



**MINUTES OF THE REGULAR SESSION OF THE
LINN COUNTY BOARD OF COMMISSIONERS
LINN COUNTY COURTHOUSE – ROOM 200
TUESDAY, SEPTEMBER 12, 2023**

The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, September 12, 2023.

Those present at various times for the matters as indicated below were: Michelle Duncan, Linn County Sheriff; Andy Franklin, Captain Support Services Division, Linn County Sheriff's Office; John Pascone, President, Linn Economic Development Group; Steve Wills, Linn County Planning and Building Director; Alyssa Boles, Planning Manager, Linn County Planning and Building Department; Wayne Mink, Linn County Roadmaster; Torri Lynn, Linn County Juvenile Department Director; Michelle Hawkins, Linn County Treasurer; Reagan Maudlin, Linn County Special/Rural Transportation Coordinator; audience members for the Public Hearing; Alex Paul, Linn County Communications Officer and Shayla Escudero, Reporter for Democrat-Herald.

1, 2, 3. At 9:30 a.m. Chair Nyquist called the meeting to order. The flag salute and roll call followed. Commissioners Roger Nyquist, Chair; Will Tucker, Vice-Chair and Commissioner Sherrie Sprenger were present, as well as, Darrin Lane, Linn County Administrative Officer and Marsha Meyer, Recorder for the Board of Commissioners.

4. Approval of Agenda.

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

5. Approval of the September 5, 2023 Commissioners' Meeting Minutes.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve the September 5, 2023 Commissioners' Meeting Minutes. The vote was called. The motion passed unanimously.

6. Sheriff's Office – Michelle Duncan, Linn County Sheriff.

Andy Franklin, Captain Support Services Division, Linn County Sheriff's Office presented this item on behalf of Sheriff Duncan.

A. Resolution & Order 2023-338 approving a Contract between Gresham Automotive, Inc., dba Gresham Ford and delegating authority to execute originals.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-338.

Discussion followed in regard to why the Sheriff's office was purchasing vehicles through Gresham Ford and not locally. The Sheriff's office used the State Procurement Program to purchase the vehicles and Gresham Ford was the dealership available through that program. Commissioner Sprenger stated that it would be nice to purchase the vehicles locally to which Captain Franklin replied that the local Ford dealership does all the maintenance and service work on the Sheriff's office vehicles. Commissioner Nyquist stated that, while he understood the Sheriff's Office needed vehicles, he would likely be a no protest vote, in part, because it didn't sound like the local dealerships were given an opportunity to submit a quote in this matter.

Commissioner Sprenger asked Captain Franklin and/or Sheriff Duncan to find out if the County could, for the same price through the State program, purchase vehicles within Linn County. Darrin Lane, Linn County Administrative Officer, stated that he's had significant past experience in using the Oregon Cooperative Purchase Program, currently known as Oregon Buys, and it was the logical and appropriate process for the Sheriff's Office to use in this situation.

The vote was called. The motion passed 2-1 with Commissioner Nyquist voting in opposition.

7. Linn Economic Development Group – John Pascone, President, Linn Economic Development Group.

Mr. Pascone provided background information regarding this item.

A. Resolution 2023-350 approving an Extended Property Tax Abatement Agreement between Linn County a Cosponsor of the Linn County Enterprise Zone and Selmet, Inc.

Mr. Pascone stated that Selmet was proposing to spend \$20 million and create 65 new jobs. He was asking the Board to approve the extended property tax abatement.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution 2023-350. The vote was called. The motion passed unanimously.

8. Reports of Staff and Committees:

A. Planning and Building Update – Steve Wills, Linn County Planning and Building Director.

Mr. Wills provided the Board with a Planning and Building Update for the month of August, 2023. A copy of his report is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Mr. Wills stated that there were no Planning Commission meetings and no hearings to come before the Board in September, 2023.

He also shared that the new Accela program would be up and running next week. Commissioner Sprenger stated that the department was managing the program well. The contract cities appreciated the open and honest dialogue and were excited to move forward with this program. Commissioner Sprenger told Mr. Will's that he was doing a good job in managing the transition.

Commissioner Tucker stated that a person from the Building Code Division with AOC thanked the County for the Accela program and the work the department had done in the Canyon; out of five counties, Linn County was leading in the number of applications processed and the total number of finished houses from the 2020 wildfires. Commissioner Tucker thanked Mr. Wills and his department for all their efforts.

