

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 November 29, 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 Krawczyk, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Laura Tschabold, Projects Coordinator; Ken Friday, Planning Division Manager; Dan Linscheid, Surveyor; Larry and Linda Halstead, PO Box 429, Yamhill; James Otto, 21893 NE Graham Avenue, Yamhill; Lonni Strode, 21680 NE Cove Orchard Road, Yamhill; David Mihm, 21700 NE Cove Orchard Road, Yamhill; and Daryl Garrettson, 5370 NE Duniway Road, Dayton.

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. None offered.

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

Personnel

1. **B. O. 06-955** - Approve the employment of Gabriel Del Rayo, McMinnville, as on-call relief in the Juvenile Department, temporary part-time, Range 12, Step 1, \$13.26/hour, effective November 30, 2006 through February 28, 2007.

2. **B. O. 06-956** - Approve the employment of Kerri Short, McMinnville, as Extra Help in Administrative Services, temporary part-time, \$7.50/hour, effective November 29, 2006 through February 1, 2007.

3. **B. O. 06-957** - Approve the change of status of Michael Turnipseed to Police Clerk in the Sheriff's Office, regular full-time, Range 4, Step 1, retroactive to November 22, 2006.

4. **B. O. 06-958** - Approve the following changes in the Sheriff's Office:

a. Adopt job descriptions for the Administrative Support Program Manager (Range 16) and Administrative Office Specialist (Range 9) and remove the Executive Assistant job description from the SFMGT position list, effective December 9, 2006;

b. Reclassify Kellye Fetters from Executive Assistant to Administrative Support Program Manager, SFMGT Range 16, Step 5, effective December 9, 2006;

c. Amend the personnel management roster to add position authority for 1.0 FTE Administrative Office Specialist, effective December 1, 2006, and remove position authority for .5 FTE Lieutenant, effective December 31, 2006.

#### Contracts

5. **B. O. 06-959** - Ratify the approval of Amendment #28 to the 2005-07 Financing Agreement #113020 between Health & Human Services and Oregon Department of Human Services to add a cost of living adjustment for foster care providers, \$363, retroactive to April 1, 2006.

#### Budget

6. **B. O. 06-960** - Authorize a \$50 petty cash fund for the HHS Adult Mental Health Sunnyside Residential Housing Program.

7. **B. O. 06-961** - Authorize a payment of \$2212 from Economic Development (Fund 26) to the Fair (Fund 20).

#### Vehicles

8. **B. O. 06-962** - Authorize the purchase of a 2007 Ford one-ton van from Chuck Colvin Ford for the Juvenile Department, \$18,045, and declare unit P-126 as surplus county property to be sold on e-Bay to the highest bidder.

#### Refund

9. **B. O. 06-963** - Rescind Board Order 06-888 authorizing a refund to Thomas Kurt from the Planning Department.

#### Committees

10. **B. O. 06-964** - Approve the appointment of Deputy Ron Wellborn to the Road Improvement Advisory Committee to replace Lt. Paul May as the Sheriff's Office liaison, no term expiration.

#### **C. OLD BUSINESS:**

1. **B. O. 06-965** - Consideration of adoption of Ordinance 797 in support of Planning Docket PAZ-04-06, a request for Plan Amendment/Zone Change from Heavy Industrial to Highway Commercial on 3.36 acres, applicant Julie Dean, as tentatively approved November 8, 2006 and continued from November 22, 2006.

Rick Sanai provided the first and second readings of Ordinance 797 by title only, declaring an emergency. Ms. Stern moved to adopt the ordinance. The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. **B. O. 06-966** - Consideration of adoption of Ordinance 798 in support of Planning Docket PA-02-06, a request to include 14.47 acres in Newberg's Urban Growth Boundary, applicant Jeffrey Smith representing Ella Gueldner, as tentatively approved November 8, 2006.

Mr. Sanai provided the first and second readings of Ordinance 798 by title only, declaring an emergency. Ms. Stern moved to adopt the ordinance. The motion passed, Commissioners Lewis, George, and Stern voting aye.

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

1. **B. O. 06-967** - Consideration of adoption of Ordinance 796, amending Ordinance 749 regarding the implementation of Measure 37, effective December 1, 2006.

