

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 December 13, 2006 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Leslie Lewis and Kathy George being present and Commissioner Mary P. Stern being excused.

Also present was John Krawczyk, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Laura Tschabold, Projects Coordinator; Ken Friday, Planning Division Manager; Mike Brandt, Planning Director; Armand de Rosset, 15040 NW Tupper Road, Yamhill; Laura Grady and Joe Brown, 15000 Old Railroad Grade Road, Yamhill; Martyn Dunn, 14710 NW Tupper Road, Yamhill; Bob & Betty Janzen, 20555 SE Webfoot Road, Dayton; Tom Tankersley, PO Box 625, McMinnville; Henry & Merylyn Reeves, 22250 Boulder Crest Lane SE, Amity; Kathleen Yielding, PO Box 549, Yamhill; Kevin & Shirley Shawn, 715 NE Ford Street, McMinnville; Ilsa Perse, 5765 Mineral Springs Road, Carlton; K. Susan Welch, 18201 NE Bald Peak Road, Newberg; Linda Freeman, 3229 SE Francis, Portland; and John Englebrecht, 1266 NW Augusta Drive, McMinnville.

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.

Henry Reeves quoted statements by Commissioners Lewis and George regarding the expected minimal impact of Measure 37 and stated that 24 square miles of Measure 37 claims have been reported in Yamhill County so far. He added that Commissioner George and her husband have filed a claim to divide their farm into twelve homesites, which constitutes a subdivision. He asked Commissioners Lewis and George to explain how much their misjudgments have cost Yamhill County and he requested that Ms. George recuse herself from all future Measure 37 deliberations and subdivision or partition applications because of a conflict of interest. He submitted a written copy of his testimony for the record.

B. **AGENDA:**

Personnel

1. **B. O. 06-986** - Consideration of approval of the change of status of Eusebio Herrera-Perez to regular full-time employment as HS Specialist 1 in HHS Chemical Dependency, Range 17, Step 3, effective December 21, 2006.

2. **B. O. 06-987** - Consideration of approval of the change of status of Dovie Desirey to Range 17, Step 3 in HHS Chemical Dependency, effective December 24, 2006.
3. **B. O. 06-988** - Consideration of approval of the change of status of Joshua Eckroth to Correction Officer in the Jail, regular full-time, Range 12, Step 1, effective December 24, 2006.
4. **B. O. 06-989** - Consideration of approval of the change of status of Mary Lavoie to extend temporary full-time employment in Public Works, retroactive to December 8, 2006 through January 31, 2007.
5. **B. O. 06-990** - Consideration of approval of the change of status of Meuy Chao to underfill the Chief Deputy position as Deputy District Attorney II in the District Attorney's Office, Range 26, Step 1, effective December 24, 2006.

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

#### Contracts

6. **B. O. 06-991** - Consideration of approval of Amendment #4 to Intergovernmental Agreement 0507YAM between the Commission on Children & Families and Oregon Commission on Children and Families to increase the Healthy Start allocation by \$4000.

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

#### Surplus Property

7. **B. O. 06-992** - Consideration of declaring unit P-155, a 1984 Chevy van owned by YCINT, as surplus county property to be sold on consignment at Winfield Motors.

John Gray explained that the Board would be consenting to the sale of the county's interest in the van, which is jointly owned by several agencies. Ms. Lewis moved to declare unit P-155 as surplus county property. The motion passed, Commissioners Lewis and George voting aye.

#### Areas of Responsibility

8. Discussion of changes to the Board of Commissioners' areas of responsibility for 2007. *[Continued to December 18, 2006.]*

Ms. Lewis stated that she hasn't had time to look at the proposed changes yet. The Board agreed to discuss the item at next week's informal session.

#### **C. OLD BUSINESS:**

1. **B. O. 06-993** - Consideration of adoption of an order in support of M37-68B-05, a Measure 37 claim authorizing Thomas E. Currans, Jr. and Ellen Ann Currans to make application to divide 52 acres into eight to ten lots of 2.5 to four acres each and twenty lots of one to two acres each and

to establish dwellings thereon, superceding B.O. 05-671, as tentatively approved December 6, 2006.

Mr. Gray read the operative part of the order. Ms. Lewis moved to adopt the order. The motion passed, Commissioners Lewis and George voting aye.

2. **B. O. 06-994** - Consideration of adoption of an order in support of M37-29-06, a Measure 37 claim authorizing Golda Bales to make application to divide 23.81 acres into one-acre lots and to establish dwellings thereon, as tentatively approved December 6, 2006.

Mr. Gray read the operative part of the order. Ms. George moved to adopt the order. The motion passed, Commissioners Lewis and George voting aye.

