

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 Thursday, January 22, 2004, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present were John M. Gray, Jr., County Counsel; John Krawczyk, Director of Administrative Services; Rick Sanai, Assistant County Counsel; Ken Friday, Senior Planner; Dan Linscheid, Surveyor; the following residents of the Mayette Drive area in Sheridan: Roxanne Acuff, P O Box 162; Nancy Anderson, 26875 Mayette Drive; Armand Pilotte, P O Box 328; Donald Gappa, 26215 SW Mayette Drive; Tammy Tucker, 26430 Regia Drive; and the following persons who testified regarding Planning Docket PAZ-05-03: Paul Hribernick, Black Helterline, 1900 Fox Tower, 805 SW Broadway, Portland, OR 97208; Edward J. Sullivan, Garvey Schubert Barer, 121 SW Morrison #1100, Portland, OR 97204; Cynthia Lowe, Parsons Brinckerhoff, 400 SW 6<sup>th</sup> Ave, Suite 802, Portland, OR 97204; Steve Bruce, Geo Engineers, Inc., Suite 140, 150055 SW Sequoia Parkway, Portland, OR 97224; Dorian Kuper, Kuper Consulting LLC, 22680 SW 76<sup>th</sup> Avenue, Tualatin, OR 97062; Bruce Chapin, 9965 Wheatland Road N, Salem, OR 97303; Robert Bernstein, 507 18<sup>th</sup> Ave E, Seattle, WA 98112; Mark Reed, 719 East Beacon Dr, Eugene, OR 97404; Leslie Ann Hauer, 6100 Collins Road, W Richland, WA 99353; Sam Sweeney, 1070 Ferry St, Dayton; Pieper Sweeney, 860 Ferry Street, Dayton; Arie and Joel Slegers, 18345 SE Nichols Road, Dayton; Marjorie Ehry, 19800 N Highway 99W, Dundee; Dave Hanson, 9400 Rock Creek Road, Sheridan; Marilyn Reeves, President of Friends of Yamhill County and Henry Reeves, 22250 Boulder Crest Lane SE, Amity; Tim Stieber, SWCD, 2200 SW Second Street, McMinnville; David Cruickshank, 11925 SE Cruickshank Road, Dayton; Tim Parsons, 20020 Green Acres Road, Dayton; Geoffrey Dorsey, 19075 SE Mallard Lane, Dayton; and Robert Dorsey, 12915 SE Kinnsey Road, Dayton; Dan Bansen, 5801 SE Bansen Lane, Dayton; Bob Brinkmann, DOGAMI, Albany; and Todd Sadlo, 1532 E 36<sup>th</sup> Avenue, Portland.

A. **PUBLIC COMMENT PERIOD:** This fifteen-minute time period is reserved for comments from the public on any topic other than a quasi-judicial land use matter or other topic scheduled for public hearing. None offered.

B. **CONSENT AGENDA:** Commissioner Stern moved approval of the consent agenda, omitting item #7. The motion carried, Commissioners George, Stern, and Lewis voting aye.

Personnel

1. **B. O. 04-42** - Approve transfer of Carol Ann Rogers to Office Specialist II, in a shared position between Telecom/ and Emergency Management, regular fulltime, \$1797/month, effective January 26, 2004.

2. **B. O. 04-43** - Approve correction of a personnel action for Kathleen Mateer, Chemical Dependency, to reflect employee's assignment of 19 hours/week in the Reflections Program, effective December 1, 2003.
3. **B. O. 04-44** - Approve employment of Suzi Southworth as Human Services Technician, Abacus Program, .25 FTE, Range 11, Step 1, \$11.50/hour, effective January 27, 2004.
4. **B. O. 04-45** - Approve employment of Jeanine Wearer as R.N. II, Public Health (Babies First Program), regular fulltime, Range 19, Step 3, \$3224/month, effective January 23, 2003.

#### Commissioner / Liaison Assignments

5. **B. O. 04-46** - Amend Board Order 04-01 to include assignment of Commissioner Mary Stern as liaison for the Mental Health Advisory Board.

