

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 February 17, 2010, at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present were Laura Tschabold, County Administrator; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Pat Anderson, Human Resources; Ken Friday, Planning Division Manager; John Phelan and Russ Heath, Public Works; Hannah Hoffman, News-Register; Marilyn Reeves, PO Box 1083, McMinnville; Ilsa Perse, 5765 Mineral Springs Rd, Carlton; Jessica Kimball, 31145 NE Canter Ln, Sherwood; Barbara Schaffner, 30750 NE Bell Rd, Sherwood; Carla Oyala, 16485 NE Leander Dr, Sherwood; Marni Haley, 16300 NE Leander Dr, Sherwood; Leslie Atiyeh, PO Box 3040, Newberg; Barbara Richman, 30765 NE Bell Rd, Sherwood; Jane Bardolf, 31950 NE Canter Ln, Sherwood; Ted & Judy Quackenbush, 16195 NE Leander Dr, Sherwood; Pete Schmidt, 31950 NE Canter Ln, Sherwood; Marty Stiven, 148 B Avenue, Lake Oswego 97034; Michael Robinson, 1120 NW Couch St, Tenth Floor, Portland 97209; Gale Mills, 3355 Countryman Circle, Albany 97321; Ronald LaFountain, 18000 SW Finnigan Hill Rd, Hillsboro; Richard Baker, 509 E 3rd St, Newberg; Hilda Taatjes, 30650 NE Bell Rd, Sherwood; Shap Shapiro, 30750 NE Bell Rd, Sherwood; and Mike Cook, 20508 SW Roy Rogers Rod, Ste 135, Sherwood.

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. None offered.

B. **AGENDA:**

Personnel

1. **B. O. 10-90** - Consideration of approval of the employment of Kelsey Hafner as Probation Officer 3 in Community Corrections, regular full-time, Range 3, Step 1, effective February 22, 2010.
2. **B. O. 10-91** - Consideration of approval of the change of status of Kim Pinson to regular full-time employment in the District Attorney’s Office, Range 10, Step 4, retroactive to February 10, 2010.

3. **B. O. 10-92** - Consideration of approval of the change of status of Lindsey Manfrin to regular part-time employment in HHS Public Health, .8 FTE, retroactive to February 9, 2010.

Ms. Stern moved approval of items B(1) through B(3). The motion passed, Commissioners George, Stern, and Lewis voting aye.

Contracts/Grants

4. **B. O. 10-93** - Consideration of approval of Amendment #14 to the 2009-11 Financial Assistance Agreement #127319 between Health & Human Services and Oregon Department of Human Services regarding case management services to people with developmental disabilities.

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

5. **B. O. 10-94** - Consideration of approval of Grant Agreement #M57036-09JAG between Community Corrections, grantee, and Oregon Criminal Justice Commission for the Measure 57 Intensive Drug Court program, \$42,449, retroactive to January 1, 2010, through September 30, 2010.

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

Committees

6. **B. O. 10-95** - Consideration of the appointment of Kevin Jeffries to the Ending Homelessness Governing Council.

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

C. **OLD BUSINESS:** None.

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

1. **B. O. 10-96** - Consideration of authorizing Public Works to exercise the buy-back option from Halton Caterpillar for motor grader units 05-153 and 05-154, \$151,271 each.

Russ Heath stated that the buy-back option is a good price in the current economy. Ms. Lewis moved approval of item D(1). The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. **B. O. 10-97** - Consideration of declaring two 600 KW generators as surplus county property to be sold on eBay to the highest bidder, minimum bid price \$20,000 each.

Mr. Heath explained that these generators were acquired through the federal surplus

program. He said that although the county had intended to use them, they have been sitting unused for close to three years and need to be sold. He stated that the value is difficult to determine, so if they don't sell for \$20,000, he will come back to the Board with a request to reduce the price. Ms. Lewis noted that the county has permission from Steve Smith of the federal surplus program to sell the generators. She moved approval of item D(2). The motion passed, Commissioners George, Stern, and Lewis voting aye.

