

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 December 6, 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; Sherrie Mathison, Solid Waste Coordinator; Mike Brandt, Planning Director; Martin Chroust-Masin, Associate Planner; John McKibben, 218 SE 141<sup>st</sup>, Portland; Kirti Mohapatra, 15055 NE Dopp Road, Newberg; David & Faye Fields, 17900 NE Lewis Rogers Lane, Newberg; Milo Chapman, 17580 SW 131<sup>st</sup> Avenue, Tigard; Mary Cyr, 17280 NE Bayley Road, Newberg; Nancy Sturdevant, 17600 NE Aviation Way, Newberg; Craig Johnson, 14861 NE North Valley Road; and others as listed on the attached attendance roll.

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. George moved approval of the consent agenda with the addition to item B(1) of minutes from November 29, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye.

Minutes

1. Approve the following formal session minutes:
  - a. **B. O. 06-970** - June 28, 2006;
  - b. **B. O. 06-971** - October 18, 2006;
  - c. **B. O. 06-972** - October 25, 2006;
  - d. **B. O. 06-973** - November 1, 2006;
  - e. **B. O. 06-974** - November 29, 2006.

Personnel

2. **B. O. 06-975** - Approve the employment of Callie Gamble, McMinnville, as HS Associate in HHS Chemical Dependency, regular full-time, Range 14, Step 1, \$2544/month, effective December 11, 2006.

3. **B. O. 06-976** - Approve the employment of Kerry Hammersmith, Portland, as HS Specialist 1 in HHS Chemical Dependency, regular full-time, Range 17, Step 1, \$2944/month, effective December 26, 2006.

4. **B. O. 06-977** - Approve the change of status of Michelle Bernards to HS Specialist 1 in HHS Chemical Dependency, Range 17, Step 2, effective December 26, 2006.

#### Contracts

5. **B. O. 06-978** - Accept the apparent low bid from ABM Janitorial Services for janitorial services at the courthouse, \$61,978/year, and authorize the Chair to execute the contract, subject to approval by County Counsel, effective January 1, 2007 through December 31, 2008.

6. **B. O. 06-979** - Accept the apparent low bid from Concrete Enterprises, Inc. for the Lafayette Highway, Moores Valley Road, and Westside Road Bridges, not to exceed \$5,218,089, and authorize the Chair to execute the contract, subject to approval by County Counsel.

7. **B. O. 06-980** - Approve an agreement between HHS Chemical Dependency and Kathyleen Tomlin for consultation and training services in connection with a SAMHSA grant, not to exceed \$12,000 per fiscal year, effective December 6, 2006.

#### Fire District

8. **B. O. 06-981** - Adopt the final order approving the formation of the new Carlton Fire District, establishing a permanent tax rate, naming the newly-elected directors, and noting the results of companion elections.

#### Policy

9. **B. O. 06-982** - Adopt a policy delegating authority to department heads to approve refunds up to \$500.

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

1. **B. O. 06-983** - Consideration of adoption of Ordinance 799 in support of Planning Docket Z-03-06, a request for zone change from EF-20 to AF-40 on 18.5 acres, applicant Vicky Tadic, as tentatively approved by the Planning Commission on November 2, 2006.

Rick Sanai provided the first and second readings of Ordinance 799 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):

##### Personnel

1. **B. O. 06-984** - Consideration of approval of the change of status of Katie Jones to regular full-time employment in the Juvenile Department, \$2302/month, effective December 9, 2006.

Ms. Stern moved approval of the change of status of Katie Jones. The motion passed, Commissioners Lewis, George, and Stern voting aye.

E. **PUBLIC HEARINGS:**

1. **B. O. 06-985** - Consideration of a request for a ten-year franchise extension for Western Oregon Waste (WOW), as recommended unanimously by the Solid Waste Advisory Committee.

Ms. Lewis opened the public hearing.

Staff Report - Sherrie Mathison stated that WOW can apply for franchise extensions every thirty months to extend the franchise expiration date ten years from the date of approval. She reviewed the history of previous extensions and noted that there have been no complaints about WOW's service. She stated that the Solid Waste Advisory Committee had unanimously recommended approval of the franchise extension.

