

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 10, 2007 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present was John Krawczyk, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Ken Friday, Planning Division Manager; Willie Owens, 9660 NE Fox Farm Road, Dundee; John Kroo, Jr., PO Box 969, Newberg; Brett Veatch, 1014 E Hancock Street, Newberg; Marilyn Reeves, PO Box 1083, McMinnville; Karol Susan Welch, 18201 NE Bald Peak Road, Newberg; John Englebrecht, 1266 NW Augusta Drive, McMinnville; Beverly Davis, 18300 NE Bald Peak Road, Newberg; Michelle Michelsen, 18304 NE Bald Peak Road, Newberg; and Robert Migliori, 24745 NE Mountain Top Road, Newberg.

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

Personnel

1. **B. O. 07-53** - Approve the employment of Joshua Anderson, McMinnville, as Deputy Sheriff in the Sheriff’s Office Patrol, regular full-time, \$3089/month, retroactive to January 5, 2007.

2. **B. O. 07-54** - Approve the change of status of Jeremy Ruby to Corrections Officer in the Jail, regular full-time, Range 12, Step 1, \$3089/month, retroactive to January 9, 2007.

3. **B. O. 07-55** - Approve the change of status of Julia Staigers to .8 FTE in Administrative Services, retroactive to January 9, 2007.

Contracts/Grants

4. **B. O. 07-56** - Approve an intergovernmental agreement between Public Works and the City of Lafayette regarding permanent and temporary easements over a portion of Terry Park for the Yamhill River (Lafayette Highway) Bridge.

5. **B. O. 07-57** - Approve Amendment #34 to the 2005-07 Financing Agreement #113020 between Health & Human Services and Oregon Department of Human Services for geriatric mental health services.

6. **B. O. 07-58** - Approve Grant Agreement #23848 between the Transportation Division and Oregon Department of Transportation for Job Access Reverse Commute (JARC) funds to support employment transportation for low-income individuals, \$57,984, retroactive to September 11, 2006 through June 30, 2007.

#### Vehicles

7. **B. O. 07-59** - Authorize the purchase of two new 2007 Chevrolet extended cab 4x4 pickups from Bruce Chevrolet of Hillsboro for the Planning Department, \$20,285 each, and declare unit P-085 as surplus county property to be sold on e-Bay to the highest bidder.

#### Measure 37

8. **B. O. 07-60** - Schedule a public hearing on February 7, 2007 for M37-72-06, a Measure 37 claim authorizing Vernie and Kenneth Eisland to make application to divide 26 acres into one-acre lots and to establish a dwelling on each vacant lot.

9. **B. O. 07-61** - Schedule a public hearing on February 7, 2007 for M37-93-06, a Measure 37 claim authorizing Stuart Lindquist to make application to divide 340 acres into one-acre lots and to establish a dwelling on each vacant lot.

10. **B. O. 07-62** - Schedule a public hearing on February 7, 2007 for M37-94-06, a Measure 37 claim authorizing Stuart and Janice Lindquist to make application to recognize existing platted lots as buildable for dwellings, to divide the remainder of the 137 acres into one-acre lots, and to establish a dwelling on each vacant lot.

11. **B. O. 07-63** - Schedule a public hearing on February 7, 2007 for M37-95-06, a Measure 37 claim authorizing William and Faye Sanders to make application to divide 90.88 acres into one-acre lots and to establish a dwelling on each vacant lot.

12. **B. O. 07-64** - Schedule a public hearing on February 7, 2007 for M37-100-06, a Measure 37 claim authorizing James and Diane Brown to make application to divide 74.72 acres into one-acre lots and to establish a dwelling on each vacant lot.

13. **B. O. 07-65** - Schedule a public hearing on February 7, 2007 for M37-112-06, a Measure 37 claim authorizing Wendell and Patsy Trivelpiece to make application to divide a 10.6-acre portion of a 49.46-acre property into one-acre lots and to establish a dwelling on each vacant lot.

#### Transit District

14. **B. O. 07-66** - Initiate the formation of the Yamhill County Transit Area, a county service district, and set the first public hearing on formation for February 14, 2007.