Commissioner Nyquist recommended that as Mr. Wills made for next year's budget he should consider adding an extra code enforcement person. His understanding was that there is activity on Jefferson/Scio Road in regard to chicken houses and that he anticipated the County would get multiple calls daily about that matter. Commissioner Nyquist stated that the expectations of the community would be that the County would respond to those complaints and he wanted Mr. Wills to be prepared for it.

Alyssa Boles, Planning Manager, Linn County Planning and Building Department provided background information for the following two items.

1. Resolution & Order 2023-317 approving a Comprehensive Plan and Zoning Map Amendment to add property to the Lyons Urban Growth Boundary.

Ms. Boles stated that Commissioner Nyquist had been excused from the two hearings on this matter. The Board previously had voted 2-0 to approving the applications.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-317. The vote was called. The motion passed 2 to 0 with Commissioner Nyquist abstaining.

2. Ordinance 2023-318 approving an Ordinance amending the Linn County Comprehensive Plan Map and Zoning Map.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Ordinance 2023-318. The vote was called. The motion passed unanimously.

3. Resolution & Order 2023-354 approving an update to the construction excise tax rate set by the Greater Albany Public School Board.

Mr. Wills stated that the construction excise tax rate for residential was currently at \$1.26 and would increase to \$1.56; and, the excise tax for non-residential was currently at \$.63 and would increase to \$.78.

Commissioner Nyquist stated that the County had a long history with the excise taxes. The Board's position resulted in the legislature fine-tuning their initial provision requirements in which the County was then required to collect the tax. This item was not an approval in itself but merely a procedural requirement to collect the taxes.

Commissioner Nyquist stated that he would not participate in today's vote as he voted on this matter as a school Board member of the Greater Albany Public School (GAPS) Board.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-354.

Commissioner Sprenger stated that GAPS was implementing the increases and the County was the entity that collected and processed the taxes.

The vote was called. The motion passed 2-0 with Commissioner Nyquist abstaining.

4. Request for Refund from Linn County Planning and Building Department to T2 Incorporated, \$1,000.

Mr. Wills stated that the application had the wrong square footage so the department made the correction and submitted a Request for Refund for the difference.

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

9. Road Department – Wayne Mink, Linn County Roadmaster.

Mr. Mink provided background information on the following items.

A. Resolution & Order 2023-304 accepting and recording certain real property granted to Linn County for road purposes (County Road Number 0367, Old Salem Road).

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-304. The vote was called. The motion passed unanimously.

B. Resolution & Order 2023-333 accepting a road dedication, Laurel Street, Lebanon, Linn County.

Mr. Mink stated that this would legitimize Laurel Street as an access road for local use. The County would not be responsible for maintenance and there would be no cost to the County.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-333.

Commissioner Sprenger clarified that Laurel Street was a road that's been in existence but it had not been reported as being maintained or owned by any one entity. Commissioner Tucker stated that he wished the City of Lebanon had annexed it, however, it needed to be legalized as there's now a Court Order; it's the right thing to do for the citizens on that road. Extensive discussion followed.

Commissioner Nyquist stated that there were many properties within Lebanon's city limits that looked like they're part of the city but they're outside city limits and the city doesn't annex them. They are sub-standard lots in the way of services with all kinds of challenges. The County has not liked this situation for a long time and were powerless to do anything.

The vote was called. The motion passed unanimously.

10. Juvenile Department – Torri Lynn, Linn County Juvenile Department Director.

A. Resolution & Order 2023-324 approving an Intergovernmental Agreement between Linn Benton Lincoln Education Services District and Linn County Juvenile Crime Prevention Funding.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-324. The vote was called. The motion passed unanimously.

B. Resolution & Order 2023-346 approving an Amendment No. 11 to an Intergovernmental Agreement (Agreement No. 5264k) for the Oak Creek Youth Correctional Facility between the State of Oregon, Oregon Youth Authority (OYA) and Linn County and delegating authority to execute originals.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-346.

Commissioner Nyquist commented on the importance of this agreement. Mr. Lynn stated that there was language in the agreement that, if OYA chose to close, Linn County would have the option to maintain services in that building. Commissioner Sprenger stated that there were two separate facilities and two separate programs on the one property.

The vote was called. The motion passed unanimously.