There being no public testimony, the public hearing was closed. Ms. Stern stated that she would abstain from the vote because her husband is employed by WOW and this issue would have a financial impact on her household.

Ms. George moved approval of the ten-year franchise extension. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern abstaining.

2. Consideration of FD-15-06, an appeal of the Planning Director's approval for a farm help dwelling, applicant Nicolette Nickolaou, appellants Sam and Millie Eastman. [*Appeal tentatively denied, findings to be adopted December 20, 2006.*]

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Lewis stated that she and Ms. George had taken a site visit on Monday afternoon with Ken Friday. Ms. Stern stated that she had previously visited Youngberg Hill. She noted for the record that she had received phone calls from Klaus Pagel and Wayne Bailey regarding issues raised peripherally in this matter, but 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 - Mr. Friday described the subject property, the surrounding property, the request for a farm help dwelling, and the appeal of the Planning Director's approval.

Proponents - Sam Justice, representing the applicant, submitted supplemental written materials for the record in support of the findings prepared by Planning staff and noted that the appellants and the Planning Department have already received copies of the materials.

Nicolette Nickolaou stated that farm costs have been increasing over the years and she has recently increased the size of her vineyard by almost fifty percent, which will increase maintenance costs. She added that she has switched to organic farming and is practicing sustainable farming practices. She said that two of her family members have agreed to move here and help her on the farm and the proposed farm dwelling would be located on the side of the hill which is not farmable. She stated that she will continue to play a predominant role at Youngberg Hill Vineyard and is

working to promote farming as a family business. She stated that she meets all of the criteria for approval and requested that the Board approve her application for a farm help dwelling.

Mr. Justice reviewed the supplemental exhibits, the legal standards for a farm help dwelling, and the proposed findings as listed in a memo from the applicant. He concluded that there is sufficient evidence in the record to support the need for additional farm help.

Questions of Proponents - Mr. Justice clarified that an access easement on the driveway owned by Ms. Nickolaou is granted to parcel 1, which is not shown on the map.

Neutral Testimony - Norman Barnett stated that he has owned parcels 3, 4, and 5 since 1988 and the driveway through the bed & breakfast is the only access to parcel 3. He stated that the location of parcel 1 is unknown, but he needs access to parcel 3 on a regular basis and plans to do some logging. He stated that the driveway is steep in sections and has several “S” turns with limited visibility and Ms. Nickolaou has created an unintended public safety hazard by only paving one side of the driveway because people tend to drive on the wrong side of the road in order to stay on the asphalt. He showed photos of the road on his laptop computer. Mr. Friday stated that copies of the photos would need to be submitted for the record.

Mr. Barnett stated that Ms. Nickolaou has installed a very powerful music system for outdoor weddings and other gatherings and the music can be heard clearly from his porch. He stated that because the farm income is a relatively small portion of the income from the subject property, he is concerned that the family help may play a role in expanding non-farm activities.

He requested that if the Board approves the application, it include two additional conditions: 1) the owner shall address the road safety issue by either paving the remaining side or removing the existing pavement; and 2) non-farm sounds emanating from the property shall not exceed the noise level of ambient sounds from surrounding farms. He stated that the owners are doing a fine job with the bed & breakfast and he would like to see it operated in a safe manner.

Opponents - Michael Gunn, representing the appellants, noted that supporting documents were faxed to the Planning Department yesterday. He said that the Eastmans own 146 acres southwest of the access road easement. He stated that Ms. Nickolaou’s business has evolved into uses never authorized by the original conditional use permit for outdoor weddings, which has caused traffic and noise problems for the neighbors.

He stated that one of the criteria for approval of this application is that the property is currently used for farm use on a commercial scale, but no definition is given in the ordinance for “commercial scale”. He said that the county’s position that \$10,000 gross income from the property satisfies the commercial scale requirement is unreasonable and incongruous with other county ordinances. He explained that it doesn’t make sense that the property could qualify for a secondary farm dwelling when it doesn’t meet the \$80,000 income requirement for a primary farm dwelling.

He stated that another criteria is that the farm operator shall continue to play a predominant role in management of the farm, which is contradictory to the statement on the application that the residents of the proposed dwelling would be spending eighty hours per week on vineyard

management, spray problems, and all areas of vine management.

