

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 March 10, 2016, at 10:00 a.m. in Room 32 of the courthouse, Commissioners Mary Starrett, Stan Primozych, and Allen Springer being present.

Also present were Laura Tschabold, County Administrator; Christian Boenisch, County Counsel; Todd Sadlo, Senior Assistant County Counsel; Desiree Lundeen, County Counsel staff; Mike Brandt, Planning Director; Ken Friday, Planning Division Manager; Stephanie Armstrong, Planning Department staff; Nicole Montesano, News-Register; Dave Adams, KLYC; and others as listed on the attached attendance roll.

Commissioner Starrett called the meeting to order at 10:00 a.m.

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.

Nick Marrant stated she is an Oregon licensed bonded and insured general contractor with over 15 years of experience in areas related to trail building and volunteer coordination adding that she is a property rights advocate for the trail. She expressed her concerns regarding the trail and said that there has been a lack of notification to farmers regarding projects.

Pieper Sweeney stated that farmers will face many challenges with the implementation of the trail and not only will it attract nuisance but will also be a cost to land owners.

Scott Bernards stated his opposition to the trail.

Lester Sitton stated he owns a family farm near the trail and expressed his concerns regarding privacy.

Jim Van Dyke stated that as a farmer he is concerned that people making decisions concerning the trail are city minded and don't understand the country way of life, he also asked about fencing along the trail for privacy reasons.

Steve Dumdi expressed his concerns about loose garbage blowing off of non-tarped loads onto the county highways.

B. **CONSENT AGENDA:** Commissioner Primozych moved approval of the consent agenda with the exception of item B(5). The motion passed Commissioner Starrett, Primozych and Springer voting aye.

#### Minutes

1. Approve the following minutes:
  - a. **B.O. 16-71** - December 31, 2015, formal session;
  - b. **B.O. 16-72** - January 5, 2016, informal session;
  - c. **B.O. 16-73** - January 7, 2016, formal session;
  - d. **B.O. 16-74** - January 12, 2016, informal session;
  - e. **B.O. 16-75** - January 14, 2016, formal session;
  - f. **B.O. 16-76** - January 19, 2016, informal session;
  - g. **B.O. 16-77** - January 21, 2016, formal session;
  - h. **B.O. 16-78** - January 28, 2016, formal session; and
  - i. **B.O. 16-79** - February 2, 2016, informal session.

#### Contracts/Grants

2. **B.O. 16-80** - Approve Service Element Prior Authorization (SEPA) Approval Unit #7766890 for Intergovernmental Agreement #148087 between HHS Developmental Disabilities and Oregon Department of Human Services (DHS), total amount of \$28,274.58, retroactive to October 15, 2015 through February 28, 2016.
3. **B.O. 16-81** - Approve Amendment #1 to Agreement #148178 between Yamhill County Health and Human Services (HHS) and the Oregon Health Authority to provide Environmental Health Services through the Public Health Division.
4. **B.O. 16-82** - Approve an agreement of understanding between the City of Newberg, City of Wilsonville, Yamhill County, Clackamas County, the Oregon Department of Transportation, and the Ladd Hill Neighborhood Association for Phase 1 of the Newberg-Dundee Bypass OR 219/Wilsonville Road construction.

#### Ordinance

5. Approve Ordinance 897 creating a governmental entity by Intergovernmental Agreement known as the Oregon Association of County Engineers and Surveyors (OACES) and declaring an emergency. ***[Removed from the CONSENT AGENDA and moved to OTHER BUSINESS for first and second reading; see item D(2).]***

#### Agreement

6. **B.O. 16-83** - Approve an Intergovernmental Agreement to create the Oregon Association of County Engineers and Surveyors (OACES).

#### Programs

7. **B.O. 16-84** - Approve the adoption of the Oregon Department of Transportation Disadvantaged Business Enterprise (DBE) Program, Policy and Goals; and declaring an emergency.

Roads

8. **B.O. 16-85** - Approval of an order initiating the process under ORS 373.270 and 373.260 to transfer to the City of McMinnville jurisdiction over portions of Hill Road and Baker Creek Road, and scheduling a public hearing on April 7, 2016.

Committees

9. **B.O. 16-86** - Approve the appointment of Ka Rin Johnson to the Yamhill County Mental Health and Developmental Disabilities Advisory Committee to serve a 3-year term through May 2017; and accept the resignation of Abigail Dessecker.
10. **B.O. 16-87** - Approve the appointment of Jim Culbert and Neyssa Hays to the Parks and Recreation Advisory Board to serve a 4-year term through March 10, 2020.

Budget

11. **B.O. 16-88** - Approve disbursements from the discretionary revenue budget to the following departments in the 2015-16 fiscal year budget:
- a. 010-017 (Information Technology), \$125,000;
  - b. 010-041 (Jail), \$150,000; and
  - c. 010-043 (Patrol), \$150,000.