#### Contracts

6. Approve the following actions between Yamhill County and Larry and Lois Christensen, related to property adjacent to the Newberg Landfill:
  - a. **B. O. 04-47** - Easement Agreement and Declaration of Restrictions;
  - b. **B. O. 04-48** - Memorandum of Option to Purchase (intent to encumber property);  
and
  - c. **B. O. 04-49** - Option to Purchase.
7. **Omit** - Approve the proposal between the Juvenile Department and RSS Architecture, P.C., Salem, for architectural services during the construction phase of the juvenile detention expansion project, in the amount of \$69,549. *[To be considered at a later date.]*

#### Committee Appointments

8. **B. O. 04-50** - Reappoint Diane Fisher, Planning Department, and Elaine Heidt, District Attorney's Office, to the Classification Committee for three-year terms to expire January 22, 2007.

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

**B. O. 04-51** - Consideration of adoption of Ordinance 734, approving findings in support of Planning Docket PAZ-04-02, applicant Michael Gougler representing the Werth Family LLC, and declaring an emergency. [The application was tentatively approved December 11, 2003, and continued from January 15, 2004.]

Mr. Sanai provided the first and second readings of the ordinance by title only. Commissioner Lewis moved approval of Ordinance 734. The motion carried, Commissioners George, Stern, and Lewis voting aye.

#### D. **OTHER BUSINESS** (Add-ons and Non-consent):

1. **B. O. 04-52** - Ratify the emergency hire of Kevin Dromgoole as Office Specialist I, Adult Mental Health, \$7.85/hour, effective January 21 through April 20, 2004.

Commissioner Stern moved to ratify the emergency hire of Mr. Dromgoole as requested.

The motion carried, Commissioners George, Stern, and Lewis voting aye.

2. **B.O. 04-53** - Approval of the employment of Robert Maca as Emergency Services Manager, Sheriff's Office, regular fulltime, S.O. Nonbargaining Range 6, Step 3, \$2207/month, effective January 22, 2004.

Commissioner Lewis moved approval of Mr. Maca's employment. The motion carried, Commissioners George, Stern, and Lewis voting aye.

3. **B.O. 04-54** - Approval of intergovernmental agreement between Yamhill County and ODOT for planning services related to the Transportation System Plan and the Newberg-Dundee Transportation Improvement Project, Agreement #21193, to be completed no later than December 31, 2004.

Commissioner Lewis moved approval of the intergovernmental agreement as listed. The motion carried, Commissioners George, Stern, and Lewis voting aye.

**E. PUBLIC HEARING:**

1. Consideration of reducing the width of Mayette Drive from 60' to 40', vacating the northerly and southerly 10 feet of even width adjoining the properties listed below, as initiated by the Board of Commissioners on December 15, 2003:

Tax Lots	5626-100	5623-1604	5626-300	5623-1603
	5626-400	5623-1900	5626-500	5623-2000
	5626-600	5623-2300	5623-2400.	

Commissioner George opened the public hearing.

Staff Report - John Gray said the Board initiated this hearing under Yamhill County Ordinance 625 and ORS 368.326 through 366 to consider elimination of ten feet of right-of-way on Mayette, a local access road near Sheridan.

Dan Linscheid provided background information regarding the original creation of Mayette Drive in 1909 and the addition of 30' right-of-way to each side of the road in 1973. He said that in 2003, when the county required some of the owners to relocate their fences out of the right-of-way, some owners became interested in the county vacating a portion of right-of-way.

Mr. Linscheid stated that neither he nor the public works director recommend approval because for the past 40 years it has been county policy to seek 60' right-of-way for any roadway and that current road construction standards all require a 60' right-of-way. He said that vacation of roads based on local concerns could set an unfortunate precedent, as will waiving the fee for road vacations. He said that vacating 10 feet will create an inequity for some of the property owners along the road, and when future road improvements are proposed, will place the public works and surveyor's departments in the awkward position of having to second-guess whether the public will be upset by the 60' standard right-of-way.

Public Comment - Tammy Tucker described her property location and said that she would like to have the extra footage to use as grazing for her horses. She said there are only six homes that have access from Mayette Drive and the 60' right-of-way seems excessive for local needs.