He stated that the Eastmans are appealing the Planning Director's approval of the application because it fails to meet these two criteria.

Questions of Opponents - Ms. Stern pointed out that the farm income was well over \$80,000 in both 2005 and 2006 if both grapes and wine are included. Mr. Gunn stated that the \$80,000 income requirement only applies to the sale of farm product or livestock grown on the farm and would not include wine. Ms. Lewis stated that the county has never used the \$80,000 income rule as a test for farm help dwellings and has a long-standing determination of \$10,000 gross income to satisfy the commercial scale requirement.

Sam Eastman stated that although the posted speed on the driveway is 15 mph, many people drive in excess of 50 mph and he has had several near misses with people driving downhill on the wrong side of the road. He added that wine tour buses and buses for bands and equipment also use the road. He stated that his house is at least half a mile away from the subject property and the music is so loud that he can't sit outside his house during events, which occur most weekends throughout the spring and summer. He said that the music starts as early as 6:00 p.m and has gone as late as 11:30 p.m., although the ending time was changed to 9:30 p.m. after complaints were made. He expressed concern that the farm help would also be involved in other commercial activities on the property.

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

Rebuttal - Mr. Justice stated that the income requirement for a primary farm dwelling does not apply in this case and even it did, the property produces more than the \$40,000 gross income required for property that is not high-value farmland. He added that taking into consideration the potential savings in labor costs from having family help would also justify defining this as a commercial operation. He pointed out that the Board has previously interpreted "commercial scale" to mean \$10,000 gross income and it wouldn't be fair to change the standard now.

He stated that "predominant role" means that the person is in charge of making decisions about farm operations and the evidence clearly shows that Ms. Nickolaou meets that role. He cautioned the Board to limit its consideration to the criteria related to a secondary farm dwelling, noting that opponents should direct their concerns about noise and traffic to the event permit rather than to this application.

He requested that the Board not attach any conditions of approval except those recommended by staff, pointing out that authoritative information in the record shows that the road complies with the standard for a secondary farm dwelling and no assertion has been made that a secondary dwelling would have any impact on the noise level.

Ms. Nickolaou stated that she has posted signs at both ends of the driveway and has added as much extra width as possible at sections of poor visibility. She stated that the existing signs are more than adequate for a private driveway, but she would concede to a requirement for additional

signs. She explained that she left half of the road unpaved in order to allow safe travel during icy conditions and pointed out that before paving, everybody drove down the middle of the road.

She stated that Mr. Barnett has alternative motives for noting the dangers on the driveway because of his Measure 37 claim. She said that he has no easement right on the road because he does not own parcel 1 and neither he nor Mr. Eastman have contributed anything to the upkeep of the road. She noted that she has been trying unsuccessfully to get Mr. Eastman into mediation since September. Mr. Justice submitted documentation for the record regarding mediation attempts. Mr. Friday explained that both sides want conditions placed on the mediation and have not yet been able to reach an agreement.

Ms. Lewis stated that she is very disturbed about the situation and the lack of respect for the neighbors and suggested a reevaluation of the event permit. Mike Brandt reviewed the history of complaints received from the neighbors and the permit revocation process and stated that the best way to deal with the issue at this point is through mediation. Ms. Lewis requested a copy of the conditional use permit from the Planning Department.

Ms. Stern stated that Ms. Nickolaou's establishment brings money into the county and is an asset to the community and she has been working to resolve the issues with her neighbors. She said that this is not the proper time to discuss issues which are not pertinent to the application and it is unfair to judge Ms. Nickolaou without having all of the information.

Staff Recommendation - Mr. Friday recommended approval of the request for a farm help dwelling with the four conditions listed in the staff report. He stated that the subject property is not high-value farmland and would only be subject to the \$40,000 income requirement for a primary farm dwelling, which would be met in this case, although the standards are lower for a farm help dwelling. He stated that the additional conditions requested by Mr. Barnett apply to a site design review and should not be attached to this application. He said that he would have no serious objection to attaching a condition requiring additional signs, although he wouldn't recommend it.

