

OPEN SESSION/PUBLIC HEARING

2:00 p.m.

Crook County Public Hearing--Reconsideration Hearing, Ordinance 259 / Goal 5 wildlife mapping land use appeal

The Crook County Court met in Open Session to hold a Public Reconsideration Hearing at 2:00 p.m. on July 5, 2017 in the County meeting room located at 320 NE Court Street. Members of the Court and staff in attendance were: Commissioner Jerry Brummer; Commissioner Brian Barney; County Counsel Jeff Wilson; Assistant County Counsel Eric Blaine and County Court Secretary Colleen Ferguson. Judge Seth Crawford was not in attendance for today's hearing.

Members of the public signing the attendance log were: Larry York, Prineville; Greg Jackle, Prineville; Paul Dewey, Bend; Paul Dewey, Bend; Joh Jinings, Department of Land Conservation and Development (DLCD); Pam Rhoden, Crook County Community Development and LaQuita Stec, Prineville.

Commissioner Brummer called the public hearing session to order at 2:00 p.m.

Commissioner Brummer read the preliminary comments into the record regarding Ordinance 259. ((Please see attached preliminary comments)).

The County Court was polled for conflicts. There were no conflicts declared.

Jeff Wilson, County Counsel, provided a written staff report that was also available to the public and the attorneys. He summarized what he believed were the high points. History, 2012 beginning, December 19, 2012 adopted the Goal 5 Winter Range Wildlife Overlay map. Planning Commission held numerous meetings January 2013 COLW and ODFW and DLCD filed notice of appeal to Land Use and LUBA. Parties took part in mediation to see if case could be resolved. That process was to a large amount successful, issues tentatively resolved but some matters that could not be agreed upon. The County asked for the appeal back and went back into mediation and then refereed back to LUBA. Mr. Wilson filed an appeal asking for the matter to be returned to hold a reconsideration hearing. LUBA did not agree to the remand. Instead, the request was treated as a withdrawal. For purposes of today's meeting, the hearing is not on a remand, but to adopt what LUBA would refer to as a Reconsideration Hearing. He presented Ordinance 259 and the matters adopted in that Ordinance. The density standard included in the Ordinance is basically the crux of the appeal.

Mr. Wilson discussed the Wildlife Policy 2 of Crook County prior to adoption of Ordinance 259 and the establishment of the two portions of Crook County: the West County area and the Greater County Area. Copies of assignments of errors have been provided to the Court.

The County believes its ESEE analysis was complete and identifies conflicting uses, identified an impact area, one-mile study, analyzed the ESEE consequences and the benefits and detriments. He explained the winter wildlife range areas, their purpose and the needs of the big game.

The County adopted Ordinance 259 with conditions that the County believes adequately protects big game in Crook County.

Mr. Wilson provided four options that the County could reach today:

1. Address each of the 16 assignments of error.
2. Revoke Ordinance 259
3. Adopt Ordinance 259 as written.
4. Affirm the County's previous decision to adopt Ordinance 259 with additions and revisions.

The Court and Legal Counsel discussed the reconsideration and the typical remand from LUBA. Parties testifying today will only be parties before LUBA. No new evidence or testimony will be accepted today.

County Planning Director Bill Zelenka provided information on the process of the creation of Ordinance 259, the collaborative efforts with two state agencies, statutes and local interpretation, the density requirements, and the ESEE analogy written by Jon Jinings, DLCD.

Mr. Wilson read a statement from Seth Crawford into the record. He authorized the sharing of the statement at the time of the hearing regarding the 300 feet of road requirement and the right to development of his or her own parcel of land.

Jon Jinings, DLCD, based in Bend, said he works with Central and eastern Oregon. He feels the attorney did a good job on report and with moving forward. The DLCD considers something along the line of Option 4. He thing the County and the greater county have a greatest value for animal habitat. He discussed substandard non dwelling and separates conflicting uses regarding density. The bigger the parcel, the fewer the limitations. He discussed the West County design and Greater County design regarding residences. The Court and Mr. Jinings discussed surrounding counties and the 300 foot set back. Discussion was held on special circumstances and with small parcel, less distance set back. Mr. Wilson pointed out a proposal of small and medium size parcels and the setback footage. Mr. Jinings said he believed there could be more discussion regarding the setback distance depending on the situation and size. Paul Dewey, Attorney for Central Oregon Land Watch, said the voluntary remand surprised that organization and caught them off guard. He referenced 18.172.102d, regarding evidence that could be presented. He believed he could present the evidence even if LUBA had not received it.