11. Treasurer's Office – Michelle Hawkins, Linn County Treasurer.

A. Order 2023-355 approving a transfer of certain appropriations within the General Fund, \$57,397.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Order 2023-355. The vote was called. The motion passed unanimously.

12. Special Transportation – Reagan Maudlin, Linn County Special/Rural Transportation Coordinator.

A. Resolution & Order 2023-334 approving a Subrecipient Agreement for general transportation services between Senior Citizens of Sweet Home dba Linn Shuttle.

Action Taken Below.

B. Resolution & Order 2023-339 approving an Amendment No. 2 to the Subrecipient Agreement for special transportation services between Linn County and Senior Citizens of Sweet Home dba Linn Shuttle.

Action Taken Below.

C. Resolution & Order 2023-340 approving an Intergovernmental Agreement for special transportation services between Linn County and the City of Albany.

Action Taken Below.

D. Resolution & Order 2023-341 approving an Intergovernmental Agreement for special transportation services between Linn County and the City of Albany.

Action Taken Below.

E. Resolution & Order 2023-342 approving an Intergovernmental Agreement for special transportation services between Linn County and the City of Lebanon.

Action Taken Below.

F. Resolution & Order 2023-343 approving an Intergovernmental Agreement for special transportation services between Linn County and the City of Lebanon.

Action Taken Below.

G. Resolution & Order 2023-344 approving an Intergovernmental Agreement for special transportation services between Linn County and the Oregon Cascades West Council of Governments.

Action Taken Below.

H. Resolution & Order 2023-345 approving a Subrecipient Agreement for general transportation services between Senior Citizens of Sweet Home dba Linn Shuttle.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Orders 2023-334, 339, 340, 341, 342, 343, 344 and 345. The vote was called. The motion passed unanimously.

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

14. Special Orders:

A. Personnel Action Forms.

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

Darrin Lane, Linn County Administrative Officer, provided background information on the following items.

B. Resolution & Order 2023-321 approving a Personal Services Contract between Rhodes-Warden Insurance, Inc. and Linn County.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-321. The vote was called. The motion passed unanimously.

C. Resolution & Order 2023-331 approving a Grant Agreement for the Oregon Criminal Justice Commission Specialty Court Grant Program between the State of Oregon and Linn County and delegating authority to execute originals.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-331. The vote was called. The motion passed unanimously.

D. Resolution & Order 2023-335 approving an Amendment No. 1 to an Intergovernmental Agreement between Benton County and Linn County and delegating authority to execute originals.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-335. The vote was called. The motion passed unanimously.

E. Resolution & Order 2023-347 approving a First-Time Youth Wage Grant Agreement between Linn County and Boshart Trucking.

Action Taken Below.

F. Resolution & Order 2023-351 approving a First-Time Youth Wage Grant Agreement between Linn County and The Point Restaurant & Lounge.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to approve Resolution & Order 2023-347 and 351. The vote was called. The motion passed unanimously.

15. Unfinished Business and General Orders:

A. Calendar Update: The Commissioners updated their calendars. Commissioner Nyquist stated that all three Commissioners attended a Board of Forestry meeting at the Governor's office on Monday, September 11, 2023. No decisions were made and there were no deliberations made towards a decision. He stated that the meeting was properly announced and advertised.

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

17. Announcements: There was no announcements.

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

19. Public Hearing – (Continued from Tuesday, August 29, 2023) Deliberation and Decision – BC19-0002 – A hearing on remand from the Oregon Land Use Board of Appeals (LUBA) of Linn County Ordinance 2021-397 and Resolution & Order 2021-396 which approved applications by Ronald & Virginia Henthorne for a Comprehensive Plan (Plan) Map Amendment and Zoning Map Amendment on a 108.59-acre property.

Commissioner Nyquist called upon staff to provide background information on this matter.

Alyssa Boles, Planning Manager, Linn County Planning and Building Department, stated that the initial hearing was held on Tuesday, August 29, 2023 where the Board closed the Public Hearing for oral testimony but left the record open for written testimony for any party to submit comments until Tuesday, September 5, 2023 at 5:00 p.m. The Applicant was allowed six days to respond by Monday, September 11, 2023 at 5:00 p.m. She stated that both of those timelines were met. All comments received were submitted to the Board for their review. Ms. Boles stated that the Board received a Staff Report dated Wednesday, September 6, 2023 containing two comments from 1,000 Friends of Oregon and a Staff Memo dated Monday, September 11, 2023 containing the Applicant's written response.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion to accept into the record the Staff Report dated Wednesday, September 6, 2023 and the Staff Memo dated Monday, September 11, 2023 and to direct Marsha Meyer, Recorder for the Board, to mark the documents as she deemed appropriate. The vote was called. The motion passed unanimously.