Close of Public Hearing / Deliberation - Ms. Lewis stated that she believes the applicant has met the approval criteria and although she is disturbed about the other commercial activities on the property, she agrees that those concerns are not part of the criteria. She apologized for addressing those unrelated concerns at this time and said she is pleased to hear that the applicants are trying to resolve the issues through mediation.

She moved tentative denial of the appeal and approval of FD-15-06 with the conditions listed in the staff report and two additional conditions requiring two additional signs and specifying that the secondary dwelling is to be used for farm help dwelling purposes only, with findings to be adopted December 20, 2006. The motion passed, Commissioners Lewis, George, and Stern voting aye. Ms. George expressed her hope that an agreement can be reached so that the neighbors feel more respected. She stated that she doesn't believe the \$80,000 income test applies to this application and added that she has always felt that requirement is unrealistic for farms.

The meeting recessed at 11:30 a.m. and reconvened at 11:36 a.m.

3. Consideration of M37-68B-05, a Measure 37 claim authorizing Thomas & Ellen Ann Currans, Jr. to make application to divide 52 acres into eight to ten lots of 2.5 to four acres each and twenty lots of one to two acres each and establish dwellings thereon. *[Tentatively approved, order to be adopted December 13, 2006.]*

Ms. Lewis opened the public hearing. John Gray reviewed the hearing procedure.

Staff Report - Mr. Brandt stated that the original claim, which was approved in August 2005, was to divide the property into eight to ten lots of 2.5 to four acres each and one twenty-acre lot, but the claimants have since decided to divide the twenty-acre lot into lots of one to two acres each. He recommended modifying, removing or not applying the land use regulations back to the 1965 ownership date. He submitted a letter from Claus Eggers for the record and noted that traffic issues are not a condition for Measure 37 approval, although they will be addressed in subsequent land use applications. He stated that the subject property is located very close to the Bales claim.

There being no further testimony, the hearing was closed. Ms. Lewis moved tentative approval of M37-68B-05 with the final order to be adopted December 13, 2006. Ms. Stern stated that she does not believe the legislative intent of the voters was to allow subdivisions on rural residential land. Ms. Lewis stated that the criteria for denial is limited to ownership issues. The motion for tentative approval passed, Commissioners Lewis and George voting aye and Commissioner Stern voting no.

4. Consideration of M37-29-06, a Measure 37 claim authorizing Golda Bales to make application to divide 23.81 acres into one-acre lots and establish dwellings thereon. *[Tentatively approved, order to be adopted December 13, 2006.]*

Ms. Lewis opened the public hearing.

Staff Report - Mr. Brandt stated that unless the county chooses to pay compensation, it is obligated to waive land use regulations for valid Measure 37 claims. He recommended modifying, removing, or not applying the land use regulations back to March 1, 1972 and said that concerns about issues such as traffic and noise could be raised during the land division process. He stated that one-acre lots are not allowed in rural residential zoning, but there is no minimum lot size specified for agricultural zoning.

Claimant - Mr. Gunn, representing the claimant, supported Mr. Brandt's recommendation, stating that the criteria for a valid Measure 37 claim have been met. He noted that the claimant has listed one-acre lots in order to keep her options open, but the actual land use application may include fewer lots.

Public Testimony - Vincent Cantwell read a statement in opposition to the claim and submitted a copy for the record (see attachment). Ms. George stated that the limited water overlay limits farm use of water but does not restrict residential use, which seems backwards. Mr. Gunn stated that the issues raised by Mr. Cantwell have nothing to do with Measure 37 and should be raised at the subdivision application hearing.

Close of Public Hearing / Deliberation - Ms. Lewis stated that the issues raised by Mr. Cantwell are important issues. She noted that the county has an infrastructure ordinance which deals with roads and suggested that he obtain a copy from Mr. Brandt. She said that septic issues can be dealt with during the land use process and water use is under the jurisdiction of the state.

Ms. Lewis moved tentative approval of M37-29-06 with the final order to be adopted December 13, 2006.

Ms. Stern stated that although she normally votes against rural subdivisions, this land was originally zoned to allow rural residential use. She agreed with Mr. Cantwell that Measure 37 does not consider the expectations held by neighbors at the time they purchased their property. Ms. George added that the county typically includes very strong “right to farm” wording in its land use findings and farming rights are given priority over other uses.