C. **OLD BUSINESS:** None.

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

1. **B. O. 07-67** - Consideration of the denial of M37-47-06, a Measure 37 claim authorizing Patricia Ediger to make application to divide 155.28 acres into six lots and to establish a dwelling on each vacant lot, as continued from January 3, 2007.

John Gray explained that because of a break in ownership, the acquisition date for Ms. Ediger would be 1996 and no county land use regulations have been adopted since then which would reduce the value of the property. Ms. Lewis moved to deny M37-47-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Mr. Gray stated that he would be absent during next week's formal session and suggested that Ms. George not participate in any discussion or decision related to the Measure 37 claim filed by her family. He stated that the decision must be made by the Board of Commissioners and if it ends up being a 1-1 vote, the Board should continue the item and he will check with the Government Standards and Practices Commission on how to resolve the issue.

2. **B. O. 07-68** - Consideration of approval of an agreement between Yamhill County, the Community and Shelter Assistance Corporation (CASA), and the Yamhill Community Action Partnership, Inc. (YCAP) for a relocation study for YCAP food distribution, effective through November 30, 2007.

Ms. Stern moved approval of the agreement, noting that this is a Community Development Block Grant being administered by the county. The motion passed, Commissioners George, Stern, and Lewis voting aye.

3. **B. O. 07-69** - Consideration of authorization for electronic acceptance of Service Element Prior Authorization (SEPA) Approval Unit #161571 for Contract #113020 between Health & Human Services and Oregon Department of Human Services.

Ms. George moved to authorize the SEPA Approval Unit. The motion passed, Commissioners George, Stern, and Lewis voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket PAZ-06-04, a request for zone change of eleven acres from AF-10 to Highway Commercial, applicant Willie Owens, as continued from October 18, 2006 at the point of Proponent's Case. *[Continued to March 7, 2007 at the point of Proponent's Case.]*

Ms. George opened the public hearing.

Ken Friday provided background information on the application and stated that the hearing had been continued to allow Mr. Owens to address traffic concerns raised by the Oregon Department of Transportation (ODOT).

Proponent's Case - Mr. Owens stated that he is the sole trustee of the subject property and

will be the spokesperson for the application. He stated that ODOT is planning to take the entire property for the bypass and relocate him, but he still wishes to continue with the application to restore the property to the commercial zoning in place at the time of purchase. He stated that he is not able to get any information from his former attorneys and it would take a great deal of money to get another attorney up to speed.

Mr. Friday stated that in order for his office to recommend approval, a traffic study would need to be conducted to address ODOT's concerns. He provided Mr. Owens with a copy of the study previously submitted by Lancaster Engineering so Mr. Owens could contact them directly and arrange for a new study to be completed.

Ms. Lewis moved to continue the hearing to March 7, 2007 at the point of Proponent's Case. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. Consideration of S-13-06, an appeal of the Planning Commission's approval for a twelve-lot subdivision on 31 acres (Measure 37), applicant John Kroo, appellant Karol Susan Welch. *[Continued to February 14, 2007 at the point of Public Agency Reports.]*

Ms. George opened the public hearing and stated that although this is not a land use hearing, the Board would follow the established land use procedures. There were no abstentions or objections to jurisdiction. Ms. George stated that the Board had taken a site visit. Ms. Stern noted for the record that she had received a phone message from Beverly Davis several months ago regarding this property and had requested that she submit written materials, which were forwarded to the Planning Department, but this contact will not affect her decision on the application.

Karol Susan Welch requested that Ms. George recuse herself from the hearing because of her inability to make an impartial decision, based on her previous public statements in support of Measure 37, her position against holding public hearings for many Measure 37 claims, her statements regarding the Board's inability to address concerns raised by neighbors, and her family's own Measure 37 claim. At Ms. George's request, she submitted a copy of her testimony.

Ms. George stated that although the Board cannot address many concerns raised at Measure 37 hearings, this is a hearing for a proposed subdivision and the Board does have the opportunity to consider issues related to public health and safety and place conditions of approval.

The meeting recessed at 9:37 a.m. for Mr. Gray to review the written testimony. The meeting reconvened at 9:50 a.m.