Donald Gappa said that he supports the vacation; that the road is maintained by the residents, not the county, and only 2000' will be impacted.

Armand Pilotte said the he uses the entire drive to access his home and agrees that a 60' right-of-way is not needed.

Nancy Anderson stated the vacation directly impacts her home, yet she has never received notice of the proposed vacation. She said she has been trying for four years to have the 10' wide road widened to 15' with a ditch so that water runoff will be diverted off the road. She stated she supports the proposed change because she would like to see a consistent road width, rather than three separate widths. She said that land use zoning will limit development in the area and reducing the width of the road should not cause problems.

Roxanne Acuff stated that the portion of road being considered for vacation only affects four properties and will create inconsistencies in several places along the road. She said she doesn't oppose a reduction because 40' is adequate, but the change should be advantageous to everyone along the short road. She said that as proposed, the vacation will not have any benefit for the north side owners because the utilities are placed in the right-of-way that would be vacated.

Ms. Lewis stated that she was surprised when she saw the map because she thought the vacation was going to affect the entire length of Mayette Drive.

Mr. Linscheid stated that the westerly and southern 10' of the road create a very unusual situation and that he has serious concerns about the proposal, as detailed in his Road Official's report.

Mr. Gray stated that there are equity issues and if the Board chooses to modify the proposed vacation, it will be necessary to re-notice the hearing.

Commissioner Stern moved to deny the application. She said it is apparent that the proposal was not properly explored with the surveyor or public works director before proceeding. She said it is not appropriate to piecemeal portions of the road, or to change county policy without clearly understanding the ramifications for future situations.

Commissioner Lewis stated the Board has received considerable testimony from area property owners who support the vacation. She stated that while it is county policy to require 60' right-of-way on public roads, this vacation affects a local access road which the county does not maintain and which does not have the capacity for significant future development. She stated she still favors the vacation, but would prefer it apply to the entirety of Mayette Drive.

Commissioner George stated she understands the concerns expressed by Ms. Stern but also feels that 60' is excessive in this instance, especially because the owners maintain the road.

The motion to deny the vacation failed, Commissioner Stern voting aye, Commissioners George and Lewis voting no.

Commissioner Lewis moved to continue consideration to March 25, 2004 at 10:00 a.m. The motion carried, Commissioners George, Stern, and Lewis voting aye.

2. Consideration of Planning Docket PAZ-05-03, a request for a Comprehensive Plan amendment from AFLH to Quarry; a zone change from EF-80 to MR-2 for approximately 169 acres, applicant C.C. Meisel.

Commissioner George opened the public hearing.

There were no abstentions or objections to jurisdiction. Ms. Lewis stated the Board visited the site with Ken Friday, viewing surrounding uses and the proposed access road. Ms. Stern stated she visited again with Ken Friday and Bill Gille, traveling all the way to Dorsey Road; she also read the News-Register article, and contacted the Soil & Water Conservation District (SWCD) for information on noxious weeds. Ms. George said she read the News-Register article. Ms. Lewis said she did not read it.

Rick Sanai read the statement required for land use hearings related 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 presented the staff report and stated that the subject parcel is a combination of two tax lots comprised of open fields in farm use, accessed via an easement, and located in the floodway of the Willamette River, currently on farm deferral. Surrounding uses are generally in large scale farms producing hay, berries, vegetables and livestock. He said the adjacent property to the east is zoned MR-2 (in floodplain / greenway overlay), with the remaining acreage in EF-80.

Mr. Friday stated property owners within 1500' were noticed of the application because that distance is proposed as the impact area. Mr. Friday referenced applicable criteria as listed in the staff report including OAR 660-023, and more specifically OAR 660-023-0180 which the Board is required to follow without consideration of additional criteria. Mr. Friday said that the new Goal 5 rule adopted by the State supercedes county codes. He stated that two additional documents have been submitted since the staff report packet was prepared: an amended map and a letter from the OSU-Extension Service District opposing the application.

