

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 October 17, 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 Assistant Director; Ken Friday, Planning Division Manager; Deborah Bridges, Victims’ Assistance; Nicole Montesano, News-Register; Gretchen Olson, 23725 Old Bethel Road, Amity; Marilyn Reeves, 22250 Boulder Crest Lane SE, Amity; Dorothy Cofield, 9755 SW Barnes Road #450, Portland, 97229; Lindy Dopson, 5280 Macleary, Salem; and Joe Savelsbergh, 1720 Kenard NW, Salem.

Commissioner George called the meeting to order.

PROCLAMATION: Reading of Resolution 07-10-17-1 proclaiming October 21-27, 2007 as the 10th Annual National Hands & Words Are Not For Hurting Week in Yamhill County (see consent agenda below).

Gretchen Olson provided background information on the pledge program, shared examples of how the program is succeeding, and discussed the new signs and decals available. The commissioners expressed their support of the program.

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. Lewis moved approval of the consent agenda. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Personnel

1. **B. O. 07-931** - Approve the employment of John Taylor, Salem, as Laborer 1 in Community Corrections, temporary part-time, \$10/hour, effective October 23, 2007 through April 22, 2008.

2. **B. O. 07-932** - Approve the employment of Natasha Lopez, Newberg, as HS Associate in HHS Adult Mental Health, temporary on-call, Range 14, Step 1, effective October 24, 2007 through October 24, 2008.

3. **B. O. 07-933** - Approve the employment of Diana Resendez, McMinnville, as Office Specialist 2 in the Assessor's Office, regular full-time, Range 12, Step 1, \$1766/month, effective October 18, 2007.

4. **B. O. 07-934** - Authorize the Road Department to return to the winter shift schedule of five eight-hour days per week, effective October 29, 2007.

Contracts/Grants

5. **B. O. 07-935** - Approve Amendment #4 to extend Agreement #117-8 between Public Works and OBEC Consulting Engineers for the Meadow Lake Road Bridge #11566 through December 31, 2007.

6. **B. O. 07-936** - Approve a modification of agreement between Yamhill County and Ball Janik, LLP, provider, for consulting services, not to exceed \$86,400, retroactive to July 1, 2007.

7. **B. O. 07-937** - Accept the 2007 Edward Byrne Memorial Grant from Oregon Office of Homeland Security for HHS Chemical Dependency, \$137,616, retroactive to July 1, 2007 through June 30, 2008, replacing the agreement previously accepted by B.O. 07-841.

8. **B. O. 07-938** - Approve an agreement between HHS Public Health, provider, and Oregon Health & Science University for the CaCoon Program, \$24,975, retroactive to October 1, 2007 through September 30, 2008.

9. **B. O. 07-939** - Approve Agreement #122716 between HHS Public Health, provider, and Oregon Department of Human Services for the Drinking Water Monitoring Program, not to exceed \$29,043, retroactive to October 1, 2007 through June 30, 2009.

10. **B. O. 07-940** - Approve a memorandum of understanding between Information Systems and the City of McMinnville for the cooperative use of communications towers.

Vehicles

11. **B. O. 07-941** - Authorize the purchase of a new 2008 Ford Focus from Chuck Colvin Ford for HHS Public Health, \$11,496.

Refund

12. **B. O. 07-942** - Authorize a refund of \$1800 from the Planning Department to J.D. Rainwater.

Change Fund

13. **B. O. 07-943** - Approve a \$500 temporary change fund for the Assessor's Office, effective October 22, 2007 through December 15, 2007.

Committees

14. **B. O. 07-944** - Establish a Business Continuation Task Force to oversee the development of a Business Continuation Plan for Yamhill County.

Resolution

15. **B. O. 07-945** - Consideration of adoption of Resolution 07-10-17-1 proclaiming October 21-27, 2007 as the 10th Annual National Hands & Words Are Not For Hurting Week in Yamhill County.