Mr. Gray stated that based on ORS 244, a commissioner must refrain from voting on issues which would be to his or her financial benefit or detriment or to that of a family member (an "actual conflict of interest"). He stated that when a potential conflict of interest exists, the commissioner must publicly announce the nature of the potential conflict but may vote on the issue. He concluded that while there might be other issues which would cause a commissioner to withdraw from voting, there is no legal requirement to step down from participation in Measure 37 claims where there is no actual conflict of interest.

Ms. George stated that she has voted no on some Measure 37 issues, which shows she can make an unbiased decision. She thanked Ms. Welch for her comments and respectfully declined to recuse herself from the hearing.

At the request of Marilyn Reeves, Mr. Gray provided clarification on Ms. George's earlier statement that this is not a land use hearing, explaining that he does not believe that these types of applications resulting from Measure 37 waivers are land use applications, but he has recommended handling them through the land use process as a precaution against future challenges to the Land Use Board of Appeals. He added that he hopes to have some case law within a few months which will provide more guidance. He said that the only regulations to be considered during this hearing are those related to public health and safety, which were not waived by Measure 37.

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 the subdivision application resulting from a Measure 37 claim approved by the Board. He stated that the Planning Commission had voted unanimously to approve the application subject to the twelve conditions listed in the staff report.

Proponents' Case - Brett Veatch, representing the applicant, stated that the Kroos have fully cooperated with the county throughout this process and have met all requirements for approval. He stated that engineers are working to meet all of the conditions of approval, after which the standards for public health and safety will have been met. He discussed issues such as stormwater drainage and conditions recommended by the fire marshal and submitted a preliminary contour map which identified building sites with less than 40% slope on each lot. He stated that the Kroos are trying to take the neighbors' concerns into consideration and mitigate any potential effects from the development.

Questions of Proponents - Mr. Veatch stated that the drainage plan has been submitted to Public Works and the City of Newberg is having a hydrologist determine whether the proposed development would have any effect on Skeleton Springs. He stated that his livelihood is primarily through real estate brokerhood, but he has done land use hearings in the past and he has agreed to act as the Kroos' agent to assist them through the land use process.

Robert Migliori stated that if the applicants are trying to be cooperative with the neighbors, information such as the contour map should have been provided to them before today. Mr. Veatch stated that the information was not deliberately withheld, but he had assumed that since information submitted to the county is public record, neighbors would go to the county if they were interested in getting a copy. Ms. Lewis suggested that the neighbors call the county weekly to see if any new information had been received.

Opponents' Case - Ms. Welch submitted written testimony for the record and requested that the record remain open so that parties involved may have the opportunity to submit and review additional written evidence. She read her written testimony, stating that her appeal of the Planning Commission's approval is based on the fact that the preliminary subdivision plat is invalid due to

its failure to meet the following seven specifications required by the Yamhill County Land Division Ordinance: 1) all streets shall have a right-of-way not less than sixty feet; 2) approximate street grades shall be indicated; 3) location of proposed structures shall be identified; 4) drainage patterns shall be shown in sufficient detail; 5) contour lines at intervals of less than five feet shall be indicated; 6) proposed means and location of sewage disposal shall be indicated; and 7) access easements to each parcel shall be clearly defined. She pointed out that the information above was presented to the Planning Commission and the decision to accept a preliminary plat which doesn't meet the required specifications is clearly in conflict with the Land Division Ordinance.

She stated that the opponents of this application are grieved by the failure of the Planning Commission to address comments made regarding traffic safety, fire safety, water supply, and safety issues from the proximity of the proposed subdivision to an established commercial business. She noted for the record her formal protest of the legality of this hearing due to Ms. George's refusal to recuse herself.

Beverly Davis submitted written testimony for the record regarding the potential impact on the existing water supply. She stated that the existing group of users has first and foremost water rights to Skeleton Springs and insufficient water is a public health and safety issue when residents can't flush toilets or there isn't enough water to fight fires. She added that the water quality would be affected because water runoff drains down the hill from the subject property toward the spring.

She also discussed concerns about soil erosion from the development and stated that the Kroos have not obtained the required permits from DEQ. She said that she and other neighbors were sent intimidating letters from the Kroo family with the intent to prevent them from opposing the application at this hearing and she pointed out that there are state laws to protect citizens from intimidation. Mr. Friday noted that copies of three letters from the Kroos are included in the record.

