

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 March 15, 2006 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Leslie Lewis, Kathy George, and Mary P. Stern being present.

Also present was John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; John Krawczyk, Director of Administrative Services; Ken Friday, Planning Division Manager; Martin Chroust-Masin, Associate Planner; David Bates, News-Register; Marilyn Reeves, PO Box 1083, McMinnville; Mike Willcuts, 11700 NE Sunnyacres Lane, Newberg; Mimi Doukas, 5415 SW Westgate Drive, Portland; Catherine Wright, PO Box 625, McMinnville; Charma Vaage, 21150 SW Eagle Point Way, McMinnville; and Dan Armstrong, 7000 NE Krono Road, Yamhill.

Commissioner Lewis 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.

Marilyn Reeves, representing Friends of Yamhill County, submitted a written statement about some of the Measure 37 claims on today’s agenda. She expressed the following concerns: 1) the exaggerated loss of property value is not based on valid appraisals; 2) approving waivers is raising expectations that owners will be able to develop and sell their property; and 3) property values within the Newberg urban growth boundary would actually be increased because of the potential to eventually develop the land.

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

Personnel

1. **B. O. 06-150** - Approve a change of status to increase work hours to full-time for Kristen Michael, HS Specialist I, Chemical Dependency, effective March 6, 2006.

2. **B. O. 06-151** - Approve the following actions for Sheriff’s Office personnel:

- a. Promote Robert Nelson to Corrections Officer, Jail, regular full-time, Range T12, Step 2, effective March 24, 2006.
- b. Transfer Russell Meade to Deputy Sheriff, regular full-time, Range T12, Step 2, effective March 24, 2006.

no.

c. **B. O. 06-159** - M37-129-05, a Measure 37 claim authorizing Janice M. Church to make application to subdivide 51 acres into eighteen lots and to establish dwellings thereon.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-129-05. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern voting no.

d. **B. O. 06-160** - M37-130-05, a Measure 37 claim authorizing Lawrence F. Williams to make application to establish a dwelling on each of three existing tax lots totaling 11.33 acres.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-130-05. The motion passed, Commissioners Lewis, George, and Stern voting aye.

e. **B. O. 06-161** - M37-131-05, a Measure 37 claim authorizing Lawrence F. Williams to make application to establish a dwelling on 2.84 acres.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-131-05. The motion passed, Commissioners Lewis, George, and Stern voting aye.

f. **B. O. 06-162** - M37-132-05, a Measure 37 claim authorizing Lawrence F. Williams to make application to subdivide 21.3 acres into twenty lots and establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-132-05. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern voting no.

g. **B. O. 06-163** - M37-133-05, a Measure 37 claim authorizing Edmund and Sheri Adams and Dennis and Arthur Pugh to make application to subdivide 37.2 acres into seven lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-133-05. The motion passed, Commissioners Lewis, George, and Stern voting aye. Ms. Stern noted that this property was zoned VLDR 5 at the time of purchase.

h. M37-134-05, a Measure 37 claim authorizing Steve and Denise Wozniak to make application to subdivide 7.77 acres into lots of one to two acres and establish a dwelling on each vacant lot. [*Continued to March 22, 2006.*]

Mr. Gray stated that the City of Newberg is interested in postponing the claim until annexation issues are resolved. Ms. Lewis added that Mr. Brierly had indicated that the claimants would be willing to put the claim on hold until after the November election. Ms. George moved to continue M37-134-05 to March 22, 2006 and direct staff to contact the claimants. The motion

passed, Commissioners Lewis, George, and Stern voting aye.

i. **B. O. 06-164** - M37-135-05, a Measure 37 claim authorizing Gary and Sandra Hurley to make application to establish a dwelling on a 25-acre lot and to subdivide 45 acres into lots of one to two acres and to establish dwellings thereon.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-135-05. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern voting no. Ms. Lewis noted that because most of the 45-acre lot is in a 100-year floodplain, subdivision approval would be a difficult process.

j. **B. O. 06-165** - M37-136-05, a Measure 37 claim authorizing Fred and Angela Flory to make application to subdivide 60.23 acres into ten to thirteen lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-136-05. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern voting no.