The motion for tentative approval passed, Commissioners Lewis, George, and Stern voting aye. Mr. Brandt clarified that a public hearing is only held during the land use process if someone requests it and pays for it, but all written comments are considered.

5. Consideration of M37-35-06, a Measure 37 claim authorizing Martin and Katherine Nicklous to make application to divide 3.36 acres into seven lots and establish dwellings thereon. *[Tentatively approved, order to be adopted December 13, 2006.]*

Staff Report - Mr. Brandt described the subject property and recommend modifying, removing, or not applying land use regulations back to the May 1968 ownership date. He stated that since the staff report had been submitted, he had received a comment from Oregon Department of Transportation saying that state highway access will be considered and the owners would be required to obtain permits for any access to the highway.

Claimant - Mr. Gunn, representing the claimant, stated that this is a straightforward claim which satisfies both criteria of Measure 37. He pointed out that although the Board decided to hold a public hearing because of the small lot sizes requested in the application, lot size is not relevant to Measure 37.

Public Testimony - Ms. Lewis noted that Barton Brierly, City of Newberg, had submitted a card in opposition to the application, but is no longer present. Mr. Brandt stated that Mr. Brierly had previously submitted a letter which is included in the Board’s packet. Ms. Lewis stated that although she understands the city’s concern regarding the impact of half-acre lots, this property is within the city’s urban growth boundary and can be brought into the city at any time.

Close of Public Hearing / Deliberation - Ms. George moved tentative approval of M37-35-06 with the final order to be adopted December 13, 2006. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern voting no.

The meeting recessed at 12:10 p.m. and reconvened at 1:03 p.m.

6. Consideration of C-04-06, a request for conditional use approval for weddings and other

gatherings up to 300 people, applicant Parimita Mohanty. *[Tentatively approved, order to be adopted December 20, 2006.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. She stated that no site visit had been taken because the commissioners are all very familiar with this area. She stated for the record that the Board had received complaints in early July from one of the residents on Dopp Road regarding a wedding on the subject property, but the complaints were received prior to the land use application being submitted. Ms. George stated that she lives within a mile of this location and had been contacted by Milo Chapman prior to the application with a request for a recommendation for an attorney, which she had provided, but this does not affect her ability to render an impartial decision.

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 - Martin Chroust-Masin described the subject property, surrounding uses, and the request for conditional use approval for weddings, business meetings, and conferences. He stated that parking would be available for 150 cars. He noted that the previous owner had a home occupation manufacturing dollhouses, but conditional use permits do not usually transfer when ownership changes.

Proponents - Todd Sadlo, representing the applicant, stated that the proposal is for a wedding venue for up to 300 people and 150 cars. He said that the original application did not state a limit and 300 is the limit which has been discussed throughout this land use process. He said that there is ample parking for 300 people, which is the typical size for weddings.

He stated that the applicants had held eight wedding events over the summer without conditional use approval, which had generated many negative comments because of a hired facilitator who had made unrealistic promises and had not handled the events properly. He explained that the applicants have tried to address the concerns of the neighbors and as a result, most of the residents closest to the property have provided signatures in support of the application.

He stated that the two most important issues raised at the Planning Commission hearing were traffic and noise. He stated that weddings do not generate a lot of cars and the traffic is staggered throughout the event, with the wedding party, family, and guests arriving at different times. He added that the subject property has good access on flat, gravel roads

He stated that Mr. Chroust-Masin's recommendation for no amplified music is not realistic because most people want music and dancing at a wedding. He said that the proposed conditions would resolve the noise issue by prohibiting amplified bands, stopping the music at 10:00 p.m., and providing a system to address any complaints received from residents in the area. He stated that if participants are properly advised and events are properly managed, there shouldn't be any noise impact greater than that of the surrounding farms. He added that the noise level difference between 150 people and 300 people would be marginal.

