

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 November 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 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; Dan Linscheid, Surveyor; Henry & Marilyn Reeves, 22250 Boulder Crest Lane SE, Amity; Dorothy Cofield, 9755 SW Barnes Road, Suite 450, Portland, 97225; Jenny Han, 3374 SW Vermont Street; John B. Smith, 6717 SW 33<sup>rd</sup> Place, Portland; John W. Smith, PO Box 1567, Sherwood, 97140; John Niemeyer and Laurent Montalieu, 2803 Orchard Avenue, McMinnville.

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.

Marilyn Reeves expressed her appreciation to the Board for their involvement in the Class B biosolids application by the City of Salem. She said that the public hearing was very interesting and had a positive result. She encouraged Yamhill County residents to take a closer look at the issues of population growth and protecting prime agricultural lands and do everything they can to nurture and sustain these lands, now that Measure 49 has passed.

Henry Reeves invited the commissioners to speak about the passage of Measure 49 in the previous day’s election. Ms. Lewis stated that she has always respected the voice of the voters and she hopes that those who have traditionally opposed property owners’ rights, such as Mr. Reeves, will not be appearing before the Board to oppose people who are trying to exercise their property rights under this new, more restrictive law. She stated that the Board made every effort to exercise the spirit and letter of the law under Measure 37 and will continue to do so under Measure 49. Mr. Reeves encouraged the commissioners to leave their ideologies on the doorstep of the courthouse and remember their obligation to serve the public. Ms. George pointed out that commissioners are elected on the basis of their ideologies.

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

### Minutes

1. **B. O. 07-978** - Approve formal session minutes from October 24, 2007.

### Personnel

2. **B. O. 07-979** - Approve the employment of Cassie Jackson, McMinnville, as Office Specialist 2 in the District Attorney's Office, regular full-time, Range 7, Step 2, effective November 7, 2007.
3. **B. O. 07-980** - Approve the employment of Rhonda Manint, Monmouth, as on-call relief in the Juvenile Department, \$7.80/hour, effective November 9, 2007.
4. **B. O. 07-981** - Approve the employment of Ellen Goss, Portland, as HS Associate in HHS Adult Mental Health, temporary part-time, Range 14, Step 1, retroactive to November 3, 2007 through November 23, 2007.
5. **B. O. 07-982** - Approve the change of status of Elizabeth Whalon to reduce regular employment in HHS Abacus from full-time to .8 FTE, retroactive to October 24, 2007.
6. **B. O. 07-983** - Approve the change of status of Jennifer Trumbo to temporary part-time employment in HHS Abacus, effective November 9, 2007 through April 30, 2008.
7. **B. O. 07-984** - Approve the change of status of Jessica Johnson from 15 to 19 hours/week in Maintenance, retroactive to October 24, 2007.
8. **B. O. 07-985** - Approve the change of status of Deborah Carter from Office Specialist 2 to Senior Office Specialist in the Planning Department, Range 10, Step 1, retroactive to October 24, 2007, as recommended by the Classification Committee.

### Contracts/Grants

9. **B. O. 07-986** - Authorize the Chair to sign a Lobbying and Litigation Certification for the closeout of the Martin & Wright Grant.
10. **B. O. 07-987** - Approve the 2008 Regional Housing Center Agreement #931 between Yamhill County and Oregon Housing and Community Services to accept Community Development Block Grant funds, \$48,000, effective January 1, 2008 through December 31, 2008.
11. **B. O. 07-988** - Approve an agreement between Yamhill County and City County Insurance Services for GASB 45 retiree health actuarial services.
12. **B. O. 07-989** - Ratify the approval of Amendment #9 to the 2007-09 Financial Assistance Agreement #119951 between Health & Human Services and Department of Human Services, retroactive to October 29, 2007.
13. **B. O. 07-990** - Approve Amendment #1 to Contract #4600006521 between HHS Adult Mental Health, provider, and Multnomah County for mental health and case management services

to people living with HIV/AIDS, not to exceed \$34,706, retroactive to July 1, 2007.