3. **B. O. 10-98** - Consideration of the appointment of Matt Dunckel to the Road Improvement Advisory Committee to fill the unexpired term of Jay B. Dick through July 8, 2010.

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

E. PUBLIC HEARINGS:

1. Consideration of Planning Docket PAZ-01-09(KF), a request to rezone 52 acres from EF-20 to AF-10, taking an exception to Goal 3, applicant Mills Development Co. *[Continued to March 10, 2010, at the point of Public Agency Reports; record to remain open for submission of written testimony by any party until 5:00 p.m. on February 24, 2010; for submission of written rebuttal by any party until 5:00 p.m. on March 3, 2010; and for submission of written rebuttal by the applicant only (unless waived by the applicant) until 5:00 p.m. on March 16, 2010; hearing to be reopened on March 17, 2010, at the point of Staff Recommendation.]*

Ms. George opened the public hearing. There were no abstentions or objections to jurisdiction. She noted that all three commissioners had taken a site visit. 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, the surrounding zoning and uses, and the approval criteria for the rezoning request. He stated that the Planning Commission had voted 3-3 on this issue and had unanimously agreed to forward it to the Board without a recommendation.

Proponents - Michael Robinson, representing the applicant, stated that the application meets the legal requirements for a reasons exception and the request is compatible with surrounding uses. He said that there is an economic need for more housing, there is a shortage of lots of this type and size, and this location is clearly a place where people want to live. He stated that the applicant plans to leave the treed area unchanged because it provides a nice buffer between the surrounding rural residential use and agricultural uses to the south.

He said that the subject property is very difficult to farm because of the slope and lack of water, so it is currently being used for grass seed and produces a net profit of only about \$300 per year, or about \$10 per acre. He pointed out that the purpose of farming is to make a profit and farmers aren't going to invest in high-value farming without a water source, but the land would work well as rural residential property because people want to live in this area despite the

water issues.

He stated that a traffic engineer has looked at the proposal and concluded that there is ample capacity on Bell Road to handle the additional traffic that would result. He noted that this case has the same factual circumstances as Planning Docket PAZ-01-08, in which the Board found that the increased number of trips would not negatively affect traffic safety. He said that there would be no adverse environmental impacts from the proposed change and it would support the economic and social connection between this area and Newberg. He read some comments from the Planning Commission minutes in support of the application and concluded that the evidence in the record supports approval of the request.

Gale Mills stated that his family owns the subject property, which has never produced an adequate crop, even after switching from pears to grain crops. He stated that in 1985, the family started renting the property to a local farmer for grass seed and receives \$900/year for rent. He said that the purpose of the rezoning application is to make better use of the land and allow others the opportunity to live there. In response to a question from Ms. Lewis, he stated that he has not been approached by anyone wanting to put a vineyard on the property. Mr. Robinson stated that good grape-growing land has been snatched up during the recent expansion of the wine industry, but this property is still being used for grass.

Marty Stiven, land use planning consultant, stated that she had been asked to do research on the availability of alternate sites. She said that her first written response is already in the record and the second, a memo dated December 7, 2009, was prepared in response to questions raised by the Planning Commission and added an analysis of VLDR land to her earlier analysis. She submitted copies of the memo for the record. She reviewed the study area and factors used to identify alternate sites appropriate for development or re-development. She concluded that, even taking VLDR land into consideration, there are only a total of 16 sites available, which does not provide much choice in such a large geographical area. Ms. Lewis pointed out that there would be four additional lots from the recently-approved Spath development that don't show up on GIS yet.

Ms. Stiven also discussed the lack of sales activity in the study area and said that the five proposed homesites would help meet the demand for housing that will likely increase as a result of changes in the area. Mike Cook, realtor, stated that there has always been a demand for rural residential property to the north of Newberg, but there are few options. He said that there have been very few sales of existing homes in the last 14 years and there are currently no empty lots available in the study area that are between two and twenty acres in size.

Questions of Proponents - Marni Haley stated that Empire Farms is viable vineyard land, according to its owners, and asked why it had been omitted. Mr. Robinson thanked her for the information and stated that he had no answer.

