

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 24, 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; Laura Tschabold, Projects Coordinator; Mike Brandt, Planning Director; Ken Friday, Planning Division Manager; Martin Chroust-Masin, Associate Planner; Debbie Gill and Phillip Shadden, Veterans’ Services; Betty Wahle, PO Box 325, McMinnville; Samuel Justice, PO Box 648, McMinnville; Marlin Brethower, 9325 NE Blackburn Road, Yamhill; Jacki Bessler, 8663 NE Blackburn Road, Yamhill; Mike Slater, 7900 NE Cooper Lane, Yamhill; Merylyn Reeves, PO Box 1083, McMinnville; Shirley Kimball, 121 NW 22nd, McMinnville; Barton Brierly, PO Box 970, Newberg; Michael Gunn, PO Box 1046, Newberg; Walt Gaibler, 1301 Fulton #130, Newberg; Vicki Shepherd, 30230 NE Benjamin Road, Newberg; John Bridges, 515 E 1st Street, Newberg; Tim Speakman, 17649 Woodhurst Place, Lake Oswego; John Trudel, 4303 NE Birdhaven Loop, Newberg; Dick Petrone, 4301 NE Crestview Drive, Newberg; and Nancy Leigh, 32170 SW Lake Drive, Wilsonville.

Commissioner George called the meeting to order.

SPECIAL PRESENTATION: Presentation of a Distinguished Service Award from the Oregon Department of Veterans’ Affairs to Debbie Gill and Phillip Shadden on behalf of Diane Cilenti in recognition of her outstanding and unselfish service to veterans, their families, and survivors.

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.

Merylyn Reeves requested that the Board schedule public hearings for appeals of Measure 37 subdivisions during the evening to allow concerned citizens the opportunity to attend.

B. **CONSENT AGENDA:** Ms. Lewis moved approval of the consent agenda with the addition of expiration dates for the Parks Board appointees. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Minutes

1. **B. O. 07-116** - Approve formal session minutes from June 22, 2005.

Personnel

2. **B. O. 07-117** - Approve the employment of David Sangster, Portland, as HS Specialist 2 in HHS Family & Youth, temporary part-time, \$45/hour, effective January 29, 2007 through April 23, 2007.
3. **B. O. 07-118** - Approve the employment of Lacey Wade, Junction City, as HS Associate in HHS Adult Mental Health, temporary part-time, Range 14, Step 1, effective January 29, 2007 through June 30, 2007.
4. **B. O. 07-119** - Approve the employment of Jennifer Blood, Federal Way, as Extra Help in the Commission on Children & Families, temporary part-time, \$7.80/hour, effective February 1, 2007 through June 30, 2007.

Contracts

5. **B. O. 07-120** - Approve Amendment #6 to an agreement between HHS Adult Mental Health and Mid-Valley Behavioral Care Network for Oregon Health Plan services, retroactive to January 1, 2007.
6. **B. O. 07-121** - Approve a Business Associate Agreement between HHS Developmental Disabilities and Yamhill Community Action Partnership, Inc. (YCAP) for provisions required by HIPAA, effective January 24, 2007.
7. **B. O. 07-122** - Accept a proposal from Northwest Parking Equipment Company for the purchase and installation of an electronic pay station at Rogers Landing, \$12,811.
8. **B. O. 07-123** - Accept a proposal from BrightSide Electric & Lighting Services, Inc. for electrical work on the electronic pay station project at Rogers Landing, \$1301.

Public Hearing

9. **B. O. 07-124** - Set a public hearing for February 21, 2007 to consider a request from the Newberg Boat Club and the Columbia Outboard Racing Association for exclusive use of Rogers Landing Park and Boat Launch for the 2007 Memorial Weekend Boat Races, mass gathering permit fee to be set at \$250.

Committees

10. **B. O. 07-125** - Approve the appointment of Ron Nyman, Roger Hall, and Robert Gang to the Parks Board for four-year terms to expire February 1, 2011.

OLD BUSINESS:

1. Consideration of adoption of findings in support of S-11-06, a request for a twelve-lot subdivision on 58.14 acres, applicant Youngman Family Trust, appellant Katherine Dunn, as tentatively approved January 3, 2007. *[Continued to January 31, 2007.]*

At the request of Rick Sanai, Ms. Lewis moved to continue the item to January 31, 2007. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. **B. O. 07-126** - Consideration of approval of M37-106-06, a Measure 37 claim authorizing the Clevenger Family Trust to make application to divide 108 acres into five-acre lots and to

establish a dwelling on each vacant lot, as continued from January 17, 2007.