John Gray stated that Ordinance 749 established procedures for implementation of Measure 37 during the first two years and Ordinance 796 establishes new procedures for claims submitted after 5:00 p.m. on December 4, 2006 and also contains several technical amendments. He explained that after December 4, "enforcement" is redefined to be a denial of a county land use application rather than just a letter from the Planning Director. He added that the new ordinance will allow the transferability of Measure 37 waivers to the extent provided for by law.

Mr. Gray provided the first and second readings of Ordinance 796 by title only, declaring an emergency. Ms. George moved to adopt the ordinance. Ms. Stern stated that she believes the county's procedure should be to hold a public hearing on each Measure 37 claim unless the majority of the Board votes to not hold a hearing, but she will vote in support of the ordinance because it needs to be adopted this week. The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. **B. O. 06-968** - Consideration of establishing a \$100 deposit for Measure 37 claims to cover recording fees in the Clerk' Office, with any unused portion to be refunded to the claimant, effective December 1, 2006.

Mr. Gray stated that because of the new enforcement requirement for a land use denial, which will have its own fee, he and Mike Brandt agree that the current Measure 37 application fee of \$250 should remain unchanged at this point, although the fee amount can be changed once a year. He recommended requiring a deposit to cover recording costs, which would not be considered part of the application fee. He explained that the typical cost for recording is \$41, although sometimes the amount is higher because the documentation has more pages. He stated that any Measure 37 claim which is filed before the effective date of this order would not be subject to the requirement.

Ms. George moved to establish a \$100 deposit for Measure 37 claims to cover recording fees in the Clerk' Office, with any unused portion to be refunded to the claimant, effective December 1, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket PAZ-06-06, a request for Plan Amendment/Zone Change from EF-40 to AF-10 on approximately forty acres, applicant Daryl Garrettson. *[Tentatively approved, findings to be adopted December 13, 2006.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. She noted that the Board had taken a site visit on Monday afternoon. She stated that although she has known Mr. Garrettson since 1989 and served on the Planning Commission with

him, she has not discussed this application with him and can render an impartial decision. Ms. Stern added that each of the commissioners has regular contact with Mr. Garrettson because he represents one of the unions, but that is not a basis for disqualification.

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 and the criteria for approval, noting that the Planning Commission had voted 5-0 to recommend approval of the request.

Proponents - Mr. Garrettson stated that he had nothing to add to his testimony given to the Planning Commission, which has been incorporated into the record.

Opponents - None.

Public Agency Reports - Mr. Friday stated that the only report is from the City of Lafayette, which has no conflicts with the request. He noted that no municipal services would be extended to the development. He stated that the Department of Land Conservation and Development reported over the phone that they have no objections to the request.

Staff Recommendation - Mr. Friday recommended approval of the request, noting that it is very similar to a previous application by Dennis Walker approved by the Board. He stated that the subject property was zoned EF-40 in 1983 and was zoned either AF-20 or EF-20 prior to 1983.

Close of Public Hearing / Deliberation - Ms. George moved tentative approval of Planning Docket PAZ-06-06 with findings to be adopted December 13, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye. Ms. Lewis stated that this area probably should have been zoned AF-10 all along. Ms. Stern stated for the record that Public Works did submit a response to the request for public agency reports.

2. Consideration of Public Works Docket RV-7-2006, a request for vacation of a portion of F.C. Grahams Cove Orchard, applicants Larry and Linda Halstead. *[Tentatively approved, findings to be adopted December 13, 2006.]*

Ms. Lewis opened the public hearing.

Staff Report - Dan Linscheid stated that the Halsteads had applied in August 2006 through a longer process to have a ten-foot strip of the twenty-foot undeveloped alley vacated, but he had determined that it was unnecessary to go out for referrals because the property is a burden to the public road system and nobody would be denied access to their property if the vacation were approved. He noted that David Mihm had requested in the spring to vacate the entire twenty-foot strip, but the application was tabled because the Board had denied Mr. Mihm's request for a waiver of the filing fee.

John Gray stated that the Board can approve the vacation if it would be in the public interest and if all properties have alternate access.

Proponents - Larry Halstead stated that it would not be practical or feasible for the county to maintain this property other than for a utility easement. He stated that there are water lines, two large trees, utility meter boxes, and a chain link fence on the property and at least two prior owners of his property have used the ten-foot strip for private use, which sets a precedent for this vacation request. He added that the county had no objections to his temporary use of the property for personal use. He pointed out that Mr. Mihm had twice rejected his offer to vacate the entire width of the alley by petition, even though he would have received the majority of the benefit. He stated that alternative access exists to all adjoining lots and Mr. Mihm could still create an alley in the future with the remaining ten-foot strip and ten feet of his own property.