Commissioner Sprenger stated, for the record, that she was not present for the hearing on Tuesday, August 29, 2023, so to be able to participate in today's hearing, she had carefully listened to the digital recording of the hearing and reviewed all of the documents going back to 2019 as she was present for the hearing in 2021. Commissioner Sprenger stated that, apparently because of her absence during the recent hearing, she wanted to provide an explanation as she heard there were concerns expressed about her absence. Commissioner Sprenger stated that the Friday preceding the hearing her husband had a serious fall 25 feet off a ladder and suffered a concussion as did she. She stated that, at the time of the hearing, she knew that she was not in a clear mind; that's the decision I made and why I made it. Today, she stated that she was prepared to participate in the hearing. In regard to exparte communication and conflict of interest, Commissioner Sprenger stated that she had not had any conversations with any of the parties and/or connections to any of the parties nor any conflict of interest financially in this matter. She did state that she knew Mr. Merrill but she, nor her family, had anything to gain financially in this matter. Commissioner Tucker appreciated Commissioner Sprenger going through all the documents and for going through the process to prepared for today's hearing.

Both Commissioners Nyquist and Tucker stated that they had no exparte communication or financial interest in this matter.

Action – Commissioner Tucker moved and Commissioner Sprenger seconded the motion, based upon the record, testimony and the evidence submitted and finding the applications complied with the policies of the plan, specifically, LCC 903.510(B)(7)(a) and moved to approve BC19-0002 including the Conditions 1 through 3 that were acceptable to the Applicant and had been in the last two approvals.

Commissioner Sprenger stated, to clarify that the decision today, was based upon the Land Use Board of Appeals (LUBA) remanding and the Oregon Court of Appeals saying that the Board made the right decision but they needed to define the County's code whether or not the density was within the habitat area or the section and the section was not the parcel. She said she didn't disagree with the motion but wanted to make sure that she was clear on the decision point to be made today.

Ms. Boles provided clarification stating that the initial approval in 2019 was appealed to LUBA which actually reversed the County's decision and was appealed to the Court of Appeals who reversed LUBA's decision and remanded it back to LUBA. Then that decision was appealed to the Supreme Court who declined to hear it. Ms. Boles stated that the 2021 decision went to LUBA and they remanded the decision to the County which was appealed by the Court of Appeals on specific procedural issues more so than the policy discussion that's before the Board today. The Court of Appeals affirmed LUBA's procedural findings but didn't touch on the habitat so it is back before the Board on remand on LUBA's questions of how the County interprets these policies in the plan.

Commissioner Tucker stated that he would vote to have findings created by staff that supported the motion and provided clarification. He stated that as he tries to describe the conditions he finds himself mixing the two possible ways of doing this. He stated that the reason he likes the conditions as set forth is it gives a number in the peripheral habitat conservation area and limiting that to ten and a number that is less than, but as he calculates it, he comes up with a larger number. He was glad that they've come to a number that is less than the number he calculated. Commissioner Tucker stated that he tried hard to not go in and give the mathematical formula because he didn't want to get to a point where he mis-spoke even after sitting down with staff to do the calculation.

Ms. Boles stated that the Staff Report concluded that either interpretation of the policy wouldn't result in a dwelling density that would exceed the number that's in the plan and that there were processes in place where the application is approved and the decision is affirmed. The application for development would come to the County, either at the staff level or at the Planning Commission where they could make sure that any future development complied with those policies in the County's plan and wouldn't exceed the dwelling density threshold.

Commissioner Tucker stated that, by asking for clustering and setting a limit, he thought the County achieved what they needed to achieve to get clear direction about where staff would look in the future. There were some people who made comments about how this would be enforced. Commissioner Tucker stated that, in fact, they needed to get a development permit and it would be very clear of what they could do. The peripheral habitat area was able to have 32 homes and we are trying to limit it down to ten which this proposal does. Outside of that, there's still some mobility for the developer to develop as he would in any other non-resource land not impacted by the habitat area which would come to us as part of the plan for development.

