

'05 DEC 21 P1:09

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 April 27, 2005 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Mary P. Stern, Leslie Lewis, and Kathy George being present.

Also present were John M. Gray, Jr., County Counsel; John Krawczyk, Director of Administrative Services; David Bates, News-Register; Curt Ellson, 14605 NE Quarry Road, Newberg; Susan Watkins, 13440 SW McCabe Chapel Road, McMinnville; Henry and Merylyn Reeves, 22250 Boulder Creek Lane SE, Amity; William Peterson, 4300 Cherry Avenue, Keizer; David Smith, 6950 SW Hampton Street, Tigard; and other guests (see attached attendance roll).

Commissioner Stern called the meeting to order.

A. PUBLIC COMMENT: This thirty-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. Unless extended or restricted by the Chair or majority of the Board, public comment will be limited to three minutes per person.

Susan Watkins suggested that the Board accept testimony which citizens may have to offer regarding Measure 37/Ordinance 749 exemptions such as endangered species or habitat on the subject property. She stated that public hearings on all claims would better serve the community by allowing the public to hear the applicant's plans for the property and understand the restrictions under which they've been living.

Henry Reeves commented that it is often difficult to hear the some of the commissioners speak.

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

Personnel

1. B. O. 05-280 - Ratify the emergency employment of Brian Miller, Willamina, as Extra Help in Maintenance, temporary full-time, \$18/hour, retroactive to April 20, 2005 until October 20, 2005.

Contracts

2. B. O. 05-281 - Approve Agreement #1352 between the Assessor's Office and Oregon Department of Revenue for ORMAP grant funding, \$23,920.

3. B. O. 05-282 - Approve an intergovernmental agreement between the Assessor's Office and Oregon Department of Consumer and Business Services regarding ownership document and trip

MS/LL *[initials]* KG *[initials]*  
B.O. 05-1025

permit applications for manufactured structures, effective until June 30, 2006.

4. **B. O. 05-283** - Approve a memorandum of agreement between Yamhill County and Teamsters Local 223 regarding the arbitrability of a grievance.
5. **B. O. 05-284** - Approve an intergovernmental agreement between Community Corrections and Chehalem Parks & Recreation District for landscaping services, \$350/week, retroactive to July 1, 2004.
6. **B. O. 05-285** - Approve an intergovernmental agreement between Public Health and Willamina School District regarding the school-based health center, effective April 27, 2005.
7. **B. O. 05-286** - Approve a modification of agreement between the Commission on Children and Families and Yamhill County Court Appointed Special Advocates (CASA) to increase the allocation to \$17,822, effective April 27, 2005.
8. **B. O. 05-287** - Approve an agreement between Public Works and Concrete Enterprises, Inc. for construction of the Meadowlake Road Bridge, 3,332,264, effective April 27, 2005 until September 15, 2006.
9. **B. O. 05-288** - Accept the apparent low bid of JC Compton for the 2005 Public Works summer overlay program, \$1,037,558, and authorize the notice of intent to award.
10. **B. O. 05-289** - Accept a proposal from RSS Architecture to modify the existing contract to add \$1000 for evaluation of the load-bearing capacity of the existing floor in the former vault area, effective April 27, 2005.
11. **B. O. 05-290** - Accept a proposal from RSS Architecture to modify the existing contract to add \$1632 for evaluation of the layout of the Assessor's Office in the current Clerk's Office space, effective April 27, 2005.

Grants

12. **B. O. 05-291** - Authorize the Assessor's Office to apply for the 2005-06 A&T Grant from Oregon Department of Revenue.

Budget Transfers

13. **B. O. 05-292** - Approve the following transfer of discretionary funds for a temporary shelter for Juvenile workers:

From	010-013-699.01	BOC#1	\$70.82
	010-013-699.01	BOC#2	\$70.82
	010-013-699.01	BOC#3	\$70.81
To	010-074-342.24.J144	Juvenile Work Crew	\$212.45

STF Allocations

14. **B. O. 05-293** - Accept the recommendation of the STF Committee for the allocation of 2005-

06 STF funds.

Fees

15. **B. O. 05-294** - Authorize a Consumer Price Index (CPI) adjustment for Riverbend Landfill fees.