Vehicles

12. **B.O. 16-89** - Authorize the Sheriff's Office to purchase a 2016 Ford Fusion from Chuck Colvin Ford, in the amount of \$19,644.

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C. **OLD BUSINESS:** None.

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

1. **B.O. 16-90** - Consideration of approval of a Notice of Intent to Award the Yamhill County 2015 Overlay Project to Baker Rock Resources, total base plus alternate bid of \$1,672,730.10.

Commissioner Primozich moved approval of D(1) with the correction of the year being changed from 2015 to 2016. The motion passed Commissioner Starrett, Primozich, and Springer voting aye.

2. **B.O. 16-91** - Approve Ordinance 897 in the matter of creating a governmental entity by an Intergovernmental Agreement known as the Oregon Association of County Engineers and Surveyors (OACES) and declaring an emergency.

Commissioner Starrett called for the first reading, hearing no objection from the Board County Counsel Christian Boenisch gave the first reading of Ordinance 897 by title only. Commissioner Starrett also called for the second reading by title only. Christian Boenisch gave

the second reading by title only. Commissioner Primozich made a motion to approve D(2). The motion passed unanimously.

E. **PUBLIC HEARINGS:**

1. Docket L-45-15, (KF) an appeal by DLCD of a lot line adjustment involving a lot approved through measure 49, applicant Robert and Betty Janzen representing the Youngman Family Trust. *[Appeal dismissed- continued to March 17, 2016 for adoption of written finding in support of dismissal.]*

Commissioner Starrett opened the public hearing at 11:14 a.m. There were no abstentions from the Board. Ms. Starrett asked for objections to jurisdiction and Mr. Joseph Strunk from Tankersley, Wright, and Strunk, stated that they have long represented the applicant and owners in this matter. He stated that they object to jurisdiction because the DLCD has failed to establish standing in this matter. Mr. Strunk read relevant provisions and portions of the law to the Board and explained the reason for their objection. He requested that DLCD dismiss their appeal for lack of standing and asked for time to be reserved for a rebuttal.

Appellant - Diane Lloyd commented that the state did not receive notice of the lot line adjustment decision from the County. Ken Friday noted that notice was sent to the DLCD on December 15, 2015.

Opponent - Sid Friedman asked that the Board continue with the hearing and not allow this small discrepancy to hinder the progress of this matter.

Rebuttal - Mr. Strunk stated that if indeed DLCD has a valid procedural issue it was not raised by December 31, 2015. He also addressed Mr. Friedman regarding the zoning ordinance and stated the requirement to establish standing. Mr. Strunk stated that the filing and the filing fee are required to establish standing and both of those were not fulfilled. He repeated his request to the Board of Commissioners that this appeal be dismissed.

Mr. Hunnicutt stated that he agreed with Mr. Strunk and that the County's ordinance be enforced evenly and fairly to everyone. To allow the state to file the filing payment late there would need to be language in the ordinance to state the length of time that a late payment could be received. He agreed with Mr. Strunk that the interpretation of the county's ordinance is accurate.

Staff Report - Mike Brandt commented for the record that they have always provided notice to the DLCD on all lot line adjustments. Mr. Brandt then stated that he took responsibility for the late payment that was received due to discussions regarding both the Hintermeyer and Jantzen cases. Mr. Brandt had hoped that in light of the new legislature and having a sit down discussion with DLCD and others that there wouldn't even be an appeal filed. There was additional discussion regarding the payment not accompanying the application filing.

Commissioner Primozich made a motion to dismiss the appeal based on the fact that the applicant lacks standing and to allow County staff to prepare findings within one week. Commissioner Starrett, Primozich, and Springer voted aye.

2. Docket L-47-15, (KF) an appeal by DLCD of a lot line adjustment involving a lot approved through measure 49, applicant Michael Hintermeyer. ***[Continued to April 14, 2016, at 10:00 a.m., room 32 of the courthouse, at the point of Staff Recommendation. Record to remain open until March 21, 2016 at 5:00 p.m. for submittal of written argument and evidence from any party; record to remain open until April 1, 2016 at 5:00 p.m. for submittal of written rebuttal by any party of testimony received during the open record period; and record to remain open until April 8, 2016 at 5:00 p.m. for written final argument from the applicant only.]***

Commissioner Starrett opened the public hearing at 10:25 a.m. There were no abstentions or objections to jurisdiction.

Mr. Todd Sadlo read the land use statement required by ORS 197.7635 regarding the requirement that parties must raise all issues at the public hearing or waive their right to raise the issues on appeal.