3. **B. O. 06-166** - Consideration of approval of a road development agreement between Public Works and Jeffery D. Jackson for Tax Lots 3210-1701 and 3210-1703, Planning Docket P-39-05.

Mr. Gray stated that this agreement was started before the Board delegated authority to the Public Works Director for road development approvals. Ms. Lewis moved approval of the agreement. The motion passed, Commissioners Lewis, George, and Stern voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket PAZ-02-05, a request for a UGB amendment to include 18.8 acres currently within Newberg's Urban Reserve Area (URA), applicant WRG Design, representing Austin Industries. *[Tentatively approved; findings to be adopted March 29, 2006.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Lewis stated that because the Board is familiar with the area, no site visit was necessary.

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 - Martin Chroust-Masin reviewed the property location and description, surrounding zoning, previous land use actions, and the request for UGB amendment.

Proponents Case - Mimi Doukas, WRG Design, explained that the Austins are working on a master plan for approximately 400 acres and would like to include this parcel in order to do true comprehensive planning for the region. She stated that the owners do not anticipate development of the subject property in the near future. She noted that the staff report should list the

Comprehensive Plan designation as low-density residential, not medium-density residential.

Public Agency Reports - Mr. Chroust-Masin stated that the Newberg Urban Area Management Commission and the Newberg City Council have both approved the application.

Staff Recommendation - Mr. Chroust-Masin recommended approval of the application with a stipulation that jurisdiction of Aspen Way be transferred to the City of Newberg when annexation takes place.

Close of Public Hearing / Deliberation - Ms. Stern stated that exceptions to Goals 3 and 4 were given many years ago and this application is part of a good overall development plan to accommodate expected growth in the area.

Ms. Stern moved tentative approval of Planning Docket PAZ-02-05 with findings to be adopted March 29, 2006. Ms. George expressed appreciation for the applicant's thoughtful planning and concern for the need for low-density housing. Ms. Lewis stated that it makes sense to bring parcels currently in the urban reserve area into the urban growth boundary because the city is short of land.

The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. Consideration of Planning Docket PA-03-05, a request for a UGB amendment to include eight parcels currently in Newberg's Urban Reserve Area (URA), applicant Coyote Homes. *[Tentatively approved; findings to be adopted March 29, 2006.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Nobody in the room requested the required statement to be read again.

Staff Report - Mr. Chroust-Masin reviewed the property location and description, surrounding zoning, and the request for UGB amendment.

Proponents Case - Mike Willcuts, Coyote Homes, stated that one parcel was removed from the original application because the owner decided to opt out. He briefly addressed the issue of erosion from water in the ditches, stating that he is required to detain any increase in flow caused by development.

Public Agency Reports - Mr. Chroust-Masin stated that the Newberg Urban Area Management Commission and the Newberg City Council have both approved the application.

Staff Recommendation - Mr. Chroust-Masin recommended approval of the application with a stipulation that jurisdiction of the roads be transferred to the City of Newberg when annexation takes place.

Close of Public Hearing / Deliberation - Ms. Stern stated for the record that she was a previously a neighbor to Mr. Willcuts and lived in a home built by him, but that fact will not influence her decision in this case. She moved tentative approval of Planning Docket PA-03-05 with

findings to be adopted March 29, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye.

3. Consideration of Planning Docket FT-16-05, a request for a forest template dwelling, applicant Charma Vaage. *[Continued to March 29, 2006 at the point of rebuttal; record left open until 5:00 p.m. March 22, 2006 for submission of written information by any party; record open until 5:00 p.m. March 27, 2006 for written rebuttal.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Nobody in the room requested the required statement to be read again.

