

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 July 13, 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; Rick Sanai, Assistant County Counsel; Mike Brandt, Planning Director; Ken Friday, Senior Planner; Ken Huffer, Parks Coordinator; T. Richard Wayne, 24200 NE Zard Lane, Newberg; Suzie and Mark Cacciaccaro, 21470 McCormick Hill Road, Hillsboro, 97123; Tammara Albanese, 18645 SW Farmington Road, Beaverton, OR 97005; Gerald and Luella Docken, 18645 SW Farmington Road, Aloha, OR 97007; Al Benkendorf, 522 SW 5th Street, Portland, 97204.

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.

T. Richard Wayne, representing the local Steelheaders’ Association, discussed the proposal for launch fees at Rogers Landing Park and suggested a \$45 ticket for failure to purchase the launch fee.

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

Personnel

1. **B.O. 05-569** - Approve the employment of Donald High, Lafayette, Tina Trenholm, Dallas, and Debra Anderson, Beaverton, as On-Call Relief in the Juvenile Department, \$7.50/hour, effective July 13, 2005.

2. **B.O. 05-570** - Approve the employment of Jennifer Trumbo, McMinnville, as Office Specialist 2 in HHS Abacus, temporary part-time, Range 7, Step 8, effective July 20, 2005 through September 30, 2005.

3. **B.O. 05-571** - Approve the employment of Theresa (Terri) Koenig, McMinnville, as Human Services Tech in HHS Abacus, temporary part-time, Range 11, Step 1, effective July 14, 2005 through June 30, 2006.

4. **B.O. 05-572** - Approve the change of status of Muriel Zaugg and Judith Caylor to extend temporary part-time status in Public Health, retroactive to July 1, 2005 through June 30, 2006.

5. **B.O. 05-573** - Approve the change of status of Jeffrey Donahoo to the Marine Division of the Sheriff’s Office, retroactive to July 9, 2005 through September 8, 2005.

6. **B.O. 05-574** - Approve the change of status of Timothy Codiga to regular full-time employment in the Planning Department, Range 19, Step 1, retroactive to July 11, 2005.

7. **B. O. 05-575** - Approve the change of status of Ellen Ewing to HS Specialist 1 in Developmental Disabilities, regular full-time, retroactive to July 9, 2005.
8. **B. O. 05-576** - Approve the change of status of Kevin Dromgoole to extend temporary part-time employment in Adult Mental Health, retroactive to July 1, 2005, through June 30, 2006.
9. **B. O. 05-577** - Approve the change of status of Kathryn Brown to extend temporary part-time employment in the Commission on Children and Families, retroactive to July 1, 2005 through June 30, 2006.
10. **B. O. 05-578** - Approve the change of status of Allison Musillami to reduce regular full-time hours to .8 FTE in the Commission on Children and Families, retroactive to July 1, 2005 through October 31, 2005.
11. **B. O. 05-579** - Approve the renewal of a contract between Family and Youth and Dr. Alfredo Soto for psychiatric services, \$115/hour, retroactive to July 1, 2005.

Contracts

12. **B. O. 05-580** - Approve an intergovernmental agreement between CCF and the Oregon Commission on Children and Families, \$45,252, retroactive to July 1, 2005 through June 30, 2007.
13. **B. O. 05-581** - Approve the 2005 Fund Exchange Agreement #22,809 between Public Works and Oregon Department of Transportation to exchange \$365,279 federal funds for \$343,362 state funds for the Yamhill County Overlay Program.
14. **B. O. 05-582** - Consideration of approval of Modification #2 to a Sub-Recipient Agreement between Yamhill County and Yamhill County Affordable Housing Corporation regarding the Regional Housing Center grant, effective July 13, 2005.

Grants

15. **B. O. 05-583** - Authorize reimbursement during 2005-06 fiscal year to Grand Ronde Confederated Tribes for eligible bike path and sidewalk improvements to the portion of Grand Ronde Road located in Yamhill County, maximum reimbursement \$115,000.

