

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 January 7, 2009, at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Leslie Lewis, Kathy George, and Mary P. Stern being present.

Also present were Laura Tschabold, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Pat. Anderson and Steve Mikami, Personnel; Mike Brandt, Planning Director; Ken Friday, Planning Division Manager; Sheriff Jack Crabtree; Captain Ken Summers; Keith Urban, Chemical Dependency; Michael Robinson, 1120 NW Couch St, Tenth Floor, Portland 97209; Art & Anne Engen, 13325 NW Willis Rd, McMinnville; Patti Jahnke, 7151 NE Oak Springs Farm Rd, Carlton; Walt Gowell, PO Box 480, McMinnville; Wendy & Jennifer Abdelnour, 14190 NW Berry Creek Rd, McMinnville; Sally and Dwayne Cole, 13215 NW Berry Creek Rd, McMinnville; Marilyn Reeves, 22250 Boulder Crest Ln SE, Amity; Edwin Sharer, 16500 SE Lafayette Hwy, Dayton; Herb Kuhn, 10275 NE Worden Hill Rd, Dundee; Joe Dixon, 13780 NW Berry Creek Rd, McMinnville; Al Arguedas, 14100 NW Berry Creek Rd, McMinnville; Matt Dunckel, 19010 Baker Creek Rd, McMinnville; Fred Plews, 13730 NW Berry Creek Rd, McMinnville.

Commissioner Lewis called the meeting to order.

SPECIAL PRESENTATION: Years of Service awards to county employees.

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

Minutes

1. **B. O. 09-02** - Approve formal session minutes from November 12, 2008.

Personnel

2. **B. O. 09-03** - Approve the employment of Angela Keim, McMinnville, as extra help in Veterans Services, temporary part-time, \$8.40/hour, effective January 12, 2009, through June 30, 2009.

3. **B. O. 09-04** - Approve the change of status of Daphne Bach to regular part-time employment in Community Corrections, .5 FTE, retroactive to January 1, 2009.

Contracts/Grants

4. **B. O. 09-05** - Ratify the approval of Amendment #1 to Contract #1840200 between HHS Chemical Dependency, provider, and Chemeketa Community College for the JOBS Program, revising the Statement of Work and reducing the budget to \$27,467, retroactive to December 18, 2008.

C. **OLD BUSINESS:** None.

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

1. **B. O. 09-06** - Consideration of approval of Amendment #1 to Intergovernmental Agreement #09-DA-07 between the District Attorney's Office and Oregon Department of Justice to remove the dollar limitation on how much money may be claimed in the last three quarters of the 2007-09 state biennium.

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

2. **B. O. 09-07** - Consideration of the employment of Corey Baughman, McMinnville, as Corrections Reserve in the Jail, part-time on-call, \$10/hour, effective January 9, 2009.

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

3. **B. O. 09-08** - Consideration of the change of status of Terry Schmidt to temporary full-time employment in the Jail, effective January 9, 2009, through March 8, 2009.

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

E. **PUBLIC HEARINGS:**

1. **B. O. 09-09** - Consideration of annexing Tax Lot R3321-913 to the Dundee Rural Fire Protection District, as authorized by ORS 198.857, petitioners Herbert and Carolyn Kuhn.

Ms. Lewis opened the public hearing. Mr. Gray stated that the petition was endorsed by the fire protection district. There being no public comment, the hearing was closed. Mr. Kuhn indicated that he was in favor of the annexation.

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

2. Consideration of Planning Docket S-01-08/V-03-08(KF), an appeal of the Planning Director's conditions of approval of a ten-lot subdivision, applicant/appellant Martha Jahnke. *[Continued to February 4, 2009, at the point of Staff Recommendation; record to remain open for the submission of written material from all parties until 5:00 p.m. on January 14, 2009, for written rebuttal from all parties until 5:00 p.m. on January 21, 2009, and for written rebuttal from the applicant only until 5:00 p.m. on January 28, 2009.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Lewis noted that the Board had taken a site visit on January 5. 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, the request for a subdivision, and the approval criteria. Mike Brandt stated that meetings were held among the neighbors to discuss concerns and suggest conditions of approval, many of which were incorporated by Mr. Friday in the draft list of proposed conditions. He said that the appeal has been withdrawn, but some of the proposed conditions are not satisfactory to Ms. Jahnke.

Proponents - Mike Robinson, representing Ms. Jahnke, stated that he appreciates the efforts of the Planning Department to resolve the neighbors' concerns, but some of the proposed conditions are not permissible under Oregon law and some would be more appropriate at the building permit stage.

He reviewed a list of proposed modifications to the conditions of approval and requested that the hearing be continued or the written record left open. He requested that, once the record is closed, the Board approve the subdivision without the conditions or with the modified conditions as discussed above.

Ed Sharer stated that no reference to Willis Road was made in the application and the plan was for all traffic to come from Berry Creek Road. He said that the evaluation process mentioned by Mr. Robinson would probably be necessary before access from Willis Road could be considered.

He referred a large map and aerial photo and discussed the fire break area. Mr. Friday stated that he intends to modify that condition to make sure there are no restrictions on the fire break area. He explained that he did not intend for the setbacks to be on the property or to create a situation where there are few, if any, opportunities to build.

Mr. Sharer submitted a photo of a subdivision on Parrett Mountain and stated that the proposed subdivision will have the ten homes clustered near the roadway, similar to the photo, so the problems alluded to in the staff report, such as steep slopes, won't be an issue.