Policy

16. **B. O. 05-295** - Approve the Vegetation Management Policy.

Resolution

17. **B. O. 05-296** - Adopt Resolution 05-04-27-1 regarding the county's 2005 election to receive national forest-related safety net payments.

C. **OLD BUSINESS:**

1. **B. O. 05-297** - Consideration of adoption of findings in support of Public Works Docket RV-2-05, a request for vacation of portions of Apple and Front Streets in Whiteson, as tentatively approved April 20, 2005. *[Approved]*

Ms. Lewis moved to adopt the findings. The motion passed, Commissioners Stern, Lewis, and George voting aye.

2. **B. O. 05-298** - Consideration of adoption of Ordinance 767 in support of Planning Docket PAZ-02-03, a request for a comprehensive plan amendment/zone change from EF-20 to AF-10, applicant Matthew Powell, as tentatively approved April 13, 2005. *[Approved]*

Rick Sanai provided the first and second readings of Ordinance 767 by title only, declaring an emergency. Ms. Lewis moved approval of the ordinance. The motion passed, Commissioners Stern, Lewis, and George voting aye.

D. **PUBLIC HEARINGS:**

Ms. Stern stated that every person coming before the Board deserves the same respect. She encouraged those present to avoid personal attacks and to create a new, positive stereotype for public hearings. Mr. Gray stated that even if testimony is relevant to more than one application, it must be submitted during each hearing to be included in the record.

1. Consideration of approval of M37-23-05, a Measure 37 claim authorizing applicants Larry and Karen Waide to subdivide 173.93 acres into 1.5-acre lots and establish dwellings thereon. *[Continued to May 18, 2005 at 9:00 a.m. at the point of deliberations.]*

Mr. Gray read a statement explaining the way Measure 37 public hearings will be conducted and the way physical evidence will be handled. He listed the four approval criteria that can be challenged and stated that only evidence relevant to this criteria will be made part of the record.

Staff Report - Mike Brandt stated that the subject property consists of five tax lots. He said that one ten-acre lot was purchased by the current owner in 1967, one 36-acre lot was purchased by

the current owner in 1987, and the remaining lots were acquired through the establishment of a family trust set up in 1993. He recommended modifying, removing, or not applying the land use regulations back to those dates. He explained that the ten-acre lot could potentially be divided into six lots with dwellings and the Waides could apply to establish one dwelling on each of the remaining lots, but those remaining lots could not be divided.

Ms. Stern opened the public hearing.

Applicants - Larry Waide submitted written material for the record. Karen Waide reviewed the history of the family farm and stated that no deed was required to be filed for the father-to-son trust, which was common at the time.

William Peterson, an engineer, stated that he wrote the legal description for the 10-acre parcel. He noted that although the reduction value was based on doing a large development, that is not the intention of the applicants at this time, although they wish to hold their rights open for such development. He stated that a letter in the record explains why the applicants believe they've had ownership of the property since the mid-1940's, even without a deed.

Ms. Stern noted that she had received documents via mail and email for this hearing. Mr. Gray stated that she could print them at the conclusion of this meeting and he would mark them as part of the conditionally received evidence for the record.

Public Testimony - Dick Day, neighbor to the applicants, asked the Board to consider infrastructure and police and fire issues resulting from the proposed subdivision, which would affect property owners in the area. He suggested a compromise which would protect the entire community and be fair to the claimant.

Sid Friedman, 1000 Friends of Oregon, submitted a written statement for the record. He said that the statement regarding the collapse of agriculture in Yamhill County is contradicted by statistics from the Oregon Department of Agriculture. He stated that a promise of inheritance does not constitute transfer of ownership. He pointed out that the Board is only required by Measure 37 to allow a single use permitted at the time the current owner acquired the property, and public health and safety regulations cannot be waived. He stated that the applicants have not sufficiently demonstrated reduction of value because they need to show that the value dropped from just before the land use regulations were enacted to just after.