14. **B. O. 07-991** - Approve a Professional Services Agreement between HHS Abacus and Mid-Valley Behavioral Care Network to accept grant funds for consumer-provided services, \$15,197, retroactive to October 1, 2007 through September 30, 2008.

15. **B. O. 07-992** - Approve a Communications Site Lease Agreement between Yamhill County and R. Waldo Farnham DBA Farnham Rentals for the property at 22200 Boulder Crest Lane, Amity, \$200/month, initial lease term of five years with renewal options, effective November 7, 2007.

16. **B. O. 07-993** - Approve a Memorandum of Understanding between Yamhill County and Polk County regarding the use of communication facilities, effective November 7, 2007.

#### Refund

17. **B. O. 07-994** - Authorize a refund from Health & Human Services to Blue Cross Blue Shield, \$579.

C. **OLD BUSINESS:** None.

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

1. Consideration of approval of Public Works Docket RV-5-2007, a petition for the vacation of Fig, Elm, and Date Streets between Burns Road and Fourth Street and all of Fifth Street northerly of Cherry Avenue in Whiteson, petitioners Roger and Barbara Egan, no hearing necessary under ORS 368.341. *[Tentatively approved, findings to be adopted November 20, 2007.]*

Ms. Lewis moved tentative approval of RV-5-2007 with findings to be adopted November 20, 2007. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. **B. O. 07-995** - Consideration of the employment of Monique Castillo, Sheridan, as on-call relief in the Juvenile Department, Range 12, Step 1, \$13.87/hour, effective November 14, 2007.

Ms. Stern moved approval of the employment of Monique Castillo. The motion passed, Commissioners George, Stern, and Lewis voting aye.

3. Consideration of approval of the following agreements between Yamhill County and Washington County Consolidated Communications Agency (WCCCA):

a. **B. O. 07-996** - Tower and Site Use Irrevocable License to allow Yamhill County wireless communications equipment to be located on WCCCA's tower and shelter, \$300/month, retroactive to November 1, 2007 through November 1, 2012;

b. **B. O. 07-997** - Reciprocal Tower Use Agreement to allow WCCCA to install and operate two microwave antennas on the Yamhill County tower located on Mountain Top Road, Newberg, effective November 7, 2007 through November 7, 2012.

Ms. Lewis explained that the county will be able to use one of the T1 channels on WCCCA's microwave equipment, which will save the county about \$500 per month. She moved approval of the two agreements. 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, as continued from October 17, 2007 at the point of Staff Recommendation. *[Tentatively approved, findings to be adopted November 20, 2007; record submission of LUBA Record #2006-082 rejected.]*

Ms. Stern requested a recess to allow Rick Sanai to speak with each of the commissioners individually. The meeting recessed at 9:18 a.m. and reconvened at 9:48 a.m.

Ms. George opened the public hearing.

Staff Recommendation - Ken Friday referred to a letter submitted on November 5, 2007 by Ms. Cofield and recommended that the request by Merilyn Reeves to submit the contents of LUBA Record #2006-082 for the record of FT-11-07 be formally rejected. He explained that it would be very confusing to include the complete record and both the LUBA decision and the memo from John Pinkstaff are already part of the record for FT-11-07.

He said that he believes that the LUBA decision requiring lots in the template to be lawfully created has been overturned by the court of appeals decision, which was based on the fact that the relevant statute contains no specific requirement for lawful creation and specific wording requiring lawful creation is included in other statutes.

He recommended approval of FT-11-07 with a modification to Condition #1 to require setbacks consistent with the request of the applicant. He explained that requiring a 130-foot setback would push the dwelling onto a steep slope where construction would not be possible.

Close of Public Hearing / Deliberation - Ms. Stern agreed with the statements made by Mr. Friday and said that including the complete LUBA record would unduly prejudice the applicant. She moved tentative approval of FT-11-07 with findings to be adopted on November 20, 2007.

