The application for Residential Facility can house up to fifteen residents. The applicant could have two adult foster homes, or she could develop the empty lot to the north with another duplex.

Taylor Henderson explained that with State Foster care, one person live in home full time as the caregiver on a 24/7 basis. In Ms. Roe's home, there are two caregivers providing higher level of care catering to the residents cares and wants. The State has now modeled a program after the program of this facility. Ms. Robe has two residential homes; one in Redmond and this one in Prineville. Ms. Roe cared for her aunts and this endeavor is in honor of them. The current facility began two years ago using one-half of the facility with the other one-half empty. She wants to expand the number of residents to fifteen and use the entire facility.

Mr. Van Vactor explained that residential facilities are allowed on property with a minimum of one acre. This acreage is 1.29 acres. The signs are small, 1 1/2 square foot size, and there is an off street parking as required. There are 10 required off street parking spaces. A map was created showing two parking areas, five parking spaces each, to address a concern of one large durable and dustless parking area. At this time, behind the duplex parking is used, there are bumper rails and no artificial lighting, but if the Court wants lighting that is directed downward so as not to bother other residents, that can be done. Mr. Van Vactor included information from an email received from the Fire Marshall regarding the issue of maneuvering on a looped drive. There would have to be no additional driveway. Mr. Van Vactor provided information on the controversial parts of the application and five general criteria. Numbers 1, 3, 4 and 5 were favorable. Number 2, the location, design and operations were the problem. He believes the Planning Commission's decision is flawed. One Planning Commissioner said they needed to consider what is in front of them, not what ifs. The SR1 Zone allows residential. The duplex was allowed and is other than a single family use. He feels it is not protecting from the outright use. It was treated as if it was a no-impact requirement. Code says it can have some adverse impact, just minimal and are several outrights that might have more impact. They could have 20 residents if the property is fully developed. The duplex is an impact in itself because more than a single family could reside there among the single family residence homes. The applicant has the number of conditions of approval, and they have been met by the applicant. This is a flawed analysis of code. The market study has shown a need for this type of facility in the area and is a critical service.

Mr. Van Vactor finished his comments and said he will have time saved for a rebuttal.

### **Comments of Neighbors**

Dave Holmes, 3454 NW Knob Hill, Prineville believes the Planning Commission was right and said he believed there will be another building built on the property so there will be could be 30 people. Mr. Homes said the home now may be used as a duplex but the center of the area is the common area for staff. He thinks the Condition Use Permit (CUP) was an exception. He spoke of his own large shop being used as a business and how the County would come out against the use.

He does not believe the applicant met the standard.

Dawn Chavez lives at the top of the hill and road and has lived in the neighborhood the longest. She said the street is not large, and there could end up with 30 people living at the proposed site. She pointed out that Ms. Roe lives in Deschutes County and the neighbors all live here, it is their neighborhood. It is Ms. Roe's business in our neighborhood. It is a quiet neighborhood, the street is not large and there is no outlet. The business does impact the person across the street.

Ed Whale, 3521 Knob Hill, said he thought it would be new. He asked what is permitted and what is it. He said they have to consider the information such as will there be a lot of visitors. What about the adverse driving conditions in the winter, the additional staff and visitors, and now the "what ifs". In the hearings, the impact information submitted was more than minimal impact.

Jamie Whale, 3521 Knob Hill Way, talked about not living on "what if's"; it has to do with what is now. She understood we had to stay on what is now and now it is "what ifs".

Philip Wortman discussed the flow of traffic, the increase of traffic with vehicles for deliveries and the grade in the road in the winter. His property has been damaged by the staff during the winter driving, and he has to take care of himself. He asked the question regarding livability, and how would this affect the Court member's neighborhoods? Mr. Workman told of the reasons that the residents chose to live in the neighborhood for the quiet and large lots. If legalities, let's discuss the effect on our lifestyle. We have the right to our lifestyle and our landscaping. He feels this is a sacrifice.