Staff Report - Ken Friday reviewed the parcel size, location, description, surrounding zoning, and criteria for approval. He stated that in 1983, the Oregon Supreme Court issued a decision determining that the Eagle Point subdivision containing the subject property was not lawfully created. He noted several letters which had been received concerning this application.

Proponent's Case - Catherine Wright, representing the applicant, read the portion of the county's zoning ordinance pertaining to forest template dwellings and stated that there is no requirement that the lot be legally created. She cited cases to support her position that because the ordinance is clear and unambiguous, nothing can be added to or taken away from the existing language. She disagreed with staff's assertion based on the Ludwick case because the property owners in that case were seeking a lot of record rather than a forest template dwelling and different standards apply.

She addressed concerns raised in the letters received by the Planning Department and stated that her client would be willing to pay her pro rata share of maintenance costs on the access road once the building permit is issued.

She requested that Condition #7 be modified to remove the requirement to upgrade the road to the County Engineer's standards, stating that fire department standards should be sufficient. She also requested that Condition #11 be removed because Tax Lots 2400 and 2700 are not under the same ownership. She explained that Tax Lot 2700 is owned by Ms. Vaage and her parents, but Tax Lot 2400 is owned solely by Ms. Vaage.

Mr. Friday stated that he would be willing to strike Condition #11 based on the additional information presented. He later added that he had no objection to the requested modification of Condition #7.

Opponents - Marilyn Reeves, representing Friends of Yamhill County, submitted a written statement for the record and stated that she supports the staff recommendation and believes that the 1983 Supreme Court decision is unequivocal. She said that in 1983, a lot of record actually referred to a legally created lot because the statutory lot of record provision wasn't enacted by the legislature until later. She concluded that because the lot was not created legally, it doesn't meet state law or county ordinances and the application should clearly be denied.

Public Agency Reports - Mr. Friday stated that the County Sanitarian found no septic records

for this lot and septic approval and permits would be required. He stated that the McMinnville Fire Department found no conflict with the application.

Rebuttal - Ms. Wright stated that in the current statutory definitions for a lot of record and a forest template dwelling, there is a clear distinction between the legal requirements for creation, and the current standards should be applied, rather than those in place when the lots were created.

Ms. Vaage reviewed the history of her ownership of the subject property and other lots in the subdivision, stating that she was told at the time of purchase that the lots were buildable. Mr. Friday stated that the original owner, Bob Hemstreet, had initiated the subdivision application, but never did the road improvements necessary to complete the process and have it recorded.

Ms. Reeves requested that the record be left open. Ms. Lewis moved to continue the hearing to March 29, 2006 at the point of rebuttal with the record left open until 5:00 p.m. on March 22, 2006 for all parties to submit additional information. At Ms. Stern's suggestion, she amended her motion to allow the record to be left open until 5:00 p.m. on March 27, 2006 for written rebuttal. The motion passed, Commissioners Lewis, George, and Stern voting aye.

4. Consideration of Planning Docket FT-21-05, a request for a forest template dwelling, applicant Linda Seiler. *[Continued to March 29, 2006 at the point of rebuttal; record left open until 5:00 p.m. March 22, 2006 for submission of written information by any party; record open until 5:00 p.m. March 27, 2006 for written rebuttal.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Nobody in the room requested the required statement to be read again.

Staff Report - Ken Friday reviewed the parcel size, location, description, surrounding zoning, and criteria for approval. He restated the Oregon Supreme Court's decision determining that the Eagle Point subdivision containing the subject property was not lawfully created.

Proponent's Case - Catherine Wright, representing the applicant, repeated her testimony from the previous application. She read the portion of the county's zoning ordinance pertaining to forest template dwellings and stated that there is no requirement that the lot be legally created. She cited cases to support her position that because the ordinance is clear and unambiguous, nothing can be added to or taken away from the existing language. She disagreed with staff's assertion based on the Ludwick case because the property owners in that case were seeking a lot of record rather than a forest template dwelling and different standards apply.

