

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/informal session on July 15, 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, Human Resources; Mike Brandt, Planning Director; Ken Friday and Stephanie Armstrong, Planning Department; Ken Summers, Captain; John Phelan, Bill Gille, and Pete Lindberg, Public Works; Edwin Sharer, 16500 SE Lafayette Hwy, Dayton; Marjorie Weigel, 905 NE 25th St, McMinnville; Charles Parr II, PO Box 151, McMinnville; Sam Justice, Amru Zeitoun, and Kal Zeitoun, PO Box 399, McMinnville; Donna Delikat, 19509 NE Woodland Loop Rd, Yamhill; Michael Ard, 321 SW 4th Ave, Ste 400, Portland, OR 97204; Charles Harrell, Three Centerpointe Dr, Ste 250, Lake Oswego, OR 97035, Roz Ott, 12850 NE Red Hills Rd, Newberg; Marilyn Reeves, PO Box 1083, McMinnville; Mark Bortnem, 21650 NE Sunnycrest Rd, Newberg; and others as listed on the attached attendance roll.

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. **AGENDA:**

Minutes

1. Approve minutes from the following Board sessions:
 - a. **B. O. 09-398** - December 1, 2008, Informal Session;
 - b. **B. O. 09-399** - April 6, 2009, 9:00 a.m., Service Team Budget Work Session;
 - c. **B. O. 09-400** - April 6, 2009, 1:30 p.m., Service Team Budget Work Session;
 - d. **B. O. 09-401** - April 7, 2009, Service Team Budget Work Session;
 - e. **B. O. 09-402** - April 8, 2009, 9:00 a.m., Service Team Budget Work Session;
 - f. **B. O. 09-403** - April 8, 2009, 2:45 p.m., Service Team Budget Work Session;
 - g. **B. O. 09-404** - November 24, 2008, Formal Session;
 - h. **B. O. 09-405** - December 29, 2008, Formal Session;
 - i. **B. O. 09-406** - March 19, 2009, Formal Session.

Ms. Stern moved approval of the minutes listed above. The motion passed,

Commissioners Lewis, George, and Stern voting aye.

Personnel

2. **B. O. 09-407** - Consideration of approval of the employment of James Carelle as on-call relief in the Juvenile Department, \$8.40/hour, effective July 15, 2009.
3. **B. O. 09-408** - Consideration of approval of the employment of Ines De Souza as Registered Nurse 2 in HHS Public Health, regular full-time, Range 19, Step 6, effective July 20, 2009.
4. **B. O. 09-409** - Consideration of approval of the change of status of Jenny Beecroft from .6 to .8 FTE in HHS Public Health, retroactive to July 9, 2009.
5. **B. O. 09-410** - Consideration of approval of the change of status of Mary Bramall to extend temporary part-time employment in HHS Abacus, retroactive to July 1, 2009, through June 30, 2010.

Ms. George moved approval of items B(2) through B(5) and item D(1). The motion passed, Commissioners Lewis, George, and Stern voting aye.

Contracts/Grants

6. **B. O. 09-411** - Consideration of accepting a grant from the Bureau of Land Management for paving approaches to bridges on county roads to improve water quality, \$24,500.

Ms. Lewis moved approval of item B(6). The motion passed, Commissioners Lewis, George, and Stern voting aye.

7. **B. O. 09-412** - Consideration of approval of Agreement #09-111 between the Juvenile Department, provider, and Polk County for the housing of juvenile offenders, \$185,055, retroactive to July 1, 2009, through June 30, 2010.

Ms. Stern moved approval of item B(7). The motion passed, Commissioners Lewis, George, and Stern voting aye.

8. **B. O. 09-413** - Consideration of approval of Intergovernmental Agreement #0911YAMJD between the Juvenile Department, provider, and Oregon Commission on Children & Families for Juvenile Crime Prevention funding, \$18,103, retroactive to July 1, 2009, through June 30, 2011.

Ms. Stern moved approval of item B(8). The motion passed, Commissioners Lewis, George, and Stern voting aye.

9. **Tabled** - Consideration of approval of a renewal and first amendment to an agreement between the Jail and Global Tel*Link Corporation, provider, for inmate telephone services, effective through June 1, 2014.

10. **B. O. 09-414** - Consideration of approval of Modification #3 to Attachment S of the 2009-10 agreement between HHS Family & Youth, provider, and Mid-Valley Behavioral Care Network to update the hours and rate of pay for Regional Wraparound Trainer services.