Mary Weil stated that the Board needs to consider the claim as it was filed, even though the applicants have said they don't intend to actually go forward with such a large development at this time. She said that the Board has a duty to protect farmland and to prevent huge financial profits to a select few at the expense of the community.

Merilyn Reeves, Friends of Yamhill County, stated that public hearings like this can produce important information from neighbors and should be held for all Measure 37 claims. She agreed with the Planning Director's determination of ownership dates and requested that copies of the information submitted in today's hearings be submitted to the state as well.

Mark Sheridan, vineyard manager, stated that the Waide's property is valuable agricultural land and Yamhill County's entire economy is based on agriculture. He urged the Board to reject the claim in its entirety and ask the applicants to refile with full intent as to what they are actually seeking. He said that the Waides are good people and asked the neighbors to start waving to them again.

John Englebrecht discussed safety issues relating to the nearby intersection and the inadequacy of the road to support a housing development. He agreed that the applicants should refile based on their real plans for the property.

Jim Parker read from the Yamhill County Comprehensive Plan and stated that this application is an affront to Goal 1. He said that the proposal, which is similar to his small subdivision, cannot be supported by existing infrastructures and there is no funding mechanism to maintain county or city standards. He added that law enforcement, which is already struggling to keep up because of staffing shortages, will be negatively impacted by the development.

Jon Steinhart, vineyard operator, agreed with the need for land use planning, but disagreed with the \$80,000 income rule and said that there are currently no regulations to sufficiently penalize someone who gets approval for a dwelling and then doesn't live up to the farming requirement. He stated that his main concern with the proposal is the traffic impact, which would make his business less profitable by increasing transportation time. He asked the Board to consider granting a use that would have less impact than the proposed 1.5-acre lots with dwellings.

Rebuttal - Karen Waide stated that in today's market, it's difficult to make farming profitable, and an evaluation done on the property showed that it has the wrong exposure for growing grapes. William Peterson stated that the documents show that Larry Waide had ownership in this property for a long time and a deed isn't necessary to prove an ownership interest. He added that filing a claim based on the applicants' actual plans for the property would require a lot of expense up front with no anticipation of what will happen at the state level.

Ms. Stern closed the public hearing. Mr. Gray stated that staff will need time to consider the evidence received today before it is included in the record.

Ms. Lewis moved to continue the hearing to May 18, 2005 at 9:00 a.m. at the point of deliberations. The motion passed, Commissioners Stern, Lewis, and George voting aye. Mr. Gray noted that the record is now closed for the receipt of evidence.

2. Consideration of approval of M37-01-04, a Measure 37 claim authorizing applicant Maralynn Abrams to subdivide 342 acres into one-acre and smaller lots, build dwellings thereon, and develop a commercial strip area adjacent to Hill Road. *[Continued to May 18, 2005 at 9:00 a.m. at the point of deliberations.]*

Ms. Stern stated that the applicant has been working with the City of McMinnville to bring a portion of the property into the Urban Growth Boundary (UGB). She expressed her appreciation of the effort and her hopes that development will be able to continue consistent with the city's plans.

Staff Report - Mr. Brandt stated that deeds verify the applicant's ownership of the majority of the property since 1952, another piece since 1955, and the remaining 55 acres since 1968. He recommended modifying, removing, or not applying the land use regulations back to those dates, noting that there were no land use regulations in 1952 or 1955.

Ms. Stern opened the public hearing. The applicants were not present.

Public Testimony - Jon Steinhart stated that traffic impacts on his business are his main concern with this application as well. He asked that if the Board approves the application, they earmark the ten-year back tax penalty for road improvements and either increase the speed limit in the area or keep it the same.

Merilyn Reeves submitted written testimony from Friends of Yamhill County and reiterated her previous requests to hold public hearings for all claims and to submit information from this claim to the state. She stated that subdivisions would difficult to develop on the property because Measure 37 rights cannot be transferred to new owners. She added that the 30 acres presently included within the proposed McMinnville UGB should not be included in this claim and that the Board should include specific safety requirements in the findings if they approve the claim.