Mr. Friday clarified the zoning of the surrounding properties and explained the differences between the AF and EF zones. Ms. Stiven stated that EF-20 property was not considered in the alternative sites analysis because it would not allow ten-acre lots. Mr.

Robinson added that EF-20 land does not allow a dwelling unless the income standard is met.

Ms. Stiven explained that the property with the spring was not considered an alternative site because it is owned and used by the city as part of its municipal water supply.

Mr. Friday stated that each of the cities is required to have a twenty-year supply of land for development, but there is no corresponding requirement for the county, although the county is required to have a diversity of housing available. He said that he believes the county has met that requirement.

Opponents - Leslie Atiyeh read a written statement expressing concerns about the finite water resources, growing traffic issues, the dearth of infrastructure to support growth in the rural areas, and water runoff. She said that neighbors have dealt with runoff issues in the past and any potential increase in runoff as a result of the proposed development would need to be mitigated. In response to requests by Commissioners George and Lewis, Ms. Atiyeh pointed out her property on the map and stated that she had purchased the 2.6-acre property 15 years ago.

Judy Quackenbush submitted letters of opposition from residents and a signed petition for the record. At Ms. George's request, she pointed out her 2.5-acre property on the map and stated that she had moved there in 1987. She stated that there are many vineyards all around the Bell Road area at about the same elevation as the subject property, and most aren't irrigated. She said that she has a one-acre vineyard that is very productive without irrigation. She added that many vineyards are turning to organic farming, which reduces the impacts on residential neighbors from herbicides and pesticides. Ms. Lewis noted that Oregon's laws allow farmers to use herbicides and pesticides and there could be some drift.

Peter Schmidt submitted written testimony. At Ms. George's request, he pointed out his one-acre property on the map and stated that he has lived there for nine years. He briefly discussed water issues and stated that he is part of a community water system in which 25 homes are supplied by a single well and the total water usage for all 25 properties must stay within the daily limit for a single dwelling property.

Jane Bardolf submitted written testimony and urged the Board to preserve the quality of life Oregon is known for by adhering to Goal 3. She stated that a number of dry-land crops would allow the subject property to continue in farming and the proposal would have negative impacts on traffic, water, and the area's rural character. At Ms. George's request, she pointed out her one-acre property on the map and stated that she has lived there for nine years along with her husband, Peter Schmidt.

Barbara Richman submitted a large map and written testimony for the record. At Ms. George's request, she pointed out her 3.22-acre property on the map and stated that she has lived there for 28 years. She said that a broader view of the area shows that the primary use is farming, not rural residential. She stated that property owners have the right to use their land as they see fit, but within the existing zoning laws, and the county should not abandon its zoning after only thirty years. She said that the subject property is viable for farming and once that's

gone, it won't come back. She stated that most of the area's residents are 55 or older, so the dearth of available properties is temporary. She pointed out that in order for the subject property to be "view property," as it is called in the report, the trees would have to be cut or thinned, which would make the houses conspicuous from the valley floor.

In response to a question from Ms. George about potential Measure 49 claims in the area, Mr. Friday stated that there could be a few, but they would keep the existing zoning and additional dwellings would be considered a non-conforming use.

The meeting recessed at 11:22 a.m. and reconvened at 11:30 a.m.

Marni Haley submitted written testimony about traffic concerns. At Ms. George's request, she pointed out her 2.7-acre property on the map and stated that she has lived there for 18 years.

Carla Oyala submitted written testimony regarding the reasons exception to Goal 3. She read the Oregon Administrative Rule that states that a reasons exception cannot be based on market demand for housing. At Ms. George's request, she pointed out her 2.3-acre property on the map and stated that she has lived there for 21 years

Barbara Schaffner submitted written testimony. At Ms. George's request, she pointed out her 3.5-acre property on the map and stated that she has lived there for 22 years. She stated that the subject property is viable for farming and there is no legitimate reason to eliminate it as farmland. She said that the area's farmland is an economic boon as a tourist area as well as for the crops that are produced. Ms. George stated that allowing the property to be developed into ten-acre farms would not result in the dense urban sprawl shown in the photo submitted by Ms. Schaffner as an example. Ms. Lewis pointed out that the small lots owned by Ms. Schaffner and many of the neighbors would be considered by some to be urban sprawl and is much more dense than the proposed development. Ms. Schaffner stated that those properties were grandfathered in and now is the time to stop the destruction of farmland and uphold the intentions of Goal 3.