Ms. George moved approval of item B(10). The motion passed, Commissioners Lewis, George, and Stern voting aye.

11. **B. O. 09-415** - Consideration of approval of a HIPAA Business Associate Agreement between Health & Human Services and Housing Authority of Yamhill County.

Ms. George moved approval of item B(11). The motion passed, Commissioners Lewis, George, and Stern voting aye.

Vehicles/Surplus Property

12. **B. O. 09-416** - Consideration of authorizing the purchase of a 2007 Broce self-powered broom from Clyde West Equipment for \$17,700 and declaring Unit #87-191 as surplus property to be sold on eBay.

Ms. Lewis moved approval of item B(12). The motion passed, Commissioners Lewis, George, and Stern voting aye.

13. **B. O. 09-417** - Consideration of declaring a list of firearms as surplus county property to be disposed of by the Sheriff's Office.

Captain Summers stated that, for the second time in the last eight years, the Sheriff's Office has accumulated an odd collection of firearms that it would like to dispose of by offering them to licensed firearms dealers as a single lot. He requested that any proceeds be allocated to improving the security of firearms storage within the evidence facility. Ms. Stern moved approval of item B(13). The motion passed, Commissioners Lewis, George, and Stern voting aye.

Deeds/Easements

14. **B. O. 09-418** - Consideration of accepting a dedication of public right-of-way from Fox Farm Vineyard, LLC.

15. **B. O. 09-419** - Consideration of accepting a permanent storm drainage easement from Fox Farm Vineyard, LLC, for an area of land containing approximately 5326 square feet.

16. **B. O. 09-420** - Consideration of accepting a permanent storm drainage easement from Fox Farm Vineyard, LLC, for an area of land containing approximately 3239 square feet.

Ms. Lewis moved approval of items B(14) through B(16). The motion passed, Commissioners Lewis, George, and Stern voting aye.

Dues

17. **B. O. 09-421** - Authorize the payment of \$14,086 to the Mid-Willamette Valley Council

of Governments, \$7719 for 2009-10 dues and \$6367 for the economic development fee.

Ms. Stern moved approval of item (B17). The motion passed, Commissioners Lewis, George, and Stern voting aye.

Committees

18. **B. O. 09-422** - Consideration of the appointment of Rick Olson and Kellie Menke to the Parkway Committee for four-year terms to expire July 15, 2013.

Ms. Lewis moved approval of item B(18). The motion passed, Commissioners Lewis, George, and Stern voting aye.

C. **OLD BUSINESS:** None.

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

1. **B. O. 09-423** - Consideration of extending the layoff date for Joshua Gordon in Community Corrections from July 15, 2009, to October 15, 2009.

2. **B. O. 09-424** - Consideration of approval of a memorandum of agreement between the Board of Commissioners and Yamhill County Employees Association (YCEA) regarding the county's self-insured dental plan.

Ms. Lewis moved approval of item D(2). The motion passed, Commissioners Lewis, George, and Stern voting aye.

3. **B. O. 09-425** - Consideration of approval of an agreement between HHS Developmental Disabilities and Oregon Technical Assistance Corporation, provider, for Supported Living services, retroactive to July 1, 2009, through June 30, 2010, estimated amount \$69,988.

Ms. George moved approval of item D(3). The motion passed, Commissioners Lewis, George, and Stern voting aye.

4. **B. O. 09-426** - Consideration of extending Board Order 08-609 related to a process for HHS Public Health to expend funds from the local Commission on Children & Families (CCF) for the Healthy Start program.

Ms. George moved approval of item D(4). The motion passed, Commissioners Lewis, George, and Stern voting aye.

5. **B. O. 09-427** - Consideration of approval of Amendment #2 to an agreement between CCF and Mid-Willamette Valley Community Action Agency, Inc., provider, to include funding for additional services, \$9543, retroactive to July 1, 2009, through September 30, 2009

Ms. George moved approval of item D(5). The motion passed, Commissioners Lewis, George, and Stern voting aye.

6. **B. O. 09-428** - Consideration of approval of Amendment #3 to extend an agreement between CCF and Court Appointed Special Advocates (CASA), provider, \$8963, retroactive to July 1, 2009, through September 30, 2009.

Ms. George moved approval of item D(6). The motion passed, Commissioners Lewis, George, and Stern voting aye.

