

BOARD ORDERS AND MINUTES

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY (“the Board”) sat for the transaction of county business in formal session on Thursday, February 12, 2004, at 10:00 a.m. in Room 32, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present were John M. Gray, Jr., County Counsel; John Krawczyk, Director of Administrative Services; Rick Sanai, Assistant County Counsel; Ken Friday, Senior Planner; Martin Chroust-Masin, Associate Planner; David Bates, News-Register; Mark Shipman, 250 Church Street SE, Suite 300, Salem 97301; Marilyn Reeves, 22250 Boulder Creek Lane SE, Amity; Tina Paddock, 325 NW 9th Street, McMinnville; Carol Paddock, 5001 NE Mineral Springs Road, McMinnville; Barry Adamson, P O Box 1172, Lake Oswego 97035; George and Marijo Johnston, 70915 SW Pacific Highway, Sherwood 97140; Catherine Wright, P O Box 625, McMinnville; Susan Oliveira, 18524 SE Nichols Road, Dayton; Marc Norton, Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem 97301; Frank Schnitzer, Department of Geology & Mineral Industries, 229 Broadalbin Street, Albany; Angelo Spada, P O Box 171, St. Paul 97137; Arthur Spada, 13635 NE Clackamas Street, Portland 97230; Sam Sweeney, 1070 Ferry Street, Dayton 97114; Geoff Dorsey 19075 SE Mallard Lane, Dayton 97114; Robert B. Dorsey, 12915 SE Kimsey Road, Dayton 97114; Patty and Arie Slegers, 18345 SE Nichols Road, Dayton; Harve Paddock, 325 NE 9th Street, McMinnville; and David Paysinger, 16303 SE Wallace Road, Dayton 97114.

Commissioner George called the meeting to order.

A. **PUBLIC COMMENT:** This fifteen-minute time period is reserved for public comment on any topic other than a quasi-judicial land use matter or other topic scheduled for public hearing. None offered.

B. **CONSENT AGENDA:** Commissioner Lewis moved approval of the consent agenda. The motion carried, Commissioners George, Stern, and Lewis voting aye.

Personnel

1. **B. O. 04-73** - Approve a temporary change in work status of Tyler Tooley, Corrections Reserve, from regular part-time to temporary full-time, effective February 9, 2004 until April 30, 2004.

2. **B. O. 04-74** - Approve a change in work status of Jodi Whiting, Sheriff’s Department, from extra help to regular full-time, Range 09, Step 1, \$2418/month, effective February 10, 2004.

3. **B. O. 04-75** - Approve a change in work status of Carole Hansen, Public Health Department, to regular part-time, 27 hours/week, effective February 25, 2004.
4. **B. O. 04-76** - Approve employment of Betty Fousfos, Dundee, as HS Associate in Health & Human Services, temporary on-call, Range 14, Step 1, \$13.38/hour plus pager/call out pay, effective February 15, 2004.
5. **B. O. 04-77** - Approve employment of Kimberly Faught, Portland, as HS Associate in Health and Human Services, temporary on-call, Range 14, Step 1, \$13.38/hour plus pager/call out pay, effective February 15, 2004.
6. **B. O. 04-78** - Approve employment of Nathan Lee Pacheco, McMinnville, as extra help in the Assessment & Taxation Department, \$7.50/hour, effective February 25, 2004.

Contracts

7. **B. O. 04-79** - Approve an amendment to extend the contract between Yamhill County Fairgrounds and Mid-Willamette Valley Council of Governments for kitchen improvements at Yamhill County Fairgrounds to December 31, 2004.
8. **B. O. 04-80** - Approve an amendment to extend the contract between Yamhill County and Mid-Willamette Valley Council of Governments for emergency communications equipment to December 31, 2004.

Transfer of Funds

9. **B. O. 04-81** - Approve a transfer of funds within the Assessment & Taxation Department for a new workstation and equipment:

From	010-012-800.01	Office Furniture	\$8000
To	010-012-543.01	Office Equipment	\$8000

Grants

10. Approve two applications for the Special Transportation Discretionary Grants Project List:
 - a. **B. O. 04-82** - Community Action Agency of Yamhill County, \$10,800.
 - b. **B. O. 04-83** - Yamhill County - Transportation Expansion Feasibility Study, \$34,000.

