

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 January 9, 2008 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Mary P. Stern, Leslie Lewis, and Kathy George being present.

Also present was Rick Sanai, Assistant County Counsel; John Krawczyk, Administrative Services Director; Laura Tschabold, Administrative Services Assistant Director; Ken Friday, Planning Division Manager; Richard & Barbara Lipinski, PO Box 221, Dundee; Amanda Newman, Newberg Graphic; Gary Neuschwanger, 1668 NE Hoffman Drive, McMinnville; Marc Dochez, PO Box 4, Dundee; Bruce Dickson, 18035 NE Fairview Dr, Dundee; Gil & Janet Rinard, 18265 NE Fairview Dr, Dundee; Jerry Seeberger, 18145 NE Fairview Dr, Dundee; Fred Allman, PO Box 575, Dundee; Reynaldo Balthazar, 1500 NE Irving St, Portland; and Carrie Richter, 121 SW Morrison #1100, Portland, 97204.

Commissioner Stern 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.

Gary Neuschwanger requested an update on alternative plans in case the Newberg-Dundee Bypass doesn't come through. Ms. Lewis stated that the bypass is the only long-term solution, but the City of Dundee will be having a workshop with Oregon Department of Transportation (ODOT) in the next couple of months to look at other short-term options, such as a couplet or four lanes through town. She said that a source of funding would have to be identified for improvements in Dundee because the highest priority for the federal funding is the acquisition of right-of-way land. She noted that a number of intersections in Newberg are already considered to be at failure status and will probably continue to operate as such because the estimate from ODOT to fix those is about \$20 million. She stated that a regional bypass has been out of the picture since 2001-02 and explained the reasons why.

B. **CONSENT AGENDA:** Ms. Lewis moved approval of the consent agenda. The motion passed, Commissioners Stern, Lewis, and George voting aye.

Minutes

1. **B. O. 08-11** - Approve formal session minutes from June 27, 2007.

Personnel

2. **B. O. 08-12** - Approve the employment of Amanda Nunley, Grand Ronde, as Office Specialist 2 in the Assessor's Office, regular full-time, Range 7, Step 1, \$1766/month, effective January 9, 2008.
  
3. **B. O. 08-13** - Approve the employment of the following individuals in the Sheriff's Office:
  - a. Nathan Eames, Independence, Corrections Reserve, \$14/hour, effective January 9, 2008;
  - b. Jeffrey Woodard, McMinnville, Corrections Reserve, \$10/hour, effective January 9, 2008;
  - c. Terry Schmidt, McMinnville, Extra Help, \$10/hour, effective January 22, 2008;
  - d. Tina McNeil, McMinnville, Police Clerk, regular full-time, Range 5, Step 2, effective January 24, 2008.
  
4. **B. O. 08-14** - Approve the change of status of Betty Hoskins to regular part-time employment in the HHS Abacus Program, .8 FTE, effective January 9, 2008.

Contracts/Grants

5. **B. O. 08-15** - Approve a memorandum of understanding between the Commission on Children & Families and Oregon Commission on Children & Families to establish a statewide training fund in the amount of \$30,000.
  
6. **B. O. 08-16** - Approve an agreement between HHS Family & Youth, provider, and Amity School District for a Youth Alcohol and Drug Diversion Program, not to exceed \$1600, retroactive to January 1, 2008 through June 30, 2008.
  
7. **B. O. 08-17** - Approve the third modification of a contract employee agreement between Dog Control and Kari Lewers for license checker services, \$12.30/hour, retroactive to January 1, 2008 through June 30, 2008.
  
8. Ratify approval of the following Oregon Teamster Employer Trust (OTET) agreements between Yamhill County and Teamsters Local 223, retroactive to July 1, 2007 through June 30, 2010:
  - a. **B. O. 08-18** - Subscription Agreement;
  - b. **B. O. 08-19** - Agreement for Participation of Non-Bargaining Unit Employees.
  