7. **B. O. 09-429** - Consideration of increasing the Fair's ATM fund to \$30,000 for the 2009 Yamhill County Fair & Rodeo taking place July 29 through August 1.

Ms. Lewis moved approval of item D(7). The motion passed, Commissioners Lewis, George, and Stern voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of the dissolution of West Sheridan Lighting District, as continued from June 17, 2009. *[Continued to September 9, 2009.]*

John Gray stated that he has been attempting to communicate with the State Audits Division about this matter. Ms. Stern moved to continue the hearing to September 9, 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, as continued from July 8, 2009, at the point of Staff Recommendation. *[Tentatively approved, findings to be adopted July 29, 2009.]*

Ms. Lewis opened the hearing. Mike Brandt stated that no additional information was submitted during the open record period.

Staff Recommendation – Stephanie Armstrong recommended approval of the application with the eight listed conditions. She stated that the applicants' representative has no objection to a condition requiring the septic system to be located on the same lot as the non-farm-use dwelling. She recommended that this be approved as an additional condition.

Close of Public Hearing / Deliberations – Ms. Stern moved tentative approval of Planning Docket NFD-01-08 with the conditions recommended by Ms. Armstrong, with findings to be adopted July 29, 2009. She stated that the applicants have clearly met the burden of proof and she urged the neighbors to contact the Oregon Department of Transportation to resolve the drainage ditch issues. The motion passed, Commissioners Lewis, George, and Stern voting aye.

3. Consideration of Planning Docket S-14-06/C-20-07(KF), a remand of a request for a 16-lot subdivision, applicants Sam & Mildred Eastman represented by Coyote Homes, Inc., appellant Friends of Yamhill County, as continued from April 1, 2009. *[Tentatively approved, findings to be adopted July 29, 2009.]*

Ms. Lewis opened the public hearing.

Staff Report – Ken Friday stated that the original decision in this case was based on a Measure 37 waiver. He said that the remand hearing was originally scheduled for September 8, 2008, but was continued due to a vesting hearing. He stated that the vesting application was denied, but that decision was later overturned by circuit court, so the subdivision application can go forward under Measure 37. He reviewed the issues being remanded by the Land Use Board of Appeals (LUBA).

Ms. Lewis stated that the commissioners did not take another site visit because they all did a site visit in 2007 and are familiar with the area. 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.

Proponents – Charles Harrell stated that nothing has changed since the application was approved two years ago and vesting approval was granted by Judge Collins. He said that there is substantial evidence in the record to indicate that there is adequate water quantity and quality and no risk of affecting older, nearby wells. He stated that the public health and safety regulations in the current Land Division Ordinance would still apply, but the other regulations have been waived back to the 1959 ordinance.

Questions of Proponents – None.

Neutral Testimony – Roz Ott expressed concern about her neighboring well going dry and submitted a copy of her well report. She said that her well is 141 feet deep and nearby wells have to go down 300 feet to get to water.

Opponents - Marilyn Reeves, Friends of Yamhill County (FYC), submitted a copy of her testimony for the record. She stated that FYC is devoting its attention completely to the water issue and wants to make sure the Board understands LUBA's directions to determine whether there is adequate quality and quantity of water to support the proposed use. She expressed concern about the Board's decision to wait for a final plat map before making a decision about the water. She requested the Board to require the applicants to provide a community water supply that can be bonded to maintain it and that can be regulated. She said that if the Board certifies that there is adequate water based on testimony about wells and those wells end up going dry, the county will be at legal risk.

Mark Bortnem submitted handouts for the record and stated that data from Water Resources shows a decline in the water table. He said that the proposed subdivision would have an impact on the water supply and it is the county's responsibility to ensure an adequate continuing water supply. He noted two instances of nearby wells going dry in the last four or five years and said that there has been an increasing amount of well repair and re-drilling activity on existing tax lots since 2007, after very little activity between 1955 and 2000.

Ms. George stated that this could be due to aging wells needing repair. Ms. Lewis added that other factors could be present as well, such as changes over the years in knowing where to drill for water. Ms. Stern stated that this information may be outside the specific scope given by

LUBA for this remand hearing. Mr. Bortnem stated that this evidence of the declining water table puts the burden on the applicants to provide more information to prove that there is adequate water. He said that the average yield of wells may be transitory and the real question is what's happening to the water table.

