

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 February 7, 2007 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Kathy George and Leslie Lewis being present and Commissioner Mary P. Stern being excused.

Also present was John Krawczyk, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Laura Tschabold, Projects Coordinator; Mike Brandt, Planning Director; Murray Paolo, Information Services Director; Charles Harrell, 201B N Meridian Street, Newberg; Phil Kuehnel, 25543 NW Gerrish Valley Road, Yamhill; Janet Paquette, 22955 NE North Valley Road, Newberg; James Brown, 3407 NE 27th, Portland; Bill Dickas, 520 SW Yamhill Street #600, Portland; Robert and Ann McNamee, 3425 NW High Heaven Road, McMinnville; and others as listed on the attached attendance roll.

Commissioner George 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.

Don Loving discussed his concerns with plans by Oregon Department of Transportation (ODOT) to put a median in front of the Newberg First Assembly of God Church, which would force over 300 people coming to church to find another way into the entrance. He said that ODOT is unwilling to consider the church’s offer to put the access farther north on the property. He submitted a letter from John Bridges (see attachment) and requested the Board’s attendance at a meeting with ODOT representatives to discuss the issue. Commissioners George and Lewis agreed to offer their support and Ms. Lewis said she would talk to ODOT. John Bailey, Newberg First Assembly of God Deacon, read a statement expressing his evaluation of ODOT and stated that a median would cause the intersection of Highway 219 and 2nd Street to be the most dangerous intersection in Newberg. He discussed the need for a center turn lane, a 35 mph speed limit, and a possible stop light at 2nd Street to address safety concerns.

Henry Reeves stated that Measure 37 was sold without disclosure of its probable impact on citizens and asked the Board to explain what went wrong. He stated that claimants have been committing monetary fraud by submitting excessive compensation requests with no independent economic analysis. He urged the Board to support the governor’s Senate Bill 505, which would suspend Measure 37 until all problems have been resolved.

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

Minutes

1. Approve the following formal session minutes:
 - a. **B. O. 07-144** - November 22, 2006;
 - b. **B. O. 07-165** - December 6, 2006.

Personnel

2. **B. O. 07-145** - Approve the employment of Kathryn Petersen, Portland, as Deputy District Attorney 1 in the District Attorney's Office, regular full-time, Range 21, Step 2, effective February 12, 2007.
3. **B. O. 07-146** - Approve the employment of Sarah Ingalls, Portland, as on-call relief in the Juvenile Department, \$7.80/hour, effective February 7, 2007.
4. **B. O. 07-147** - Approve the employment of Joseph Plasker, Monmouth, as HS Associate in HHS Adult Mental Health, temporary full-time, Range 14, Step 1, effective February 12, 2007.
5. **B. O. 07-148** - Approve the change of status of Kevin Stephens to HS Specialist 2 in HHS Chemical Dependency, Range 22, Step 6, effective February 9, 2007.
6. **B. O. 07-149** - Approve the employment of Duane Terry, McMinnville, as Extra Help in Community Corrections, temporary part-time, \$20/hour, effective February 7, 2007 through August 6, 2007.
7. **B. O. 07-150** - Approve the change of status of Brenda Hopper and Shannon Miller to Senior Office Specialists in Community Corrections, Range 10, Step 1, effective February 9, 2007.
8. **B. O. 07-151** - Amend the Community Corrections position management roster to add position authority for a full-time Community Service Supervisor.
9. **B. O. 07-152** - Approve the change of status of Kim Pinson to Senior Office Specialist in the District Attorney's Office, Range 10, Step 1, effective February 9, 2007.

Contracts

10. **B. O. 07-153** - Approve Amendment #6 to the 2006-07 Financing Agreement #117553 between HHS Public Health and Oregon Department of Human Services.

Budget Transfer

11. **B. O. 07-154** - Approve the transfer of appropriation authority and funds for computer equipment related to the relocation of the Commission on Children & Families:

From	10-92-950.01	Contingency	\$2000
To	10-17-543.01	Dept. Equipment	\$2000

Refund

12. **B. O. 07-155** - Approve a \$700 refund from the Planning Department to Fred Turek.

Committees

13. **B. O. 07-156** - Approve the appointment of Al Hansen, Attorney, to the Local Public Safety Coordinating Council for a three-year term to expire July 2010.

14. **B. O. 07-157** - Approve the reappointment of Barbara Brown, Sharon Ingram, Kenneth Knutson, and Pieter Schoonveld to the Special Transportation Advisory Commission for three-year terms to expire December 31, 2009.

Measure 37

15. **B. O. 07-158** - Schedule a public hearing for March 7, 2007 to consider M37-132-06, a Measure 37 claim authorizing George Steele to make application to divide 22.65 acres into 22 lots and to establish a dwelling on each vacant lot.

C. **OLD BUSINESS:**

1. **B. O. 07-159** - Consideration of adoption of findings in support of M37-46-06, a Measure 37 claim authorizing Walter Gaibler to make application to divide 94.56 acres into one-acre lots and to establish a dwelling on each vacant lot, as tentatively approved January 24, 2007.

John Gray read the operative part of the order. Ms. Lewis moved approval of M37-46-06. The motion passed, Commissioners George and Lewis voting aye.

2. **B. O. 07-160** - Consideration of adoption of findings in support of M37-83-06, a Measure 37 claim authorizing Roy & Betty Wahle to make application to divide 95.74 acres into ten lots and to establish a dwelling on each vacant lot, as tentatively approved January 31, 2007.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-83-06. The motion passed, Commissioners George and Lewis voting aye.

3. **B. O. 07-161** - Consideration of adoption of Ordinance 802 in support of G-02-06, a request to modify the Interchange Overlay District to allow property in the Newberg Urban Reserve Area C to be considered for inclusion in the Newberg Urban Growth Boundary, as tentatively approved January 24, 2007.

Rick Sanai provided the first and second readings of Ordinance 802 by title only, declaring an emergency. Ms. Lewis moved to adopt the ordinance. The motion passed, Commissioners George and Lewis voting aye.

4. **B. O. 07-162** - Consideration of adoption of Ordinance 804 in support of Planning Docket PA-04-06, a request to bring thirty acres of urban reserve land into Newberg's Urban Growth Boundary, applicant Tim Speakman, as tentatively approved January 24, 2007 and continued from January 31, 2007.

Mr. Sanai provided the first and second readings of Ordinance 804 by title only, declaring

an emergency. Ms. Lewis moved to adopt the ordinance. The motion passed, Commissioners George and Lewis voting aye.

5. **B. O. 07-163** - Consideration of adoption of Ordinance 803 in support of Planning Docket PA-03-06, a request by the City of Newberg to amend their Urban Growth Boundary to include approximately 200 acres of property in northwest Newberg, as tentatively approved January 31, 2007.

Mr. Sanai provided the first and second readings of Ordinance 803 by title only, declaring an emergency. Ms. Lewis moved to adopt the ordinance. The motion passed, Commissioners George and Lewis voting aye.

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

1. **B. O. 07-164** - Consideration of the change of status of Elvira Myers to regular full-time employment in Telecommunications, effective February 9, 2007.

Ms. George moved approval of the change of status of Elvira Myers. The motion passed, Commissioners George and Lewis voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket S-14-06, an appeal of the Planning Director's approval for a nineteen-lot subdivision on 41.9 acres (Measure 37), applicants Samuel & Mildred Eastman, appellant Mark Bortnem. *[Continued to March 7, 2007.]*

Ms. George opened the public hearing. Mike Brandt stated that the applicants have requested a continuance to March 7, 2007. Ms. Lewis moved to continue the hearing to March 7, 2007. The motion passed, Commissioners George and Lewis voting aye.

2. Public hearing required for closeout of grant funding to the Housing Authority of Yamhill County (HAYC). *[No formal action taken.]*

Ms. George opened the public hearing.

Karen Christensen, HAYC, stated that the objective of the Regional Housing Resource Center is to help people, especially those of low to moderate income, do whatever is necessary to become self-sufficient and buy a house. She noted that a state grant has allowed the center to have twenty staff members working off-site this year. She said that the center is currently in Year 3 of operation and this hearing closes out grant funding for Year 2. She submitted a handout showing the Internal Service Delivery Flowchart for the housing center.

There being no public comment, the hearing was closed.

3. Consideration of M37-72-06, a Measure 37 claim authorizing Vernie and Kenneth Eiesland to make application to divide 26 acres into one-acre lots and to establish a dwelling on each vacant

lot. *[Continued to February 14, 2007 at the point of Deliberation.]*

Ms. George opened the public hearing. Mr. Gray read a statement explaining the process for Measure 37 hearings and the handling of evidence and noted that this is not a land use application. He reviewed the four criteria for a valid Measure 37 claim.

Staff Report - Mr. Brandt reviewed the claim and recommended modifying, removing, or not applying land use regulations back to January 20, 1968.

Claimants - Charles Harrell, representing the claimants, stated that he had nothing to add to the staff report. He said that prior to Senate Bill 100, Oregon's land had no zoning and was not designated as agricultural land, so he supports the rights of property owners to do with their land what was allowed at the time of purchase.

Public Comment - Roger Smith stated that the valuation alleged for this property is fictitious, if not fraudulent. He explained that the infrastructure costs to make the property marketable, including sewer, water, phone, and electricity, would be close to or equal to the alleged value, so there has actually been no loss of value. He stated that he has academic and national real estate credentials and his opinion is that based on the slope, wetland areas, and water availability, there might be one good building site on the subject property.

Perry Bodeen agreed that the applicant has overstated the loss of value and that only one or two homesites would be feasible because of the water scarcity, soil type, and slope.

Merilyn Reeves, representing Friends of Yamhill County, stated that the Board has the obligation to approve "a use" on the subject property, not necessarily the use that was requested by the claimant. She said that it is time to test this law in court and many citizens clearly share Commissioner Stern's view that rural subdivisions were not the legislative intent of the voters. She urged the Board to either reject the claim or approve it for a smaller number of lots.

Phil Kuehnel agreed that water is a significant issue on this property. He also objected to the sewage runoff onto his property, which adjoins the subject property.

Summation by Claimant - Mr. Harrell stated that the majority of the previous comments are not relevant to the Measure 37 approval criteria and should be brought up at the development stage. He pointed out that the staff report states that there is clearly a loss of value.

Ms. Lewis stated that although Mr. Harrell's clients have the right to ask for one-acre density, it is very unlikely that they will get subdivision approval for that and asking for something so unrealistic creates unnecessary angst for neighbors. Mr. Harrell explained that he advises his clients to ask for the highest possible density at this stage of the process in order to provide the broadest range of options for future plans.

Close of Public Hearing / Deliberation - Janet Paquette expressed concern that by participating in the approval of Measure 37 claims, Board members are creating a precedent for the future approval of their own claims, which is a conflict of interest. Mr. Gray stated that unless a

commissioner has a personal financial interest in a particular claim, he or she is not required to step down. He said that if citizens believe a commissioner is in violation of this statute, they can either contact the Government Standards & Practices Commission in Salem or challenge the claim in court.

Mr. Gray stated that the suggestion by Ms. Reeves is an argument that will soon be decided by appellate court. He said that if the Board approves a claim for less than what is requested and the decision is challenged in court, the county would probably have to pay attorney fees to the claimants if it lost. He noted that by the time this case was decided, the issue would probably have already been resolved by other cases in appellate court. He said that the county has followed the state's lead in adopting the practice that as long as there is a clear reduction of value, there is no need to determine the exact amount. He explained that because the county's ordinance requires the claimant to state a specific request, there is not a way to grant a waiver that is not specific to the number of lots.

Ms. Lewis moved to continue the hearing to February 14, 2007 at the point of Deliberation to allow Board members to discuss the issue in general with Mr. Gray without discussing the specific case. The motion passed, Commissioners George and Lewis voting aye. Ms. George stated that Measure 37 provides very few options to the Board, but there will be an opportunity for input on more issues during the development approval stage.

4. Consideration of M37-93-06, a Measure 37 claim authorizing Stuart Lindquist to make application to divide 340 acres into one-acre lots and to establish a dwelling on each vacant lot. *[Continued to February 14, 2007 at the point of Deliberation.]*

Ms. George opened the public hearing. Mr. Gray reviewed the Measure 37 hearing procedure and approval criteria.

Staff Report - Mr. Brandt reviewed the claim and recommended modifying, removing, or not applying land use regulations back to March 15, 1974.

Claimant - Bill Dickas, representing Mr. Lindquist, stated that he has submitted documents showing that the claimant has complied with all of the approval criteria. He stated that if the county were to approve the claim for less than what was asked for, it could be liable for the compensation amount as well as attorney fees. Mr. Gray stated that if the claimant were awarded compensation by the court and the county did not pay the compensation within two years, the land use regulations would be waived instead.

Public Comment - Ms. Paquette stated that she does not feel comfortable presenting her concerns to the Board because of Commissioner George's personal interest in Measure 37. She said she has serious concerns about developers who come in and destroy rural Oregon, contribute to sprawl, meth, and crime, and then leave. She stated that the Board can interpret how to respond to Measure 37 and pointed out that other counties have done it differently. She pointed out that agriculture is the highest priority of the county, as stated in the county's charter or similar document. She expressed her belief that most people did not understand the consequences of Measure 37, although those promoting it understood and grossly misrepresented it to the public.

John Paquette objected to the claim because of the huge potential negative impact on his livelihood and that of others. He said that he can see no positive agricultural benefits of the proposed development.

David Adelsheim encouraged the Board to drive down North Valley Road and look at the beautiful agricultural area that would be lost by approving this claim. He said that although Senate Bill 100 had unintended consequences, it didn't force residents to depend on the future for agriculture, as Measure 37 has done. He suggested that the Board not take action on the claim and tell the legislature that the county is in the untenable position of deciding between maintaining quality of life and providing satisfaction to a handful of property owners.

At the request of William Mautner, Mr. Gray provided information about Urban Growth Boundaries and their impact on housing densities. Mr. Mautner stated that providing water to 340 houses through a well or series of wells may violate the senior water rights of existing homeowners by causing existing wells to go dry. Mr. Brandt stated that senior water rights is a state law and Mr. Lindquist will need a state Measure 37 waiver as well a county waiver. He reviewed the state's procedure for processing claims. Mr. Mautner requested that the Board postpone consideration of this claim until after the state has made its determination.

Barton Brierly, Newberg Planning & Building Director, expressed his concern about the significant public health and safety issues arising from 340 lots as well as the expense the city would incur to address traffic issues. He stated that he didn't see single family dwellings listed in the approved uses for agricultural zoning, which the subject property had at the time of purchase, and the Board should err on the side of upholding the county's Comprehensive Plan. Ms. George noted that the county has an ordinance requiring the developer to pay for infrastructure costs.

Charles Kreth stated that not all adjoining property owners had received notice of this proceeding. He stated his opposition to Mr. Lindquist's plans for development and discussed the scarcity of water in the area.

Merilyn Reeves, representing Friends of Yamhill County, thanked the Board for holding these Measure 37 hearings. She stated that the land use system is not perfect, but Yamhill County's sustainable agricultural and forest community is a result of that system and is now being threatened by Measure 37, which has only further complicated land use laws. She said that it would be irresponsible to allow lots without available water or to have a well for each one-acre lot. She said that the Board could require a community water system, even though it would be more expensive for the developer. She requested that the Board ask the legislature for a suspension of Measure 37 in order to look at the unintended consequences.

Stirling Fox stated that the subject property is already being farmed in multiple crops and that should be preserved. He said that dividing the property into lots of twenty to forty acres each would allow small vineyards, wineries, and farms, which would maintain the agricultural use and contribute to the tourism industry.

Summation by Claimant - Mr. Dickas stated that the public comments have largely been either premature or irrelevant to the approval criteria. He said that Measure 37 passed because

people recognized the fundamental unfairness in regulations which restrict people living outside city boundaries from doing what people inside the boundaries can do.

Close of Public Hearing / Deliberation - Ms. Lewis stated that she would like to continue the hearing in order to discuss with the Planning Director what would have been allowed under the 1968 agricultural zoning ordinance, and to discuss the issue of granting a waiver for less than what was requested. She moved to continue the hearing to February 14, 2007 at the point of Deliberation. Ms. George made a friendly amendment to continue the following hearing as well. Mr. Gray recommended going ahead with the hearing for M37-94-06 today. Ms. Lewis rejected the friendly amendment. The motion passed, Commissioners George and Lewis voting aye.

5. Consideration of M37-94-06, a Measure 37 claim authorizing Stuart and Janice Lindquist to make application to recognize existing platted lots as buildable for dwellings, to divide the remainder of the 137 acres into one-acre lots, and to establish a dwelling on each vacant lot. *[Continued to February 14, 2007 at the point of Deliberation.]*

Ms. George opened the public hearing. Mr. Gray reviewed the Measure 37 hearing procedure and approval criteria. Ms. George stated that testimony given by Ms. Reeves and by Mr. and Ms. Paquette during the previous hearing could be extended to this hearing for the record.

Staff Report - Mr. Brandt reviewed the claim, noting that these tax lots were purchased after the 1976 zoning ordinance, which established clear zones and minimum lot sizes for the entire county. He stated that the subject property was zoned EF-40 at the time of purchase, so the minimum lot size would be forty acres. He said that there is some question as to whether or not the existing platted lots would be buildable. He recommended modifying, removing, or not applying land use regulations back to 1977 and 1978.

Claimant - Mr. Dickas stated that the platted lots have existed since 1891 and the issue of what preexisting rights were attached to those lots will be discussed at a later time.

Public Comment - Ms. Paquette stated that she does not feel comfortable presenting her concerns to the Board because of Commissioner George's personal interest in Measure 37. She said she has serious concerns about developers who come in and destroy rural Oregon, contribute to sprawl, meth, and crime, and then leave. She stated that the Board can interpret how to respond to Measure 37 and pointed out that other counties have done it differently. She pointed out that agriculture is the highest priority of the county, as stated in the county's charter or similar document. She expressed her belief that most people did not understand the consequences of Measure 37, although those promoting it understood and grossly misrepresented it to the public.

She shared an experience she'd had in the emergency room with two intoxicated airline pilots who intended to fly jumbo jets and said that after hearing about the situation, the attorney general had written back to say that even though she'd had to violate some rules to prevent the pilots from returning to the job, no court has ever ruled against someone who is erring on behalf of the greater good.

John Paquette objected to the claim because of the huge potential negative impact on his livelihood and that of others. He said that he can see no positive agricultural benefits of the proposed development.

Merilyn Reeves, representing Friends of Yamhill County, thanked the Board for holding these Measure 37 hearings. She stated that the land use system is not perfect, but Yamhill County's sustainable agricultural and forest community is a result of that system and is now being threatened by Measure 37, which has only further complicated land use laws. She said that it would be irresponsible to allow lots without available water or to have a well for each one-acre lot. She said that the Board could require a community water system, even though it would be more expensive for the developer. She requested that the Board ask the legislature for a suspension of Measure 37 in order to look at the unintended consequences.

Ms. George noted that Matthew Flier had submitted a card in opposition to the claim, but was no longer present. His written comments addressed the lack of sufficient water, high quality farmland, and infrastructure limitations.

Mr. Bierly stated that the Lindquists could not have done what they're asking for at the time they acquired the property, so he does not believe the Board can approve the claim as written. He submitted a copy of ORS 92.205 for the record and recommended that the Board follow the statute regarding undeveloped subdivisions, which was adopted in 1973.

Mr. Adelshiem stated that the Chehalem Mountains have been officially recognized as an American Viticultural Area for everything above 200 feet in elevation and at least 40% of the subject property could be used for wine grapes. He encouraged the Board to drive down North Valley Road and look at the beautiful agricultural area that would be lost by approving this claim. He said that although Senate Bill 100 had unintended consequences, it didn't force residents to depend on the future for agriculture, as Measure 37 has done. He suggested that the Board not take action on the claim and tell the legislature that the county is in the untenable position of deciding between maintaining quality of life and providing satisfaction to a handful of property owners.

Close of Public Hearing / Deliberation - Ms. Lewis stated that she would like a chance to read the statute submitted by Mr. Bierly. She moved to continue the hearing to February 14, 2007 at the point of Deliberation. The motion passed, Commissioners George and Lewis voting aye.

6. Consideration of M37-95-06, a Measure 37 claim authorizing William and Faye Sanders to make application to divide 90.88 acres into one-acre lots and to establish a dwelling on each vacant lot. *[Continued to February 14, 2007 at the point of Deliberation.]*

Ms. George opened the public hearing.

Staff Report - Mr. Brandt reviewed the claim and recommended modifying, removing, or not applying the land use regulations back to 1962 and 1964.

Claimant - Mr. Harrell stated that prior to Senate Bill 100, Oregon's land had no zoning and

was not designated as agricultural land, so he supports the rights of property owners to do with their land what was allowed at the time of purchase.

Public Comment - Ann McNamee stated that although it may not be relevant to the legal criteria, her main concern is responsible stewardship of land. She urged the Board to delay the Measure 37 deadline or do anything possible to ensure that subdivisions aren't created in areas where they shouldn't be. Robert McNamee stated that because putting ninety new homes above his property would affect his water supply, part of the approval process should be a requirement for the claimants to pay for water testing of the neighbors' wells and resolve any negative impact. He encouraged the Board to take a comprehensive look at the surrounding area and the potential effects of the proposed development. Ms. Lewis suggested that the McNamees sit down with the claimants to discuss their real intentions for developing the property.

Mr. Gray stated that if the county does not take action on the claim within the 180-day deadline, the matter could go to court and he is reluctant to advise the Board to do something that would cause substantial risk of financial impact to the taxpayers.

Ms. Reeves, representing Friends of Yamhill County, stated that because Measure 37 is a compensation measure, the county needs to look at the true loss of value, which is not the same now as it was when the land use regulations were first implemented. She said that she opposes the claim based on public health and safety issues with one-acre lots.

Close of Public Hearing / Deliberation - Ms. Lewis stated that she doesn't believe that Ms. Reeves' statement about the loss of value is accurate. Ms. George expressed her confidence that the Planning Director will take public health and safety issues into consideration. She noted that legislators had promised compensation to the people when land use regulations were implemented, but those promises were dropped and it had taken an act of the people to get an initiative to force the notification law. She said that many people invest in land with long-term plans and should not be limited to a short window of opportunity to carry out those plans.

Ms. Lewis moved to continue the hearing to February 14, 2007 at the point of Deliberation. The motion passed, Commissioners George and Lewis voting aye.

The meeting recessed at 12:39 p.m. and reconvened at 12:48 p.m.

7. Consideration of M37-100-06, a Measure 37 claim authorizing James and Diane Brown to make application to divide 74.72 acres into one-acre lots and to establish a dwelling on each vacant lot. *[Continued to February 14, 2007 at the point of Deliberation.]*

Ms. George opened the public hearing.

Staff Report - Mr. Brandt reviewed the claim and recommended modifying, removing, or not applying the land use regulations back to 1972.

Claimant - James Brown stated that this is a defensive claim to protect his investment in the

property, since the land use rules keep changing. He explained that he bought the property 35 years ago as a timber farm, but two homes have been added on less than ten acres nearby since the 1976 zoning was implemented. He noted that he is in favor of land use planning as long as it is applied consistently and fairly. He stated that he has met all of the approval criteria.

Ms. Lewis explained that a law was passed by the legislature in 1993 which allowed the neighbors to get approval for a forest template dwelling that had previously been denied.

Mr. Harrell stated that prior to Senate Bill 100, Oregon's land had no zoning and was not designated as agricultural land, so he supports the rights of property owners to do with their land what was allowed at the time of purchase.

Public Comment - Marla Goodman stated that she believes Mr. Brown knows that one-acre parcels would not be feasible and the neighbors might not be opposed to his development if they knew what his real intentions were. She strongly encouraged him to discuss his plans with the neighbors and offered the use of her home for a neighborhood meeting.

Celine McCarthy stated that one-acre parcels do not make sense on the subject property because of the steep slopes and the gravel road. Greg McCarthy stated that the Board should either put the claim on hold or start collecting taxes based on the \$10 million property value stated on the claim. Ms. Lewis pointed out that by law, the county cannot take the property out of forest deferral and change the tax value until the actual use of the property changes.

Ms. Reeves, representing Friends of Yamhill County, emphasized the importance of considering infrastructure, the capability of the land, and water resources in land use planning. She pointed out that once platted, the one-acre lots would exist forever. She urged the Board to make a request to the legislature to suspend Measure 37 until such issues are resolved.

Summation by Claimant - Mr. Brown stated that he is not comfortable having a timber farm next to five-acre lots because of litter, trespassers, and increased fire risk. He said that although he is not planning to sell his property, he wants the ability to get the maximum value for it if he has to do so.

Mr. Harrell stated that no agreement with the neighbors could waive the current zoning without a Measure 37 claim. Ms. Lewis said that she believes Ms. Goodman's suggestion was to discuss the plans for development and come back with an application more representative of what Mr. Brown actually wants to do. Mr. Gray pointed out that new Measure 37 claims are now subject to a different set of rules, but there would be no problem in modifying the existing claim.

Close of Public Hearing / Deliberation - Ms. Lewis stated that this claim is similar to the previous ones because the subject property clearly would not support seventy lots. She noted that the Planning Director does not plat one-acre lots without taking into consideration factors such as the slope. She moved to continue the hearing to February 14, 2007 at the point of Deliberation. The motion passed, Commissioners George and Lewis voting aye.

8. Consideration of M37-112-06, a Measure 37 claim authorizing Wendell and Patsy Trivelpiece to make application to divide a 10.6-acre portion of a 49.46-acre property into one-acre lots and to establish a dwelling on each vacant lot. *[Tentatively approved, order to be adopted February 14, 2007.]*

Ms. George opened the public hearing.

Staff Report - Mr. Brandt reviewed the claim and recommended modifying, removing, or not applying the land use regulations back to 1966. He noted that the subject property was not zoned at the time of purchase.

Claimant - Mr. Harrell, representing the claimants, stated that this is a small acreage without the issues of the previous claims. He stated that prior to Senate Bill 100, Oregon's land had no zoning and was not designated as agricultural land, so he supports the rights of property owners to do with their land what was allowed at the time of purchase.

Ms. Trivelpiece provided a history of the property and her efforts to build a home and divide off some of the land for her children.

Public Comment - Ms. Reeves, representing Friends of Yamhill County, stated that although she has not reviewed this claim, there are clearly three existing homesites on the property and Friends of Yamhill County is opposed to one-acre lots in rural farmland.

Close of Public Hearing / Deliberation - Ms. Lewis stated that she is comforted to know that the claimants do not intend to develop one-acre lots. She said that this claim is a perfect example of why Measure 37 passed. Ms. Lewis moved tentative approval of M37-112-06 with the order to be adopted February 14, 2007. The motion passed, Commissioners George and Lewis voting aye.

F. ANNOUNCEMENTS:

1. The following positions are open to the public. Contact the Commissioners' Office for applications.

- a. Commission on Children & Families, one lay alternate position and one youth position;
- b. Parks Board, one position;
- c. Road Improvement Advisory Committee, one position;
- d. Special Transportation Advisory Commission, 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 adjourned at 1:42 p.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair KATHY GEORGE

Commissioner MARY P. STERN

Commissioner LESLIE LEWIS



BOARD OF COUNTY COMMISSIONERS

Attendance Roll for meeting records

Meeting: Informal _____ Formal Work Session _____ Date 2/7/07 _____

PLEASE PRINT
Name

PLEASE PRINT
Complete Address

PLEASE PRINT
Subject

- David Adelsheim 16400 NE Calhoun Ln Newberg OR 97132 M37-9306
- Karen Christensen HAYC-RC ^{135 NE Dunn Place} ~~PO Box~~ McMinnville 97228 Resource Center
- Don Loving 2926S NE Benjamin Rd Newberg Public Comment
- Henny M. Reeves ^{SE Amity, OR 97101} 22250 Boulder Crest Ln. Public Comment
- MARK A. BORTNEM 21688 NE SUNNYCREST NEWBERG, OR 97132 51406 IF NECESSARY
- Dave Benson 411 W Myrtlewood St Newberg OR. Public Comment
- John Bailey 22760 NE SUNNYCREST RD NEWBERG OR Public Comment
- William Mautzer 17850 Hillside Dr Newberg, OR Public Comment
- CHARLES A. KRETH 18100 NE HILLSIDE DR NEWBERG OR. 97132 " "
- Marilyn Reeves PO Box 1083 McMinnville
- GREG / CELINE MCCARTHY P.O. BOX 417 GASTON OR 97119 Public
- Bob McNamee 3425 N.W. High Heaven Rd Mac ~~972~~ Comment
- Rogers C. Smith, MPA, CCM 25136 NW Mt. Richmond Rd. Yamhill 97148
- Murray Paolo 17781 NE Lighthouse Rd, Yamhill, Or. 97148
- Bartus Briedley P.O. Box 970 Newberg OR 97132 M 37-94-05
M 37-93-06
- Stuart Linneman PO Box 42135 Port 97242
- Stirling Fox POB 1117 Newberg, OR 97132

EXHIBIT A 1/2



BOARD OF COUNTY COMMISSIONERS

Attendance Roll for meeting records

Meeting: Informal _____ Formal Work Session _____ Date 2/7/07

PLEASE PRINT
Name

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Complete Address

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Subject

Ann McNamee	3425 NW High Heaven	Public comment
John M. Packer	22955 NE NORTHVALEY RD	Public ^{LAND USE} Comment
Ida Van Wormer	22005 Russell Creek Rd	
Claude Hampton	3475 N.W. High Heaven	
Matthew Flier	17450 NE Hillside	Lindquist claim
Ort. H. Friesen	17150 N.E. Hillside Dr.	(Lindquist)
Perry Bodeen	25706 NW Mt Richmond Rd	Island claim
Marla Goodman	23600 NW Russell Creek Rd	Brown Division (37dbm)

EXHIBIT A 2/2

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February 7, 2007February 7, 2007

To: _____

Re: First Assembly of God Church/Hwy 99 Access

Dear _____:

You may be aware that ODOT is planning a project in the Summer of 2007 which would close the Wilsonville Road access on Highway 99W, build a new traffic controlled intersection near the current location of Ninth Street, and close many other accesses along Highway 99W. The First Assembly of God Church will have a tremendous economic impact from the decision that was recently made by ODOT regarding this project.

Initially ODOT informed the Church that they intended to close the Church's access on Highway 99W in conjunction with this project. When the Church learned of this proposed closure, they contacted ODOT and engaged in an informal meeting with ODOT. Prior to the meeting, the Church was informed that they should not bring an attorney to the meeting. At the meeting, the Church was told that the decision was final on the issue of closing the approach. ODOT indicated that they based their decision on an alternative approach that the Church had to Springbrook Road via an easement over property owned by Harris Thermal, a heavy equipment manufacturing business. ODOT employees informed the Church, that if they wished to avoid the closure however that ODOT would agree to a right in/right out access only.

The Church was unsatisfied with the idea of a right in/right out only access off of Highway 99W. The vast majority of the Church's membership is from Newberg. Most of those members access the Church from the highway, as the Church fronts the highway. If the access were right in/right out only, there would be no access from the Newberg direction. At the conclusion of the meeting with ODOT, the Church was informed that if they wished to pursue maintaining their access further, they needed to request a Regional Review. They requested such a review.

EXHIBIT B 1/3

The Church hired my office shortly before this informal meeting, but at ODOT's request did not have me participate in the initial informal meeting. After they made the decision to have the Regional Review, the Church asked me to become more actively involved in pursuing their interests. A major component of ODOT's decision-making was that there was an easement across the Harris Thermal property. It is our position, one that ultimately ODOT acknowledged, as you will learn below, that the Harris Thermal easement was a revocable easement at Harris Thermal's discretion. It should also be noted, that access to the Church by way of the Harris Thermal easement would have an incredible negative impact on the Church. The access essentially looks as though it is going to the yard for Harris Thermal. The Church is not visible at the access and a first time church attendee would have great difficulty locating the church building.

Representatives of the Church and I attended the Regional Review process in Salem. We presented our position to the Regional Review parties, and explained how we thought the full movement intersection at the access to the Church was reasonably safe based on the times that it is utilized and the fact that there are no other conflicting traffic movements in the area. Although the DOJ had previously opined that the easement access was not revocable, their statement at the Regional Review seemed to suggest that they were not as certain of the irrevocability of the easement. After both sides had presented their cases, an ODOT employee in charge of purchasing the access indicated that she had hired outside appraisers who determined closure of the access would require ODOT to purchase the entire church property, because in their professional opinions the easement was revocable. This piece of information in the eleventh hour of the process seemed to completely change ODOT's perspective on this case.

The Region Review issued their decision and essentially said if the easement is revocable that a right in/right out access should be maintained, and if it was irrevocable, that the access should be closed. The Church was informed that their next option was to request a Contested Case Hearing. They requested a Contested Case Hearing, but prior to one being scheduled, ODOT withdrew their access closure notice and instead issued a decision relying upon ORS 374.310 which provides ODOT a generalized power to look after the best interests of the public to make "a traffic control decision" to place a median in the highway at the Church's current access to effectively create a right in/right out access. ODOT argues that because this is a traffic control measure it is not an appealable decision. They have deemed that this is necessary because the access the Church has is within the area of influence of the to-be-constructed intersection.

Our perspective on this process is that ODOT initially closed the access completely. At some point they realized that they could not close it because of the revocability of the easement. Once they realized that the closure could not be sustained, they sought other ways to maintain control over the situation. By utilizing the generalized power of safety they removed any opportunity for the Church to attempt to redress their concerns. They do this under the veil of seeking to protect and preserve the safety of the membership of the Church from harm without any evidence that there is a risk of harm that is great enough to require such restrictive measures. They have also failed to analyze other alternatives.

EXHIBIT B 2/3

It is obvious that the Church has a very strong interest in the health, safety, and welfare of their own membership. They do not want to create a situation that would lead to a reasonable likelihood of harm befalling one of their members. The core value of the Church is to look after its members. However the Church has existed and used this access for decades without incident. It appears that the sins of the other intersections along 219 (Springbrook Road/219 and Second Street/219) are being visited on the Church. Those intersections certainly have had problems, but they are not the problems of the Church's access.

The Church's main utilization of the access is at a time when traffic is at its lowest point, Sunday morning. The Church has remained ready, willing and able to allow ODOT to move the access along their sizeable frontage on 219 so that it would be completely out of the area of influence. This would be a fairly easy fix. If that were done, you would find that the entrance to the Church would be approximately the mid point between Second Street and the new Ninth Street intersection. There would be no other accesses in that same segment. A new light at Ninth Street would also help by creating gaps in traffic so that safe left turns can be obtained. It is also important to note that traffic leaving Newberg in this segment, is not traveling at highway speeds. The other alternatives in addition to moving the access include adding a center turn lane. ODOT did not evaluate that as a potential resolution.

We would like to schedule a meeting with ODOT and our elected representatives. We feel as though the agency has taken away our opportunity to have any further dialogue on this issue. We are in need of our elected officials' assistance in this matter. Dave Benson, the pastor of First Assembly of God Church, will be in touch with each of you in the next ten (10) days to schedule a Saturday meeting at the church site. We want to make certain that our legislators are able to participate in this meeting so we have recommended a Saturday meeting time. Your participation and help in maintaining a viable business opportunity for the Church is greatly appreciated.

Yours very truly,

BROWN, TARLOW, BRIDGES & PALMER, P.C.

John Bridges

JTB:cml

cc: Dave Benson

EXHIBIT B 3/3