John Gray read the operative part of the order. Ms. Lewis moved approval of M37-106-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

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

1. **B. O. 07-127** - Consideration of approval of an employment agreement between Yamhill County and Chris Johnson to serve as Director of Health & Human Services, salary retroactive to January 9, 2007.

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

2. **B. O. 07-128** - Consideration of amending the 2007 Areas of Responsibility for the Board of Commissioners to move the Veterans Services Division from Commissioner Stern to Commissioner George.

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

3. Acknowledge the reappointment of Mark Miller, DMD to the Health Board for a four-year term to expire February 1, 2011.

4. **B. O. 07-129** - Consideration of approval of M37-59-06, a Measure 37 claim authorizing the S.B. Nicoll Revocable Living Trust and Bobbe Nicoll Family Trust to make application to divide 46 acres into five-acre lots and to establish a dwelling on each vacant lot.

Mr. Gray stated that the trustor is still alive, so the ownership date goes back to the original date of acquisition by the trustor. He read the operative part of the order. Ms. Lewis moved approval of M37-59-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

5. **B. O. 07-130** - Authorize the Chair to execute an agreement between Public Works and OBEC Consulting Engineers for an embankment project on Quarry Road, subject to approval by County Counsel.

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

6. **B. O. 07-131** - Consideration of authorizing the Juvenile Department to apply for a grant from Oregon Youth Authority for gang intervention.

Ms. Stern stated that the grant funds would have to be expended by June 30, 2007. She said that there has been some gang activity in the county. She moved to authorize the grant application. The motion passed, Commissioners George, Stern, and Lewis voting aye.

7. Discussion of a possible grant application through the Oregon Department of Transportation for a study on mass transit/commuter rail. [*Consensus: Include the proposal on the list to be considered by the STF Committee for priority ranking.*]

Ms. Lewis stated that the Special Transportation Grant application has to be submitted by the end of the month and the STF Committee will be meeting tomorrow to rank the priority of the grant projects for Yamhill County. She said that the county could apply for funding to update the existing study and include concepts for a tourist train, but she believes that continuing and expanding the existing transit system is a higher priority.

Ms. Stern stated that the study would be a good way to determine if it makes sense to add a tourist train as a stepping stone to the ultimate goal of commuter rail. The Board agreed to include the study proposal on the list of projects to be ranked by the STF Committee.

E. PUBLIC HEARINGS:

1. Consideration of M37-46-06, a Measure 37 claim authorizing Walter Gaibler to make application to divide 94.56 acres into one-acre lots and to establish a dwelling on each vacant lot. [*Tentatively approved, order to be adopted January 31, 2007.*]

Ms. George opened the public hearing. John Gray provided background information on the claim and reviewed the hearing procedure.

Staff Report - Mike Brandt described the subject property and noted that it is located in an area being considered by the City of Newberg to include in its Urban Reserve Area (URA). He reviewed the ownership dates for the tax lots included in the claim and recommended modifying, removing, or not applying the land use regulations back to those dates.

Claimant - Michael Gunn, representing Walter Gaibler, stated that the two criteria for Measure 37 approval, proof of ownership date and reduction of property value, have both been satisfied. He said that he understands the City of Newberg's opposition to Measure 37 claims outside city limits because they don't conform with the city's vision of the area, but the claim cannot be denied based on a reason that is not part of the approval criteria.

Public Comment - Marilyn Reeves, representing Friends of Yamhill County, stated that there is nothing in Measure 37 which permits the transferability of waivers, nor are there any rules for the determination of valid compensation, and these issues need to be addressed. She stated that compensation is clearly what voters wanted from Measure 37. She urged the Board to suspend the Measure 37 deadline to allow adequate time for a thorough review of the many claims submitted.

Barton Brierly, representing the City of Newberg, stated that through many discussions with citizens of Newberg and surrounding areas, it has become clear that residents want Newberg to be a community where people can both live and work and that people in residential areas don't like industry right next to them. He said that this proposal to put a residential subdivision in an area that should be a future industrial area will lead to many problems. He stated that Measure 37 allows "a use", which could be an industrial use instead of the use requested by the claimants.

Summation by Claimant - Mr. Gunn stated that the county could face significant financial implications from the applicant if the 180-day deadline is not followed. He said that the issues raised by the opponents have nothing to do with the approval criteria and there are no statutory reasons why the Board should not approve the claim. He added that the Board does not have the authority to approve the claim for a use that was not requested by the claimant.

Mr. Brandt stated that when Measure 37 first went into effect, he had suggested to Lane Shetterly and his staff that a new category be added to the urbanization criteria to give higher preference to lands coming into the Urban Growth Boundary (UGB) under Measure 37, which would benefit cities as well as claimants. He said that nothing was done about his suggestion at the time, but now that the legislature is in session again, there is another opportunity to get the change made.

