

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 August 1, 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 M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; John Krawczyk, Administrative Services Director; Laura Tschabold, Administrative Services Deputy Director; Ken Friday, Planning Division Manager; Martin Chroust-Masin, Associate Planner; Mary Holtan, PO Box 3192, Newberg; Ross Day, PO Box 230637, Tigard, 97303; David & Karen Evers, 15530 NW Orchard View Road, McMinnville; Dennis & Ruth Goecks, 14325 NW Pheasant Hill Road, McMinnville; Steve Pfeiffer, 1120 NW Couch Street, Portland, 97204; Tom Tankersley, PO Box 625, McMinnville; Charles Swindells, 1207 SW 6th Avenue, Portland, 97204; Charlyn Dalebout, 16829 NW Baker Creek Road, McMinnville; Kristi Holtan, 34085 NE Wilsonville Road, Newberg; Jennifer Hellberg, 9248 SW Sweek Drive, Tualatin, 97062, Joseph Evers, 6675 SE Reid Land, Dayton; Dan Bansen, 5801 SE Bansen Lane, Dayton; Ron & Leigh Woodard, 5995 SW Cougar Mountain Road, McMinnville; and Caleb Sperry, 2925 Hazel Avenue, Hood River.

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. The motion passed, Commissioners George, Lewis, and Stern voting aye.

Minutes

1. **B. O. 07-697** - Approve formal session minutes from March 7, 2007.

Personnel

2. **B. O. 07-698** - Approve the employment of Mark Mincher, Brett Hansen, and Manuel Valdez as Utility Workers in Public Works, regular full-time, Range 11, Step 1, \$2188/month, retroactive to July 30, 2007.

3. **B. O. 07-699** - Approve the employment of Jacob Blair, McMinnville, as on-call relief in the Juvenile Department, \$7.80/hour, effective August 2, 2007.

4. **B. O. 07-700** - Approve the change of status of Marsha Gabriel, Cleo Harding, Patricia

Harding, Norma Heath, and Robert Vertregt to extend temporary on-call employment in the Clerk's Office, retroactive to July 1, 2007 through June 30, 2008.

5. **B. O. 07-701** - Approve a contract employee agreement between HHS Chemical Dependency and Greta Coe for the development of an education program for Yamhill County wineries, \$35/hour, not to exceed \$5000, retroactive to July 15, 2007 through January 31, 2008.
6. **B. O. 07-702** - Approve Physician Services Agreement between Health & Human Services and Sally Godard, M.D., for psychiatric services, retroactive to July 1, 2007.
7. **B. O. 07-703** - Ratify the adjustment of Commissioner Lewis' salary to equal that of Commissioners George and Stern for fiscal year 2007-08, as discussed in Budget Committee meetings.
8. **B. O. 07-704** - Adopt an order regarding costs to employees for health insurance benefits for fiscal year 2007-08.

Contracts/Grants

9. **B. O. 07-705** - Approve a Client Service Agreement between Yamhill County and Marsh USA Inc. for risk management and insurance services, \$35,000, retroactive to July 1, 2007 through June 30, 2008.
10. Ratify approval of two change orders to an agreement between Yamhill County and McKinstry Co. for additional services related to the courthouse chiller replacement:
 - a. **B. O. 07-706** - #9085-002, \$8140;
 - b. **B. O. 07-707** - #9085-003, \$7211.
11. **B. O. 07-708** - Approve an agreement between Yamhill County and Superior Communications, Inc. for communications tower replacement management services, not to exceed \$59,500, effective August 1, 2007 through December 31, 2007.
12. **B. O. 07-709** - Approve a Cooperative Improvement Agreement between Public Works and Oregon Department of Transportation for the realignment of Highway 219 between Springbrook Road and Wyooski Road in Newberg.

John Gray noted that ODOT will be sending a revised agreement that includes a standard clause regarding the reversionary status of the road dedication.

13. **B. O. 07-710** - Approve Grant Agreement #24418 between the Transit Division and Oregon Department of Transportation for the rehabilitation of two vehicles, not to exceed \$6730, retroactive to July 1, 2007 through June 30, 2009.
14. **B. O. 07-711** - Approve an agreement between the Juvenile Department and Polk County for four beds in the Yamhill County Juvenile Detention Facility, \$246,740, retroactive to July 1, 2007 through June 30, 2008.