Ilsa Perse stated that Oregonians passed Measure 37 to address unfair land use regulations, not to allow huge subdivisions and create huge windfalls for small numbers of people at the expense of others. She pointed out that owners of smaller acreage properties paid top dollar because such land used to be very scarce, but their investments are now being vastly jeopardized. She added that the groundwater supply will become a big issue if hundreds of houses are built in the area.

Sid Friedman, 1000 Friends of Oregon, stated that approval of this claim could potentially authorize hundreds of new homes and a commercial strip in the area, which would be very harmful to the county and the city and would overtax police and fire protection. He strongly urged the Board to exercise their discretion to allow a single use rather than all requested uses and reiterated his previous comments regarding exempt regulations pertaining to public safety. He stated that reduction of the property value has not been adequately shown and it is quite possible that the property value actually increased as a result of land use regulations.

John Englebrecht stated that the applicant should be required to help pay for road improvements resulting from the increased traffic along Baker Creek Road. He added that water will be a problem and the land would need to come into the city's UGB. He requested that the Board only allow a single use until the issues can be worked out with the city.

Jim Parker reiterated his previous concerns about inadequate funding for infrastructure improvements and law enforcement shortages. He stated that the development could potentially jeopardize nearby Baker Creek and would have major implications for future generations.

Ms. Stern closed the public hearing. Ms. Lewis moved to continue the hearing to May 18, 2005 at 9:00 a.m. at the point of deliberations. The motion passed, Commissioners Stern, Lewis, and George voting aye.

3. Consideration of approval of M37-10-04, a Measure 37 claim authorizing applicants Jeffrey Magar and Billy Magar to subdivide their property into 24 lots and establish dwellings thereon. *[Continued to May 18, 2005 at 9:00 a.m. at the point of deliberations, with the record being left open until 5:00 p.m. May 11, 2005 for the submission of briefs by 1000 Friends of Oregon and David Smith.]*

Staff Report - Mr. Brandt noted that there is a discrepancy in the actual lot size, so the record will state 9-12 acres. He stated that a warranty deed verifies the applicants' ownership since 2002, but the applicants' attorney claims that this deed was an equitable mortgage between father and son and that continuous ownership remained with the father since 1963. Mr. Brandt recommended modifying, removing, or not applying land use regulations back to 1963, noting that subdivision of the property into 24 lots would be subject to approval of a later land use application.

Ms. Stern opened the public hearing.

Applicants - David Smith, attorney for the applicants, agreed with the staff report and stated that he would reserve any additional comments until after the public comment period.

Public Testimony - Curt Ellson, neighbor of the applicants, discussed his concerns about the effects of development on the limited water supply in the area and on traffic safety. He stated that although housing development would be the most profitable use of the land, there are other agricultural uses which would be more profitable than the current filbert production.

Merilyn Reeves submitted written testimony from Friends of Yamhill County and stated that to be a valid claim, it should at least be clear what the lot dimensions are. She stated that this case is quite different from the quit claim deed case cited by the applicants' attorney and does not constitute valid ownership because Jeffrey Magar doesn't owe Billy Magar anything.

Grace Schaad, neighbor of the applicants, questioned the validity of the claim based on ownership and reviewed the paper trail in the record starting in 1992 that shows Jeffrey Magar owned the property. She also questioned the loss of value, stating that her land was recently appraised at farm value and shows that the value has increased. She also discussed traffic safety issues.

Sid Friedman submitted written testimony from 1000 Friends of Oregon and agreed with Ms. Reeves that the facts of this case are very different from those in the case cited by the applicants' attorney. He said there is nothing in the record to indicate that Jeffrey Magar advanced or owes any money to Billy Magar, so this is not an equitable mortgage. He also stated that no evidence was submitted to show that farmland in that vicinity sold for less after the implementation of land use regulations than it did right before.

Laura Volkman stated that her main concerns are the ownership date, the devaluation of her land and surrounding property, and traffic on Quarry Road.

