

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 June 17, 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 Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; John Krawczyk, Budget Director; Pat Anderson, Human Resources; Mike Brandt, Planning Director; Stephanie Armstrong, Planning; David Beck, Amity Rd, Amity; Edwin Sharer, 16500 SE Lafayette Hwy, Dayton; Marjorie Weigel, 905 NE 25th St, McMinnville; Charles Parr II, PO Box 151, McMinnville; Amru Zeitoun and Khaled Zeitoun, PO Box 399, Amity.

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

Personnel

1. **B. O. 09-275** - Amend Board Order 09-247 to change the effective date for Carrie Martin’s change of status to May 24, 2009.

2. **B. O. 09-276** - Amend Board Order 09-225 to change the effective date for Tabatha Bird Weaver’s contract employee agreement to May 25, 2009.

3. **B. O. 09-277** - Approve the employment of Andrew Barlow, Matthew Blake, David Cano, Lisa Ernst, and Mikel Mead as on-call relief in the Juvenile Department, \$8.40/hour, effective June 18, 2009.

4. **B. O. 09-278** - Approve the change of status of Jola Fuentes to extend temporary part-time employment in HHS Abacus, effective July 1, 2009, through June 30, 2010.

Contracts/Grants

5. **B. O. 09-279** - Approve an agreement between HHS Adult Mental Health and Julie Beaton, provider, for a Functional Assessment and Behavior Support Plan, not to exceed \$3255,

retroactive to June 1, 2009, through June 30, 2010.

6. **B. O. 09-280** - Approve an agreement between HHS Adult Mental Health and Paul Stolfzfus, provider, for clinical supervision services, \$80/hour, effective September 1, 2009, through June 30, 2010.
7. **B. O. 09-281** - Approve an agreement between HHS Adult Mental Health and Northwest Human Services, provider, for mental health counseling and treatment services, \$11,903/year, effective July 1, 2009.
8. **B. O. 09-282** - Ratify approval of a Business Associate HIPAA Agreement between Health & Human Services and Sheridan School District, retroactive to June 11, 2009.
9. **B. O. 09-283** - Approve the 2009-11 Financial Assistance Agreement #127319 between Health & Human Services, provider, and Oregon Department of Human Services; designate Chris Johnson as the County Financial Assistance Administrator for this agreement.
10. **B. O. 09-284** - Approve Agreement #11448 between the Juvenile Department, grantee, and Oregon Youth Authority for Juvenile Crime Prevention basic services and diversion services, \$424,469, effective July 1, 2009, through June 30, 2011.
11. **B. O. 09-285** - Approve Intergovernmental Agreement #11425 between the Juvenile Department, grantee, and Oregon Youth Authority for individualized services, \$18,424, effective July 1, 2009, through June 30, 2011.
12. **B. O. 09-286** - Approve Grant Agreement #GRNT0270 between the Juvenile Department, grantee, and Community Colleges & Workforce Development for the OYCC Summer Conservation Corps project, not to exceed \$12,000, effective through October 31, 2009.
13. **B. O. 09-287** - Authorize Yamhill County to apply for a Community Development Block Grant for a new Head Start facility.

C. OLD BUSINESS:

1. **B. O. 09-288** - Consideration of adoption of Ordinance 838 in support of Planning Docket G-01-09(KF), a request for modification of the Zoning Ordinance and Comprehensive Plan to remove the restrictions that prohibit zone changes and UGB amendments within the Newberg-Dundee Bypass and Interchange Overlay Districts, applicant Yamhill County, as tentatively approved June 3, 2009.

Rick Sanai provided the first and second readings of Ordinance 838 by title only, declaring an emergency. Ms. Lewis moved to adopt the ordinance. Ms. Stern noted concerns about whether ODOT had reviewed the language in the recitals, but said that she believes it to be an accurate reflection of the current status and the language can be changed later if necessary. The motion passed, Commissioners Lewis, George, and Stern voting aye.

D. PUBLIC HEARINGS:

1. Consideration of the dissolution of West Sheridan Lighting District, as continued from May 13, 2009. *[Continued to July 15, 2009.]*

Ms. Stern moved to continue the hearing to July 15, 2009. The motion passed, Commissioners Lewis, George, and Stern voting aye.