Proponents - Paul Hribernick, representing C. C. Meisel, referenced materials submitted for the record and summarized the process for a post-acknowledgment plan amendment ("PAPA") which recognizes aggregate resources. He said the PAPA rule was developed to lessen conflicts and

provide a mechanism for more consistent decisions from local governments in land use issues. He said the rule provides for local government to look for conflict minimization rather than elimination of the use. He referenced the LCDC publication included in the staff report. He reviewed the five key issues in the new PAPA rule, including protection of an aggregate site that is determined to be significant, to define the site's impact area, and to identify any conflicting uses. He said the rule presumes the impact area to be approximately 1500', generally due to noise. He said that once conflicts are identified, the county must consider ways to minimize them; then, if effects can be minimized, the rule requires approval. He stated that if the conflicts cannot be minimized, an economic, social, environmental and energy ("ESEE") analysis is required.

Dorian Kuper, President, Kuper Consulting, stated she is a registered professional geologist who has worked on more than 70 mining sites in Oregon, and her findings have been submitted for the record. She identified the subject application on a vicinity map, and stated other mining sites in the area have been active since the early 1900s. She said her role in the application was to locate the resource and evaluate its quality and quantity and she described the methods used to assess the site. She said all the samples tested met or exceeded ODOT specifications. She said that to be considered a significant site, there is a minimum threshold of 2 million tons; this site is estimated at 50 million tons, covered by Class II soils. She said that Goal 5 requires a minimum of 25 feet of sand and gravel to justify taking farmland if more than 30% of the site is comprised of Class II soils; she said this site clearly has at least a 35' average of sand and gravel.

Ms. Kuper said the site should be placed on the county's aggregate inventory. She said DOGAMI was consulted regarding the mining plan and revisions to it have been made since the planning commission hearing. She stated that while additional information is being prepared for DOGAMI, work would begin outside of the area designated as buffer, and that in the buffer area a lake will be created with protection for wildlife and native plantings. She said the plan is to mine seasonally between April and October, with no rock to be processed on-site. She said that top soil removed during excavation will be stored, and as each cell is mined, reclamation will occur.

Mr. Hribernick stated there are two wetland areas on the site which will remain undisturbed. He stated that the anticipated conflicts in the 1500' impact zone area would be noise, dust and other discharges. He described the plans for mitigation and referenced materials in the record addressing these issues. He said three water trucks will be used to suppress dust and the trucks transporting the rock will be limited to 15 miles per hour. He reviewed the hydrogeologist's conclusions that drawdown will not affect residential wells in the area. He said the traffic impact will be minimal on local roads and an easement in the record confirms access to the property.

Cynthia Lowe, hydrogeologist, stated she has studied the two rivers in the vicinity and identified two sites from which floodwater might enter the subject property, especially the Willamette River which is an actively meandering alluvial river.

Mr. Hribernick stated that the center portion of the site is stable and mining plans have been revised to reflect DOGAMI's concerns regarding flooding, etc. He said that he believes well water concerns in the area are unrelated to mining operations and that mitigation of dust and noise will also minimize agricultural impacts. He said the standard for whether mining can be allowed in an

agricultural area is that it will not significantly increase farm costs or significantly change farm practices on surrounding lands. He said there have been gravel operations in this area for 30 years. He said the request before the Board is to make a determination of a significant aggregate site and to approve the application with limited use overlay for conditions as appropriate.

Lloyd Town stated that the truck volume is expected to be five to seven trucks an hour, possibly up to twenty, depending on the product being mined.

Following a thirty minute recess, the meeting reconvened at 1:05 p.m.

Questions of Proponents - Marilyn Reeves asked questions of Ms. Kuper regarding the test boring on the site.

Opponents - Ed Sullivan, attorney representing several area families opposing the application, referenced the voluminous materials already submitted to the record. He said the applicants are presuming the impact area of the mining operation to be 1500' when expert professional testimony and testimony from adjoining farmers clearly indicate a greater area of impact. He said there are significant transportation impacts on local roads, particularly the easement road planned for gravel trucks, because farm trucks will use the roads during the same seasonal time frame the gravel trucks would. He said that agricultural practices in the immediate area will clearly be adversely affected by the mining operation on a number of levels. He said dust levels that may meet DEQ standards could still be highly detrimental to crops. He said the fish in the river are a designated Goal 5 resource that must be protected.