9. **B. O. 08-20** - Approve the fifth extension of a lease agreement between Yamhill County and Lewis and Stark Company for space in the Stark Building, retroactive to December 1, 2007, effective through June 30, 2008 for HHS office space and through March 5, 2010 for Law Library space.
  
10. **B. O. 08-21** - Authorize the submission of a Community Development Block Grant application for the YCAP Food Bank building.

Plans

11. **B. O. 08-22** - Approve the January 2008 Yamhill County Comprehensive Plan for Children and Families, as recommended by the Commission on Children on Families.

Vehicles

12. **B. O. 08-23** - Authorize the purchase of two new 2008 Ford Crown Victorias for the Sheriff's Office patrol from Chuck Colvin Ford of McMinnville, \$21,654 each.

Roads

13. **B. O. 08-24** - Approve a request for a temporary reduced speed zone of 25 mph on a portion of Zimri Drive due to construction work.

Refunds

14. **B. O. 08-25** - Authorize a refund from the Surveyor's Office to J.T. Smith Co. for unused deposit funds received for checking the Orchard Lair subdivision, \$26,475.

Committees

15. **B. O. 08-26** - Approve the reappointment of Cheryl Gebhart to the Commission on Children & Families for a four-year term to expire November 1, 2011.

16. **B. O. 08-27** - Approve the reappointment of Joyce Morrow to the Housing Authority Board for a five-year term to expire December 31, 2012.

C. **OLD BUSINESS:** None.

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

1. **B. O. 08-28** - Consideration of approval of an intergovernmental agreement between Yamhill County and Sherwood School District for Yamhill County to collect and remit construction excise taxes, effective January 9, 2008, tax collection to begin no earlier than March 1, 2008.

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

2. **B. O. 08-29** - Consideration of approval of a service agreement between HHS Family & Youth and Automated Typing Services, Inc. for transcription and secretarial services, retroactive to January 7, 2008.

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

3. Consideration of approval of the following formal session minutes:

- a. **B. O. 08-30** - October 17, 2007;
- b. **B. O. 08-31** - November 7, 2007;
- c. **B. O. 08-32** - November 20, 2007.

Following the public hearing, Ms. Lewis moved approval of the minutes. The motion passed, Commissioners Stern, Lewis, and George voting aye.

**E. PUBLIC HEARINGS:**

1. Consideration of SDR-22-06(KF), a remand from the Land Use Board of Appeals (LUBA) regarding a request from T-Mobile for a 120-foot cell tower. *[Continued to January 16, 2008 at the point of Rebuttal.]*

Ms. Stern opened the public hearing.

Staff Report - Ken Friday reviewed the request from T-Mobile and stated that it was remanded to the county because LUBA believes that the Board failed to apply the standards in ORS 215.275. He provided copies of the statute to the public (see attachment) and said that testimony at this hearing needs to be directed to those standards.

Proponents - Carrie Richter, representing the applicant, stated that the three-page letter submitted for the record contains the same exhibits that were in the LUBA record. She reviewed factors (a), (c), and (e) listed in the statute for determining whether the requested use is necessary. She stated that T-Mobile had established a search area ring defining their parameters, identified non-resource lands within the search area, and selected the highest areas for consideration.

Reynaldo Balthazar, engineer, pointed out the target coverage area on a topographic map and stated that the elevations of non-resource land in that area are too low to be feasible. He explained that the high frequency range assigned to T-Mobile by the FCC has limitations that constrain them to having line-of-sight between the cell tower and the coverage area. Ms. Richter added that, once it is shown that siting on resource land is necessary, there is no requirement to consider alternate locations.

Questions of Proponents - In response to a question by Jerry Seeberger, Ms. Richter confirmed that the subject property is not the highest point in the search area. Mr. Seeberger requested that Fred Allman identify his own property on the map and suggested that a higher location might be a better option for T-Mobile's coverage purposes as well as for public health and safety standards. Ms. Richter noted that the zoning of Mr. Allman's property is EFU, just like the subject property. Mr. Balthazar stated that the Allman site is slightly higher than the subject property and could provide better line-of-sight with a higher tower than the 120-foot tower proposed.

In response to questions by Bruce Dixon, Mr. Balthazar confirmed that Mr. Dixon's property, located across the street from the proposed site, is 20 to 40 feet higher than the proposed site and that some of the target coverage area is behind his property. Mr. Dixon stated that his trees could interfere with the tower signal as they grow taller. Ms. Richter stated that this information is not relevant to the statute under consideration.

Opponents - Jerry Seeberger stated that his objective is to find the very best location for the proposed cell tower. He said that the owner of the proposed site is currently in negotiations to sell the property to buyers who intend to replace the trees with a vineyard, which would justify

the requirement of a larger fence as additional mitigation. He stated that Mr. Allman's property would provide better cell coverage, would be a better site for emergency services, and wouldn't require additional mitigation.

Mr. Allman reviewed his background in electrical engineering and stated that there are several sites available that would outperform the site proposed by T-Mobile. He discussed eleven improvements identified for T-Mobile by using his site on the southwest side of Worden Hill Road and submitted a map for the record. Mr. Seeberger added that all of the neighbors he had spoken with are in support of this site.

Marc Dochez submitted and read a written statement for the record. He stated that he would support the Allman site, although he questions the need for a tower. He urged the Board to deny the application.

Rick Lipinski submitted a map for the record showing search rings for both the proposed location and the Allman location, stating that the Allman property is an alternative site that would work.

Gil Rinard stated that he would support the Allman site as a better location. He questioned the need for better coverage, based on drive tests conducted by his wife and himself. Janet Rinard stated that Ron Fowler, the T-Mobile representative who selected the proposed site, had previously indicated that he would be open to considering other sites, but is now adamantly opposed to suggestions. She expressed her disappointment that the residents, who know the area best, had not been consulted about locations.

Mr. Allman confirmed that at least two contacts had been made with Mr. Fowler, one in 2006 and one in 2007, but Mr. Fowler had indicated both times that T-Mobile was not interested in the Allman site.

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

Rebuttal - Ms. Richter stated that she understands the concerns expressed by the neighbors, but according to the ruling in Sprint PCS v. Washington County, providers are entitled to identify their own solutions for meeting their service needs. She said that tourism is not a recognized farm use and there is no evidence that the proposed tower would impact farm use, so there is no obligation to mitigate the visual impact. She pointed out that all of the identified alternative sites are also located on resource land and therefore are not required to be considered. She said that there is no engineering study to support the suggestion that the higher location would better meet T-Mobile's service needs and T-Mobile has already entered into a lease with the owner of the proposed property. She stated that T-Mobile's test data is for in-home service and no additional information was provided by the Rinards about that.

Ms. Lewis stated that even though T-Mobile has no legal obligation to be neighborly, she wonders if they have any corporate desire to fit into the community. Ms. Richter stated that she will continue to talk to Mr. Seeberger and T-Mobile about the Allman site, but they are bound by



215.275 Utility facilities necessary for public service; criteria; mitigating impact of facility. (1) A utility facility established under ORS 215.213 (1)(d) or 215.283 (1)(d) is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service.

(2) To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(d) or 215.283 (1)(d) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

- (a) Technical and engineering feasibility;
- (b) The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;
- (c) Lack of available urban and nonresource lands;
- (d) Availability of existing rights of way;
- (e) Public health and safety; and
- (f) Other requirements of state or federal agencies.

(3) Costs associated with any of the factors listed in subsection (2) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities. The Land Conservation and Development Commission shall determine by rule how land costs may be considered when evaluating the siting of utility facilities that are not substantially similar.

(4) The owner of a utility facility approved under ORS 215.213 (1)(d) or 215.283 (1)(d) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this section shall prevent the owner of the utility facility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

(5) The governing body of the county or its designee shall impose clear and objective conditions on an application for utility facility siting under ORS 215.213 (1)(d) or 215.283 (1)(d) to mitigate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on the surrounding farmlands.

(6) The provisions of subsections (2) to (5) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulation by the Federal Energy Regulatory Commission.

**EXHIBIT A 1/1**