Staff Report - Ken Friday described the parcel and noted that the applicant filed a Measure 37 application when the property was first acquired and was approved. The Measure 37 claim was then modified to a Measure 49 claim. The applicant applied for a Measure 49 partition through Docket P-18-15 and this request was approved on December 15, 2015. The subject lot line adjustment was approved December 18, 2015 and an email notice of appeal was received from DLCD on December 30, 2015. Mr. Friday noted that HB 2831 was signed by the Governor on June 16, 2015 and became effective on January 1, 2016. HB 2831 amended the lot line adjustments statute ORS 92.192 and among other things prohibits adjustments of Measure 49 lots beyond their 2 and 5 acre limit. As of January 1, 2016 the Planning department is enforcing this provision however, this application was made and approved prior to this date. The request is subject to section 403.11(B)(2) Yamhill County Zoning Ordinance and the Yamhill County Land Division Ordinance and ORS 92.192.

Proponents - David Hunnicut from Oregonians in Action introduced himself and asked to keep the record open until March 21, 2016 due to some letters that were received that he would like to have time to respond to. Mr. Hunnicut stated that this is not the creation of a new parcel, there are already two parcels on this property that have already been approved. It is not a creation of a new dwelling as there will be two dwellings on this property regardless of whether this request is approved or not. The question remaining is whether or not the new dwelling is on a 2 acre parcel or a 40 acre parcel. This is not a precedent setting case. Mr. Hunnicut stated that as already mentioned by Mr. Friday, HB 2831 no longer allows the county to approve a lot line adjustment of a Measure 49 created parcel, but since the Hintermeyer application was submitted prior to the change in the law the law, in effect at the time the application was submitted is what

it falls under. To put things simply the reason we are here today is for a lot line adjustment to take a 2 acre parcel and a 78 acre parcel and make two 40 acre parcels. This would equalize the size of the parcels and make them more homogenous with the 20 and 40 acre parcels surrounding this property. Mr. Hunnicutt gave some history regarding the most recent changes in the law and what effects that has had on this particular request. Mr. Hunnicutt stated that he agrees with the staff report and he asked that the board take into consideration not just whether or not we are correct on the law but also the impact that this would have on the applicant in this case.

Mike Hintermeyer commented that since purchasing the property in 1978 there have been many challenges regarding these parcels. He waited until he was able to take advantage of dividing these two properties into two 40 acre parcels so that he can sell one off and continue on with his long term plans of retirement.

Appellant - Diane Lloyd with the Oregon Department of Justice representing the state discussed the definition and limitations of Measure 49. She raised the concern of establishing a dwelling on a parcel that is not consistent with the final order.

Opponents - Sid Friedman pointed out that the additional home site on the 2 acre parcel is not in dispute. What is in dispute is whether or not the lot line adjustment, thus enlarging the 2 acre parcel is allowed or legal. Mr. Friedman agreed with Mr. Hunnicutt that the record remain open but asked that the record remain open until April 1, 2016 instead of March 21, 2016.

Mr. Friday stated that there were no additional public agency reports.

Rebuttal - David Hunnicutt stated that the state is taking ORS 92.192 and is interpreting it incorrectly. The state's argument is completely undercut because ORS 92.192 applies to any property line adjustment of two parcels which are smaller than a minimal parcel size of the zone and does not exclude Measure 49 parcels. Mr. Friedman indicated that comments made early implied that we shouldn't pay attention to the law. On the contrary, the board should pay attention and rule in accordance with the law. The comments made were directed toward the state who has limited resources spending its time on a case with a few people, waiting until the last minute to come in and have a fight over an issue that for all intents and purposes is dead due to the new legislation.

Staff Recommendation - Ken Friday asked that the record remain open until 5:00 pm on April 1, 2016 for all parties to submit written testimony or evidence to the Planning Department. The record will then be open until 5:00 pm on April 1, 2016, for all parties to submit to the Planning Department written rebuttal to what was submitted during the first open record period. The record will then be open for the applicant only to submit written testimony until 5:00 pm on April 8, 2016. At that point the record will be closed. The Board of Commissioners will then reopen the hearing at 10:00 am on April 14, 2016, in Room 32 of the Yamhill County Courthouse at the point of staff recommendation.

Commissioner Primozich made a motion to continue according to the schedule set forth by Mr. Friday. No further discussion. Commissioner Starrett, Primozich, and Springer voting aye.

F. **ANNOUNCEMENTS:**

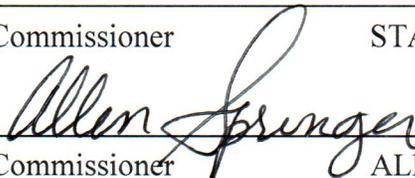
1. For information on county advisory committee vacancies, please refer to our website, [www.co.yamhill.or.us/content/volunteer-opportunities](http://www.co.yamhill.or.us/content/volunteer-opportunities), or call the Board of Commissioners' office: 503-434-7501 (from McMinnville) or 503-554-7801 (toll-free from Newberg).

The meeting adjourned at 11:43 a.m.

Lucy Flores Mendez  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair  MARY STARRETT  
**Unavailable for signature**

Commissioner STAN PRIMOZICH  
  
Commissioner ALLEN SPRINGER

Accepted by Yamhill County  
Board of Commissioners on  
10-2-16 by Board Order  
# 16-218