He stated that he has proposed additional conditions to cease alcohol service one hour prior

to the end of each event, provide security to ensure that events are contained to the subject property, remove any litter and temporary signs generated by the events, and prohibit parking within thirty feet of Dopp and Bailey Roads. He clarified that there would be no wine tasting and alcohol would only be served by a caterer with a permit.

He concluded by stated that weddings are not inherently in conflict with farm zone uses and if handled well, a venue like this would be an asset to the county by filling an existing need and promoting the beauty of Yamhill County.

John McKibben stated that he would be responsible for booking and organizing the events, making sure that the rules are clearly explained and followed, and correcting any issues that arise during events. He explained that he had previously operated a wedding facility in Portland and is very experienced at keeping noise levels from disturbing the neighbors. He stated that his catering company would supply food service for all events and would carry a liquor license for beer, wine, and champagne. He assured the Board that his staff is well-trained at serving alcohol and monitoring the number of drinks each person has had.

Ms. Lewis pointed out that the ordinance requires the home occupation to be substantially operated within buildings. Mr. Sadlo stated that although the events will all be held outdoors, the substantial part of the operation consists of activities such as planning, organizing, and cooking, which will be done indoors. Ms. George expressed concern about the potential conflict to an outdoor gathering from blowing dust or spray from farm activities. Mr. McKibben stated that he had encountered no problems with farming conflicts this past summer and he could communicate with major farm operations in advance to coordinate activities.

David Fields stated that Ms. Mohanty and her husband have done a phenomenal job improving the quality and value of their property and were very distressed about the problems caused by the hired facilitator. He stated that they are wonderful neighbors who have made their property and facilities available to the neighbors and the school. He said that he hadn't noticed any problems with the traffic on Dopp Road during last summer's events and the neighboring airport creates more of a noise disturbance than the weddings. Faye Fields stated that this would be a wonderful addition to the county and the applicants are very willing to work with the community to increase the sense of unity.

Milo Chapman, previous owner of the subject property, stated that the largest event he had held on the property was a church event with about 300 people in attendance. He said that the only problem he had experienced with farm spraying was when a plane accidentally sprayed across his yard. He expressed his support of the application and stated that it would be an asset to the community.

Questions of Proponents - Mr. Chapman explained that some of the private events he had held on the property had been during the evenings and no alcohol was served. Mr. McKibben stated that he understands that the airport is a preexisting business and he will make sure clients are aware of potential noise from helicopters.

Opponents - Nancy Sturdevant, owner of Chehalem Airport, expressed concerns about guests

wandering onto the runway during events and alcohol consumption and signs contributing to accidents on Highway 240. Ms. Stern read the proposed conditions regarding security and cleanup. Ms. Sturdevant said she would be satisfied with the conditions if they are followed. She pointed out that more neighbors would probably have attended this hearing if the notice had stated that the facility would accommodate 300 people instead of 150.

Neutral Testimony - Mary Cyr stated that the applicants were put into an unfortunate situation by the former facilitator and Yamhill County needs a nice facility like this that is not tied to the wineries. She said that her main concern is the noise, although the airport makes much more noise than the weddings. She emphasized the importance of having the ability to call in a complaint and have the problem taken care of.

Public Agency Reports - Mr. Chroust-Masin reviewed the reports in the staff report and stated that no additional reports had been received.

Rebuttal - Mr. Sadlo discussed the issue of the public notice and stated that the applicant has shown that the subject property is suitable for up to 300 people and that capacity is necessary in order to make the business a success. He explained that 300 was the number discussed at the Planning Commission and although the public notice has caused some confusion, there are no legal impediments to granting the conditional use approval for up to 300 people. He stated that he is willing to include the conditions from Mr. Chroust-Masin's list that were inadvertently left off of his list. He noted that the owners may fix up the building on the property in the future and use it for events, which would be an asset to the business.

Staff Recommendation - Mr. Chroust-Masin explained that the number in the public notice was based on an email from Ms. Mohanty which stated that parking would be available for up to 150 cars. He recommended approval of C-04-06 with the conditions stipulated in the staff report, including the condition prohibiting amplified music, noting that he still has concerns about amplified music creating noise issues for neighbors.

The meeting recessed at 2:55 p.m. and reconvened at 3:01 p.m. Mr. Sanai stated that after discussion with Mr. Sadlo, he believes it is not necessary to re-notice the public hearing based on the discrepancy in the number of people allowed at events.