Ms. Lewis agreed that including that entire LUBA record would be confusing and prejudicial and that language cannot be inserted into a statute that wasn't included by the legislature. Ms. George thanked Mr. Friday for his comments and for his willingness to review his original recommendation.

The motion for tentative approval passed, Commissioners George, Stern, and Lewis voting aye. Ms. Stern moved to reject the record submission of LUBA Record #2006-082. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. Public hearing pursuant to ORS 368.256 regarding road hazard abatement in the Hyland Orchards Subdivision, property owner John Niemeyer. *[Continued to November 20, 2007.]*

Ms. George opened the public hearing.

Staff Report - John Gray provided background information and reviewed the process for

handling violations of ORS 368. Dan Linscheid stated that he had received a complaint from Mr. Niemeyer's neighbor, John Smith, about the encroachment of Mr. Niemeyer's fencing into the public right-of-way. He said that Mr. Niemeyer wants the deer fence to be as close to the road as possible in order to maximize the farmable areas of his land.

Public Comment - Mr. Niemeyer explained the situation to the Board, using maps of the property for illustration (see attachments). He stated that the fences are needed to protect Hyland Vineyards from deer and if gates are unacceptable, he would be willing to put in cattle guards.

Laurent Montelieu stated that he is Mr. Niemeyer's business partner and his focus is on winemaking. He said that Mr. Niemeyer has been very open with his neighbors regarding his intentions for the property. He discussed the farming practices used on the property and his desire to preserve the natural beauty of the area in a way that works for the business. He noted that an alley has been provided for deer and other wildlife to travel in. Ms. Lewis expressed her appreciation for his efforts and said that she was shocked to learn that many vineyard owners are taking out permits to kill the deer.

John Smith stated that he and his father, Jack Smith, had a good relationship with the previous vineyard owners and understand Mr. Niemeyer's desire to expand the vineyards, but they feel that the public right-of-way needs to be maintained. He said that the encroachment of the fencing onto the right-of-way makes it difficult for his big logging equipment to get through and the gates are difficult for his elderly father to maneuver. He added that other land owners in the area also use the right-of-way for access to their property. He pointed out the areas of encroachment on the map and stated that he is almost finished moving his own fence out of the right-of-way.

He stated that cattle guards may not be the right solution. He said that an automatic gate opener would be better for his father, but not practical because there is no power there.

Ms. Lewis pointed out that a compromise between the two parties might be possible in order to provide Mr. Smith better access and prevent Mr. Niemeyer from having to put up a lot more fencing. Mr. Niemeyer explained that the fencing encroachment on the corner was an error by the contractor and will be corrected. He stated that he will fix the other problem area and is willing to put in a double gate to allow better access for logging equipment. Mr. Smith stated that he would be willing to allow a fence down the middle of the right-of-way if he is allowed to keep his fencing in the right-of-way as well.

Ms. George moved to continue the hearing to November 20, 2007 to allow the parties time to discuss the issues further and try to work out an agreement. The motion passed, Commissioners George, Stern, and Lewis voting aye. Mr. Gray stated that if a compromise is reached, the Board can dismiss these proceedings.

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

3. All Board sessions will be canceled the week of November 12-16, 2007 due to the annual Association of Oregon Counties Conference.

4. No Board sessions will be held on November 19 or 21, 2007. Due to the Thanksgiving holiday, the Board will hold a combined session at 9:30 a.m. on Tuesday, November 20, 2007.

G. **EXECUTIVE SESSION** pursuant to ORS 192.660(2)(e) to discuss real property transactions. *[No formal decisions made.]*

The Board recessed to executive session at 11:04 a.m. pursuant to ORS 192.660(2)(e) to discuss real property transactions. The meeting reconvened at 11:26 a.m. with no final decisions made and the sense of the Board conveyed to John Gray.

The meeting adjourned at 11:27 a.m.

Anne Britt  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

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Chair KATHY GEORGE

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Commissioner MARY P. STERN

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Commissioner LESLIE LEWIS