### **Rebuttal**

Mr. Van Vactor responded to the neighbor's comments. Mr. Homes spoke of 30 residents. Mr. Van Vactor discussed the Septic reserve and the most residents there would ever be would be 20. There is not enough room for more. The house is a horseshoe shape and it is a duplex. Conditional Use is allowed. It is Critical Outright use. The applicant has met the criteria. To Ms. Chavez comment of Ms. Roe living in Deschutes County, yes she does, but the residents of the facility are Crook County residents as well as the staff. Further discussion was held on outright permitted uses in the zone. In the issue of livability, this is the same home as was built in 1994 with the exterior modified into a single facility. The neighbors are correct, the property is not improved. Ms. Roe plans on making improvements but is holding off until this decision is made.

Commissioner Brummer discussed trips per day. Is this fact versus emotion? Ms. Beier said that for impact analysis, 25 trips per day are made during the peak hours. She believes this would be morning and afternoon depending on staffing changes and staggering staff. The applicant could be reduced traffic of commercial need and that does not trigger the need for traffic analysis. Regarding living out of County, there are no criteria to the issue of Ms. Roe living out of Crook County. Commissioner Brummer discussed the property arrangement with the 15 unit toward the bottom of the property, the road at the top, the septic system and the steps that could be taken to make a single combined lot of the two lots owned by Ms. Roe. Also, the conditional use is not transferrable, so if new owners came in, they would have to come in for owning a facility. Commissioner Barney discussed with Ms. Beier the combining the two lots. Commissioner Brummer discussed outright use being a better chance to protect neighbors. Outright use versus conditional use. This is basing the decision on the criteria and taking emotion out of the mix.

Ms. Beier has met with neighbors and discussed minimizing traffic. Mr. Van Vleet said that staffing is the primary traffic. There are 3 8 hour shifts with the change at 10:00 p.m., 6:00 a.m. and 2:00 p.m. This is not the peak hour of regular traffic. He discussed the deed restriction for the property and said he believes this is a good plan. Commissioner Brummer asked questions regarding the number of the people in the unit and the number of staff for each unit. Two staff members.

Ms. Chavez discussed the drainage in the road. Mr. Van Vleet said the drainage is predated and has been going on for years. Ms. Beier will assure any additional road approaches would require engineering. Roadmaster Bob O'Neil said the road

department has been up on Knob Hill and has been working on the road and culvert. He discussed another approach and meeting requirements.

Mr. Homes asked the Court if they were to approve the application, who takes care of the compliance? Ms. Beier said the County does black and white on conditions, and will have the compliance officer respond and enforce any issue regarding the criteria. Judge Crawford said if the conditions were not met, such as any septic which is a life safety issue, the business would be stopped. County Environmental Health monitors closely such operations and if it came to the extreme, the County would close the business down. Judge Crawford discussed the not meeting of conditions of fencing and landscaping, and if they are not met, the business is shut down. It is extremely important to put in a time frame for the compliance, making it specific if approved. Commissioner Brummer and Ms. Beier discussed that these conditions would have to be done before occupation.

Philip Wortman stated his concerns about everything being finished and inspected before any additional uses and staffing was done. He asked the County about speaking with neighbors, seeing things that must be completed, the fencing and all the criteria met prior to issuing a permit of occupancy. Ms. Homes discussed the view of the neighbors. Commissioner Brummer and Mr. Homes discussed the quality and cooperative nature of the area. Ms. Beier said the applicants agreed with that.

Ms. Roe presented information regarding the situation of the facility at this time. She said that right now, the front yard is messed up due to repair of the drain field. They are in a holding pattern. She said she wants the facility to be part of the neighborhood, making it beautiful. She has tried to make all kinds of concessions. Discussion was held regarding the upkeep and beautification. Mr. Whale said they were missing the point of extra traffic and staff. Emotions aside, he believes the Planning Commissioner made the right decision.