Susan Watkins urged the Board to take today's testimony seriously and asked several questions about what issues would be taken into consideration in making their decisions. Mr. Gray stated that the answers to her questions would become apparent during the Board's deliberations.

He also pointed out that according to Ordinance 749, professional appraisals are not required for a Measure 37 application.

Mr. Gray stated that the equitable mortgage issue is an interesting one. He suggested that the Board leave the record open to invite written information from both sides on whether an equitable mortgage constitutes ownership under Measure 37.

Rebuttal - Mr. Smith distributed a handout outlining the equitable mortgage criteria as set forth in the French case mentioned earlier. He stated that the Measure 37 language includes those having any interest in the subject property, so the issue to consider is whether or not Billy Magar retained an interest in the property after conveying it to Jeffrey Magar.

He stated that if the Measure 37 claim is approved, development of a subdivision would be subject to additional approval based on the 1959 ordinance, which contains measures to address concerns such as the impacts on infrastructure. He stated that the discrepancy in the lot size is probably due to differences between the assessor's records and the clerk's records.

He stated that Mr. Friedman's suggestion about allowing a single use is an interesting question which he hasn't looked at in detail yet, but a Measure 37 claim should either be approved or denied based on the identified use or it should go back for another application.

Ms. Lewis moved to close the public hearing, leaving the record open for Mr. Smith and 1000 Friends of Oregon to submit written briefs on ownership issues by 5:00 p.m. on May 11, 2005, and continuing Planning Docket M37-10-04 to May 18, 2005 at 9:00 a.m. The motion passed, Commissioners Stern, Lewis, and George voting aye.

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

1. **B. O. 05-299** - Consideration of approval of the Public Health Annual Plan 2005-2006. *[Approved]*

Ms. George moved approval of the plan. The motion passed, Commissioners Stern, Lewis, and George voting aye.

2. **B. O. 05-300** - Consideration of rescinding Board Order #05-220. *[Rescinded]*

John Gray stated that Fjelland Floors has filed a formal protest against the contract awarded to Rice Furniture for carpeting work in the Moore Building because Rice Furniture and the other bidder did not meet the specification that the bidder must be licensed as a general contractor in Oregon. He said that he had verified the accuracy of the claim and although Rice's installers are licensed, he believes the Board is obligated to rescind their approval of the contract and award it to Fjelland Floors. John K stated that there would not be time to rebid the project.

Ms. Lewis moved to rescind Board Order #05-220. The motion passed, Commissioners Stern, Lewis, and George voting aye.

3. **B. O. 05-301** - Consideration of authorizing County Counsel to negotiate a contract with Fjelland Floors, the sole responsive offeror to the competitive quote package for carpeting work in the Moore Building; and authorizing the Chair to sign the contract subject to approval by the Director of Administrative Services. *[Approved]*

Ms. George moved to authorize the negotiating and signing of the contract. The motion passed, Commissioners Stern, Lewis, and George voting aye. Ms. Lewis stated that the county's bid specifications need to be reevaluated.

4. **B. O. 05-302** - Consideration of adoption of Resolution 05-04-27-2 regarding the county's 2005 election to receive national O&C lands-related safety net payments. *[Approved]*

Ms. Stern moved to adopt the resolution. The motion passed, Commissioners Stern, Lewis, and George voting aye.

5. **B. O. 05-303** - Consideration of authorizing a certification that Yamhill County Affordable Housing Corporation is eligible to be a non-profit sub-grantee of Community Development Block Grant funds. *[Approved]*

Ms. Stern moved to authorize the certification. The motion passed, Commissioners Stern, Lewis, and George voting aye.

6. **B. O. 05-304** - Consideration of adoption of Resolution 05-04-27-3 declaring May 6-12, 2005 as National Nurses Week. *[Approved]*

Ms. George moved to adopt the resolution. The motion passed, Commissioners Stern, Lewis, and George voting aye.

7. **B. O. 05-305** - Consideration of approval of placing yield signs at the following locations: *[Approved]*

- a. Finn Hill Loop at Stag Hollow Road;
- b. McCabe Chapel at Oldsville Road;
- c. Dillon Road at Honey Lane.