Mark Reed, professor of economic geology, stated that he has 30 years experience in the field and previous experience in testifying about Goal 5 issues, and submitted materials for the record. He stated the applicant's sample data is insufficient because 86% of the property was not sampled and two of the bore log descriptions contain so little information that it is not possible to determine adequate levels of aggregate. He said an essential failing of the applicant's samples is the small fraction of property studied. He said that "good results on bad sampling means nothing"; and good samples would analyze all of the material taken from a drill hole. He said the sampling performed by the applicant were made subjectively with bias and the results are inaccurate and incomplete information. Mr. Reed said there are excellent alternative sources of aggregate available, particularly high quality quarry rock, in many places in Oregon.

Robert Bernstein, registered traffic engineer, stated he was retained to analyze the traffic impact area, conflicts, and measures to reduce conflicts, and has submitted a written report for the record. He stated conflicts would exist between large farm vehicles and gravel dump trucks, as well as residential traffic, over the entire length of the affected roads. He said the applicant's study was inadequate because it didn't address 98% of the impact area. He said the narrow, one-lane roadway will severely impact traffic and the only mitigation would be to construct Nichols Road as a two-lane, paved road. He said there is no location along the road for two vehicles to pass, especially large farm equipment and gravel trucks, and no right-of-way available for widening the road.

Leslie Ann Hauer, planning consultant, stated written materials are included in the record

which show that Nichols Road does not really exist; there is no road deed, and it is only easement that does not permit uses that would cause loss of farm deferral. She said agricultural practices in the lower area bottomland, bounded on three sides by the Willamette, are very time-specific for planting and harvest, with irrigation occurring all year. She stated that typically the farm equipment is 24' wide and although trip activity may vary season-to-season, there may be as many as 80 trips a day for field manure-spreading trips, as well as trips due to overlapping planting time for other farms, and that the impact area should include the entire area served by Nichols Road. She said if the dairy farm was prohibited from manure-spreading, there would be a very high cost impact to the farmer. She said the addition of heavy gravel trucks would significantly impact the problems of traffic in the Nichols Road gully which could easily have three to five vehicles stacked up at each end, waiting to traverse the gully. She said traffic delays would also significantly impact current practices and costs; they cannot be minimized because no reasonable, practical measures can be applied.

Ms. Hauer said the applicant has not provided usable information on how water would be used to control dust. She said some of the materials she submitted to the record address the measurable impacts of dusts on crops, i.e., quality of hay, reducing milk output for dairy animals.

James Luzier and Richard Rinne jointly presented slides and information regarding water, wells, groundwater levels, and water table levels. Mr. Luzier stated the applicant's monitoring wells "are fluff" which do not provide meaningful information. He stated that it is very difficult to recharge a groundwater system and long-range impacts on groundwater will have a significant impact on the aquifer. He said there is a fatal flaw in the mining plan because the proposed lake will negatively impact both the river and the regional aquifer.

There was a lengthy slide presentation of technical information regarding water availability and the impact of mining on the water table. Mr. Luzier stated he is convinced the aquifer is already over-stressed in the summer and the cumulative effect brought about by mining will dessicate the nearby region. Mr. Rinne stated that it is clear that the water conflicts will greatly affect agricultural practices and costs to neighboring farms, particularly if drawdown from pumping the mining pit results in a loss of water availability.

Following a brief recess, the meeting reconvened at 3:15 p.m. Testimony from Bob Brinkmann of the Department of Geology and Mineral Industries ("DOGAMI") was accepted at this point in the hearing and appears below as a Public Agency Report.

Tim Abbe, Director of River Science and Geomorphology, Herrera Environmental Consultants, submitted written testimony for the record. He stated there are very significant conflicts that could arise from the proposed use for which the applicant has not provided sufficient data regarding mitigation. He stated the potential conflicts carry well beyond the presumptive 1500' radius based on topography and flood insurance maps as well as observation that the site is located within a dynamic section of the river near its main stem. He stated considerable testimony has been submitted relating to the movement of the river and its many ephemeral channels (swales and low-lying linear pathways). He stated this bank and surrounding area is subject to sudden erosion and that it is very possible for the river to be entrapped in mining cells. He stated there are no reasonable

practical measures that can remedy a major shift in the river channel and almost all traditional methods of controlling bank erosion, such as constructing rip-rap barriers, are now in disfavor.