Michelle Michelsen submitted written testimony for the record regarding safety issues from the proximity of the proposed subdivision to her equine rehabilitation and foaling business, which she had established in this location because of the existing zoning laws. She explained that it is imperative that her horses have quiet surroundings to recuperate. She requested that a solid barrier fence and vegetation be placed between her property and the subject property to ensure the safety of her horses and the neighbors, that each occupant of the proposed development be required to sign a liability waiver, and that the applicant complete a land grade analysis and a geologic study for land sliding. She also requested information regarding setback distances.

She stated that she had also received a letter of intimidation from Mr. Kroo and he has been in direct violation of a lease agreement she has with him, risking the safety of her horses. She provided background information regarding lot line disputes with Mr. Kroo and said that she is actively pursuing the matter in court to recover her expenses because of his unwillingness to negotiate with her and her mother. She stated that he has been threatening and violent in the past and she is afraid to walk on her property.

Robert Migliori discussed the contour map submitted by Mr. Veatch, pointing out that the map is vague and the contours are at twenty-foot intervals. He stated that the subject property is some of the steepest land in the county and the information provided is not nearly enough for the

governing body to make a decision regarding a development of the proposed intensity. He discussed some of the challenges associated with roads, drainfields, and sand filters and stated that a study from a soil geologist regarding heavy runoff should be included as part of the application.

Merilyn Reeves, representing Friends of Yamhill County, submitted written testimony for the record. She stated that it is inappropriate for Ms. George to ask any witness how long they have lived at their current location because each of the residents knew the surrounding zoning regulations when they purchased their property. She stated that this is not a valid application because the applicant is listed as the Kroo Living Trust, but the Measure 37 waiver was granted to John and Elizabeth Kroo. She discussed the general purpose of the Land Division Ordinance and stated that it is irresponsible planning to approve any new development which does not provide adequate water supply. She stated that this proposal is very flawed because of issues involving the layout, terrain, and ongoing disputes and suggested that the Board suspend any further action on it. She also requested that the Board suspend all further consideration of Measure 37 claims and subdivision applications until transferability and other uncertainties are clarified by the legislature.

Public Agency Reports - Mr. Friday reviewed the public agency reports in the record. He said that he would have no objection to including a statement in the conditions of approval that the proposed dwellings must satisfy the fire siting and construction standards of the county's Zoning Ordinance. He stated that he and Mr. Gray agree that because of the Measure 37 waiver, all preliminary plat requirements have been modified, removed, or not applied except those related to public health and safety issues.

Ms. Stern suggested continuing the hearing, explaining that she needs more information regarding health and safety issues in order to make a decision about this application. She said she would like to see the geological report being prepared for the City of Newberg, a study regarding drainage on the hillside, a hydrologist's report for the area and the potential impact of drilling new wells, and a contour map with five-foot intervals. She said she would also need some clarification on the issue of the application being in a different name than the Measure 37 waiver.

Ms. Michelsen, Ms. Davis, and Ms. Welch stated that there is significant stormwater runoff from the subject property down the hillside, which collects on Ms. Welch's property. John Kroo, Jr. stated that his family had put in a ditch along the fenceline and no water comes from his family's property to hers. He explained that the area is very rich in water, which seeps up from the ground. He said that any water coming down the hillside is channeled through ditches.

Mr. Veatch stated that he would be willing to submit the additional information requested, some of which has already been prepared. He noted that the hydrologist's report would probably take thirty to sixty days.

After some discussion about timelines and possible open record periods, Ms. Lewis moved to continue the hearing at the point of Public Agency Reports to February 14, 2007, at which time the open record period would be discussed further if all of the requested reports have been completed. The motion passed, Commissioners George, Stern, and Lewis voting aye.

#### F. ANNOUNCEMENTS:

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

- a. Parks Board, four positions;
- b. Commission on Children & Families, one lay alternate position and one youth position;
- c. Road Improvement Advisory Committee, one position.

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](mailto:Sally.Lawson@state.or.us).

The meeting adjourned at 12:12 p.m.

Anne Britt  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

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Chair KATHY GEORGE

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Commissioner MARY P. STERN

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Commissioner LESLIE LEWIS