2. Consideration of Planning Docket NFD-01-09(SA), a request for a non-farm-use dwelling on 1.04 acres, applicant Addie Mae's, LLC, c/o Marjorie Weigel, appellant Amru Zeitoun. *[Continued to July 8, 2009, at the point of Staff Recommendation.]*

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 the previous 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 - Stephanie Armstrong described the subject property, adjacent zoning and uses, and the approval criteria for the request. She noted that the Planning Commission had voted 7-0 to approve the application with a few changes to the condition related to drainage. She said that she had left a message with the Oregon Department of Transportation (ODOT) regarding accident history and flooding over the road, but had not gotten a response back.

Proponents' Case - Marjorie Weigel reviewed the scope and criteria of the non-farm study, stating that out of the 208 properties evaluated, only four have the potential for a non-farm-use dwelling. She stated that there are no ditches or waterways on the subject property and all water flows in a natural flow pattern. She pointed out that the Zeitouns are required by law to take all water flowing to their property in a natural flow pattern. She said that the applicants are willing to submit a drainage plan showing that the proposal would not add to the water flow onto the Zeitouns' property. She submitted an aerial plat map with topographic elevations, prepared by the GIS department, to demonstrate the natural flow of surface water runoff.

Edwin Sharer stated that the criteria for a non-farm-use dwelling requires the evaluation of development trends over a large study area and the demonstration that the proposal would not increase the amount of non-farm-use land to an unacceptable level. He stated that Andy Gallagher, a certified soil scientist, prepared the soils report in the record and his work is based on science, not on trying to appease a landowner.

He stated that there is no developed access from the subject property to the highway and if such access exists on record, the applicants are willing to give that up. He stated that the applicants would use Burch Hill Road for access. He noted that Burch Hill Road has always been a county road and was probably there before the state highway.

He stated that, according to a report in the record, Joan Cooper's property is currently listed on the tax roll as being in tax deferral for wildlife habitat status.

Charles Parr referred to pictures taken from his property, located directly northwest of the subject property, which show the slope of the land, the drainage direction, the culvert crossing the road onto the Zeitouns' property, and the drainage ditch running along the property line. He said that the runoff from his property is minimal compared to what comes off the hillside and he has offered to redirect that away from the Zeitouns' property. He stated that if there is a problem with the ditch that is affecting their property, they should contact ODOT.

He pointed out the locations of the test holes on a map and stated that he had dug them as deep as possible. He said that the property has trouble growing anything. He stated that, in his opinion, putting a structure on the subject property would not create any traffic problems.

Questions of Proponents - Mr. Sharer clarified information about the tax lot numbers. He explained that a portion of the property in Section 26 was transferred out to Section 23 and that will show up in the new tax roll that comes out in July. He stated that at some point, the Assessor's Office had combined the two sections into one tax lot in its records because they had the same owner, but there is no evidence that the sections were ever combined by the owner. Ms. Weigel added that the small, state-owned piece of property in front of the subject property is also in Section 23.

Mr. Sharer stated that the owner's deed describes both pieces and he does not believe that the state ever owned any of the subject property. He stated that when the state took the other property, there was an exception made for the subject property portion. Amru Zeitoun pointed out that the deed shows that that portion was transferred to the state. Mr. Sharer stated that the legal description of the subject property does not include the portion still owned by the state. He said that the purpose of submitting the vesting deed is to show that the lot was created in 1939.

Mr. Parr stated that he was the person who dug the soil samples. Mr. Sharer stated that the test holes were dug with a track hoe because of the impervious layer of marine shale. He explained that he wanted to demonstrate that it wasn't just a shallow layer of shale. He stated that Mr. Gallagher inspected the test holes, which were open for over a month, and only disregarded one of them because it was on state property. He said that five test holes on 1.4 acres exceeds the typical density.

Opponents' Case - Amru Zeitoun stated that in addition to the drainage issues, he also has concerns about the soil analysis. He stated that the test holes were dug by the applicant, not the analyst, and 80% of the samples were taken from compacted soil near Burch Hill Road, thereby affecting the results. He added that the soil analysis was not reviewed by a state agency.

He stated that Tax Lot 5426-2200 already has a non-farm-use dwelling according to most of the criteria, which is grounds for denial of the request. He said that all laws must apply as if it were one property, since there is no separate tax lot number. He said that the Soil & Water Conservation District agrees that this property does not meet the criteria for a non-farm-use dwelling. Ms. George pointed out that the applicants have testified that the new tax lot number

will be identified on the next tax roll. Mr. Brandt stated that a lot is identified by the deed when no tax lot number has been identified yet.