Ms. Stern voiced her agreement of Ms. Reeves' suggestion to suspend the 180-day deadline and Mr. Brandt's suggestion regarding urbanization criteria. She pointed out that this land would be more valuable if it were within the city limits. She said that she would consider drafting a request to the legislature from the Board. Ms. Lewis agreed, stating that some help from the legislature would be appreciated.

Close of Public Hearing / Deliberation - Ms. Lewis said that she understands the city's concerns and hopes that the claimants will be willing to work with the city through the URA/UGB process. She stated that the Measure 37 criteria have clearly been met, so the claim is valid. She moved tentative approval of M37-46-06 with the order to be adopted January 31, 2007.

Ms. Stern agreed with Ms. Reeves that Measure 37 was sold as a compensation measure and said that she believes the county's ordinance is flawed because it doesn't require adequate information regarding property values. She said that the voters' pamphlet supports her position that it was not the legislative intent of the voters to put rural subdivisions on farmland and it is morally wrong to approve so many claims leading to development with no planning. She stated that although it would cost the county in legal fees, the Board should take a stand at some point by voting against a Measure 37 claim.

Ms. George stated that it is unreasonable to expect landowners to wait so many years to be able to do something with their land and hopefully Measure 37 will fix some of the problems with the land use system.

The motion for tentative approval passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

2. Consideration of M37-83-06, a Measure 37 claim authorizing Roy & Betty Wahle to make application for multiple uses on three lots totaling 95.74 acres. *[Continued to January 31, 2007 at the point of Public Comment.]*

Mr. Gray reviewed the hearing procedure and stated that this is not a land use application. Ms. George opened the public hearing.

Staff Report - Mr. Brandt reviewed the ownership dates for the tax lots included in the claim and recommended modifying, removing, or not applying the land use regulations back to those dates. He stated that the application listed a number of proposed uses and suggested that the claimants provide some clarification as to their real intentions.

Claimants - Samuel Justice, on behalf of the claimants, reviewed a packet of information submitted the previous day to the Planning Department. He explained that the claimants would want compensation based on the most intensive use of the property, but the request for a waiver would only be for ten lots with a dwelling on each lot. He said that they may ask for a cluster of smaller residential lots in order to minimize the impact on agricultural uses.

Public Comment - Jacki Bessler stated that she was not able to determine from the application what the Wahles intend to do with their property. She requested that the hearing be continued to give the public an opportunity to review the new information submitted to the county by the claimants.

Marlin Brethower stated that he is concerned about the high density of the initial plans, the strains on the community's infrastructure, the impact on groundwater, and the impact on his right to farm from mixing residential and agricultural uses.

Shirley Kimball read her written testimony in opposition to the claim, which she submitted for the record. She requested that the claim be denied because of the irreparable damage it would do to the conservation project on the easement property.

Mike Slater agreed that these public hearings should be held in the evening and supported the request to continue the hearing to allow neighbors to consider the information provided by the claimants. He stated that the economic information provided is purely hypothetical and the requested compensation is excessive. He submitted a graph of stock market trends showing that the increase of the subject property value has been consistent with stock market returns since 1973 and concluded that there has probably been no loss of value. He requested clarification regarding the ownership dates for the two larger properties.

Mr. Gray explained that the Board has taken the position that land sale contracts can be used to verify ownership dates, which was August 1973 in this case.

Ms. Reeves stated that there needs to be some legal clarification regarding the issue raised in the previous hearing about allowing "a use" rather than the use requested. She stated that the Board must deny the claim for Tax Lot 3402-1700 because it was zoned AF-10 at the time of purchase and is still zoned AF-10. She read a statement from the voters' pamphlet by Chief Petitioner Dorothy English regarding compensation and stated that procedures need to be established for determining just compensation for Measure 37 claims. She questioned the validity of the compensation figures submitted by the claimants and agreed that the record should be kept open.

Ms. Stern stated that she would like more time to review the packet of information submitted by the claimants. Mr. Justice stated that the easement issue raised by Ms. Kimball is not relevant to the Measure 37 criteria and will need to be resolved later between the neighbors. He said that the

tax lot mentioned by Ms. Reeves is actually zoned AF-20 now, although there is some AF-10 land included in the total property.

Ms. Stern moved to continue the hearing to January 31, 2007 at the point of Public Comment. The motion passed, Commissioners George, Stern, and Lewis voting aye. Ms. Lewis noted that the only criteria which can be considered are ownership dates and reduction of value. Ms. George added that if the waiver is granted, there will be an opportunity to submit testimony regarding broader criteria during the subdivision application process.