C. **OTHER BUSINESS** (Add-ons and non-consent items):

1. **B. O. 04-84** - Consideration of approval of Amendment #7 to the contract between Chemical Dependency and MidValley Behavioral Care Network (relating to CareOregon, Inc.), associated with Attachment F (Revised June 2002) regarding Oregon Health Plan chemical dependency treatment services, to allow an increase in rates effective retroactive to January 1, 2004.

Commissioner Stern moved to approve the amendment listed above. The motion carried, Commissioners George, Stern, and Lewis voting aye.

2. **B. O.04-85** - Consideration of the emergency recall to employment of Rhon Reid, as Laborer II, Public Works, \$12/hour, effective February 12 through May 12, 2004.

Commissioner Lewis moved to recall Mr. Reid as Laborer II to cover unanticipated staff vacancies. The motion carried, Commissioners George, Stern, and Lewis voting aye.

3. **B. O. 04-86** - Consideration of the appointment of Mayor Bob Stewart, to represent the City of Newberg on the Yamhill Parkway Committee for a three-year term to expire September 22, 2007.

Commissioner Lewis moved to appoint Mayor Stewart to represent the City of Newberg on the Parkway Committee. The motion carried, Commissioners George, Stern, and Lewis voting aye.

D. **PUBLIC HEARINGS:** Commissioner George changed the order of the public hearings; however, the minutes appear below as the hearings were scheduled on the agenda.

1. Consideration of Planning Docket FP-05-02, a request for a floodplain permit, applicant A&R Spada Farms, LLC, as continued from August 14, 2003.

Commissioner George reopened the public hearing at the point of Public Agency Reports..

Public Agency Reports - Mr. Chroust-Masin stated the Federal Emergency Management Agency (“FEMA”) has provided a letter confirming that the engineer’s report on the Spada property is acceptable and suggesting additional conditions for approval.

Mark Shipman, representing Spada Farms, stated the applicant appreciates the FEMA letter and can work with engineers and staff to meet the conditions suggested.

Staff Recommendation - Mr. Chroust-Masin stated staff recommends approval with adoption of the conditions suggested by FEMA.

Close of Hearing / Deliberation - Commissioner Lewis moved to tentatively approve Docket FP-05-02 with written findings in support of approval to be considered on March 4, 2004 at 10:00 a.m. The motion carried, Commissioners George, Stern, and Lewis voting aye.

2. Consideration of Planning Docket PAZ-05-03, a request for a Comprehensive Plan amendment from AFLH to Quarry; a zone change from EF-80 to MR-2 for approximately 169 acres, applicant C.C. Meisel, as continued from January 29, 2004.

Commissioner George reopened the hearing at the point of Public Agency Reports.

Public Agency Reports - Ken Friday reviewed the comments public agencies provided to the planning department and stated that County Surveyor Dan Linscheid and Frank Schnitzer of the Department of Geology and Mineral Industries (“DOGAMI”) are present to offer comment.

Dan Linscheid provided additional information regarding Nichols Road and submitted a new map, stating there is some evidence to suggest the road is privately owned, with only a portion of it being a county road. He stated that because the 1909 survey was never completed and nothing substantial has changed in the meantime, he recommends a new survey be done to clarify the status of the road.

Frank Schnitzer summarized his background and experience in mining inspections, evaluations, and reclamation projects with DOGAMI for the past 20 years. He stated the C.C. Meisel application is incomplete at this point in time; once it has been completed, DOGAMI will share its findings and any proposed conditions with all interested parties before making a final decision, which is due no later than 45 days after the application is complete.

Mr. Schnitzer stated there are numerous concerns still to be addressed, including erosion, surface and groundwater protection, current geomorphic trends of Lambert Bend, and the concerns regarding dewatering and well failures.

Mr. Schnitzer stated DOGAMI neither supports or opposes the application and appreciates the difficulty of the county's position in making a decision on this issue. He stated that DOGAMI does not accept a report simply because it has been submitted by professionals; for example, he considers the Herrera report to be "mostly accurate", but it does not address site-specific hydrogeologic conditions at the Hester site where the mining will occur.

Mr. Schnitzer presented materials for the record and provided extensive technical testimony relating to floodplain mining including its impacts, both positive and negative, on fish habitat, erosion, channel migration, water turbidity, etc. He stated that while he is not suggesting the erosion potential on the property is nonexistent or low, neither is all mining high risk or "fraught with danger". He said he would expect to advise the applicant to build rock fills at specific locations on the Hester site which would not cause floodplain obstruction and would be helpful in stabilizing the soil during flooding. He stated he does not reach the same conclusions as the Herrera report did regarding the significance of turbulent flow because erosion damage occurs even during small flood events. He stated that generally flooding on the Willamette River is considered subcritical rather than supercritical.