Roger Sutherland, President and Director of Pacific Water Resources, Inc., stated that he supports Mr. Abbe's comments above. He discussed flooding potentials and probabilities and stated that the floodway is 6000' wide, clearly outside the 1500' impact area described by the applicant.

Jennifer Goldsmith, Project Scientist, Herrera Environmental Consultants, discussed concerns regarding water turbidity and sediment accumulation and their effects on agriculture in the immediate area.

Bruce Chapin, Chair of the Oregon Farm Bureau Agriculture Committee, stated the Bureau opposes mining on high value farmland. He read a statement into the record and stated that mining the site will end agricultural production forever. He stated that most of the nation relies on quarry rock rather than alluvial rock and the economic gain for a few cannot justify creation of the wasteland that will be left behind. He stated that Goal 5 was intended above all to protect natural resources. He stated that it would be fraudulent for a governing body to support mitigation plans if no mechanism is in place to enforce it.

Bob Brinkmann, Department of Geology and Mineral Industries ("DOGAMI"), provided information about the permitting process which DOGAMI regulates, including ensuring sites are reclaimed for secondary beneficial use and natural resources are not impacted during mining operations. He said that at this point a permit has been submitted and evaluation is in progress. He said he has visited the site numerous times and met with the applicants to obtain information and discuss deficiencies noted on hydrologic sites. He stated he has also met with the farmers and listened to their concerns.

Mr. Brinkmann stated that the subject site is similar to other gravel pits operated along the Willamette River corridor in Lane, Washington, and Multnomah Counties. He stated he has reviewed the historical data on this portion of the river and mining impacts on groundwater to this point, looking also at the placement of existing wells to try and determine whether drawdown in the cells will negatively impact offsite owners. He stated that from a historical standpoint, there is no disruption of water balance in these settings due to pit-to-pit dewatering. He said the water table at this site is 11' to 15' below ground and that although he has been told of concerns that plugging the receiving cells prohibited recharge of the water table, he has not found that to be a problem.

Mr. Brinkmann said that DOGAMI regulates mining operations throughout the life of a mine and has enforcement authority to close operation or require mitigation, as deemed necessary. He stated that the Lambert Bend area of the river is forming a cutoff and DOGAMI is interested in determining what the potential channel migration effects will be so that the migration won't intersect the proposed mine site. He said that determination will dictate DOGAMI's evaluation of the setback from the main stem of the river.

Mr. Brinkmann stated the applicant is still providing information and DOGAMI will complete its evaluation within 45 days after receiving the requested data. He stated there is a fish

issue which would typically be addressed by having the operation monitored by Fish & Wildlife and creation of a plan to solve fish entrapment problems. He stated that the applicant has voluntarily provided more information than would usually be required at this point in the process.

The Board asked a number of questions of Mr. Brinkmann relating to testimony presented by both parties. Regarding problems with noxious weeds on other reclaimed mining sites, he stated that DOGAMI now does a better job in monitoring reclamation than in the past and has already asked the applicant to submit revised revegetation plans to show planting density and types of native species. Regarding the proposed lake, he said that rectangular water impoundments are not in favor; the preferred method is to develop complex shorelines with islands for wildlife and sloping walls.

Mr. Brinkmann stated there are approximately one dozen gravel pits being actively mined in the area; generally these types of deposits are fairly equal and he would be surprised if the proposed site has less aggregate than the others. He said there is hydraulic communication between the groundwater and the river.

Commissioner George moved to continue the hearing until January 29, 2004 at 9:00 a.m. to accept testimony from the ten people who had submitted requests to testify but were unable to speak today due to time constraints.

F. **ANNOUNCEMENTS:** Two positions are available on the Investment Advisory Committee for persons with knowledge of investment practices. A position is available on the Special Transportation Advisory Commission. Contact the Commissioners' Office for applications.

The meeting adjourned at 5:00 p.m.

Carol Ann White

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