Commissioner Sprenger stated that she was not sure if she agreed with Commissioner Tucker's motion because she was not sure if she understood it. She asked Commissioner Tucker if he was wanting the number ten as she thought they were on

different pages; the decision point was to look at the County's code and define it as it is not clear. She believed the two choices they had was not exclusive to this hearing or plan amendment but, moving forward, they needed to decide if they were going to set the density by the section or within the habitat area. Commissioner Sprenger stated that she didn't believe they were disagreeing but were saying it differently.

Commissioner Tucker stated that he was proposing to not use the full section but to use the habitat area. When he calculated it, he came up with a number that was larger than ten. Ten was a number proposed by the Applicant and had been on conditions each time the Board had approved it. He stated, to be clear, he was not proposing they do it by section but look at the habitat area in its size inside of that area and not base their decision on the entire section of land.

Commissioner Sprenger stated that Commissioner Tucker was talking about two different issues; ten in this hearing and, moving forward, what their code would say, which was not what they're voting on today. The vote today would be a precedent setting decision and the Board needed to think of terms down the road and other projects. Commissioner Sprenger then stated that she would like to limit the number but she thought the section would do that; not in the habitat area. She then asked Ms. Boles to help explain that.

Ms. Boles stated that they were both limiting in similar ways. If you're looking at how the Applicant interpreted the policy in this particular section, there's 300 acres of habitat area so, when you looked at the habitat, basing it off the development being clustered, you could have up to 32 dwellings within the habitat area in a section based off the acreage. Therefore, within the habitat you're looking at potentially 16 dwellings. Ms. Boles stated that, if you looked at how the Planning and Building Department interpreted it and you looked at the entire section, they looked at all the houses within the section and, in this particular instance, it was determined that there were 21 dwellings in the section clustered so, potentially, there were 11 dwellings in the section for any property within the habitat. Ms. Boles stated that either interpretation policy would still not exceed the density standard but it's an interpretation of what the Board thought the language in the plan was trying to say. Does it say within the habitat, which is stated in the plan; or, do you believe the interpretation is based off the section.

Commissioner Tucker stated that because of the fact that the section had a habitat and was not the full section and the reason he was rationing down the available land and the number of units that could be in that habitat area, he came up with 16. The Applicant was proposing ten that is why he wanted to say it's by section based upon the habitat area as it pertains to the section. The number the Applicant had been willing to set is less than 16 and 11 so he wanted to keep the number at ten. Is it, in fact, based upon the habitat areas percentage of the full section. There, potentially, may be other sections of land that may be 90 percent habitat area or ten percent and we need to have some way to figure out what that is. Commissioner Tucker stated that to just look at the whole section that could take someone's property right-of-way he would rather have the Board look at their right if it is, in fact, like this is a non-resource land which is not up for discussion. I'm looking forward to moving this to a decision round; the habitat

areas as a ratio of its content inside of the section and not based upon the section. Commissioner Sprenger stated it was a point well taken.

Commissioner Nyquist stated that he didn't like doing this but loved being their County Commissioner. He stated that he had been working for 20 years to figure out how to get out of this part of the job; we have the provisions to allow for a hearings officer but can't get anyone to agree with me to do that. He stated that the County and all of the participants had been participating in this case for four years. As a property owner, he would suspect that there was a sense of impending doom and that their life, as they know it, was going to change. Whether it is or not, to be dragged through this for four years, is just not right. A would-be developer should also be able to accept some certainty that the current system doesn't allow for it either. Commissioner Nyquist stated that, while this was precedent setting, the Board shouldn't lose sight of the fact that there are people before them that for four years have engaged in a process and we shouldn't be in some ideological position that maintains some precedent at the expense of the testimony and evidence they've heard. He stated that he had heard from one of the gentlemen that, let's be clear here, it isn't ten homes, its ten plus four, five or six. He stated that he thought, at the time, it couldn't be because the Applicant was only asking for ten. Commissioner Nyquist stated that, however they got there, he would be adamantly opposed to any path that got them to more than ten. If that is where the Board goes, he would leave that to staff to come up with the findings to do that.