Easements

16. **B. O. 05-584** - Accept a dedication of public right-of-way and a temporary construction easement from Rob Stephenson for the Baker Creek Road Bridge project.

Delegation of Authority

17. **B. O. 05-585** - Authorize Barbara Paladeni to approve SB1145 Local Control orders in the absence of Richard Sly.
18. **B. O. 05-586** - Approve a blanket refund order authorizing the tax collector to issue lawful refunds to taxpayers, retroactive to July 1, 2005 through June 30, 2006.

OLD BUSINESS:

1. **B. O. 05-587** - Consideration of Ordinance 770, establishing boat launch fees at Rogers Landing Park, \$3/launch or \$30/year, effective August 1, 2005, as continued from June 29, 2005.

John Gray stated that, based on the Board's discussion at informal session, an ordinance has been prepared which will implement the boat launch fee as listed above, with a provision that the Board will, at

a later date, by board order, establish penalties for failure to purchase a launch permit. Mr. Gray read Ordinance 770 by title only, stating that if the ordinance passes unanimously it will be effective August 1, 2005.

Commissioner Lewis moved to adopt Ordinance 770; the motion carried, Commissioners Stern, Lewis, and George voting aye.

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

1. **B. O. 05-588** - Consideration of the appointment of Cheryl Gebhart as interim chair of the Commission on Children and Families.

Commissioner George moved approval of the appointment of Ms. Gebhart as listed. The motion carried, Commissioners Stern, Lewis, and George voting aye.

2. **Continued to July 20, 2005** - Consideration of M37-48-05, a Measure 37 claim authorizing Celia Dromgoole to make application to partition 39 acres into three lots and establish dwellings thereon, as continued from July 6, 2005.

Mr. Gray stated that Ms. Dromgoole's attorney has requested a continuation for one week.

Commissioner Lewis moved to continue consideration of M37-48-05 to July 20, 2005. The motion carried, Commissioners Stern, Lewis, and George voting aye.

3. **B. O. 05-589** - Consideration of adoption of findings in support of Planning Docket C-02-05, a request for temporary use of an emergency access road, applicant Mike Gougler, MJG Development, as tentatively approved June 20, 2005.

Commissioner Lewis moved to adopt findings in support of Planning Docket C-02-05, as tentatively approved June 20, 2005. The motion carried, Commissioners Stern, Lewis, and George voting aye.

4. **B. O. 05-590** - Approve correction of scrivener's error in B.O. 05-535, Docket M37-26-05, applicants Ralph and Norma Johnson.

Commissioner Stern moved to correct a scrivener's error relating to a duplication of dates listed in B.O. 05-535, Docket M37-26-05. The motion carried, Commissioners Stern, Lewis, and George voting aye.

5. **B.O. 05-591** - Adopt a Memorandum of Agreement between Yamhill County Sheriff, Yamhill County, and Teamsters Local 223 implementing a temporary schedule for deputies assigned to rural patrol, effective July 31, 2005.

Commissioner Stern moved adoption of the agreement. The motion carried, Commissioners Stern, Lewis, and George voting aye.

6. **Rainbow Lodge / rope course** - Use by youth program. Consensus: John Gray will work with Brandon Marsh regarding the request.

Ms. Stern reviewed the request by Mr. Marsh to use the rope course as part of his work with youth groups. The consensus of the Board was that Mr. Gray would work with Mr. Marsh to further define the

proposal.

7. **Request by Michael Caruso / letter in support of appointment to regional electric advisory council.** Consensus: Ms. Stern will route Mr. Caruso's resume to the other commissioners for review and provide other information regarding the appointment process as it becomes available.

There was discussion of the process of providing a letter of support for a county representative on the regional council. There will be further discussion following receipt of additional information about the appointment process.