Close of Public Hearing / Deliberation - Ms. Stern stated that she believes the criteria for approval have been met and she agrees with the staff recommendation with the exception of Condition #6 prohibiting amplified music. She explained that the condition submitted by Mr. Sadlo states that if the applicant's attempts to keep the noise under control does not satisfy the neighbors, then amplified music would no longer be allowed. She said that she agrees with the other conditions submitted by Mr. Sadlo as well. She expressed her appreciation to the neighbors for their willingness to work with the applicant and stated that a venue on this very special property would be a great addition to Yamhill County.

Ms. Stern moved tentative approval of Planning Docket C-04-06 with the additional conditions submitted by Mr. Sadlo, with findings to be adopted December 20, 2006.

Ms. George agreed with Ms. Stern about the amplified music and stated that the proposed conditions should keep the business from upsetting the general sense of the rural area. She agreed that there is a great need in the county for a wedding facility and this beautiful property is the perfect place for such events.

Ms. Lewis stated that the application does not meet the criteria for a home occupation because it is not substantially operated inside a building and because the business would be primarily operated by Mr. McKibben rather than by a resident of the property. She also expressed her disapproval of allowing amplified music in a rural area, pointing out that it would be hard to enforce and the county tends to give homeowners multiple chances to come into compliance before shutting down the business. Commissioners George and Stern agreed to modify the hours of operation to end at 9:30 p.m. in order to be consistent with Youngberg Hill.

The motion for tentative approval passed, Commissioners George and Stern voting aye and Commissioner Lewis voting no.

**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:
  - 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](mailto:Sally.Lawson@state.or.us).

The meeting adjourned at 3:36 p.m.

Anne Britt  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair	LESLIE LEWIS
Commissioner	KATHY GEORGE
Commissioner	MARY P. STERN



BOARD OF COUNTY COMMISSIONERS

Attendance Roll for meeting records

Meeting: Informal \_\_\_\_\_ Formal  Work Session \_\_\_\_\_ Date 12/6/06

PLEASE PRINT  
Name

PLEASE PRINT  
Complete Address

PLEASE PRINT  
Subject

Nicolette Nickolaou 10660 SW Youngberg Hill Farm Dwelling  
 Sam Justice (Lawyer) P.O. Box 480, McMinnville OR " "  
 Todd Sadlo 1532 SE 36<sup>th</sup> Ave PDX 97214 C-04-06  
 Mike Gunn PUBx 1046 Newberg 97132 FD 15-64 Sec 115  
 Anne McIntyre PO BOX 129 Dundee OR 97115 M-37  
 Sally & Sharlene Niggli 1980 NE Niederberger Rd Dundee, OR 97115 M-37  
 VINCENT CAMPWELL PO Box 129 Dundee OR 97115 M-37/749 claim  
 Ed Laang 17979 NW Linn Regester Newberg OR  
 Ellen Curran 19855 NE TRUNK Road, Dundee, OR 97115 M-37  
 Barden Brierley P.O. Box 970 Newberg OR 97132 M-37-3506 Miklaus  
 Sam W Gardner 10650 Youngberg Hill Rd McMinnville OR  
 Tom CURRANS 19855 NE TRUNK Rd, DUNDEE, 97115  
 NORMAN BARNETT 1412 SE 95<sup>th</sup> Ave Vancouver Farm Dwelling  
 Ee-Elleu BARNETT 1412 SE 95<sup>th</sup> Ave Vancouver Farm Dwelling  
 Katherine R Nicklaus 1101 Sitka Ave, Newberg OR M37  
 Monte T. Nicklaus 1101 Sitka Ave Newberg OR M37  
 Paula Cathers 19286 Niederberger Rd. Dundee OR M-37  
 Ch. Joann Bales. 19284 Niederberger Rd. Dundee, OR M-37

EXHIBIT A 1/1

Anne L. McIntyre  
Vincent Cantwell  
PO Box 129  
18910 NE Niederberger Rd  
Dundee, OR 97115

December 5, 2006

**Subject: Measure 37 Claim – Bales Property Yamhill County Tax Lot 3334-500**

Commissioners:

Please accept these comments regarding Docket M37-29-06:

We are the owners of Tax Lot 3334-600, 18910 NE Niederberger Rd. Our property is an EFU zoned, 20.8 acre parcel with a small manufactured home. We currently farm approximately 3 acres of vineyard and are in the process of developing the whole parcel to vineyard. Our property is located approximately 500 feet from the proposed sub-division.