Public Agency Reports – Mr. Friday stated that there are no additional reports.

Rebuttal – None.

Staff Recommendation – Mr. Friday recommended approval of the application, stating that the applicants have submitted evidence to show that there is adequate quality and quantity of water in the area and have met the burden of proof. He stated that the findings can explain that, although the current zoning regulations have been waived, the public health and safety regulations have not. He said that he believes LUBA is correct in that the county's land-use process is front-loaded and the Board needs to have the information prior to the final plat approval. He recommended including a statement in the findings that the applicants have met that requirement and that it won't be deferred to the final plat approval. He said that most of the evidence was already in the record, but the findings weren't written well enough. He suggested that the county rewrite the language in the Land Division Ordinance requirements to clarify and correct item D.

Close of Public Hearing / Deliberations – Ms. Stern agreed that the county needs to clarify in the ordinance what it can and will do with regards to water. She said that the purpose of this hearing is to clarify how the Board interprets the current Land Division Ordinance. She stated that she has questions about the water issue, but believes that the weight of evidence submitted supports the applicants' claim that there is adequate water for the proposed use. She stated that the 1959 Land Division Ordinance does not apply with regards to the public health and safety regulations and that needs to be included in the findings.

Ms. Stern moved tentative approval of Planning Docket S-14-06/C-20-07, with findings to be adopted July 29, 2009. The motion passed, Commissioners Lewis, George, and Stern voting aye.

The meeting recessed at 10:47 a.m. and reconvened at 11:03 a.m.

4. Consideration of Planning Docket C-17-08/SDR-22-08(KF), a request for conditional use and site design review for commercial activity in conjunction with farm use to allow for events such as festivals, parties, receptions, weddings, and banquets, with the primary intent of indirect promotion of lavender flowers and products, applicant/appellant Donna Delikat. *[Continued to July 22, 2009, at the point of Opponents' Case.]*

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Lewis stated that the Board had taken a site visit with Mr. Friday 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 – Mr. Friday described the subject property, the surrounding zoning and use, and approval criteria for the request. He stated that copies of letters received and a supplemental description and noise study dated July 14, 2009, submitted by the applicant have been given to the commissioners.

Bill Gille clarified the general location of Morelli Drive on the map and stated that the southern portion of Morelli Drive, located on the Delikat property, had been vacated by the county in 2001. Ms. Lewis noted that the remaining portion was changed from a county road to a local access road at that time, so the county provides no maintenance.

Proponents – Jessica Cain, representing the applicant, discussed the character of the subject property and stated that the original application has been revised to accommodate some of the issues raised by neighbors. She reviewed the new, more limited restrictions on events and the types of uses for lavender. She stated that Ms. Delikat's lavender business is a fledgling, growing agri-business that currently grosses \$15,000 per year and would increase 20-25% if operating at full capacity. She said that the revised request is consistent with the goals and policies of the county's Comprehensive Plan and with the scale and character of businesses in this agricultural area. She stated that indirect promotion of lavender through the proposed events would result in increased awareness of and demand for the product and would promote offsite sales.

She stated that Ms. Scott's driveway connects to the local access road, but there is no survey to prove that the local access road is her driveway.

Mike Ard, Lancaster Engineering, summarized a traffic analysis letter submitted in response to specific questions raised by the county. He stated that the combined trips from events and from existing traffic would not push the limits of the road's capacity. He recommended clearing vegetation in the right-of-way to maximize the sight distance at the entrance to Morelli Drive, having staff available at events to direct traffic with two-way radios and handle any traffic conflicts, and creating a one-way traffic flow loop on the property to be used during events.

Ms. Cain stated that the applicant is willing to adopt all mitigations recommended by Lancaster Engineering. She said that the entire parking area would be graveled to address fire concerns and the applicants would maintain control of events and make sure that requirements such as OLCC permits are met. She submitted photos of Ms. Delikat's daughter's wedding to show a typical 75-person event and stated that the recommended traffic system was utilized for this event and worked well. She said that a number of local wineries and establishments hold these types of events in similar agricultural areas and many of those exceed in scale the events proposed by the applicant.

She discussed concerns raised by neighbors about amplified noise and stated that the noise readings at the closest property line during the amplified music at the wedding were 32-33 decibels, while the readings from assault weapons being fired on the Scott property during the

wedding were 90 decibels. She submitted copies of a photo showing a sign posted regarding the firing of assault weapons every weekend.

