

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 12, 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; Debbie Gill, Veterans Services; Murray Paolo, Information Services Director; Tanya Pitt and Jodi Whiting, Dog Control; David and Tammy Burkhardt; Aron Perez-Selsky, Linfield intern; Marilyn Reeves, PO Box 1083, McMinnville; Cassie Sollars, candidate for Commissioner; Jessica Cain, PO Box 1046, Newberg; Al Benkendorf, 522 SW 5th, Portland; Joel Norgren, 3655 NW Van Buren, Corvallis; Howard Leichter, 14420 NW Pheasant Hill Road, McMinnville; Jon Hemstreet, 28880 Thomson Mill, Sheridan; Carl Lambert, AMVETS; and Gene Labonte, NIVA .

Commissioner Lewis called the meeting to order.

SPECIAL RECOGNITION: Presentation to David Burkhardt, Chief Pilot for Air Support, in recognition of his volunteer efforts for Yamhill County.

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. None offered.

B. **CONSENT AGENDA:** Ms. Stern moved approval of the consent agenda with the effective date on item B(8) changed to March 25, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye.

Personnel

1. **B. O. 06-218** - Approve the employment of Dovey Desirey, Dallas, as HS Specialist 1 in HHS Chemical Dependency, temporary full-time, Range 17, Step 1, \$2855/month, effective May 1, 2006 through July 1, 2006.

2. **B. O. 06-219** - Approve the employment of Melissa Harlan, Aurora, as Extra Help in Community Corrections, temporary part-time, \$7.85/hour, retroactive to March 15, 2006 through September 13, 2006.

3. **B. O. 06-220** - Approve the employment of Katrina Wiegand, Nathan Eames, and Patricia Brown as Corrections Reserve in the Jail, part-time on-call, \$10/hour, effective April 12, 2006.

4. **B. O. 06-221** - Approve the employment of Scott Gray, Newberg, as Corrections Reserve

in the Sheriff's Office Marine Division, part-time on-call, \$10/hour, effective April 17, 2006.

5. **B. O. 06-222** - Authorize the Sheriff to hire a deputy in anticipation of an upcoming vacancy.
6. **B. O. 06-223** - Approve the employment of Frank Davis, McMinnville, and Terry Lane, Newberg, as Utility Workers in Public Works, regular full-time, Range 11, Step 1, \$12.23/hour, effective April 17, 2006.
7. **B. O. 06-224** - Approve the change of status of Tim Overton to extend temporary full-time employment in Maintenance, effective April 24, 2006 through April 24, 2007.
8. **B. O. 06-225** - Approve the change of status of Linda Lowe to Building Inspection Assistant in the Planning Department, Range 13, Step 5, retroactive to March 25, 2006.

Contracts

9. **B. O. 06-226** - Approve an agreement between Solid Waste and Hahn and Associates, Inc. for services at the closed Whiteson Landfill, not to exceed \$22,400, effective April 12, 2006.
10. **B. O. 06-227** - Approve Agreement #614 between Health & Human Services and Marion County for on-call crisis services, not to exceed \$54,216 plus the cost of crisis services, effective May 1, 2006 through June 30, 2007.
11. **B. O. 06-228** - Approve Intergovernmental Agreement #4600005913 between HHS Public Health and Multnomah County for pass-through Ryan White CARE Act funds for services to low-income, under/uninsured individuals living with HIV/AIDS, not to exceed \$34,100, retroactive to March 1, 2006 through February 28, 2007.
12. Approve two contract amendments between the District Attorney, HHS Public Health, and the following providers to increase the monthly salary for medical examiner services to \$1075/month, effective July 1, 2006:
 - a. **B. O. 06-229** - William Koenig, D.O.;
 - b. **B. O. 06-230** - Kay E. Case, M.D.
13. **B. O. 06-231** - Authorize a conflict waiver to allow the joint legal representation of Yamhill County and Yamhill Communications Agency (YCOM) by the Office of Yamhill County Counsel.