8. **Juliette's dam; Rainbow Lake** - Ms. Stern stated that the Soil & Water Conservation District will be preparing additional information for the Board's consideration to be presented this coming fall. She asked that Commissioners Lewis and George relay any concerns they wish to have addressed and she will forward them to SWCD.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket PAZ-08-04, a request for zone change from AF-20 to AF-10, applicant Benkendorf Associates, representing Steven Wilson, Bucks Corporation, as continued from June 22, 2005 at the point of rebuttal. *[Tentatively approved; findings to be considered July 20, 2005.]*

Commissioner Stern reopened the public hearing at the point of rebuttal.

Rebuttal - Al Benkendorf stated that following the hearing three weeks ago, his firm accepted the suggestion made by Friends of Yamhill County that the application address a reasons exception. He stated that the reasons exception, filed yesterday, along with other information in the application, including the soil consultant's report, and the recommendation from the Planning Commission, supports approval of the application.

Staff Recommendation - Ken Friday stated staff recommends approval. He stated the staff very much appreciated the quality of findings submitted by Mr. Benkendorf.

Close of public hearing; deliberation - Commissioner Lewis stated that the soil study identified a stony site with more than 97% poor value soil and less than 2.5% good soil, which seems to be a good justification for taking an exception to Goal 4.

Commissioner Lewis moved tentative approval of PAZ-08-04, taking an exception to Goal 4, with findings to be considered for adoption in one week. The motion carried, Commissioners Stern, Lewis, and George voting aye.

2. Consideration of Planning Docket CTS-06-05, a request for a hardship dwelling, applicants Luella and Gerald Docken, appellant Suzie and Mark Cacciaccaro. *[Docket CTS-06-05 tentatively approved; findings to be submitted for adoption July 27, 2005. Refund of \$250 for appellant Suzie Cacciaccaro approved.]*

Commissioner Stern opened the public hearing. There were no abstentions or objections to jurisdiction. The commissioners described their site visits. Ms. George disclosed that Senator George's staff contacted her in response to a call to the Senator's office; the contact will not affect her decision.

Rick Sanai 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.

Staff Report - Ken Friday described the subject property, stating that it contained a residence and a separate building which includes an apartment; surrounding uses include rural residential uses to the north, west, and south, and a 60-acre farm to the east. He stated the apartment was originally used as a dwelling by the applicants while their permanent residence was being built. He said the application is a request for the applicant's daughter to live in the apartment in order to provide daily caretaker assistance to her aged mother who is in ill health.

Mr. Friday stated that this application process has been unusually long. He stated that at one point, staff realized that the county's zoning ordinance did not permit stick-built hardship dwellings in the VLDR zone. The applicants were asked to delay their request, pending completion of amendments which were being made at that time to the zoning ordinance, and which would include an amendment to allow stick-built temporary hardship dwellings in the VLDR zone, compatible with hardship dwellings standards in other rural zones. He stated that a photo board of the subject area has been submitted for the record.

Proponents - Gerald Docken stated his family has lived on the subject property for 30 years, first in the apartment, which was constructed with all appropriate permits and inspections, and later in the permanent residence. He stated that his wife is 70 years old and has severe medical problems which affect her ability to care for herself and her home. He said their daughter assists her mother on a daily basis, but would be unable to do so if she did not live on the same property, and had to work elsewhere to pay for a place to live. Mr. Docken stated that the apartment is not visible from other properties and he does not understand the neighbors' concerns. Mr. Docken stated their living situation has been increasingly difficult for more than 1 ½ years due to on-going disputes with the Cacciatarro family.

Luella Docken stated her family tried to initiate a mediation process but the Cacciatarro family refused to participate. She said that it is deeply disturbing to have to justify her health issues to neighbors when it should be no business of theirs.

Tammara Albanese reviewed the care she provides for her mother, including transportation to doctor visits, shopping, banking, assisting with exercises and health care, and general activities of every day life. She said that she lives on the property to assist with the daily needs of her mother and because she would not be able to work at a fulltime job and live elsewhere, due to the time she spends as caretaker.