Ms. Lewis pointed out that, regardless of decibel levels, amplified music is not a sound one would expect to hear in the country. She added that amplified music is not automatically allowed under a conditional use permit, as the conditions are determined by the Board in each case.

Ms. Cain addressed potential fire hazards, water issues, and traffic concerns. She stated that a water truck is located on the site to handle immediate fire suppression needs and smoking is limited to one small area near an abundance of water. She said that there are three wells on the site, it is not a groundwater limited area, and water sufficiency has clearly been demonstrated. She acknowledged the potential for increased traffic, but stated that newcomers to the county contribute to the county's economic sustainability and quality of life. She listed examples of traffic and attendance for past events on the subject property, such as the wedding and lavender festivals.

Julie Cleveland stated that she is a member of the Oregon Lavender Association and is also a land use planner. She said that most of the potential conflicts with farm and forest use and the noise issues could be easily remedied through conditions of approval, which could also include the reduction of proposed events. She stated that lavender farming is a farm use and the farm use definition includes the right to market farm products. She said that the proposed events are a very effective, indirect way to market the product and expand farm use of the property. She recommended that the Board tentatively approve the application with conditions of approval and bring it back for final approval as soon as possible.

Jeff Monroy stated that he has worked for Ms. Delikat for over ten years and can vouch for the character and integrity of both her and her husband. He said that the proposed use would bring income and business to the local economy with little negative impact and should be an easy decision for the Board.

Ms. Lewis read the cards in support of the application from those who were no longer present: Margaret Bowman, Jennifer Hurley, Joy Hurley, Barbara Remington, and Penny Durant.

Questions of Proponents – Mr. Ard explained that the driving force behind the estimated number of trips was the amount of available parking, not the number of people expected to attend the events. He stated that brief visits, such as by caterers and other support staff, were accounted for in the peak projections.

Ms. Cain stated that the actual time for events to end has not been specified, but she would anticipate that all guests and staff would be gone by 10:00 to 11:00 p.m. after an event. She said that the ratio of staff to guests would depend on the event, but three to four staff would be onsite at all times, with additional staff for catering. She said that the water truck would be onsite at all times and the owner of the property, who is a trained paramedic, would usually be

there. Ms. Delikat stated that she is also able to operate the truck and somebody else would be trained to operate it if neither she nor her husband were present.

Opponents – Jane and Derek Scott submitted written testimony for the record and read their testimony in opposition of the application. Mr. Scott stated that he and his wife had approached the Delikats when they first moved there about entering into a road maintenance agreement, but the Delikats had refused. He said that he and his wife have been maintaining the road ever since with some help from the Garands.

Barbara Garand read written testimony and submitted a copy for the record.

Ms. Stern excused herself from the meeting due to a prior commitment.

Joseph Christen read written testimony and submitted a copy for the record. He stated that he lives within sight of the subject property, approximately 1.5 miles away. In response to a question from Ms. Cain, he stated that the prior incidents with drivers going off the road and through his fence at least once a year have occurred between the months of December and February.

Debbie Ruby read written testimony and submitted a copy for the record.

Michael Green stated that he is not directly affected by the proposal, but is concerned about noise issues. He stated that he was home on the day of the wedding and did not hear music, but he does hear the firing of weapons. He said that everybody who testified today would qualify for a similar agri-business application and hobby farming such as Ms. Delikat's one acre of lavender is not the purpose of such applications. He stated that the application is full of intent, but no commitment, and the revenue structure is not proportional to the agricultural use because the vast majority of revenue would be coming from the events rather than from the product. He said that the lavender is an excuse to generate other sources of income and he does not believe that is in the best interest of the county. He stated that the Board's decision in this case will set precedence as to what constitutes agri-business and there needs to be some guidelines and standards.

Ms. George moved to continue the hearing to July 22, 2009, at the point of Opponents' Case. The motion passed, Commissioners Lewis and George voting aye and Commissioner Stern being excused.

F. ANNOUNCEMENTS:

1. The following positions are open to the public. Contact the Commissioners' Office for applications.
 - a. Commission on Children & Families, two full members and one alternate member;
 - b. Parks & Recreation Board, two positions;
 - c. Special Transportation Advisory Commission, two positions.

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 1:39 p.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair LESLIE LEWIS

Commissioner KATHY GEORGE

Commissioner MARY P. STERN