Mr. Schnitzer stated DOGAMI agrees that the Hester site is located within historical channel boundaries dating back to the 1850s. He stated he visited the site in mid-December during a high water event and found headcutting occurring where the river had risen out of its bank and migrated back to the 1863 channel and it will continue to cut through the easiest path, with bare ground eroding more quickly than tree riparian areas.

Mr. Schnitzer stated that DOGAMI has statutory authority to establish wider mining setbacks than a county could and he discussed at length examples of similar situations. He stated there are currently 28 mining operations along the Willamette River, fifteen of which are conducting dewatering. He said that very few problems are noted at alluvial mining sites due to dewatering, with some sites having continuously dewatered for more than 20 years. He said that DOGAMI has

authority to restrict the mine depth at the Hester site and can refuse to allow dewatering if it is believed that adjacent wells cannot be protected. He stated that normally on this portion of the Willamette River, only seasonal dewatering is allowed and that would be the plan for the Hester site.

Mr. Schnitzer stated that in his opinion the Slegers well probably has other significant factors contributing to its problems, because it appears to be too far from mining sites to be affected. He stated he would have liked to investigate the problem when it first developed in 1997; however, Mr. Slegers did not contact the Water Resources Department (“WRD”) until recently, so the investigation has been after-the-fact and is really just now beginning. He stated he intends to work with Mr. Slegers and Marc Norton of WRD to find answers to the problem. He stated protection of water quantity in other adjacent wells is also currently under discussion between the two agencies and that because of the water-sensitive crops nearby, the applicant would be required to establish continuous recording equipment on the monitoring wells, so that it would not be necessary to wait for quarterly reports.

Mr. Schnitzer stated that he does not see significant conflicts between agriculture and mining that cannot be resolved with some joint effort and he recommended a group of all landowners work together to pursue possible solutions to common problems, and particularly to pursue approval of dredging permits at Lambert Bend where the build-up of river rock has caused enormous problems on the banks on both sides of the river.

There was a lengthy discussion between Mr. Schnitzer and the commissioners regarding the potential for obtaining grants to dredge at the Lambert Bend gravel bar and to stabilize the bank to prevent channel cutoff.

In response to questions, Mr. Schnitzer stated there is a high erosion potential along the Hester site and DOGAMI is waiting for further information from the applicant. He stated he would recommend mining be discontinued each year by November 1 or sooner, depending on weather conditions. He stated DOGAMI may ask for as much as a year of well monitoring before allowing any dewatering on the site.

Marc Norton, Water Resources Department, stated he will visit the Slegers dairy on February 26 and will be involved with evaluation of the well problems. He stated that WRD has no sign-off authority on the DOGAMI permit; rather, WRD reviews the application and makes comments and recommendations. Mr. Norton stated he is aware of mining sites where groundwater levels dropped due to dewatering, and impacts occurred up to a couple of miles away, primarily due to the specific geology of those areas. He stated that if, based on the geology of the subject site, it is determined that dewatering would be a problem, the permit could be conditioned to limit it.

There was a lengthy discussion of questions asked by the Board and interested parties relating to water and the permitting process.

Rebuttal - Paul Hribernick discussed specific issues raised by opponents relating to erosion, flooding, and head-cutting, stating that the applicant is using information gained from an adjacent mining site to be pro-active in reducing conflicts on the Hester site, fully aware of the necessity of

protecting a swale and wetlands on the property. He stated the cells would be established with a 3:1 cut slope to establish better stability and provide a better site for planting native vegetation. He stated that removal of the gravel bars would benefit all parties; however the Corps of Engineers has repeatedly denied any requests for dredging and the outlook for obtaining new permits is not hopeful.

Mr. Hribernick stated there are a number of misconceptions listed in the opponents' expert reports regarding dewatering. He said the cells would be developed one at a time, allowing each mined cell to fill with water as a receiving pond for the next cell under development. He stated the assumption that dewatering would be occurring on both the Wilson and Hester sites concurrently is incorrect. He stated the Goal 5 process is one of minimization of conflicts and the applicant's plan includes a number of steps to accomplish that.

Mr. Hribernick stated the applicant has proposed reasonable and practical measures to control dust and to improve the road access.