Jessica Kimball stated that she lives next to the Spath property and was involved in those discussions as well. At Ms. George's request, she pointed out her 2.5-acre property on the map and stated that she has lived there for 22 years. She said that she has seen the traffic growth on Bell Road and stated that the 1267 housing units being planned for Springbrook Development down the hill will affect traffic on Bell, Leander, and other roads in the area. She said that the zoning of the subject property should not be changed.

Merilyn Reeves, representing Friends of Yamhill County, submitted written testimony for the record. She stated that most of the goals addressed in the staff report relate to rural residential development and farm/forest goals were not addressed. She said that the county's Comprehensive Plan statements trump the need for AF-10 land. She stated that the applicant has not demonstrated an economic need for more housing and the exception cannot be based on market need. Ilsa Perse stated that people may want a type of housing that the zoning doesn't allow and if what they want is not available in a certain area, they should look somewhere else or

change what they're willing to accept.

Ms. Reeves emphasized the need to protect the county's agricultural land and do everything possible to make it viable. She pointed out that the size of the properties owned by the neighbors and others testifying at this hearing is immaterial to the application. She requested that if the record is kept open, it be done in the usual manner.

Questions of Opponents - None.

After some discussion about the proposed open record period, Ms. Stern moved to continue the hearing to March 10, 2010, at the point of Public Agency Reports, with the record to remain open for submission of written testimony by any party until 5:00 p.m. on February 24, 2010; for submission of written rebuttal by any party until 5:00 p.m. on March 3, 2010; and for submission of written rebuttal by the applicant only (unless waived by the applicant) until 5:00 p.m. on March 16, 2010; hearing to be reopened on March 17, 2010, at the point of Staff Recommendation. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Ms. Stern excused herself for another meeting.

2. Receipt of public comment on an application for a mass gathering permit for the 2010 Memorial Weekend Boat Races at Rogers Landing, applicants Newberg Boat Club/Columbia outboard Racing Association. *[Due to an error in the hearing date listed in the public notice, the hearing was opened and immediately continued to February 24, 2010.]*

Ms. George opened the public hearing and moved to continue the hearing to February 24, 2010. The motion passed, Commissioners George and Lewis voting aye.

3. Consideration of Planning Docket G-02-09(KF), a request by Yamhill County to incorporate the new Flood Insurance Rate Maps from FEMA and to update the language in the Flood Hazard Overlay Zone. *[Tentatively approved, findings to be adopted February 24, 2010.]*

Ms. George opened the public hearing. Mr. Friday stated that the new floodplain maps, provided by FEMA and dated March 2, 2010, are based on slightly better information and will replace the maps the county has been using since 1983. He explained that the new maps have to be adopted or the county will risk losing its eligibility for the national flood insurance program.

There being no public testimony, the hearing was closed. Ms. Lewis moved tentative approval of Planning Docket G-02-09(KF), with findings to be adopted February 24, 2010. The motion passed, Commissioners George and Lewis voting aye. Ms. Lewis pointed out the oddity of being required to adopt an ordinance on February 24, 2010, that refers to a report dated March 2, 2010.

F. ANNOUNCEMENTS:

1. The following positions are open to the public. Contact the Commissioners' Office for applications.

- a. Budget Committee, one position, closes February 19, 2010;
- b. Commission on Children & Families, one full member, one youth member, and four alternate members;
- c. Parks & Recreation Board, one position;
- d. Planning Commission, one position;
- e. Road Improvement Advisory Committee, one position;
- f. Special Transportation Advisory Commission, one position.

The meeting adjourned at 1:02 p.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair KATHY GEORGE

Commissioner MARY P. STERN

Commissioner LESLIE LEWIS