15. **B. O. 07-712** - Approve the 2007-09 Intergovernmental Agreement between the Juvenile Department and Oregon Commission on Children & Families for a 90-day allocation of Juvenile Crime Prevention funds, \$16,078, retroactive to July 1, 2007 through June 30, 2009.
16. **B. O. 07-713** - Approve the 2007-08 Juvenile Accountability Block Grant agreement between the Juvenile Department and Oregon Commission on Children & Families for the Peer Court program, \$10,000, retroactive to July 1, 2007 through June 30, 2008.
17. **B. O. 07-714** - Approve the 2007-09 Intergovernmental Agreement #YAM0709 between the Commission on Children & Families and Oregon Commission on Children & Families for the Healthy Start program, not to exceed \$81,750, retroactive to July 1, 2007 through June 30, 2009.
18. **B. O. 07-715** - Approve a modification to an agreement between HHS Abacus and Project Able for the establishment of a Consumer Care Partnerships Program, to address budget changes for the 2007-08 fiscal year.
19. **B. O. 07-716** - Approve an agreement between HHS Family & Youth and Catholic Community Services for Treatment Foster Care services, retroactive to July 1, 2007 through June 30, 2008.
20. **B. O. 07-717** - Approve an agreement between HHS Family & Youth and Lutheran Community Services Northwest for Oregon Health Plan services, retroactive to July 1, 2007 through June 30, 2008.

Special Assessment

21. **B. O. 07-718** - Authorize the payment of \$741 to the Association of Oregon Counties for a special assessment for the Public Lands and Natural Resources Forest Management Subcommittee.

Vehicles

22. **B. O. 07-719** - Authorize the purchase of the following vehicles for the Sheriff's Office and declare patrol units P-234 and P-200 as surplus county property to be sold on e-Bay to the highest bidder:
 - a. 2008 Ford Crown Victoria from Chuck Colvin Ford of McMinnville, \$21,269;
 - b. 2008 Chevrolet Colorado extended cab pickup from Bruce Chevrolet, \$12,944.

C. OLD BUSINESS:

1. **B. O. 07-720** - Consideration of adoption of Ordinance 812 in support of Planning Docket PAZ-01-07, a request for plan amendment/zone change from AF-20 to AF-10, applicants Benkendorf Associates representing Charles & Anne Gray, as tentatively approved July 18, 2007.

Rick Sanai provided the first and second readings of Ordinance 812 by title only, declaring an emergency. Ms. Stern moved to adopt the ordinance. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. **B. O. 07-721** - Consideration of adoption of Ordinance 813 in support of Planning Docket

PAZ-03-07, a request for plan amendment/zone change from AF-20 to AF-10, applicants Benkendorf Associates representing Martin Castro and Michael & Lauren Heifetz, as tentatively approved July 18, 2007.

Mr. Sanai provided the first and second readings of Ordinance 813 by title only, declaring an emergency. Ms. Lewis moved to adopt the ordinance. The motion passed, Commissioners George, Stern, and Lewis voting aye.

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

1. **B. O. 07-722** - Consideration of the change of status of Kevin Jackson to on-call relief in the Juvenile Department, Range 12, Step 1, \$13.27/hour, effective August 6, 2007.

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

2. **B. O. 07-723** - Consideration of the change of status of Drew Callicotte to .4 FTE in the Juvenile Department, effective August 9, 2007.

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

3. **B. O. 07-724** - Consideration of the change of status of Marilyn Westfall to Law Library Clerk in the Commissioners' Office, regular part-time, Range 13, Step 7, effective August 14, 2007.

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

4. **B. O. 07-773** - Consideration of authorizing the Chair to sign an agreement between Public Works and Talbot, Korvola & Warwick, LLP for follow-up work regarding the evaluation study of the Public Works Department, not to exceed \$15,000, subject to approval by County Counsel.

Ms. Lewis moved to authorize the agreement. The motion passed, Commissioners George, Stern, and Lewis voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket FT-06-07, a request to modify the previous condition of approval of FT-11-97 to allow the existing dwelling to remain 85 feet from the property line, applicant Catherine Wright representing Stephen Shea, appellants Ron and Leigh Woodard. *[Continued to August 22, 2007 at the point of Staff Recommendation; record left open until 5:00 p.m. August 10, 2007 for submission of additional information by any party, until 5:00 p.m. August 16, 2007 for written rebuttal by any party, and until 5:00 p.m. August 20, 2007 for written rebuttal by the appellants.]*

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

Staff Report - Martin Chroust-Masin entered the staff report into the record, noting that the minimum setback requirement at the time of the original application was eighty feet.

Proponents - Charles Swindells, representing the appellants, stated that the Woodards are the original applicants to whom the forest template dwelling approval was granted and the 200-foot setback requirement was included because of the 30% slope on the dwelling site. He stated that, according to the county's zoning ordinance, the only provisions under which the Board could modify the existing condition of approval would be for major alterations of the structure or for minor alterations affecting the siting of the use, neither of which would apply in this case.

He stated that a variance cannot be granted because there was a knowing violation of the 200-foot setback requirement and the record would not support administrative adjustments. He requested a clarification from the applicants regarding a statement in the record concerning the issuance of a certificate of occupancy.