Questions of Proponents - None.

Opponents - Suzie Cacciatarro read a lengthy biographical sketch of her family history "to refute statements" which she said were made at the planning commission hearing.

There was discussion of the photos submitted.

Mark Cacciatarro stated that he believes a number of irregularities occurred in the application process following the complaint of illegal occupancy on the Docken property which he made to the planning department in late 2003. Mr. Cacciatarro stated there was a conflict of interest because the staff member assigned to the application was performing architectural work for the applicant. He stated he believes the request for a hardship dwelling is an attempt to circumvent county rules and that the county participated in this attempt by amending the zoning ordinance in 2004 to allow this application to comply with approval

criteria. He stated he objects to the length of time it has taken for the application to reach this appeal hearing and he objects to the appeal fees, stating he feels "the county has stolen our money".

Mr. Cacciatarro stated the Dockens usually spend about three months a year away from the property,

which he believes is clear evidence that Ms. Docken is not seriously ill or infirm. He stated the county should have decommissioned the apartment once the new residence was built. He said the occupancy of the apartment has had an adverse effect on his ability to enjoy his property or cut down trees along the property line, because he would then be exposed to "searchlights" from the Dockens property. Mr. Cacciocarro referenced an incident in which he believed his family, and particularly his children, were threatened. He stated he does not believe the application meets the criteria for a hardship dwelling.

There was discussion of issues raised by both parties relating to intrusive outdoor lighting, fencing, lack of privacy, failure to allow use of utility easements, etc.

Public Agency Reports - Planning Director Mike Brandt stated he agrees there were errors during this application process and that it appears both the Dockens and the Cacciocarros feel they have been wronged. He reviewed the specifics of this application process and its delays. He said that as soon as he became aware that the staff member assigned to the application had performed architectural work for the Dockens (on his own time, not as a county employee), the application was reassigned to Ken Friday.

Mr. Brandt said that during this time period, a number of zoning ordinance amendments were being considered by the planning commission. Staff became aware that the VLDR temporary hardship dwelling criteria were not consistent with similar provisions in other zones. It was decided to consider amending the VLDR zone criteria to conform with other temporary hardship dwelling standards.

Mr. Brandt stated that at one point during the zone amendment process, the Dockens withdrew their application; the Cacciocarros were then offered a refund of their appeal fee, but declined. He said that the situation was further complicated by the planning commission approval of the first application under the criteria of the newly-amended zoning ordinance, when in fact, the proper procedure would have been for the Dockens to withdraw the application and reapply under the new criteria. He said that because of that complication, a refund of the appeal fee was once again offered to the Cacciocarros, and declined.

Mr. Brandt apologized for mistakes which were the result of a number of confusing circumstances, with no intent to disadvantage either party. Mr. Brandt stated that during his years in the planning department, he has observed a number of neighbor-to-neighbor disputes, but has never seen anything as destructive as the relationship between these two parties. He said members of the planning commission pleaded with the parties to seek mediation and he also strongly urges they participate in mediation .

Mr. Brandt said he understands the Cacciocarros are unhappy about the \$500 they have paid for appeal fees, but that they had been advised by staff, early in the process, that it would be advisable to wait until a decision had been made by the planning commission before initiating an appeal and paying \$250. They chose instead to pay the appeal fee at the planning commission level and then were required to pay an additional \$250 for the appeal to the Board. Mr. Brandt stated that he is willing to refund \$250 in the interests of good will; however, it should be noted that literally thousands of dollars in staff time has been expended in trying to work with both parties during this lengthy process.

Mr. Brandt stated that at the time the Dockens built the apartment, all appropriate permits were acquired and inspections made. He said that construction of a garage, barn, or storage building to live in while a permanent residence is built is actually a very common occurrence in the county. Normally, provisions are included on the building permit that the temporary building will be converted to storage, etc., at the time of the final inspection; however, on occasion, that final step may be overlooked. He said that the Dockens promptly applied for a hardship permit after being informed of the complaint filed by the Cacciocarros.