Mr. Wilson said the documents were voluminous. He asked Mr. Dewey if these were in the record. Mr. Dewey said no, they were records and some referred to these matters. The documents that Mr. Dewey was trying to present to Mr. Wilson are not in the record.

Mr. Wilson said the rules regarding reconsiderations are not clear. It is up to the County Court to consider whether to open up to new evidence or individuals that would not otherwise have standing. Mr. Wilson's recommendation is not to open up to more. The record is already over 1000 pages, and this has gone on for months and years. He believes it is inappropriate and unnecessary. His recommendation is to not open this up or accept anyone or anything without standing or being of the record.

Commissioner Brummer agreed, the public notice expressed no new information and the record is already established. Commissioner Barney agreed also.

Mr. Dewey read a test into the record, stopping the reading and discussing other matters and then returning to the text. He said we believe are not appropriate because no settlement were reached. He believes a settlement had to be complete and there was no settlement. The complexity of the issues, it was difficult in analyzing effects because we didn't have the numbers. He encouraged communications and not disclosing conversations.

At this time, Secretary Colleen Ferguson had to leave the meeting. The rest of the hearing is complete on the audio recording. The remaining portion of these minutes is taken from the audio recording.

Mr. Dewey continued to read and discuss his text regarding density and the Young case. He discussed the County's plan to count Federal lands into the density issues, and how to calculate future dwellings. He read about off road vehicle trails and that deer and elk don't identify between federal and county property. He read about impacts and the ESEE analysis. He said this was the conclusion of his written testimony. He went on to talk about the population numbers of deer and elk.

Commissioner Brummer discussed the larger ranches buying up the smaller parcels and there won't be the dividing up of small parcels for dwellings. Mr. Dewey discussed how parcels in Deschutes County were being handled and the difficulty of figuring the amount of dwellings that could be built, and he discussed the water rights, and farm regulations that change. He discussed the changes for animal habitats, and Commissioner Brummer explained

ODF&W, Greg Jackel Biologist, spoke to Mr. Wilson regarding updated maps, the 10 year update of wildlife, information that was not in the record. Mr. Wilson said that to be consistent since the COLW was denied, ODF&W would be also. Mr. Jackel presented information to the Court about the new information being gathered on animals, migrations, and numbers of big game animals. He discussed working together and the density being new to ODF&W. He discussed language about potential density. The 300 feet from the road, main goal, is to try to cluster. He discussed the costs, power, trying to site the road as close as possible to private and public road. He believes the land owner will try to build the dwelling without having to build a big road. He spoke about the draft ordinances used for non-residential uses and how to identify those.

Commissioner Brummer spoke about the many reasons for changes in the numbers of big game animals, disease, game hunting tags, winter range, density, there are many reasons for changes.

Bill Zelenka asked Mr. Jackel to talk about habitats that are encouraged and not encouraged, and management plans, and the lands that would support big game, but would also be in conflict with landowners, crops, and management was not an option. Difficulty of crossing jurisdictional boundaries was discussed. Discussion was held regarding animals that stay close to where they were born and others that migrate up to 60 miles or more. Mr. Jackel will now have data analysis, 600 collars on the animals.

Commissioner Barney, he said he does not see boundaries. He has as many in his yard as he does in the fields. He does not see where houses really affect the animals that much. Animals pretty well go where they want to go.

Mr. Wilson shared that in going forward, after the public hearing is closed, it would be time to deliberate and come to a decision, one of the four that were discussed, or something different. The Court can decision today, or meet individually and then prepare a written document for the Court to consider for approval.

Commissioner Brummer and Mr. Zelenka discussed the standards and zones, and that this decision regarding the 300 foot set back and no more non-farm dwellings, that if the restriction is passed, could stop someone from even applying for the dwelling.

Approved July 5, 2017 along with County Court meeting minutes of July 5, 2017

Commissioner Brummer closed the public hearing. One more person wanted to testify, but was not able to do so because he had no standing.

Commissioner Brummer still has questions and would like more one and one with the County Counsel. He feels there should be some common ground. Commissioner Barney stated that he had read all the paperwork and feels it is taking landowners rights away with the 300 foot requirement. He knows that everyone will not be happy. He would like to postpone the decision until July 19, 2017.

Mr. Wilson will meet individually with each Commissioner and will then draft a decision on the information gathered from his meetings for presentation at the July 19th meeting.

There being no further action required at this time, Commissioner Brummer adjourned the meeting.

Respectfully submitted,

Colleen Ferguson

Colleen Ferguson
Crook County Secretary