He requested that the record be left open to allow him to submit findings from the county sanitarian at the time the forest template dwelling approval was processed.

Questions of Proponents - In response to questions by Tom Tankersley, Ron Woodard stated that the owner and builder had measured the distance between the dwelling and the property line to be 85 feet and Troy Haworth Construction had recently measured the slopes on the subject property. Mr. Swindells added that the setback distance can be determined according to the scale on the county map.

Opponents - Mr. Tankersley, representing property owner Stephen Shea, submitted materials for the record and provided a copy to the proponents. He stated that the appeal is not valid because it did not specify the reasons for appeal, but stated that the information would be provided later by the appellants' attorney. He submitted affidavits by the county surveyor and Mr. Shea and explained that Mr. Shea had received county approval for every step of the process and no objection was raised by the Woodards prior to the closing of the sale, even though the stakings were made prior to that time. He added that there is no record of objections being made to the county.

He stated that the surveyor determined the setback distance to be 186.4 feet and no slope on the property exceeds 25%, with most being less than 20%. He pointed out that aerial photos are approximations and lot lines are often incorrect. He explained that the 200-foot setback requirement was not initiated by county staff, but was included as a condition of approval because that was the distance listed in Mr. Woodard's original application. He stated that staff has confirmed that the slopes on the property are not a problem and the minimum setback at the time of approval was eighty feet.

He stated that the final inspection of the dwelling was approved years before the certificate of occupancy was actually issued and explained that the certificate was delayed because the information was not entered on the Planning Department's computer.

He said that sprinklers or a pond are not required for the dwelling because the property is located within the McMinnville Rural Fire District. He added that there was no knowing violation

of the ordinance because the Planning staff and the Fire Department signed off on the plans.

He reaffirmed that this is not a valid appeal and stated that if the Board decides to consider it anyway, he would be willing to modify the setback requirement to 130 feet and include additional conditions as listed in his letter.

Public Agency Reports - Mr. Chroust-Masin stated that the McMinnville Fire Department had asked to be contacted regarding fire access.

Mr. Swindells stated that he would be willing to do his oral rebuttal today and requested two weeks for the initial open record period to allow adequate time to address the issues raised regarding the existing setback distance. He added that ten days would be sufficient. Mr. Tankersley stated that he would prefer a one-week period.

Rebuttal - Mr. Swindells stated that the dwelling approval was granted in 1997 and ownership was transferred to the Sheas in 2000, after which the Woodards began a series of complaints to the Planning Department and engaged in a protracted and costly battle over access to the property, which is being arbitrated now. Ms. Woodard stated that the letter from the arbitrator submitted by the applicants is on hold and is not the final decision. Mr. Tankersley requested that Planning staff check to see if they have a record of any complaints being submitted by the Woodards.

Mr. Swindells pointed out that the Sheas' application to modify the original condition of approval is contradicted by their recent statements that no modification is necessary because the setback distance is actually 186.4 feet. He said that he would respond in writing to Mr. Tankersley's claim that the appeal is invalid after reviewing the appeal requirements.

Ms. Lewis moved to continue the hearing to August 22, 2007 at the point of Staff Recommendation with the record left open until 5:00 p.m. August 10, 2007 for submission of additional information by any party, until 5:00 p.m. August 16, 2007 for written rebuttal by any party, and until 5:00 p.m. August 20, 2007 for written rebuttal by the appellants. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. Consideration of Planning Docket NCU-01-07, a request to recognize an existing storage business as a non-conforming use, applicant David Evers, appellant Dan Bansen. *[Continued to August 22, 2007 at the point of Staff Recommendation; record left open until 5:00 p.m. August 10, 2007 for submission of additional information by any party, until 5:00 p.m. August 16, 2007 for written rebuttal by any party, and until 5:00 p.m. August 20, 2007 for written rebuttal by the appellants.]*

Ms. George opened the public hearing. There were no abstentions or objections to jurisdiction. Rick Sanai determined that there was no need to read the required land use statement again. Ms. Stern noted for the record that she had received past donations from the Bansens to her campaign, but that will not affect her decision on this case. Ms. George and Ms. Lewis both noted that Dennis Goecks, who would be speaking on behalf of Mr. Evers, had contributed to their campaigns, but that won't affect their decisions either. Ms. Stern added that Mr. Goecks is a member of the Yamhill County Budget Committee and is a former commissioner.

Staff Report - Ken Friday described the subject property, previous action taken by the county in response to an anonymous complaint about the storage business, and the request to recognize the business as a non-conforming use. He noted that the Planning Commission had voted 4-3 to approve the application with the condition that no expansion of the non-conforming use would be allowed and the non-conforming use would be limited to the rental of storage units.