Commissioner Lewis stated that the purpose of the amendment to the zoning ordinance in 2004 was

simply to include stick-built structures in the definition of temporary hardship dwellings allowed in the VLDR zone, consistent with similar provisions for other zoning districts.

Mr. Friday reviewed the comments in the record from public agencies.

Rebuttal - Mrs. Docken stated that when the permits were acquired to build the apartment, she assumed that all requirements had been covered and did not realize that a special permit would be necessary in order to use the apartment after the residence was complete. She reviewed the materials she has provided to document her health status, once again stating that it does not appear to be fair that she has to provide “proof” of her health status for the benefit of her neighbors.

Ms. Albanese responded to testimony submitted by the Cacciaccaros regarding concerns about their family’s safety.

Staff Recommendation - Mr. Friday recommended approval with four conditions as listed in the staff report, and recommended that if approved, the expiration date of the permit be amended to two years from the date of adoption.

Close of public hearing; deliberation - Commissioner Stern stated the Board is very limited in the scope of its review; it can only consider the criterion listed in the zoning ordinance which pertains to hardship dwellings, i.e., the applicant must be aged, infirm, or unable to maintain a separate residence without assistance. She said there is sufficient information in the record to support the request.

Ms. Stern said that because the Board understood that both parties wanted to present additional information for the record, considerable latitude was allowed in the scope of testimony accepted; however, the Board cannot give any weight to the neighbors’ disagreements in making its decision.

Commissioner Stern moved tentative approval of Planning Docket CTS-06-05, with findings to be considered in two weeks and \$250 be refunded to the appellants.

Commissioner George stated she agrees that Dockens have substantiated their need for caretaker assistance for Mrs. Docken. She stated that it is unreasonable to claim that a person shouldn’t have the help of a regular care giver based on the fact that the infirm person might sometimes be able to travel. She stated she understands the concerns the Cacciaccaros have regarding privacy and the safety of their children, and it is her hope that the neighbors will resolve their differences and develop a peaceful relationship, for the good of both families.

Commissioner Lewis addressed the zoning criteria, stating that it is county policy to define “aged” as a person who reaches age 70, and on that basis alone, Mrs. Docken meets the criteria for a temporary hardship dwelling. She stated she hopes the two neighbors will work with mediators to work out their concerns about privacy, lighting, etc. She said while it is reasonable to have lights for safety and to discourage prowlers, it is also reasonable that lights not be used excessively, to the detriment of nearby residents. She said she supports the motion and the refund of \$250.

Commissioner Stern stated she also hopes the neighbors will work to resolve their differences. She referenced the family history that Ms. Cacciaccaro presented at the beginning of today’s hearing and stated that those admirable family values will stand their children in good stead, particularly if they learn from their parents in this situation how difficulties with other people can be resolved. She said the area on McCormick Hill Road is one of the most beautiful sites in the county and it would be tragic for each family to allow their enjoyment of such beautiful properties to be soured by the inability to live harmoniously with their neighbors.

The motion to approve the application for a temporary hardship dwelling carried, Commissioners Stern, Lewis, and George voting aye. Findings for adoption will be considered July 27, 2005.

F. **ANNOUNCEMENTS:** Applications are available in the Commissioners' Office for the following committees: Commission on Children and Families, two positions; Food Service Advisory Committee, six positions in various categories; Special Transportation Commission, two positions; Dog Control Advisory Committee, one position (candidates must be directly involved with dog-related issues); Local Alcohol and Drug Planning Council, one position; Ambulance Service Area Advisory Committee, one position for an emergency room physician; Parks Board, two positions; Budget Committee, one position, application deadline August 31, 2005.

The meeting adjourned.

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair MARY P. STERN

Commissioner LESLIE LEWIS

Commissioner KATHY GEORGE