He agreed that it would be appropriate for residents in the new subdivision to bear a

proportionate responsibility for the cost of a dust abatement program, but no other subdivisions have required participation as a condition of approval and this application should not be singled out. He added that it wouldn't be fair to the new residents to be required to keep paying if everybody else stopped paying.

The meeting recessed at 10:40 a.m. and reconvened at 10:57 a.m.

Opponents - Walt Gowell, representing Mr. and Mrs. Arguedas, stated that the Arguedases support the Planning Director's determination and are not objecting to land use approval, but to the appeal of the proposed conditions. He said that the proposed access road, Jahnke Drive, would have a sustained slope of 11.2% and intermittent grades of over 16%, both of which exceed county standards, would require the removal of well-developed trees, and would negatively impact the neighbors more than is necessary. He stated that the alternative access, Willis Road, is already served by municipal utilities, follows the existing roadway, and would provide much safer and more reliable emergency access.

He pointed out that if the Board can't approve alternate access across Tax Lot 1293 because it is EFU land, as suggested by Mr. Robinson, then it also cannot approve the proposed road, Paul's Way, that would split off and come down to the east side of the subdivision. He read from the LUBA decision in the *West* case and stated that access across EFU lands is allowed in order to get to VLDR lands, for emergency access, or to facilitate agricultural activities. He said that easements must be used in accordance with public law and the maximum number of properties that can be accessed through the easement is three. He said that allowing more than three would negatively impact the adjacent property owners.

He submitted proposed findings in support of the Planning Director's decision and stated that they could also be used if the Board decides to deny the variance. He gave an overview of the materials in the submitted packet.

Al Arguedas stated that he purchased his property with an understanding of the easement conditions and is willing to live with those, but the easement is limited to serving three residences and the applicants are asking for permission to serve ten.

Anne and Art Engen submitted copies of their testimony for the record and thanked Mr. Brandt for attending the two neighborhood meetings.

Jennifer Abdelnour stated that she and her husband are not opposed to the development if it is done in a way that is advantageous to the whole neighborhood. She expressed concerns about the impact on the neighborhood's water supply and on the narrow country road, which has already experienced substantial erosion since the Jahnke property was logged. She stated that the proposed conditions are beneficial and the request for variance should be denied.

Joe Dixon stated that the development should be done in a way that protects the houses

below from erosion and the proposed buffer condition is for erosion control. He also discussed the dust hazards and said that a paved road access is a better way to go if that alternative is available.

Dwayne Cole discussed concerns about water runoff and flooding problems and stated that the developer needs to consider those issues from the beginning of the development process. He also discussed concerns about Berry Creek Road.

Merilyn Reeves stated that she supports the proposed conditions of approval and urged the Board to deny the variance. She pointed out that the reason there is no opposition to this subdivision is because of the efforts taken by the Planning Department to listen carefully to the residents and come up with conditions of approval. She said that if the Planning Director's decision is upheld, she does not believe the Board would be overruled if the case were appealed to LUBA. She noted that she is not representing Friends of Yamhill County and they are not a party to this matter. She suggested that the commissioners look carefully at the material provided regarding the Transportation Planning Rule, as it is more accurate than what Mr. Robinson presented.

Public Agency Reports - Mr. Friday reviewed the public agency reports in the record. At Ms. Stern's request, he agreed to request a response from McMinnville Fire Department regarding the road design.

Rebuttal - Mr. Sharer stated that the applicants have promised to be good neighbors. He said they would be willing to participate in a dust abatement program as long as it's fair and balanced and they will do whatever is required by the fire department for fire suppression.

Matt Dunckel stated that the entrance onto Willis Road is terrible and would be very difficult to meet public health and safety standards. Mr. Friday stated that although the comments from Public Works were based on the access from the Arguedas easement, he believes that the response would be similar for access from Willis Road.

Mr. Robinson stated that the applicants have met the approval criteria for the variance. He commended Mr. Brandt for his good intentions, but stated that some of the proposed conditions impose requirements that go beyond the limitations on the easement as stated by the county's Land Division Ordinance. He said that a gate to prevent access from Berry Creek Road to Willis Road would be acceptable, but the Planning Director should not have the authority to place a gate across the easement.

He stated that the criteria in the Transportation Planning Rule (TPR) cannot be brushed off to meet the desires of the neighbors. He stated that the TPR requires the alternative with the least impact on farm and forest lands to be used and there is only one alternative that wouldn't have any impact.

He said that he would accept all conditions that can be imposed in accordance with the Land Division Ordinance. He read the purpose statement for the VLDR zone and said that it doesn't mention having paved roads, nor are there any expectations of privacy. He said that he doesn't believe that the county can limit logging, but the applicants will do whatever it takes to satisfy county standards.

He stated that there is no evidence in the record that approving the variance would have injurious impacts and there are no comments from public agencies expressing concern about using Berry Creek Road. He pointed out that the county has approved a variance for more than three lots on a private easement in other instances and requested that the Board approve this request.

Following a discussion about the request to leave the record open, Ms. George moved to continue the hearing to February 4, 2009, at the point of Staff Recommendation with the record to remain open for the submission of written material from all parties until 5:00 p.m. on January 14, 2009, for written rebuttal from all parties until 5:00 p.m. on January 21, 2009, and for written rebuttal from the applicant only until 5:00 p.m. on January 28, 2009. The motion passed, Commissioners Lewis, George, 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 full member and two alternate members;
 - b. Parks & Recreation Board, 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.

The meeting adjourned at 2:02 p.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair LESLIE LEWIS

Commissioner KATHY GEORGE

Commissioner MARY P. STERN