Commissioner Tucker stated that he would caution the Board because the code talks about two different ways to calculate what could be done in the habitat area and then there is land outside of that area that is now non-resource land and, to him, any developer would have the challenge to figure out how many he could have on the other piece of that land. Commissioner Tucker stated that the other land was not incumbered by the same state limits that was incumbered by the County's code limit on non-resource land. He stated that he thought it was pretty clear that the ten number was the maximum the Applicant would put inside the habitat area which was well below the numbers that he had attempted to calculate with staff. Commissioner Tucker stated that it wasn't just ten but he believed the concerns had been about the habitat area. He stated that he knew people didn't like any development but the County code allows for it; for him, it's ten plus. They won't know what the "plus" is until they see a development plan which will tell them what the ten plus might be. Commissioner Tucker stated that there would be a public process for that as well which was different then setting a number because he still needed to figure out if he could create ten in clusters that could be served in the habitat area and Commissioner Tucker wasn't completely sure, based upon topography and other issues, the Applicant could create that completely. Commissioner Tucker stated that, again, he couldn't have a conversation with the Applicant to ask the questions or see the examples because the decision for him was reading the County's code and State law; hearing people's testimony about different ways to look at this and trying to figure out which one was the right one. He thought the right one was taking a look at what the habitat conservation area was as that's how they get density in the mapped habitat area inside of that section. He would look at the ratio number and then, looking at the fact that the Applicant's proposal was less than that number by a substantial amount, that's why he saw that it's the way to go. Commissioner Tucker stated that he was at a point where, if there was not going to be a

vote for the motion, he would pull it back and they could vote to see where they're at or he could pull it back and one of the other Commissioners could make a motion about how to proceed.

Commissioner Sprenger stated that she was not asking Commissioner Tucker to rescind his motion at that point.

Commissioner Nyquist clarified that there had been a motion and second and that they had been discussing and deliberating on what they would allow on the property which was more than what the developer had committed to which was to hold the number of ten. Commissioner Tucker stated that he committed to hold the habitat area to ten and didn't think that the Applicant had ever committed to hold his whole development to ten. Commissioner Nyquist stated that he interpreted that differently. Commissioner Sprenger asked how Commissioner Nyquist was interpreting that specifically. Commissioner Nyquist interpreted it to be on the entire 100-acre property. Commissioner Tucker then read what they voted on previously which was what was inside Ordinance 2021-397 and inside the Resolution & Order and the motions and documents submitted by the Applicant. He then read the language that a maximum of ten dwellings shall be allowed within the peripheral habitat designated area on the subject property and dwellings must be approved in compliance with LCC 903.510(B)(7-10). Commissioner Tucker stated that it was pretty clear it was inside the ten of any side of the peripheral habitat area or designation.

Commissioner Sprenger asked staff to clarify two terms: peripheral habitat area and habitat area. She asked Ms. Boles the difference in those two terms and what it meant. Ms. Boles stated that there was no real difference. Linn County had adopted habitat maps and there were different layers such as peripheral habitat density, as well as, other layers. She stated, while peripheral habitat was the correct terminology, wildlife habitat was also fine.

Commissioner Nyquist appreciated Commissioner Tucker pointing out previous findings and conditions. He stated that the practical problem of that for him was a decision, as Commissioner Tucker's motion captured, which created no end or certainty to any of the parties as of what would be there on that property in its totality going forward. He stated that he wanted to do his best with what he hoped to be a resolution to this matter today and Commissioner Tucker's motion wouldn't accomplish that.

Commissioner Tucker stated that the next step would be from the developer either a sub-division or a partition. He asked Commissioner Nyquist if he would like to ask the developer to prepare a draft of one of those to see where the number was so they could set a number or was Commissioner Nyquist preferring to say that, regardless of what the County's rules may interpret and say is possible and despite the offer of doing ten plus or whatever he could fit there, that Commissioner Nyquist wanted to set a number. Commissioner Nyquist stated that he wanted a set number and he didn't want it to be more than ten. He hoped that people would be able to move past this and get on with their lives and at, some point, get along with each other.

Action – Commissioner Tucker withdrew his motion. Commissioner Sprenger allowed the motion to be withdrawn.

Commissioner Sprenger stated that one of the things she desired when she faced a similar situation regarding a box store coming into her area was an answer or some certainty; it gets uncomfortable when it drags on. People have the right to appeal a decision. She asked that it may be a goal but, if for whatever reason this Board today said no to everything, would that bring any certainty. What would likely happen? Would there be another appeal or remand? The Board was given a scope for the decision today. Ms. Boles stated that the Board could make whatever decision they thought was appropriate and that decision could be appealed to the Land Use Board of Appeals which would be available to all parties.