She addressed concerns raised in the letters received by the Planning Department and stated that her client would be willing to pay her pro rata share of maintenance costs on the access road once the building permit is issued.

She requested that Condition #7 be modified to remove the requirement to upgrade the road to the County Engineer's standards, stating that fire department standards should be sufficient.

Opponents - Marilyn Reeves, representing Friends of Yamhill County, submitted a written

statement for the record and stated that she supports the staff recommendation. She referred to a memo in the packet from former Assistant County Counsel John Pinkstaff and stated that to her knowledge, his interpretation regarding forest template dwellings in this subdivision has not been superseded by any other interpretations.

Ms. Lewis noted that the county's past efforts to make this subdivision legal by turning the area into Very Low Density Residential had been appealed by 1000 Friends of Oregon. Ms. Reeves stated that if a similar attempt were made again, Friends of Yamhill County would have to look at the process carefully before deciding whether or not to appeal. She said that the organization is trying hard to maintain EF-80 land and is already faced with a large number of subdivisions being planned under Measure 37.

Public Agency Reports - Mr. Friday stated that the County Sanitarian found no septic records for this lot and septic approval and permits would be required. He stated that the McMinnville Fire Department found no conflict with the application. He said he had no objection to the request to modify Condition #7.

Ms. Lewis moved to continue the hearing to March 29, 2006 at the point of rebuttal with the record left open until 5:00 p.m. on March 22, 2006 for all parties to submit additional information and until 5:00 p.m. on March 27, 2006 for written rebuttal. The motion passed, Commissioners Lewis, George, and Stern voting aye.

F. ANNOUNCEMENTS:

1. The following positions are open to the public. Contact the Commissioners' Office for applications.
 - a. Ambulance Service Area Committee, one position for a member of the public;
 - b. Parks Board, three positions;
 - c. Road Improvement Advisory Committee, one position.

2. Northwest Senior & Disability Services has openings for Yamhill County residents on the following regional councils:
 - a. Senior Advisory Council, one position;
 - b. Disability Services Advisory Council, one position.

For more information, contact Sally Lawson at (503)304-3473 or by e-mail at Sally.Lawson@state.or.us.

The meeting recessed at 11:08 a.m. and reconvened at 11:16 a.m. in Room 108.

Discussion item - Continuation of discussion of a proposed ballot measure regarding formation of a new fire district by City of Carlton and the current Carlton Rural Fire District; and a General Obligation Bond for a new fire hall. *[No final decisions made.]*

John Krawczyk handed out information from Laura Tschabold regarding loan and grant possibilities for the City of Carlton. He stated that if the proposed ballot measure doesn't pass, the city wouldn't be able to try again for two years. He said that an alternative to forming a new fire

district would be to have the county form a 451 service district exclusively for the purpose of having a bond levy to fund the new fire hall, which seems to be the most urgent need at this point. He suggested turning the bonds over to the city or the fire district and letting them manage the project. He added that this option would give the city time to pursue grant opportunities to reduce the bond amount needed

Ms. George stated that she had been told that the additional operating revenue needed by the district would be for buying a fire engine, but there are better ways to do that than passing a permanent rate levy. She added that the issue of the inequity between city and rural permanent tax rates could be resolved at a later time and this would give the city more time to come up with a plan to address citizen concerns about the building and the land and to flesh out the partnership with the Department of Forestry.

John Gray said he would do some research to confirm that a 451 district would have bonding authority. He suggested that the county's part in the district be minimized. Mr. Krawczyk and Ms. George will try to get in touch with Mayor Kathie Oriet this afternoon to discuss the proposal.

The meeting adjourned at 11:40 a.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair LESLIE LEWIS

Commissioner KATHY GEORGE

Commissioner MARY P. STERN