C. **OLD BUSINESS:**

1. **B. O. 07-946** - Consideration of adoption of Ordinance 818 in support of Planning Docket Z-04-07, a request for zone change from EF-80 to AF-40, applicant Denny Elmer, as tentatively approved by the Planning Commission on September 6, 2007.

Rick Sanai provided the first and second readings of Ordinance 818 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. 07-947** - Consideration of adoption of Ordinance 819 in support of Planning Docket PAZ-09-07(KF), a request for plan amendment/zone change from EF-20 to F-80, applicant Catherine Wright representing Kathy Lu, as tentatively approved October 3, 2007.

Mr. Sanai provided the first and second readings of Ordinance 819 by title only, declaring an emergency. Ms. Stern stated that since she was excused from the October 3, 2007 meeting, she won't be voting on the next three items. Ms. Lewis moved to adopt the ordinance. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern abstaining.

3. **B. O. 07-948** - Consideration of adoption of Ordinance 820 in support of Planning Docket PAZ-11-07(SA), a request for plan amendment/zone change from EF-80 to F-80, applicant Catherine Wright representing David Pratt, Successor Trustee of the Cecil Gross and Delores Gross Revocable Living Trusts, as tentatively approved October 3, 2007.

Mr. Sanai provided the first and second readings of Ordinance 820 by title only, declaring an emergency. Ms. Lewis moved to adopt the ordinance. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern abstaining.

4. **B. O. 07-949** - Consideration of adoption of findings in support of Planning Docket P-60-07/C-41-07(KF), a request for conditional use and partition to create two 2.5-acre parcels and one 4.2-acre parcel under a Measure 37 approval, applicant Joseph Mathis, as tentatively approved October 3, 2007.

Ms. Lewis moved to adopt the findings. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern abstaining.

5. Consideration of adoption of findings in support of Planning Docket P-26-07/C-21-07, a request for conditional use and partition under standards in effect in 1972 to allow the creation of two 2.5-acre parcels from an existing 47.4-acre lot, applicant Marla Robison, appellant Samuel Gordon, as tentatively approved October 10, 2007. *[Continued to October 24, 2007.]*

Mr. Sanai stated that he had received a request from the applicant's attorney to continue the

item for a week. Ms. Stern moved to continue the item to October 24, 2007. The motion passed, Commissioners George, Stern, and Lewis voting aye.

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

1. Consideration of adoption of the following formal session minutes:
 - a. **B. O. 07-950** - August 1, 2007;
 - b. **B. O. 07-951** - August 29, 2007;
 - c. **B. O. 07-952** - September 5, 2007.

Ms. Lewis moved to adopt the three sets of minutes. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. Discussion of proposed membership of the Business Continuation Task Force. [*Consensus: Phil McCollister, a representative from Information Services, Richard Sly, John Krawczyk, Laura Tschabold, and Commissioner George, with other staff assigned to assist in research and technical writing.*]

John Krawczyk presented the names for the task force membership and stated that, according to Phil McCollister, development of a Business Continuation Plan would be a lengthy process. He noted that staff assigned to assist the task force would include John Boynton and possibly Marilyn Westfall.

3. **B. O. 07-953** - Consideration of authorizing the Chair to sign an agreement between the Clerk's Office and Hart Intercivic, Inc., for vote tally equipment, subject to the approval of County Counsel and the County Clerk.