Commissioner Sprenger stated that, in this scenario, if the Board made a decision and it got appealed, LUBA would be the entity that told the Board what they got right and what they got wrong.

Commissioner Nyquist stated that, based on the record, they didn't get to just say no. Commissioner Sprenger asked staff if they could offer a pathway to move forward. Commissioner Nyquist stated that the Board had the information in front of them. Commissioner Sprenger stated that there seemed to be an agreement on the number of ten dwellings. Commissioner Tucker stated that, for him, ten was the number in the proposal in the habitat area. Commissioner Sprenger stated that the other piece that needed to be defined was how they come to the number ten; they don't come to ten by either one of the choices. Commissioner Tucker agreed. Commissioner Sprenger then asked if this was precedent setting.

Ms. Boles stated that the decision the Board would be making today was a policy decision which would set precedent because, to her knowledge, this issue hadn't been before the Board for discussion. Whatever policy decision the Board made would be implemented by the Planning and Building Department going forward on any development in a habitat.

Commissioner Sprenger suggested that the Board could vote on the number ten and then, in subsequent meetings, distill down the policy moving forward.

Commissioner Nyquist stated that he believed the question before the Board was whether or not the restriction applied only to the habitat area or applied to the section. He then proposed that the Board interpret their decision to apply to the entire section. Ms. Boles then stated that, today, the Board's determination was how the County would interpret it. Do you look at the entire section for any land use development within a habitat or do you look within the habitat area. Commissioner Nyquist stated that he was only looking at what was before him today but realized that they needed to be consistent. If the Board attempted to look out 20 years to foresee what may or may not come before them and make a decision based on that, it would be hard and he didn't know if it would serve them well and honor the hearing and input they've received on this case to resolve this issue.

Commissioner Sprenger then asked Commissioner Nyquist, if he were to make a motion, what would it look like. Commissioner Nyquist stated that the difference between Commissioner Tucker's motion and his motion was that ten would apply to the entire section and not just the habitat conservation area.

Commissioner Tucker asked for clarification. He stated that LUBA was asking the Board to do one of two ways and what he was hearing Commissioner Nyquist say was he wanted to do it by the way of, not the section, but the habitat area and, in this particular case, there had been some conditions of which were proposed and agreed upon by the Board in previous approvals. They changed number one of those conditions by, instead of saying maximum of ten houses in the habitat area, they said a maximum of ten houses on the entire 108-acre piece of property. Commissioner Tucker asked Commissioner Nyquist if that was what he was wanting to do and Commissioner Nyquist replied it was exactly what he was saying. Commissioner Tucker then asked if Commissioner Nyquist could state that as a motion.

Commissioner Sprenger stated, for the record, that she had driven out to the property as she had been invited to do.

Commissioner Sprenger asked Commissioner Nyquist if he was thinking that it was more limiting to go by the section. Commissioner Nyquist replied yes. She then stated that Commissioner Tucker was thinking that it was more limiting to go on the habitat. Commissioner Tucker replied that was correct. Commissioner Sprenger stated that, after doing her homework, it was more limiting to be on the section. She stated that she wanted to go the direction that was more limiting.

Ms. Boles confirmed that the Board was looking at what would be more limiting. The way that the Planning and Building Department had implemented that policy was that the section was more limiting. She stated that 640-acres in a section and the density standard was based upon acres per section which was one home per 20 acres, however, when you looked at the whole section that included development outside of the habitat, it was more restrictive because other development outside of the habitat affects development within the habitat. Commissioner Tucker stated that it would be a more strictive way of looking at it. He stated that the decision the Board was making today affected other sections within the County. If there is another place where there is more cluster along the highway and it's the edge of a section it becomes non-resource land that could be developed. We are now saying that our way of doing this could rule out development in not just 100 acres of being ten but in a couple hundred acres of being ten. Commissioner Tucker then referred to a map where it showed smaller pieces with homes. He was worried that, when you applied the "by section" rule across other parts of Linn County where it may not be forest conservation management on two sides, they couldn't have dwellings and there may be other homes that they limit other people's development on properties based upon looking at the section and not looking at the habitat property inside the section. Those were his concerns.

Commissioner Nyquist asked Commissioner Tucker how often he had seen this in his 27 years. Commissioner Tucker stated that he had not seen the County have a case this large trying to get dwellings on habitat land; this is unique and the first one of this

size. He stated that he had seen people try to clarify their ability to do things in a habitat area for one development but they've never had to decide a number for a development, partition or another method to divide their property. Commissioner Tucker stated that he was concerned with what it would do to others but would be happy to say that down the road; we're not bound by our own decisions and could certainly remake them. We could make a decision that our peers have to acknowledge and look at but a future Board could decide to make a different decision.