James Otto stated that the alley is nothing but weeds and grass that has to be mowed by Mr. Mihm every year and he sees only benefits from vacating the property.

Lonn Strode stated that there is no reason why the property can't be vacated. He said that the Halsteads have done a beautiful job landscaping and improving their small lot and the vacation would allow them to do permanent improvements.

Opponents - Mr. Mihm stated that the previous owners of the Halstead property had been granted a setback variance because of economic hardship and he should have been given the same consideration in his request for a fee waiver. He explained that at the time of his original request to vacate the alley, he had not yet received confirmation from the state regarding his Measure 37 claim, but since receiving state approval, he has decided that it makes more sense to leave the alley open for access to lots on both sides. He stated that because of the distance between Cove Orchard Road and those lots and a forty-foot difference in elevation, using the alley for access would result in a considerable reduction of development costs and he should not be denied the least expensive option for future development. He stated that the property has not been a maintenance burden to the county and he is only asking for fair treatment and consideration of the economic impact on him.

Ms. George stated that a twenty-foot alley is insufficient for emergency vehicle access. Ms. Stern agreed, stating the alley could only be used for a private easement driveway. Ms. Lewis pointed out that Mr. Mihm could develop portions of Washington and Lincoln Streets to avoid having to go to the higher elevation. Mr. Mihm stated that Washington Street would be more expensive to develop because it is in a 100-year floodplain.

Mr. Gray stated that if the vacation is approved, Mr. Mihm's permit to work on the subject property would be revoked and he could apply for a refund from the county. Mr. Mihm agreed to submit his display of maps and photos into the record as evidence.

Rebuttal - Mr. Halstead stated that no access would be denied as a result of the vacation and it would prevent the existing fence, utilities, and trees from having to be moved in the future and would allow him to develop his portion of the alley for better usage. He said that replacing his temporary storage area with a permanent development would be an asset to the community.

Mr. Mihm stated that Mr. Halstead should have known his lot size before purchasing it. He stated that approving this vacation because Mr. Halstead underestimated his storage space would set a precedent for other property owners.

Ms. George stated that she is unsure why alleys were ever platted because they are not wide enough for a safe roadway, but Mr. Halstead bought his property with the fence already in place and the right-of-way already being used for private use. She said that Mr. Mihm plans to develop his property and give other people access through this right-of-way that has never been used by the public and is asking the Board to subsidize his development costs at Mr. Halstead's expense.

Ms. Stern reminded Mr. Mihm that he has been farming the public right-of-way for many years for his own benefit. She stated that this Board has never waived fees and Mr. Mihm's request for a waiver was asking for special treatment. She expressed her concern about his ongoing harassment of his neighbors and the Planning Department.

Mr. Halstead noted that a portion of his own property is included on Mr. Mihm's list of lots for future sale. He restated his belief that it would be a better usage of the subject property to be privately owned and improved.

Staff Recommendation - Mr. Linscheid recommended approval of the request, explaining that the county has an administrative and regulatory burden of responsibility over public right-of-way roads such as this and he supports every request for vacation unless there is a good reason not to.

Close of Public Hearing / Deliberation - Ms. Lewis stated that the county has to keep track of a great deal of public right-of-way property which will never be developed because of insufficient revenue. She said that Mr. Mihm has been farming this property for over thirty years and it was not platted to be a road. She stated that the right-of-way property has clearly been used by both adjoining property owners as part of their individual holdings and has not been used by the public, so it would be wrong to change the use for public access when there are more appropriate platted access roads. She said she would have no problem with Mr. Mihm using the remaining ten-foot strip as a private driveway to his property.

She stated that Mr. Mihm's request for the Board to consider lowering his development costs is a very different situation than the previous setback variance granted to the Whitlocks for their own family use, which did not create a safety issue.

Ms. Lewis moved tentative approval of RV-7-2006, with findings to be adopted December 13, 2006. Ms. Stern stated that she believes the request meets the statutory requirements. Ms. George agreed, stating that the vacation would not change Mr. Mihm's ability to access his property, whereas changing the historical use of the property would penalize Mr. Halstead. 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. Parks Board, three positions;
  - b. Commission on Children & Families, one youth position and four alternate positions.
2. Northwest Senior & Disability Services has openings for Yamhill County residents on the following regional councils:

