

BOARD ORDERS AND MINUTES

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY (“the Board”) sat for the transaction of county business in formal session on March 7, 2007 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present was John Krawczyk, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Ken Friday, Planning Division Manager; Mike Brandt, Planning Director; Bill Gille, Public Works Director; Kevin Simpson, 22255 NE Sunnycrest Road, Newberg; John Nyberg, 21840 NE Sunnycrest Road, Newberg; Doug & Rosyland Ott, 12850 NE Red Hills Road, Newberg; Dorothy Tedescki, 12194 NE Red Hills Road, Newberg; Dave Walker, PO Box 64, Newberg; Mike & Marc Willcuts, PO Box 490, Newberg; Willie Owens, 9660 NE Fox Farm Road, Dundee; 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. None offered.

B. **CONSENT AGENDA:** Ms. Stern moved approval of the consent agenda with the omission of item B(12). The motion passed, Commissioners George, Stern, and Lewis voting aye.

Personnel

1. **B. O. 07-255** - Approve the employment of Cassandra Conolly, Amity, as HS Associate in HHS Adult Mental Health, temporary part-time, Range 14, Step 3, effective March 9, 2007 through June 30, 2007.

2. **B. O. 07-256** - Approve the change of status of Dawn Hannemann to extend temporary part-time employment in Community Corrections, effective March 19, 2007 through September 18, 2007.

Retirement Plans

3. Approve amendments to the following ICMA-RC retirement plans:
- a. **B. O. 07-257** - Model 457 Deferred Compensation Plan #303371;
 - b. **B. O. 07-258** - Money Purchase Plan #108360.

Contracts/Grants

4. **B. O. 07-259** - Approve Intergovernmental Agreement #229 07 between Yamhill County and Chemeketa Community College for small business development services through the MERIT program, not to exceed \$25,000, effective March 7, 2007.

5. **B. O. 07-260** - Approve a service agreement between HHS Family & Youth and Justin Wade, M.D. for limited psychiatric services, \$150/hour up to ten hours/week, effective March 7, 2007.
6. **B. O. 07-261** - Approve Amendment #5 to Intergovernmental Agreement 0507YAM between the Commission on Children and Families and Oregon Commission on Children and Families to increase the Healthy Start allocation for 2005-07 by \$3299, effective March 7, 2007.
7. Ratify the following amendments to the 2005-07 Financing Agreement #113020 between Health & Human Services and Oregon Department of Human Services:
 - a. **B. O. 07-262** - Amendment #36, retroactive to February 14, 2007;
 - b. **B. O. 07-263** - Amendment #38, retroactive to February 15, 2007;
 - c. **B. O. 07-264** - Amendment #39, retroactive to February 15, 2007.
8. **B. O. 07-265** - Authorize the Air Support Division to submit a public safety grant application to the Siletz Tribal Charitable Contribution Fund for a helicopter searchlight, \$26,000.

Budget

9. **B. O. 07-266** - Approve a transfer of appropriation authority and funds within the Self-Insurance Fund to cover a portion of the workers compensation cost overage:

From	80-92-950.01	Contingency	\$80,000
To	80-38-610.08	Workers Comp Insurance	\$80,000
10. **B. O. 07-267** - Approve a transfer of appropriation authority and funds from Capital Improvement to Facilities Maintenance for position authority:

From	40-27-482.00	Extra Help	\$33,000
	40-27-490.00	Medicare Tax	\$479
	40-27-491.00	Social Security	\$2046
	40-27-492.00	Retirement	\$6983
	40-27-493.00	Health Insurance	\$12,350
To	40-16-403.56	Bldg Maint Worker 2	\$33,000
	40-16-490.00	Medicare Tax	\$479
	40-16-491.00	Social Security	\$2046
	40-16-492.00	Retirement	\$6983
	40-16-493.00	Health Insurance	\$12,350

Refund

11. **B. O. 07-268** - Authorize a \$616 refund from the Planning Department to Dan Smith.

Resolution

12. **Tabled** - Adopt Resolution 07-3-7-1 in support of a March 20, 2007 legislative event to advocate for the funding of the Newberg-Dundee Bypass.

Fire District

13. **B. O. 07-269** - Adopt an amended final order for the formation of the new Carlton Fire District, amending Board Order 07-981 to correctly identify names of new directors and adopt a

corrected legal description.

Delegation of Authority

14. **B. O. 07-270** - Designate the Community Corrections Director and the Parks Coordinator as authorized persons for the purposes of Parks Ordinance 619.

Committees

15. **B. O. 07-271** - Approve the following changes to the Employee Safety Advisory Committee:
a. Appoint Pete Lindberg, Public Works, and Lori Bales, Sheriff's Office, for three-year terms to expire March 18, 2010;
b. Reappoint Chuck Vesper, Juvenile Department, for a three-year term to expire March 18, 2010.

Measure 37

16. **B. O. 07-272** - Set public hearings on April 11, 2007 for the following Measure 37 claims:
a. M37-169-06, authorizing the Mary Anne Freeman Revocable Living Trust to make application to divide 568.95 acres into lots of one-quarter acre to twenty acres each and to establish a dwelling on each vacant lot, including industrial, commercial, and/or recreational development;
b. M37-190-06, authorizing the Joan Silvers Revocable Trust to make application to divide 10.01 acres into ten lots and to establish a dwelling on each vacant lot;
c. M37-192-06, authorizing Adolfo and Janice Blanco to make application to divide 33.71 acres into one-half acre lots and to establish a dwelling on each vacant lot;
d. M37-200-06, authorizing Thomas Bogh to divide 59.7 acres into one-acre lots and to establish a dwelling on each vacant lot.

C. **OLD BUSINESS:** None.

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

1. **B. O. 07-273** - Consideration of the change of status of Jeffrey Donahoo to Deputy Sheriff in the Sheriff's Office Patrol, effective March 7, 2007.

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

2. **B. O. 07-274** - Consideration of the change of status of Nathan Eames to Deputy Sheriff in the Sheriff's Office Patrol, regular full-time, Range 12, Step 1, \$3089/month, effective March 7, 2007.

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

E. **PUBLIC HEARINGS:**

1. Consideration of 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 lot. *[Tentatively approved, order to be adopted March 14, 2007.]*

Ms. George opened the public hearing. John Gray reviewed the procedure for Measure 37 hearings.

Staff Report - Mike Brandt described the subject property and stated that although it was transferred to relatives in 2004, Mr. Steele had retained a life estate, which has been determined by county counsel to qualify as a continuous ownership interest. He recommended modifying, removing, or not applying land use regulations back to 1962. Mr. Gray added that language in the transfer deed regarding land use regulations does not trump Measure 37 rights.

Close of Public Hearing / Deliberation - There being no public comment, the hearing was closed. Ms. Lewis stated that although she is always concerned with one-acre lots in the country because of water and septic issues, those concerns will be addressed during the subdivision approval process and Measure 37 offers few options to the Board at this point. She moved tentative approval of M37-132-06 with the order to be adopted March 14, 2007. Ms. Stern stated that she does not believe it was the legislative intent of the voters to allow rural subdivisions under Measure 37 and the issue of life estate transfers should be decided by the courts rather than by the Board. Ms. George stated that she does not believe in putting the county at unnecessary risk for lawsuits. The motion for tentative approval passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

2. Consideration of Planning Docket S-13-06, an appeal of the Planning Commission's approval for a twelve-lot subdivision on 31 acres (Measure 37), applicant John Kroo, appellant Karol Susan Welch, as continued from February 14, 2007 at the point of Public Agency Reports. *[Continued to April 11, 2007 at the point of Public Agency Reports.]*

Ken Friday stated that he had received a request from Brett Veatch on behalf of John Kroo to continue the hearing to April 11, 2007 to allow time to analyze new information. He noted that no objection had been received so far from the appellant. Ms. Stern moved to continue the hearing to April 11, 2007 at the point of Public Agency Reports. The motion passed, Commissioners George, Stern, and Lewis voting aye.

3. Consideration of Planning Docket PAZ-06-04, a request for zone change of eleven acres from AF-10 to Highway Commercial, applicant Willie Owens, as continued from January 10, 2007 at the point of Proponent's Case. *[Tentatively approved, findings to be adopted March 21, 2007.]*

Ms. George opened the public hearing. Mr. Friday provided a summary of the application and stated that concerns raised by Oregon Department of Transportation (ODOT) have been addressed by the applicant.

Proponent's Case - Willie Owens stated that the record stands for itself. He noted that four acres of the subject property were had residential zoning at the time of purchase and the remainder was zoned Highway Commercial.

Public Agency Reports - Mr. Friday stated that the February 22, 2007 letter from ODOT is already in the packet.

Staff Recommendation - Mr. Friday recommended approval of the application with two limited use overlay zone protections and an additional condition requiring traffic improvements prior to any construction or occupancy of any final improvements on the property, as requested by ODOT. He stated that the applicant's attorney had argued against an initial proposal to shift three acres of residential zoning to another portion of the property and the Planning Commission had voted to allow the entire property to be rezoned with a waiver of remonstrance and a limitation to nursery and accessory uses.

Close of Public Hearing / Deliberation - Ms. Lewis moved tentative approval of Planning Docket PAZ-06-04 with the conditions placed by the Planning Commission and the additional condition requested by ODOT in the February 22, 2007 letter, with findings to be adopted March 21, 2007.

Ms. Stern stated that since the proposed uses are already allowed on the property, it doesn't make sense to change the zoning and increase the future cost to taxpayers to purchase the parcel for the Newberg-Dundee Bypass. She said that she would be supportive of exchanging the zoning on three acres, however. Ms. Lewis stated that the future appraised value would probably have to take into consideration the existing uses, even if the zoning were not changed. Ms. George stated that Mr. Owens has the right to make the request for zone change and the future bypass should not affect the current use of his property.

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

4. Consideration of Planning Docket PAZ-08-06, a request for Plan Amendment/Zone Change from EF-40 to PAI to allow a church, applicant City Church of Promise. *[Tentatively approved, findings to be adopted March 21, 2007.]*

Ms. George opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Stern noted that the commissioners had each taken a site visit. Rick Sanai read the statement required for land use hearings relating to the requirement that parties must raise all issues at the hearing or waive their right to raise the issues on appeal. Ms. Lewis noted for the record that she has attended some Wednesday night meetings at City Church of Promise, but this will not affect her decision.

Staff Report - Mr. Friday described the subject property, surrounding zoning and land use, the request for rezoning, and the approval criteria. He stated that the Planning Commission had voted unanimously on February 1, 2007 to approve the request with a limited use overlay zone.

Proponents - William Cox, representing the applicant, requested that the Board consider removing the limited use overlay zone and approving the request with a condition of approval to the same effect.

Clifford Morgan, Administrator for City Church of Promise, stated that the proposed location would be an improvement to the traffic situation compared to the church's current meeting location at the Women's Hall.

Mr. Friday stated that the reason for the overlay zone was to ensure that traffic issues would be addressed if the average attendance exceeds 150, but he would not be opposed to finding another way to achieve the same result. He explained that any building permit application by the applicant would trigger a site design review, which would be subject to the road improvement provisions of Ordinance 787. Mr. Cox stated that the church would like road improvements to be triggered by increased attendance rather than by a site design review for building improvements, since the current average attendance is only fifty members, or fifteen vehicles.

The meeting recessed at 9:52 a.m. and reconvened at 9:58 a.m.

Ms. George stated that Public Works Director Bill Gille has been asked to come and provide some input on the issue of road improvements. She said that until he arrives, the Board will proceed with the next hearing on the agenda. Following the Staff Report for Planning Docket S-14-06, the hearing for PAZ-08-06 resumed.

Mr. Gille stated that the application had indicated that there would be pedestrian traffic and he wanted to make it clear that there would be little chance of the county being able to provide pavement and sidewalks in the future. Ms. George stated that it wouldn't make sense to require the section in front of the church to be improved unless the government with jurisdiction over the road was willing to improve the rest of it as well. Mr. Gille suggested doing something like the waiver of remonstrance that cities use so that property owners can't object to future costs if the city decides to improve the road. Mr. Sanai stated that the findings could be written to require road improvements only when the average parking lot count exceeds fifty vehicles.

Opponents - None.

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

Staff Recommendation - Mr. Friday recommended approval of the application with the modified conditions as recommended by Mr. Sanai. Mr. Sanai explained that the limited use overlay zone would be replaced with a condition of approval that would require road improvements when the average Sunday parking lot count exceeds fifty vehicles.

Close of Public Hearing / Deliberation - Ms. Stern moved tentative approval of Planning Docket PAZ-08-06 with the conditions of approval as stated by Mr. Sanai and findings to be adopted on March 21, 2007. She noted that the subject property is clearly not suitable for farming or forestry and is irrevocably committed to non-resource use, which warrants an exception to Goal 3. The motion passed, Commissioners George, Stern, and Lewis voting aye.

5. 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, as continued from February 7, 2007 at the point of Proponents' Case. *[Continued to March 28, 2007 at the point of Opponents' Case.]*

Ms. George opened the public hearing. There were no abstentions or objections to

jurisdiction. Ms. Lewis noted that the commissioners had each taken a site visit. Mr. Friday read the statement required for land use hearings relating to the requirement that parties must raise all issues at the hearing or waive their right to raise the issues on appeal. Ms. Stern stated for the record that she knows Mike and Marc Willcuts, joint applicants with the Eastmans, but this will not impact her decision in the matter.

Staff Report - Mr. Friday described the subject property, surrounding zoning and land uses, the Measure 37 waiver, and the request for a subdivision, noting that approval is subject to public health and safety regulations and to Agricultural Zoning Ordinance 29, which was in effect at the time of the property acquisition.

At this point, the hearing was recessed and the Board concluded the previous hearing, after which the hearing reconvened.

Mr. Gille stated that although the applicants are in concurrence with the need for on-site improvements, additional testimony has been received regarding the need for off-site improvements to the intersection of Redmond Hills Road and Highway 240. He agreed that this intersection could be affected by traffic from the proposed subdivision and Ordinance 787 would allow the county to require a proportionate responsibility from the applicants for upgrades to the intersection. He added that since Highway 240 is a state highway, the county could collect the funds and approach ODOT with its concerns and a local match for improvements.

Proponents - Mike Gunn, representing the applicants, stated that a number of documents had been submitted in the last four or five days. The Board confirmed that the documents had been received. Mr. Gunn clarified that there had been only one Measure 37 claim to the state and it had listed two-acre parcels. He explained that the Department of Land Conservation and Development (DLCD) had mistakenly approved the waiver for five-acre parcels, but had since approved an amended final order for two-acre parcels. He stated that since this is an appeal hearing, the ability to ask for the record to be left open is up to the discretion of the Board.

He said that the Board needs to address only the issues listed in the notice of appeal, which include some incorrect dimensional standards on the deeds as well as the water and septic situations. He stated that the dimensional errors have been addressed and are in the process of being corrected on the plat. He pointed out that the subdivision ordinance does not require the applicant to state how water will be provided until the final plat approval and although the initial application indicated that water would be provided by wells, a final decision has not yet been made and a community water system may be a possibility. He added that the applicants have hired a geologist to do a water and soil analysis and have addressed every valid issue raised by the appellant.

He stated that based on a March 5, 2007 letter from DLCD, he believes that the appellant will try to raise other issues at this hearing, such as the issue of transferability and the impact of Judge Collins' circuit court decision in Marla Robison v. DLCD. He said that according to the "raise it or waive it" rule, the appellant cannot raise these issues since this is not the initial hearing and the issues weren't raised prior to this point, but he will address them now with an abundance of caution and without waiving his position that they are inadmissible.

He discussed the issue of transferability, explaining that property cannot be sold with attached Measure 37 rights. He stated that the Eastmans' relationship with Coyote Homes is an agency relationship which can be terminated at any time and no property is being transferred to Coyote Homes.

He reviewed his March 5, 2007 letter in the record, highlighting the main points of the Marla Robison case. He stated that Judge Collins' ruling was wrong because it was based on stipulated facts which were later shown to be incorrect and because a land use statute dealing with zoning cannot be correlated to a revenue statute dealing with farm deferral and taxes. He also stated that the ruling is not binding on this case because the situations are different.

The meeting recessed at 11:02 a.m. and reconvened at 11:10 a.m.

Mr. Gunn continued his discussion of the Marla Robison case. He then discussed three examples of subdivisions approved by the county between 1968 and 1973 which included lot sizes of less than 2.5 acres on Agriculture Zone A land as permitted uses and stated that although it is up to this Board to interpret the 1968 zoning ordinance, some deference should be given to what has been done historically. Ms. Lewis pointed out that the ordinance has had mixed interpretations by the county.

Mr. Gunn stated that the proposed subdivision was designed with a twenty-foot equestrian easement around its perimeter for the use of all residents, which satisfies the definition of farming. He concluded that the applicants have satisfied all the terms of Ordinance 29 and should be granted approval for the nineteen-lot subdivision as an outright permitted use. He noted that even if the Board decides not to allow it as a permitted use, the applicants clearly qualify for conditional use approval for sixteen 2.5-acre parcels.

Ms. Stern stated that she would like some more information from the Planning Director and legal staff regarding the agricultural zoning ordinance and the Board needs to determine how to interpret the ordinance before a decision can be made in this case. Ms. Lewis agreed that the hearing will have to be continued because a decision cannot be made at this point. Marilyn Reeves requested that the Board hold an open work session on this issue which can be attended by the public.

Marc Willcuts stated that he has been working with the Eastmans to meet or exceed the Measure 37 criteria and he believes that the application should be approved as it stands. He said that he had done much research prior to developing the idea for an equestrian easement, which would make horse facilities available to people with smaller lots who can't afford to board their horses offsite. Ms. Lewis pointed out the difficulties of raising horses on small acreage.

Jeff Caines stated that he was hired by Mr. Eastman to process the land use application for this subdivision and he has followed the proper procedures in doing so, resulting in an approval with conditions established by the Planning Director. He said that the appeal is based on water issues which will be worked out prior to final plat approval. He pointed out a typographical error in one of the lot numbers on the map and stated that he would provide a revised map.

Questions of Proponents - Mr. Gunn clarified his statement that this is not the initial hearing, explaining that notices were sent out regarding the subdivision application and opportunity was provided for public input, which is tantamount to a hearing. He added that the public notice had stated that the appeal is based on the record, so only those items listed in the appeal should be considered at this hearing. Ms. Lewis stated that the issue would be decided after Mr. Sanai has had a chance to review the information and provide legal guidance to the Board.

Marc Willcuts confirmed that the equestrian easement and amended plat map are included in the current application to be considered by the Board.

Mr. Gunn explained the agency relationship between the Eastmans and Coyote Homes, stating that although Coyote Homes had authorization to submit the application with the owners' signatures, Coyote Homes has no ownership interest in the property.

Neutral Testimony - Rosyland Ott stated that she is not opposed to a development on the subject property, but she would prefer fewer homesites with larger acreage. She also expressed concern about the potential effect on existing wells and traffic.

Opponents - Ms. George noted that cards in opposition to the application had been submitted by John Nyberg and Kevin Simpson, who were no longer present.

Dave Walker stated that he would wait and testify after reviewing the documents recently submitted by the applicants.

Monika York stated that the number of homes proposed on small acreage lots would have a negative impact on the quality and quantity of existing water and road improvements would actually increase the speed of traffic in the area, which is already dangerous. She also discussed issues such as water runoff and the disposal of horse manure and expressed concern that the equestrian track may be used for off-road vehicles, creating a noise disturbance.

Janet Bortnem echoed Ms. York's concerns and stated that the proposed development would negatively affect the natural habitat and would result in the loss of prime farmland.

Ms. Lewis moved to continue the hearing to March 28, 2007 at the point of Opponents' Case. The motion passed, Commissioners George, Lewis, and Stern 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. Local Alcohol and Drug Planning Committee, three positions;
 - c. Parks Board, one position;
 - d. Road Improvement Advisory Committee, one position;
 - e. 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.

3. The Board's regular informal session on March 12, 2007 has been canceled.

The meeting adjourned at 12:20 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 3/7/07

PLEASE PRINT
Name

PLEASE PRINT
Complete Address

PLEASE PRINT
Subject

~~DAVE EASTMAN 10650 SW YAMBERG RD NE PERMITS/ISSUE~~

Larry Peterson 12740 Red Hill Rd Not to use.

MARK BORTNEM 21650 NE SUNNYCREST RD 5-14-06

Jan Bortnem 21650 NE Sunnycrest Rd ^{Newberg} 5-14-06

MARLA ROBISON 12300 NE PARRETT MTN RD ^{Newberg} NEWBERG

Larry Johnson 22185 NE Sunnycrest Rd ^{Newberg}

Larry Jansen 21755 NE Sunnycrest Newberg 5-14-06

HEALICE SAUSE 21755 NE Sunnycrest Newberg 5-14-06

MONIKA M YORK 21710 NE SUNNYCREST RD NEWBERG 5-14-06

RH Dutton 159 S.W. Spruce Dundee

CLIFFORD MORGAN 809 DATTON AVE. NEWBERG, OR 97132

DAVE WALKER 1118 NE CHEHALEM DR NEWBERG, OR 97132

William C. Cox 2244 SW California St. Portland, OR 97219

Michael G. Gunn P.O. Box 1083 Newberg 97132

Marilyn Reeves PO Box 1083 McMinnville

Jeff Caines / Steve Roper 9196 SW Hill Blvd 232

T Lisa Perse 5765 Mineral Spr. Rd ^{Newberg OR 97008} Carlton

[Saved commsec/forms]

EXHIBIT A 1/1