Commissioner Nyquist stated that the Chair doesn't generally make a motion but he would attempt to do so.

Action – Commissioner Nyquist moved to direct staff to prepare findings that cures the remand and allows the developer to go out and create no more than ten homesites on this section and not the habitat area.

Commissioner Nyquist asked Ms. Boles if she could go forward with this motion should it be approved. Ms. Boles stated that she could prepare findings but didn't know if she could cure the remand but would try.

Commissioner Tucker seconded the motion for the sake of discussion.

Commissioner Tucker stated that he would be voting no based on the way the motion sounded today. He stated that, in the section which he thought Commissioner Nyquist meant in this tax lot, because of a significant chunk of land not being in the habitat area they're trying to protect and setting a number of ten for that section, he believed it was really restrictive.

Commissioner Sprenger stated that she was hearing two different things. She then asked Commissioner Tucker what part of the motion would he change if he could. He stated that he would change the number from ten to 12 or 14 looking at a proposal of what the densities were being proposed. Commissioner Tucker stated that the developer proposed ten which was less than the County codes two options. He stated he was pleased with that but not sure how it would lay out and how many houses the Applicant would get outside of the habitat. To say that were trying to protect the habitat area by setting ten as the total, Commissioner Tucker found that to be overly restrictive and not consistent with his passed positions of giving property owners the right to do with their property what they could within the constraints and controls of Oregon's land use laws. Commissioner Tucker stated that it was consistent with what they've done each time in the past when they've passed it; passing it with ten inside the habitat area leaving the other number to be defined for one of two paths to develop and bringing to the Board some type of plan. Commissioner Sprenger stated that she understood Commissioner Tucker's position.

Commissioner Sprenger stated that this was a hard decision and could only imagine the struggle everyone else was having. Commissioner Sprenger asked Ms. Boles what she heard in the motion and what she would do as a result of that motion if it passed. Ms. Boles stated that she heard the Board would be approving the applications and directing staff to prepare findings in support of that approval with a limit of ten total homesites on

the property as it was first proposed with a suggestion from Commissioner Tucker to change that to potentially 12-14. Commissioner Sprenger stated that what she didn't hear Ms. Boles say was anything about the Board addressing the question that LUBA gave them which was basing it on the section or the habitat area. Commissioner Nyquist stated that her findings would do that. Ms. Boles stated that, if the consensus of the Board was ten total homesites, the number ten complied with either interpretation of that policy; it wouldn't exceed the dwelling density within the section of the habitat. If the vote would be 12-14 new homes that would end up in an interpretation that they would look within the habitat area for density.

Commissioner Tucker asked Commissioner Nyquist if he would accept an amendment to the motion to add conditions 2 and 3 back in which were there in their previous two hearings. He stated condition 2 referenced that subsequent sub-divisions or partition applications for such a property shall potentially comply with the Applicant's draft wildlife management plan; and, condition 3 referenced parcels, fencing, domestic dogs, shooting and a series of other restraints that were acceptable. He asked Commissioner Nyquist if he would consider adding them to his motion. Commissioner Nyquist replied yes.

Action – Commissioner Nyquist amended his motion to remove condition 1 and accepting conditions 2 and 3 to the previous motion. The vote was called.

Commissioner Tucker stated that, if Commissioner Nyquist was making that amendment to his motion, he would like to second it.


Commissioner Tucker seconded the addition of what's previously been called items 2 and 3 as conditions from the previous adopted Resolutions and Ordinances. Commissioner Nyquist added to direct staff to develop findings that the Board would approve. Commissioner Nyquist called the vote. The motion passed unanimously.

20. Adjournment. There being no other business to come before the Board; the Board of Commissioners meeting was adjourned at 11:15 a.m. by unanimous consent.


The next regular public meeting of the Board of Commissioners is scheduled at 9:30 a.m. on Tuesday, September 19, 2023.

 Recorder
For Board of Commissioners
Marsha Meyer

LINN COUNTY BOARD OF COMMISSIONERS


Roger Nyquist, Chair


William C. Tucker, Vice Chair


Sherrie Sprenger, Commissioner

Date 10-17-2023