3. **B. O. 06-995** - Consideration of adoption of an order in support of M37-35-06, a Measure 37 claim authorizing Martin and Katherine Nicklous to make application to divide 3.36 acres into lots of approximately one-half acre each and to establish dwellings thereon, as tentatively approved December 6, 2006.

Mr. Gray read the operative part of the order. Ms. Lewis moved to adopt the order. The motion passed, Commissioners Lewis and George voting aye.

4. **B. O. 06-996** - Consideration of adoption of findings in support of Public Works Docket RV-7-2006, a request for vacation of a portion of F.C. Grahams Cove Orchard, applicants Larry and Linda Halstead, as tentatively approved November 29, 2006.

Ms. Lewis moved to adopt the findings. The motion passed, Commissioners Lewis and George voting aye.

5. **B. O. 06-997** - Consideration of adoption of Ordinance 800 in support of Planning Docket PAZ-06-06, a request for Plan Amendment/Zone Change from EF-40 to AF-10 on approximately forty acres, applicant Daryl Garrettson, as tentatively approved November 29, 2006.

Rick Sanai provided the first and second readings of Ordinance 800 by title only, declaring an emergency. Ms. George moved to adopt the ordinance. The motion passed, Commissioners Lewis and George voting aye.

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

1. **B. O. 06-998** - Consideration of the ratification of a Collective Bargaining Agreement between Yamhill County and Yamhill County Employees Association (YCEA), retroactive to July 1, 2006 through June 30, 2007.

John Krawczyk explained that this agreement cleans up some language and incorporates some mutually agreed upon changes of philosophy for items such as hiring and disciplinary action. He thanked Laura Tschabold for her help throughout the long process and recommended approval of the agreement. Ms. George moved to ratify the agreement. The motion passed, Commissioners Lewis and George voting aye. Ms. Lewis expressed her appreciation to everyone involved in the collaborative process.

2. **B. O. 06-999** - Consideration of authorizing the Chair to sign a letter in support of a grant application to the National Association of County & City Health Officials for funding to develop a Medical Reserve Corps in Yamhill County, \$10,000.

Ms. George moved to authorize the letter of support, stating that a Medical Reserve Corps would be very beneficial in emergency situations. The motion passed, Commissioners Lewis and George voting aye.

3. **B. O. 06-1000** - Consideration of authorizing an emergency, temporary weight limit of three tons on Bridge #11610F on Kutch Road, effective immediately.

Ms. Lewis moved to authorize the weight limit, explaining that the bridge has a failing cap. She stated that it is uncertain how long the repairs will take. The motion passed, Commissioners Lewis and George voting aye.

**E. PUBLIC HEARINGS:**

1. Consideration of S-11-06, an appeal of the Planning Director's preliminary approval for a twelve-lot subdivision on 58.14 acres, applicant Youngman Family Trust, appellant Katherine Dunn. *[Continued to January 3, 2007 at the point of Rebuttal; record left open until 5:00 p.m. December 20, 2006 for submission of written evidence to Planning, until 5:00 p.m. December 27, 2006 for written rebuttal by anyone, and until 5:00 p.m. January 2, 2007 for written rebuttal by the applicant.]*

Mr. Gray stated that this is the first subdivision application made pursuant to a Measure 37 approval to be considered by the Board. He explained that because this type of application is not a land use application, the Board is not bound to the same hearing procedure, but it would be a good idea from a process standpoint. He stated that only those provisions of the land use ordinance which relate to public health and safety will apply.

Ms. Lewis opened the public hearing. There were no abstentions or objections to jurisdiction. She noted that Ms. George had taken a site visit the previous day. At the request of Tom Tankersley, Mr. Gray 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. Tankersley, representing the Youngman Family Trust, stated that although Mrs. Youngman had passed away the previous day, the hearing should go forward. He said that although some of the neighbors disagree with the underlying policies of Measure 37, it was approved by the voters and the applicants are working hard to meet the health and safety regulations.

He stated that septic approval has been granted for all lots and county inspectors will ensure that all standards are met before the sites are sold. He assured the Board that strict conditions would be followed during construction to prevent stormwater runoff problems and stated that there is no evidence that the subdivision would impact existing wells. He pointed out that according to state law, every parcel has equal rights to use the underground water system.

He addressed complaints about log trucks using Tupper Road, stating that this is a use appropriate to the existing zoning. He added that if the subdivision is approved, the neighborhood can work together to encourage the county to repair the roads or to do the work themselves. He suggested that the Board reconsider the System Development Charge (SDC) that was repealed several years ago and stated that his client would be willing to waive remonstrance to a local improvement district to fund road maintenance. Ms. Lewis noted that the Board had passed an infrastructure ordinance in September which allows the Public Works Director to require the developer to make road improvements beyond access issues.