Mr. Hribernick reviewed the legal standard for approval of the application stating that the Board only has to find there is a reasonable expectation that permits can be obtained from DOGAMI. He reviewed the responsibilities of DOGAMI as outlined in ORS 517 and the provisions of ORS 215.283. He once again reviewed the post-acknowledgment plan amendment ("PAPA") process, as he had in his opening testimony on January 22nd, and stated that mining, agricultural, and environmental parties all had a part in its development. He stated the subject site greatly exceeds the threshold requirement as a significant resource and therefore the PAPA rule requires the site be added to the county's inventory. He stated experts reviewed the proposed 1500' impact area and found it to be adequate in considering potential conflicts and that the applicant is not required to eliminate conflicts; only to minimize them. He stated that if a determination is made that significant conflicts cannot be minimized, the Goal requires completion of an ESEE analysis. He stated the dollar value of the aggregate will most certainly be greater than the net present value of agriculture, which he estimated to be about \$100,000 in crop value from the Hester site. He stated that each 100,000 gravel yards generates approximately \$750,000 in gate revenue. He stated that based on the present net value of gravel, it is impossible for agriculture to have the same economic value. He stated farming would continue at the Hester sites, although in ever-decreasing amounts, as the mining develops. He stated that an environmental analysis will identify problems on both sides, but the mine reclamation requirements will create an environmental asset as mining is completed. He asked the Board to approve the application.

Commissioner Lewis moved to continue the hearing to allow additional written evidence through 5:00 p.m. February 26; to allow final legal argument from the proponent until 5:00 p.m., March 11; and to continue the hearing before the Board at the point of staff recommendation on March 18, 2004. The motion carried, Commissioners George, Stern, and Lewis voting aye.

3. Consideration of Planning Docket S-01-02, a request for a subdivision, as remanded by LUBA (LUBA 2002-129), applicant George Johnston, appellant Carol Paddock et al.

Commissioner George opened the public hearing. There were no abstentions or objections to jurisdiction.

Ken Friday read the statement required for land use hearings related to the requirement that parties must raise all issues at the hearing or waive their right to raise the issues on appeal. He stated that this matter is before the Board today on remand from LUBA to address one narrow issue relating to a Comprehensive Plan policy and that notice of the limited scope of the hearing was provided to all interested parties.

Staff Report - Martin Chroust-Masin introduced the staff report into the record and stated that neither the subject area nor the adjacent neighboring areas have been designated as groundwater limited resource areas.

Proponent - Catherine Wright, representing Mr. and Mrs. Johnston, stated that following approval by the Board almost a year ago, this application was appealed to LUBA which sustained the county's findings except for one narrow issue relating to Yamhill County Comprehensive Plan Policy II(C)(1)(i). She stated the Court of Appeals then affirmed LUBA's decision without opinion and therefore the LUBA decision stands. She reviewed the finding in LUBA's Opinion regarding the Plan Policy listed above, as addressed in materials submitted for the record, and stated that the county is not required to consider potential conflicts between on-site and off-site wells as a basis for decision-making in this application. She stated that opponents have submitted a great deal of information which does not apply to the subject property and which is either supposition or assumption. She stated the county has traditionally interpreted its Plan not to require consideration of groundwater issues and conflicts with offsite wells; and even if it should decide to do so, there is not sufficient evidence for denial of the application or reversal of the original decision for approval.

George Johnston stated that this land use application process has entered its 22nd month and it seems very ironic that the Paddocks object so strongly to a land use application that is quite similar to the subdivision they were granted in 1997 especially when they did not raise concerns about water availability at that time.

Opponents - Barry Adamson, representing the Paddock family, stated the applicant has the sole evidentiary burden in justifying the application. He stated he would like Mr. Norton's testimony from the quarry hearing today included in the record; Mr. Friday indicated that would not be possible. Mr. Adamson stated water policies cannot be applied to one specific site because water tends to affect areas rather than property boundaries. Mr. Adamson stated the applicant has submitted no evidence to refute the opponents' identification of environmental consequences of conflicting and competing finite water resources.

Carol Paddock submitted written materials and read into the record her interpretation of county and state land use policies. She stated she had proposed that the applicants and opponents work with the Water Resources Department and accept its recommendation regarding the subdivision, but county staff has been unwilling to work with her on that suggestion. She offered her services to draw a site map.

Tina Paddock re-read the original testimony submitted last year. She stated she is concerned about the impact on the aquifer due to over-development in the area. She stated that if the aquifer

continues to degrade due to over-development, the area may be declared a groundwater limited area.