Mr. Zeitoun said that the Planning Director followed the criteria for 402.00(I), but should have followed 402.00(K) because the property was previously listed as Class 3 soils. Mike Brandt stated that it has never been an established practice to only use the established soil classification rather than the soil scientist's report. He added that Mr. Zeitoun could present rebuttal evidence about that, as it will be up to the Board to make the final determination.

Mr. Zeitoun expressed concern about the discrepancies between section numbers listed in the application. He said that there is no proof that the property was ever transferred back from the state. He said that the coordinates are wrong on the deed and the explanation given about the confusion between Sections 23 and 26 is insufficient to overcome that.

He stated that a drainage plan by the applicants would not likely be enough to address such severe problems. He said that runoff problems on his property increased when the applicants clear cut their property. Mr. Parr stated that the trees were cut in 1992 and have since been replanted, and they will use more water as they continue to grow. He said that nothing done on his property should have affected runoff onto the Zeitouns' property because there is no way for the water to get from his property to theirs.

Mr. Zeitoun stated that Ms. Cooper's letter was false and was written to discount the runoff issue. He added that he believes it was done as some sort of retribution against the Zeitouns for submitting information in opposition to her Measure 37 claim.

He stated that he does not trust the applicants' motives because Mr. Sharer came to his house 24 hours before the Planning Commission appeal hearing and tried to get him and his brother to not appear at the hearing in order to save money. He said that Mr. Sharer told him the driveway is a public road, but that is not true because his father went through the process to get it vacated.

He stated that if the commissioners would listen to the audio recording from the Planning Commission hearing, they would see many holes and falsehoods in what was said at this hearing by the applicants. He recommended that the audio recording be used instead of the minutes because it is much more descriptive.

Public Agency Reports - Ms. Armstrong stated that the reports are all included in the record. She added that she had written the minutes from the Planning Commission hearing and they are a general overview, but the audio recording is available. Mr. Brandt stated that this is a new hearing and anything from the previous hearing can be disregarded.

Rebuttal - Mr. Sharer addressed the issue of potential flooding, stating that there has never been any indication that water runs over the road and there is a culvert to carry the water under the road. He said that the applicants had proposed doing an engineering plan to divert all

surface water runoff from getting into the culvert. He stated that the ditch is blocked by debris near the Zeitouns' property and is not functioning, but that is an old issue and has not been exacerbated by the applicants.

He provided background information on Ms. Cooper's Measure 37 claim and stated that she only wanted the right to apply for a forest template dwelling on one undeveloped piece of property as a retirement home for herself. He added that the claim is hopefully on its way to final approval by the state.

He stated that on a map submitted by Mr. Parr, the Zeitouns' driveway is still listed as a public platted road. He said that the driveway is the legal access for about nine properties to the south and is called Franquette Drive.

He said that if the Soil & Water Conservation District were asked for a review of the soils, Mr. Gallagher would be one of the people referenced to do that, as only certified soil scientists can review soil classifications. He explained that a property must be predominantly low-value soil to qualify for a non-farm-use dwelling and the location of the test holes shows that the applicants clearly covered the predominant portion of the subject property. He provided additional background information about the history of the property and its use. Mr. Brandt stated that legislation allows the soil rating to be changed if information is submitted by an expert and Mr. Gallagher meets those qualifications.

Mr. Parr stated that the test holes were filled months ago and there is still nothing growing over the holes and Scotch Broom is growing everywhere else. He stated that he believes the soil report to be accurate.

Staff Recommendation - Ms. Armstrong recommended approval of the application with the conditions listed in the Staff Report. Mr. Brandt stated that there is a section of the criteria that requires a statement from the Department of Agriculture (DOA) that it has reviewed the soil report and found it be sound and scientifically based. He said that his office stopped making those requests about eight years ago after being asked not to by the DOA because it doesn't have sufficient staff to do the reviews. He suggested soliciting a statement from the DOA to that effect to include in the record. Ms. Stern suggested sending the soil report to Natural Resources Conservation Service (NRCS) as well to see if they raise any issues.

Ms. Stern moved to continue the hearing to July 8, 2009, at the point of Staff Recommendation for the purpose of hearing a report from the DOA and/or NRCS regarding the soil analysis report. The motion passed, Commissioners Lewis, George, and Stern voting aye. Ms. Stern suggested that the county also send a letter to ODOT requesting that they come out and check on the drainage ditch.

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

1. Discussion of transit funding and budget issues. *[No formal action taken.]*