Opponents - Martyn Dunn stated that he and his wife are concerned about the impact on his property and on his lavender business from traffic and increased water use. He stated that ditching has never been done on Tupper Road as long as he has lived there and he is concerned that the county is not maintaining the road to appropriate standards. He added that there are some spots where road width is an issue. Ms. Lewis stated that it is helpful for residents to call the Public Works Department and let them know where work is needed.

Joe Brown stated that he has lived on Tupper Road for ten years and it has only been graded by the county when one of the residents calls to request it. He said that he has seen nothing to dispute his belief that Mrs. Tupper was the only person who qualified for Measure 37 rights.

Ms. Lewis noted that Armand de Rosset had submitted a card in opposition to the subdivision application, but is no longer present. She noted that Susan Welch and Kevin and Shirley Shawn had also submitted cards in opposition.

Kathleen Yielding stated that she is a direct neighbor of the Janzen property, which has been using her address for years. She said that the Youngman Trust owns property on both sides of the one-way bridge on Old Railroad Grade Road and much of the surrounding property is covered by river rock and is underwater during heavy rains. She discussed problems with her well and others in the neighborhood and pointed out that the proposed subdivision would double the population along that section of Tupper Road, causing a tremendous impact on the character of the neighborhood as well as on the water supply. She discussed stormwater runoff issues and safety issues on the road and submitted photos for the record.

Laura Grady requested an update on the Measure 37 claim filed with the state for this property. Mr. Friday stated that the state had approved the claim, waiving land use regulations back to 1962. Ms. Grady said that the majority of her neighbors have bad wells and she knows from personal experience that drilling new wells can adversely affect existing wells. She stated that if a road association is formed, only residents in the new subdivision should be required to pay for road maintenance, since the new development would be causing the road deterioration. She agreed that commissioners with their own Measure 37 claims should recuse themselves from voting on any claims.

Linda Freeman stated that she had discovered two unattended fires burning in the area last Friday, which made her wonder what other regulations pertaining to this development would be ignored. She said that it is difficult to get a representative from Water Resources to come and check the wells and she agreed with Ms. Grady that current residents should not be required to join a road

association and pay for road deterioration resulting from the new development.

Ilsa Perse stated that she has heard county officials explain at many Measure 37 hearings that issues such as water, traffic, roads, and septic systems would be addressed during subsequent land use applications and she urged the Board to consider these valid concerns now. She said that the county should evaluate what will work on each individual claim and what is feasible for the county and should deny an application if the property cannot support what the applicant wants.

Merilyn Reeves, representing Friends of Yamhill County, expressed her condolences to the Janzens and to Mr. Youngman regarding the passing of Mrs. Youngman. She stated that she has been besieged by phone calls from citizens who are confused about the county's process for these subdivision applications and wish to submit comments. She pointed out the extreme unlikelihood that all of the uncertainties surrounding Measure 37 will be resolved in time to meet the one-year deadline for the filing of the final plat. She requested the opportunity for a public hearing at the time the final plat is considered so that the county and its citizens can see how the conditions have been met.

She stated that the county should not approve this subdivision at this time because there is a legal question regarding ownership. She explained that the Youngman Trust listed Betty Janzen as the legal owner in 1975. She requested that the Board review the land division ordinance and its health and safety provisions as well as the guidelines being given to the Planning Department and to citizens regarding these types of applications. She also requested that the Board not approve any subdivision unless water and septic is available for each lot and that these subdivision applications be held in abeyance until greater certainty is provided from the legislature.

John Englebrecht stated that the transferability of Measure 37 rights was not addressed in what the voters approved. He said that causing a neighbor's well to go dry is a public health issue.

Public Agency Reports - Ken Friday reviewed the public agency reports in the record and said that no additional reports have been received.

Rebuttal - Mr. Tankersley stated that dust, traffic, and the impact on the neighborhood are not public health and safety issues and the subdivision would not have a negative impact on ditching, since it hasn't been done in the past anyway. He expressed his surprise that the neighbors would complain about the road conditions and then be unwilling to help pay for improvements that would benefit them. He said that slash burning is a resource activity unrelated to the subdivision development and he is unaware of any requirements that the fires be attended. He stated that there is no restriction as to which of the trustees can be listed as the Measure 37 claimant.

He clarified that the applicants do not intend to install joint septic systems, although there has been some discussion about joint wells being a better use of resources. He stated that the Board has no authority to change the long-standing rule that a lot can be sold without available water and noted that disclosure would have to be made before the sale. He also pointed out that the Board does not have the authority to rewrite the rules for Measure 37 subdivisions, regardless of the perceived intent of the voters, or to hold the application in abeyance indefinitely while awaiting action by the legislature, as requested by Ms. Reeves. He stated that the Staff Report and the record demonstrate