Ms. Lewis moved approval of the yield signs. The motion passed, Commissioners Stern, Lewis, and George voting aye.

F. **ANNOUNCEMENTS:**

- 1. The following positions are open to the public. Contact the Commissioners' Office for applications.
  - a. Commission on Children and Families, two positions;
  - b. Parks Board, two positions;
  - c. Food Service Advisory Committee, six positions in various categories;
  - d. Special Transportation Commission, two positions;
  - e. Dog Control Advisory Committee, one position (candidates must be directly involved with dog-related issues);

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- f. Local Alcohol and Drug Planning Council, one position;
- g. Planning Commission, three positions.

Adjourn: 11:54 a.m.

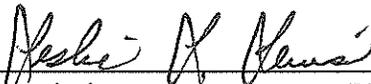
Anne Britt  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS



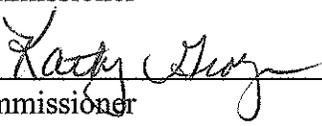
Chair

MARY P. STERN



Commissioner

LESLIE LEWIS



Commissioner

KATHY GEORGE



BOARD OF COUNTY COMMISSIONERS

Attendance Roll for meeting records

Meeting: Informal \_\_\_\_\_ Formal  Work Session \_\_\_\_\_ Date 4/27/05

PLEASE PRINT Name	PLEASE PRINT Complete Address	PLEASE PRINT Subject
Grace Schaad	Newberg 97132 31525 NE Schaad Rd	M37-10-D4
Angelina <del>and</del> Freda Flory	17512 N.E. Baker Creek Rd. McMinnville, Or. 97127	M37-
Matthew Powell	1508 N College Newberg Or 97132	PAZ-02-03
Lewis Schaad	31655 NE Schaad Rd Newberg	M37-10-04
MARY WEIL	11109 NE Worden Hill Rd Dundee 97115	M37 2305
Laura Volkmann	14725 NE Quarry Rd. Newberg 97132	M37-10-04
Cathy Day	17170 Hwy 240 Newberg OR 97132	M37-10-14
Dick Day	" " " "	" "
MARK SHERIDAN	7251 NW Lilac Hill Rd Yamhill OR	M-37
Stan Sauroud	15800 NW Rocky Ford Yamhill	
Don Leffler	15555 N.E. North Valley Rd Newberg	M-37
Kathy Magar	8760 NW Pike Rd Yamhill 97148	M37
Jeff Magar	9709 SW 59 <sup>th</sup> Ave Portland Or 97219	M37
Fred Robinson	16885 Nelson Rd Newberg OR	
Holt Franzoni	20555 Deer Creek Flats Bldg MAC	
KAREN Waide	13370 NE Worden Hill Rd Newberg	
DAVID B SMITH	6950 SW Hampton #230 Tigard	



BOARD OF COUNTY COMMISSIONERS

Attendance Roll for meeting records

Meeting: Informal \_\_\_\_\_ Formal \_\_\_\_\_ Work Session \_\_\_\_\_ Date \_\_\_\_\_

PLEASE PRINT  
Name

PLEASE PRINT  
Complete Address

PLEASE PRINT  
Subject

CRAIG MARKHAM	22245 LAFERN LN, DUNDEE 97115	
Jon Stairbent	2080 Baker Creek Road, McMinnville 97128	
Ilsa Perse	5765 Mineral Spr. Rd Carlton 97111	
Sid Friedman	14286 NW Old Moores Valley Yamhill	
Edna Sharr	P.O. Box 506 Newby OR 97132	
Jim Clark	2077N. Hwy 99W McMinnville, OR 97128	
KANDY COBENA	13231 NE Warden Hill Rd N 97132	
John W Englebrecht	1266 NW Augusta DR McMinnville	
MARC DOCHERZ	17001 FAIRVIEW DR. DUNDEE, 97132	MS 37 23-05
Betty WAmie	17245 NE Hwy 240	MS 37
Jim Parker	14350 SW Hidden Hills, Mac.	97128
Rob Manning	7140 SW Macadam Ave. HD OR	97239