Grants

14. **B. O. 06-232** - Approve Amendment #BF-96014101-1 to an Assistance Agreement between Yamhill County and the U.S. Environmental Protection Agency to reallocate funds between project tasks for the Martin & Wright Brownfields Cleanup project.
15. **B. O. 06-233** - Authorize the Parks Division to apply for a local government grant from Oregon Parks and Recreation for renovation work at Deer Creek and Lafayette Locks Parks, \$36,020.

Policy

16. **B. O. 06-234** - Approve the updated Parks Reservation Policy to streamline language and update reservation costs.

Vehicles

17. **B. O. 06-235** - Authorize the purchase of three new 2006 Ford Crown Victoria patrol cars from Chuck Colvin Ford for the Sheriff's Office, \$20,416 each, with three of the highest mileage patrol vehicles to be sold on e-Bay to the highest bidder.

18. **B. O. 06-236** - Authorize the purchase of a used 2005 Ford Taurus SE from Newberg Ford for the Sheriff's Office, \$11,685, declaring vehicle P-002 as surplus property to be sold on e-Bay to the highest bidder.

Road Vacation

19. **B. O. 06-237** - Schedule a public hearing on June 7, 2006 at 9:00 a.m. for Public Works Docket RV-2-2006, a request for vacation of Woodland Heights Road, applicant Woodland Heights Homeowners Association.

Committees

20. **B. O. 06-238** - Approve the appointment of Tim McDaniel to the Parks Board for a four-year term to expire April 12, 2010.

21. **B. O. 06-239** - Acknowledge the following reappointments to the Health Board, as approved by Kathy George and Mark Trumbo on March 29, 2006.

- a. Robert Holveck, DVM, four-year term to expire February 1, 2010;
- b. John D. Nelson, M.D., three-year term to expire February 1, 2009.

Easements

22. Accept three permanent easements from the following grantors for bridge construction projects:

- a. **B. O. 06-240** - Trustees of the Norma R. Setniker Revocable Trust and the L. Frank Setniker Family Trust, Baker Creek Road Bridge;
- b. **B. O. 06-241** - Boyd and Carol Shaw, Moores Valley Road Bridge;
- c. **B. O. 06-242** - Timothy and Maryalice Pfeiffer, Moores Valley Road Bridge.

C. OLD BUSINESS:

1. Consideration of adoption of findings in support of Planning Docket FT-16-05, a request for a forest template dwelling, applicant Charma Vaage, as tentatively approved March 29, 2006. *[Continued to April 19, 2006.]*

Ms. George moved to continue items C(1) and C(2) to April 19, 2006 at the request of the applicants. The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. Consideration of adoption of findings in support of Planning Docket FT-21-05, a request for a forest template dwelling, applicant Linda Seiler, as tentatively approved March 29, 2006. *[Continued to April 19, 2006.]*

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

1. **B. O. 06-243** - Consideration of approval of Ordinance 782, Yamhill County Towing Ordinance.

Mr. Sanai provided the first and second readings of Ordinance 782 by title only, declaring an emergency. Ms Stern moved approval of the ordinance. The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. **B. O. 06-244** - Consideration of approval of Ordinance 783, establishing a non-preference towing system.

Mr. Sanai provided the first and second readings of Ordinance 783 by title only, declaring an emergency. Ms Stern moved approval of the ordinance. The motion passed, Commissioners Lewis, George, and Stern voting aye.

3. Consideration of a request to use the county logo as the backdrop for a photo of candidates for County Commissioner Position 1. *[Authority delegated to County Counsel to make decision.]*

The Board agreed that although there is no legal prohibition against the use of the county logo for political purposes, it would not be appropriate. The consensus of the Board was to delegate authority to County Counsel to make the decision regarding the request. John G suggested developing a policy regarding the use of the logo.

E. **PUBLIC HEARINGS:**

1. Consideration of Docket G-01-06, a request to modify the definition of "kennel" in the zoning ordinance, applicant Yamhill County Dog Control. *[Continued to July 12, 2006.]*

Ms. Lewis opened the public hearing.