**1. The proximity of a 23 lot rural sub-division will negatively impact our right to pursue normal farming practice.**

Our farming practice includes the use of heavy equipment, herbicides, pesticides and firearms. Generation of noise and dust and the public safety hazards that are associated with farming are not are not compatible with proximate residential development.

**2. If we are unable to farm our land, we will suffer a loss of property value since we are not afforded the same property rights as our neighbors.**

Proximate residential development is widely proven to be detrimental to agriculture. Most of our neighboring land owners qualify as Measure 37 claimants. Unlike our neighbors, we are subject to EFU zoning restrictions. If our land cannot be farmed or developed similarly to neighboring parcels, it will lose value.

**3. Our right to use our land according to zoning in effect at time of purchase should be should be considered equally as that of Measure 37 claimants.**

When we purchased our property in 2002, we had the expectation that the zoning of our parcel and neighboring parcels would remain in-tact. This expectation is no different then the expectation that Measure 37 claimants had when purchasing their land. Our property rights to use our land in accordance with zoning in effect at time of purchase should receive the same consideration as those of Measure 37 claimants.

**EXHIBIT B 1/3**

**4. If we are unable to farm our land, we will lose our substantial investment in vineyard infrastructure and development. We will also lose the income generated by the vineyard.**

**5. The infrastructure does not exist to support the development of a 23 lot rural subdivision:**

**Roads:** Niederberger Road is a narrow, winding road with a significant amount of commercial/agricultural traffic. It is our opinion that the present road is unsafe. In the past two years there have been two major vehicle incidents. One, in a narrow turn, a school bus slid off the road, injuring children. Two, our neighbor, Mr. Mel Niggli, was tragically killed when his vehicle slid off the road in that same narrow turn. There have been numerous other traffic incidents over the years. Increased use of this road by the proposed subdivision will only further reduce the safety of the road and will make it more hazardous to all users.

**Water:** The Oregon Dept of Water Resources has determined that our aquifer cannot support additional development. In 2006, this resulted in our being denied a water right for additional use of ground water. The proposed subdivision will likely negatively impact our available water.

**Sewer:** The proposed sub-division is not connected to city sewer. Increased septic loads and run-off could potentially harm environmental damage to Hess Creek and surrounding land.

We request that the Yamhill County Board of Commissioners, as part of their review process, require the applicants to complete the following:

- a. A detailed Traffic Safety Study performed by a traffic engineer, that determines the compatibility of the proposed subdivision with the current commercial, agricultural and residential road uses. It should also consider the impact of increased traffic to the intersection at Niederberger Rd and 99W and surrounding Dundee neighborhoods. This study should identify required improvements that are necessary to make the road safe for the proposed increased use. The results of this study should be approved by Yamhill County, ODOT and the City of Dundee.
- b. A comprehensive Water Availability Study by a CWRE to determine whether existing water users will be impacted by the development. The results of this study should be approved by Yamhill County and the Oregon Department of Water Resources.
- c. A detailed Environmental Impact Study. This study should include not only an analysis of a significantly increased septic load; but also identify and propose mitigation of other environmental impacts that may occur with the placement of subdivision in close proximity to a rural area.

**EXHIBIT B 2/3**

The costs of these studies and any proposed infrastructure improvements should be borne solely by the applicant.

**6. The property owners have a documented history of non-compliance with zoning requirements.**

In the recent past, the Yamhill County Dept of Building and Planning determined that the property owners violated current code through the placement of non-permitted dwellings and misrepresented hardship dwelling applications. We express our concern that this pattern of non-compliance will continue.

Thank you for you consideration of this important matter.

Respectfully Submitted,



Anne L. McIntyre



Vincent Cantwell

**EXHIBIT B 3/3**