Merilyn Reeves stated that the county's Comprehensive Plan Policy uses the imperative "shall" when requiring an ESEE analysis. She urged the Board not to use the option of relying on its historic interpretation of groundwater issues because in the past the findings have only noted that a property "will be served by a well", a standard that clearly is not sufficient for development of subdivisions, because one on-site well does not mean there is enough for several homes. She stated the applicant should be required to drill a well for each proposed home site before getting land use approval. She stated that the county currently has no groundwater policy, but should consider developing one.

Questions of Opponents - None.

Public Agency Reports - Mr. Chroust-Masin stated no new reports have been submitted for this remand hearing.

At Ms. Stern's request, Mr. Chroust-Masin read the previous Water Resources Department report which stated the application had been reviewed and no conflicts found with its interests, noting only that any unused wells will need to be abandoned. Mr. Chroust-Masin confirmed that Water Resources is requested to comment on every subdivision application.

Rebuttal - Ms. Wright stated the applicant has met the burden of proof by meeting the county's approval standards. She stated that although the opponent has the right to offer contradicting evidence, the applicant is not required to refute something that doesn't exist, such as a perceived possibility of a future problem. She stated that LUBA clearly rejected all "errors" the opponents' claimed, excepting the one discussed above, and despite the opponents' concerns, the subject property is not in a groundwater limited area.

Ms. Wright quoted a portion of page 15 of the LUBA Opinion and stated that the Board clearly has discretion to decide whether it chooses to require consideration of off-site wells in making its decision. She stated LUBA's opinion is binding as affirmed by the Court of Appeals decision, and nothing new can be added for the Board's consideration.

Ms. Wright asked that the Board adopt findings regarding the ESEE as outlined in her letter of February 10, 2004, and affirm the county's historical interpretation that consideration of off-site wells is not included in its decision-making. She stated that even if the Board were to determine there are some ESEE consequences, those consequences do not rise to a level which would justify denial of the application.

Staff Recommendation - Mr. Chroust-Masin stated that in response to testimony submitted at this hearing, he would like to comment as follows. 1) That, as Ms. Reeves testified, wells are site-specific, so it doesn't follow that well problems in one area automatically result in problems for an adjacent area. 2) That even if the area were a designated groundwater limited area, domestic residential use would not be prohibited. 3) That the Water Resources Department materials submitted by opponent Paddock shows that the process of referral for WRD comments and

recommendations works effectively. He stated that based on testimony and information submitted for the record, staff recommends approval.

Close of Public Hearing / Deliberation - Ms. Stern stated that the Comprehensive Plan requires that where conflicting uses have been identified, the ESEE consequences of the conflicting uses shall be determined. She stated that the county must rely on the expertise of WRD to confirm whether there are conflicting uses, because it oversees all well-drilling and its decisions clearly supercede any by the county relating to water issues. She stated that in this instance, based on the letter in the record from WRD, it is appropriate for the Board to find there are no conflicts. She said there are no other issues in this application to be addressed and the county's Comp Plan Section II (C)(1)(i) does not apply in this situation.

Commissioner Stern moved to approve the application, based on adequate information in the record that there are no conflicting uses identified, and based on evidence submitted by WRD, the applicant, and opponents, and to direct staff to prepare findings in support of approval for consideration on March 4, 2004. She stated that the Board clearly has no authority to make a determination regarding the sufficiency of water in the aquifer and must rely on the expertise of WRD that it finds no conflicts.

Commissioner Lewis stated that WRD is the arbiter of well drilling and water availability and the Board respects and relies on its expertise. However, even if the area were designated a groundwater limited resource, domestic wells would still be allowed. She stated that in considering this subdivision, the Board has no ability to determine whether there is a potential conflict with offsite wells, and she is satisfied with the findings of WRD in this matter. Commissioner Lewis stated that even if there are conflicts, there are other ways to deal with the water supply for residential use than domestic wells. She stated that the Board does not have the technical expertise to consider possible effects on off-site wells.

The motion to approve the application, affirming the Board's previous approval, carried, Commissioners George, Stern, and Lewis voting aye.

E. **ANNOUNCEMENTS:** None.

The meeting adjourned at 4:20 p.m.

Carol Ann White
Secretary

Submitted 3-8-04

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair

KATHY GEORGE

Commissioner

MARY P. STERN

Commissioner

LESLIE LEWIS