Proponents - Steve Pfeiffer, representing Dan Bansen, referred to a letter included with the appeal that explains the appellant's position and pertinent facts. He pointed out that Exclusive Farm Use (EFU) zones were created by state statute with a definitive and exclusive list of allowed uses and are not open to interpretation by local government. He stated that to qualify as a non-conforming use, the use must be lawful at the time of establishment and there must be a continuous history of the use for ten years. He said that storage facilities are not lawful in EFU zones, so there is no basis for approving this as a non-conforming use. He added that denying this application will send a message to the agricultural community that the Board will rigorously enforce state laws.

Opponents - Dennis Goecks, speaking on behalf of David Evers, submitted written testimony in support of the application and read portions of the testimony. Mr. Evers submitted tax statements showing rental income since 1980. Mr. Goecks noted that check registers supporting the figures shown in the tax statements are available for review if desired by the Board. He submitted copies of articles found on the Internet regarding potential problems with organic dairy farming, to which the Bansens have recently transitioned. He encouraged Mr. Evers and Mr. Bansen to take advantage of mediation services available through Your Community Mediators. Mr. Evers provided a history of the family use of his property and stated that none of the neighbors had objected when he had first proposed the plan to use his buildings for storage rental rather than for hog farming.

Questions of Opponents - In response to questions from Mr. Bansen, Mr. Evers stated that a retired mechanic still does some work out of his facility, repairing farm equipment. He confirmed that the mechanic would leave the facility if the application were approved.

Public Agency Reports - Mr. Friday reviewed the public agency reports in the record and stated that no other reports have been received.

Rebuttal - Mr. Pfeiffer requested that the record be left open to allow the appellants to respond to the new information submitted today. He stated that much of the information discussed by the applicants is not relevant to the approval criteria and the only pertinent fact is that storage facilities have been an unlawful use on the subject property since the EFU zone was established in 1976, which fails the first and foremost test of a non-conforming use.

Mr. Bansen discussed a previous incident in which an accidental break in his pipe line resulted in manure leaking onto a neighboring property. He said that although the neighbor was not upset initially, a complaint was later filed, which shows the results already being seen of light industrial business in an agricultural zone. He added that none of the neighbors he has spoken with can recollect being asked by Mr. Evers about turning his agricultural building into a storage facility. He stated that he would have no objection to speaking with mediators. He explained that he had hired Mr. Pfeiffer because they have been friends for about twenty years.

Ms. George suggested that the hearing be continued for a period of time sufficient to allow both parties to attempt resolving their differences through mediation, in which case Mr. Bansen could withdraw his appeal if he so desired.

Ms. Lewis moved to continue the hearing to August 22, 2007 at the point of Staff Recommendation with the record left open until 5:00 p.m. August 10, 2007 for submission of additional information by any party, until 5:00 p.m. August 16, 2007 for written rebuttal by any party, and until 5:00 p.m. August 20, 2007 for written rebuttal by the appellants. The motion passed, Commissioners George, Stern, and Lewis voting aye.

3. Consideration of Planning Dockets P-44-07/C-35-07, a request for partition and conditional use approval to divide eighteen acres into three residential parcels, applicant Mary Holtan. *[Tentatively approved, findings to be adopted August 15, 2007.]*

Ms. George opened the public hearing. There were no abstentions or objections to jurisdiction. Rick Sanai determined that there was no need to read the required land use statement again.

Staff Report - Ken Friday described the subject property and surrounding zoning and noted that the application was filed subsequent to Measure 37 approval. He reviewed the Board's interpretation of Ordinance 29 regarding Agricultural Zone A.

Proponents - Mary Holtan submitted and read written testimony detailing her plans for the subject property and how the criteria has been met.

Ross Day, Director of Legal Affairs for Oregonians in Action, stated that previous efforts to get Ms. Holtan a homesite to allow her son to care for her late husband were unsuccessful prior to Measure 37, and this would allow her to finally make her dream a reality.

Public Agency Reports - Mr. Friday stated that the Public Works Director's report indicates the need for a public access road before any development could take place on the new lots. He noted that this is covered in the recommended Condition #5.

Staff Recommendation - Mr. Friday recommended approval of the application with the seven conditions of approval listed in the staff report.

Close of Public Hearing / Deliberation - Ms. Stern moved tentative approval of P-44-07/C-35-07 with the recommended conditions, with findings to be adopted August 15, 2007. The motion passed, Commissioners George, Stern, 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, three lay alternate position and one youth position;
 - b. Local Alcohol and Drug Planning Committee, two positions;
 - c. Road Improvement Advisory Committee, 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. No regular Board sessions will be held the week of August 6-10, 2007. No informal session will be held on August 13, 2007.

The meeting adjourned at 11:31 a.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair KATHY GEORGE

Commissioner MARY P. STERN

Commissioner LESLIE LEWIS