Judge Crawford and Ms. Beier discussed way of life, livability and what can be done on this property. Ms. Beier explained the test in the code and that the Planning Commission did not feel they could mitigate everything. The question of what could be done with an outright use instead of conditional use. Judge Crawford said he respects the Planning Commission and puts a lot of weight to meeting the criteria for outright and conditional use. Ms. Beier said this was clearly the test, whether or not it met the criteria. Discussion was held regarding Mr. Holmes comments of string a business.

Mr. Workman said it may be trivial. He discussed this facility being a commercial area and during the winter weather, sometimes it has been seven to ten days before plowing was done and Commercial vehicles may not be able to traverse the road during that weather.

Ms. Beier discussed the nature of the vehicles doing the deliveries. This is a County maintained road. Ms. Chavez said most vehicles were small. The fire trucks would be the largest. Beier said the fire department will be involved in the design of the looped road.

Mr. Holmes asked if the neighbors would have a chance to see the conditions imposed. He was told it is public record.

The Court discussed remanding this application back to the Planning Commission and if appealed again, coming back to the Court. Discussion was also held regarding the decision of the Planning Commission possibly having been made without full knowledge regarding the outright uses. Mr. Wilson discussed regulations of DHS if any sale was ever to happen.

There being no further testimony, Judge Crawford closed the public hearing.

Commissioner Brummer stated that he agrees with Commissioner Barney, basing this on fact and not emotion. He referred to Ashley Manor located on Meadow lakes Drive as an example. He believes this is a better opportunity to have this remanded back to the Planning Commission and give them the opportunity for them to hear all the information and options

Commissioner Barney said he agreed with Commissioner Brummer. He assured the neighbors that they have the right to concerns. He understands the concerns of the possibility of building additional buildings on the property and he also understands the neighbors wanting to make sure the facility is maintained and looking good.

Judge Crawford said his concern is the legality of the statute and the livability of the neighborhood. Discussion was held regarding the possibility of the two lots being combined, the plan for traffic control, and county maintenance of the road during the winter weather. Roadmaster Bob O'Neal explained that the maintenance of the winter snow season is through a contractor. The county contracts out snow maintenance for all subdivisions, and the County Road Department concentrates on the main routes of County roads for busses and safety. Emergency services are called out when the snow reaches 6 inches in depth.

### **Motion**

Commissioner Brummer moved to remand this matter back to the Planning Commissioner with instructions to the Planning Commission as was discussed today regarding outright uses and conditional uses. Commissioner Barney seconded the motion. The vote was 3-0, motion carried.

There being no other matters requiring action on behalf of the Court at this time, Judge Crawford adjourned the Court in toe Executive Session under:

ORS 192.660(2)(h) Consulting with Counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed

ORS 192.660(2)(e) For the purpose of conducting deliberations with persons designated by the governing body to negotiate real property transactions

### **EXECUTIVE SESSION**

**ORS 192.660(2)(e)** For the purpose of conducting deliberations with persons designated by the governing body to negotiate real property transactions: Court discussed a lease expansion of a cell phone operation.

**ORS 192.660(2)(h)** Consulting with Counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed : Court discussed the MERZ recording issue and lawsuit. 2<sup>nd</sup> item: Discussion regarding an application for vested rights, application and returned funds that did not go through the complete process.

Following discussion, Judge Crawford adjourned the Court out of Executive Session and back into Open Session, inviting any members of the public back into the meeting room.

### **Open Session**

Following the Executive Session, Judge Crawford convened the Court into Open Session and invited any members of the public back into the meeting room.

**Motion**

Commissioner Brummer moved to direct staff to follow through on the matters as discussed in Executive Session. Commissioner Barney seconded the motion. The vote was 3-0, motion carried.

There being no further action items before the Court, Judge Crawford adjourned the meeting.

Respectfully submitted,

*Colleen Ferguson*

Colleen Ferguson  
Crook County Court Secretary