Staff Report - Ken Friday stated that the intent of the request is to change the language in the zoning ordinance to mirror the definition of "kennel" in the Dog Control Ordinance. Mr. Sanai explained that under the current definition, Dog Control cannot legally inspect hobby kennels to ensure that safe and sanitary conditions are being maintained until the situation becomes bad enough to be considered a criminal case. He stated that these kinds of situations happen about once a year in the county and are an administrative nightmare. Jodi Whiting discussed examples of problems that have arisen as a result of the conflicting definitions.

Mr. Friday stated that if this modification is made, a property owner with more than five spayed or neutered dogs on high-value farmland would either have to get rid of some dogs or apply for a conditional use permit and try to show that the property is predominantly not high-value farmland. Ms. Lewis added that this is impossible in most of Yamhill County. She stated that many farmers with large acreage have more than five dogs and this ordinance would be penalizing many law-abiding citizens because of a few bad ones. She suggested that Dog Control continue to work on the language.

There being no public comment, Mary moved to continue the hearing to July 12, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. Consideration of Planning Docket PAZ-03-05, a request for zone change of approximately thirty acres from EF-80 to AF-10, applicants Wade and Patricia Miller, as continued from March 1, 2006 at the point of Staff Report. *[Request reduced to approximately twenty acres; hearing continued to April 26, 2006 at the point of deliberation, record left open until 5:00 p.m. April 19, 2006 for written comments by any party and until 5:00 p.m. April 24, 2006 for written response by the applicants.]*

Ms. Lewis opened the public hearing. Mr. 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 - Mr. Friday described the subject property and location, surrounding zoning, and criteria for approval. He noted that the Planning Commission had recommended denial of the request by a 5-1 vote.

Proponents - Jessica Cain, representing the Millers, stated that the thirty acres included in the request is the least farmable portion of the total parcel due to the steep slope of the property. She stated that the Planning Commission's 5-1 denial resulted from a commission member referring to case law regarding split zoning, but after lengthy research, she has concluded that no case exists in the state of Oregon which prohibits split zoning once the comprehensive plan designation is assigned.

She stated that the criteria for rezoning is met since most of the thirty acres consists of class 4 and class 6 soils and the property qualifies for an "irrevocably committed" exception because it is surrounded by parcels of single family residences. She said that the AF-10 zoning would create a nice buffer zone between the large-scale farmland and the nearby 2.5-acre residences. She stated that the effect on transportation would be minimal, there is a demonstrable need for AF-10 property, and water would be available for these three ten-acre lots.

At the request of Commissioner Stern, the applicants agreed to reconfigure their request to two ten-acre parcels, leaving out the most farmable portion of Tract 3. Mr. Friday stated that when a land use request is lessened, past practice has been to allow a final decision by the Board without re-noticing and taking the request back to the Planning Commission. He suggested that a drawing of the new proposal be submitted before the decision is made.

Questions of Proponents - Ms. Cain stated that seventeen communications have been received from community members in opposition of the application, some of which were almost identical in nature, addressing issues such as traffic, water, and parcel size. She added that there were about twenty people in attendance at the community meeting.

Merilyn Reeves, Friends of Yamhill County, strongly urged the Board to allow an opportunity for further testimony to be submitted in light of the revised application. She said she would like to see a map showing the reconfigured proposal. Ms. Cain agreed to provide a map.

Howard Leichter discussed the potential impact of this proposal on the county and urged the Board to help protect agricultural land and lifestyle by upholding the Planning Commission's decision to deny the request.

Ms. Lewis recessed the hearing and reopened it at the point of Proponents' Case following items E(3) and E(4) on the agenda. Ms. Cain submitted an amended map allocating the two AF-10 lots and described the changes to the proposal.

Opponents - Ms. Reeves recommended that the hearing be continued for at least two weeks because the new request needs further discussion. She requested that the record be kept open for at least a seven-day period.

Public Agency Reports - Mr. Friday stated that there are no reports in addition to what is already in the record.

Rebuttal - Ms. Cain stated that Mr. Leichter's concerns about the urban boundary creeping do not apply much to this application because of its location and because AF-10 parcels are not urbanization. She pointed out that the objections to this application have all come from people living on small rural parcels who have taken advantage of that opportunity, but don't want any more.