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

E. PUBLIC HEARINGS:

1. Consideration of Planning Docket FT-11-07(KF), an appeal of the Planning Director's denial of a forest template dwelling in the Eagle Point Subdivision, appellant Dorothy Cofield representing Charma Vaage. [*Continued to November 7, 2007 at the point of Staff Recommendation; record left open until 5:00 p.m. October 24, 2007 for the submission of information by any party, until 5:00 p.m. October 31, 2007 for written rebuttal by any party, and until 5:00 p.m. November 5, 2007 for written rebuttal by the applicant.*]

Ms. George opened the public hearing. There were no abstentions or objections to jurisdiction. She stated that the Board had taken a site visit earlier in the week. 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 - Ken Friday described the subject property, surrounding zoning, and request for a forest template dwelling. He referred to the Oregon Supreme Court decision in Yamhill County v. Ludwick, which ruled Eagle Point to be an unauthorized subdivision. He said that although the Planning Director denied the application, a list of recommended conditions is included in the staff report, should the Board decide to approve it. He noted that the applicant's attorney has objected to Condition #1, which requires a 100-foot setback from property lines to comply with the

fire break standards in Condition #4, because the standards can be complied with on the neighboring lot. He said that he has no objection to that.

Proponents - Dorothy Cofield, representing Charma Vaage, requested that the record be left open for a week to submit additional information. She stated that the previous decisions of the Land Use Board of Appeals (LUBA) to overturn two county approvals for forest template dwellings in the Eagle Point Subdivision were not appealed because of a procedural oversight, but Tax Lot 2700, which has the same facts, is being taken back up through the legal system.

She discussed the implications of Citizens for Responsibility v. Lane County, in which LUBA was admonished for adding words into the firearms training statute. She stated that the legislature intended to keep the statute operating regardless of whether or not it was lawful.

She also pointed out that the legislature has now enacted House Bill 2723, which allows lots in the Eagle Point Subdivision to become legal, thus taking away the opponents' argument about legality. She said that, according to the definition in Ordinance 202, the lots in this subdivision are legal because they were all created as deeded units of land prior to October 4, 1975.

Questions of Proponents - Ms. Cofield explained that the reason the two LUBA decisions were not appealed was because the prior legal counsel filed the paperwork within the typical circuit court case deadline of thirty days rather than the required 21 days.

Opponents - Marilyn Reeves submitted documents containing the record for the previous forest template dwellings and stated that the county had granted approval based on legal information provided by Rick Sanai regarding Maxwell v. Lane County, which was later shown to be inaccurate. She stated that nothing has changed with the Maxwell case and it still represents an important decision regarding unlawfully created lots. She explained that, according to the LUBA ruling, the fault was not with the county, but with the developer of Eagle Point, who failed to obtain final subdivision plat approval from the county. She said that many issues would have to be resolved before a single forest template dwelling could be approved in this unauthorized subdivision, which is now forest land.

She said that the firearms training case does not necessarily set a precedent and was under a different section of Oregon statute, which involves different issues than the land use issues in this case. She stated that the problems associated with this situation were clearly outlined previously by John Pinkstaff and there is ample evidence for the Board to support the Planning Director's denial of the forest template dwelling.

Public Agency Reports - Mr. Friday stated that there are no additional reports besides those already in the record.

Rebuttal - Ms. Cofield stated that there is nothing in the code to require a legal lot and just as the McCay Creek case was overturned, so could the Maxwell case. She said that because the 1993 legislature chose not to include the words "lawfully created," the intent was clearly to have a simple, objective, at-the-counter template.

Ms. Lewis moved to continue the hearing to November 7, 2007 at the point of Staff Recommendation with the record left open until 5:00 p.m. October 24, 2007 for the submission of information by any party, until 5:00 p.m. October 31, 2007 for written rebuttal by any party, and until 5:00 p.m. November 5, 2007 for written rebuttal by the applicant. 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;
 - 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.

G. EXECUTIVE SESSION: Discussion of potential litigation in executive session pursuant to ORS 192.660(2)(h). *[No formal action taken.]*

The meeting recessed at 10:07 a.m. and reconvened at 11:15 a.m. following an executive session in the Commissioners' Office meeting room pursuant to ORS 192.660(2)(h) to discuss potential litigation. No final decisions were made and the sense of the Board was conveyed to the Public Works Director.

The meeting adjourned at 11:15 a.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair KATHY GEORGE

Commissioner MARY P. STERN

Commissioner LESLIE LEWIS