She stated that there has been plenty of opportunity throughout this long process for Friends of Yamhill County to voice any objections and it is not necessary to keep the record open, since the applicants are decreasing what they are asking for.

Staff Recommendation - Mr. Friday stated that the property qualifies for the "irrevocably committed" exception because a portion of the property is surrounded by parcels of single family residences. He recommended approval of the revised application.

Close of Public Hearing / Deliberation - Ms. Stern stated that although the process has been lengthy, that has not been due to any requests by the Board and two more weeks could potentially improve relations with the neighbors. She expressed her appreciation to the Millers for their willingness to restructure their application.

Ms. Stern moved to continue the hearing to April 26, 2006 at the point of deliberation, with the record left open until 5:00 p.m. April 19, 2006 for written comments by any party and until 5:00 p.m. April 24, 2006 for written response by the applicants. The motion passed, Commissioners Lewis, George, and Stern voting aye.

3. Consideration of Planning Docket PAZ-06-04, a request for zone change of eleven acres from AF-10 to Highway Commercial, applicant Willie Owens, as continued from March 1, 2006 at the point of Proponent's Case. *[Continued to July 12, 2006 at the point of Proponent's Case.]*

Ms. Cain stated that she has had to withdraw from this case due to a conflict and the applicant has requested a continuance. Mr. Friday stated that the applicant had submitted no objection to a request to continue the hearing for ninety days. Ms. Stern moved to continue the hearing to July 12, 2006 at the point of Proponent's Case. The motion passed, Commissioners Lewis, George, and Stern voting aye.

4. Consideration of Planning Docket PAZ-06-05, a request for zone change from AF-20 to AF-10 on approximately sixty acres, applicant Benkendorf & Associates. *[Tentatively approved, findings to be adopted April 26, 2006.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Lewis noted that the Board had taken a site visit with Mr. Friday. 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 - Mr. Friday described the subject property and location, surrounding zoning, and criteria for approval. He noted that the Planning Commission had recommended approval of the request by a 5-2 vote. He stated that according to a letter in the record, the trees had been planted in 1988.

Proponents - Al Benkendorf distributed maps for the Board to review and pointed out that the surrounding property consists of parcels ranging from five to twenty acres. He stated that all utilities in the area have been put underground, roads are paved, and an elaborate fire protection system is in place. He said that the portion of Tax Lot 1600 included in the application had been separated from the lot earlier because of its poorer soils.

He summarized findings in the soil report and concluded that this is not resource land, but is more suitable for quality residential land. He also stated that the inventory of small-acreage home sites is well below the demand and Measure 37 cannot be viewed as an answer to the supply shortage because the issue of transferability has not yet been addressed in court. He stated that the applicant has met the required criteria and requested that the Board approve the application.

Opponents - Merilyn Reeves, representing Friends of Yamhill County, stated that this type of request is spot zoning, which is not the proper way to get more exception land. She stated that there are still small-acreage lots available and the county has sixteen acres in Measure 37 claims now, despite the issues with transferability. She stated that the subject property is not irrevocably committed to rural residential use and does not meet the reasons exception because soil quality is not the only criteria for determining non-resource land.

Public Agency Reports - Mr. Friday stated that the Soil and Water Conservation District has indicated that there would be no conflicts with their interests. He noted that the remaining public agency reports are already in the record.

Rebuttal - Mr. Benkendorf stated that Measure 37 was prompted by the fact that part of the state's land use system is not working. He said that he doesn't believe exception areas were intended to be only land available for future rural residential use, and this process is a way for individual property owners to come to the Board and have their requests decided on a case-by-case basis.

Staff Recommendation - Mr. Friday stated that he doesn't believe a reasons exception is justified, but that isn't necessary if the property is shown to be non-resource land, which is clearly demonstrated by information in the record. He recommended approval of the application.

Close of Public Hearing / Deliberation - Ms. Stern stated that after seeing the area in person and looking at the reports, she agrees that it is not a resource area. She said that since the county has a limited amount of land, the Board must look carefully at existing land and it makes sense to