The meeting recessed at 10:38 a.m. and reconvened at 10:46 a.m.

3. Consideration of G-02-06, a request to modify the Interchange Overlay District to allow property in the Newberg Urban Reserve Area C to be considered for inclusion in the Newberg Urban Growth Boundary. [*Tentatively approved, findings to be adopted February 7, 2007.*]

Ms. George opened the public hearing.

Staff Report - Ken Friday stated that because this is a legislative amendment, it does not follow the land use hearing procedure. He reviewed the request to modify the Interchange Overlay District and stated that the Oregon Department of Transportation (ODOT) staff has no objection to the request. He said that the Planning Commission voted unanimously to approve the request, with the modification of the words "Northern Arterial" to "Crestview Drive".

Proponents - John Bridges stated that ODOT has clarified that they did not intend for these properties to be restricted from inclusion in the Newberg Urban Growth Boundary. He agreed with the wording change requested by the Planning Commission.

Dick Petrone expressed his support of the application and noted that he has been working closely with the developer regarding issues pertaining to this neighborhood.

John Trudel submitted written testimony in support of the application and stated that any future road planning should take into account the five-party team agreement and the Transportation System Plan.

Opponents - Vicki Shepherd stated that she is opposed to the application because the area is already plagued by traffic gridlock and a frontage road should be done at the time of the bypass, as originally suggested by ODOT. She submitted a photo for the record. Ms. Stern stated that denying this request would not improve the traffic situation at all.

Staff Recommendation - Mr. Friday recommended approval of the request.

Close of Public Hearing / Deliberation - Ms. Lewis moved tentative approval of G-02-06 with findings to be adopted on February 7, 2007. She explained that the reason for the overlay district was to prevent development of property prior to the bypass that could potentially affect its function, and it was an oversight that this property was included. She pointed out that this might actually improve the traffic situation discussed by Ms. Shepherd.

The motion for tentative approval passed, Commissioners George, Stern, and Lewis voting aye.

4. Consideration of PA-04-06, a request to bring thirty acres of urban reserve land into Newberg's Urban Growth Boundary, applicant Tim Speakman. *[Tentatively approved, findings to be adopted January 31, 2007.]*

Ms. George opened the public hearing. There were no abstentions or objections to jurisdiction. 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 - Martin Chroust-Masin described the subject property, surrounding land uses, and the request for annexation into the city's Urban Growth Boundary.

Proponents - John Bridges, representing the applicant, provided an overview of the proposed project and stated that the City of Newberg has been planning this for decades. He said that the projected population growth demonstrates a need for commercial development and the applicant is committed to working with the city, the county, and ODOT regarding the details of road planning and development.

Ms. Stern expressed some concern regarding the removal of high-density residential land from the original proposal and pointed out the need for such land. Mr. Bridges stated that Mr. Speakman is trying to evaluate all opportunities for greater densities of development, but he has to balance that against the market and the city agrees that this parcel is not the right place for high-density residential development. Ms. Lewis agreed, adding that the Newberg Urban Area Management Commission (NUAMC) will find better locations for high-density development as land is brought into the Urban Growth Boundary.

Mr. Trudel, representing the Oxberg Board, expressed his support of the application and stated that Mr. Speakman and his group have been very reasonable to work with. He stated that after hearing the details about the proposal, even the strongest advocates of high-density residential housing admit that this is not the right place for such development. He said that any future planning should incorporate the five-party team agreement and the Transportation System Plan.

Mr. Petrone expressed his appreciation to the developers for their willingness to address the community's concerns regarding roads and the water system.

Opponents - Ms. Shepherd read a letter in opposition to the application (see attachment) and submitted photos for the record. Ms. Lewis stated that she respects Ms. Shepherd's concerns, but annexation of this property into the UGB has been planned for more than ten years and conditions have been placed to protect the wetland and to mitigate other issues.

Public Agency Reports - Mr. Chroust-Masin stated that NUAMC and the Newberg City Council have both approved the application. Mr. Brierly confirmed that the conditions adopted by the city were the same as those adopted by NUAMC.

Rebuttal - Mr. Bridges stated that Condition #1 will ensure that the five-party agreement is carried forward. He said that there should be no added impact on Benjamin Road from the 85 new residences and the applicant plans to work with the neighbors to make the development as compatible as possible with the surrounding area. He addressed the questions raised by Ms. Shepherd regarding financial responsibility for the roads.

Staff Recommendation - Mr. Chroust-Masin recommended approval of the application with the same conditions that were adopted by the City of Newberg.

Close of Public Hearing / Deliberation - Ms. Lewis moved tentative approval of Planning Docket PA-04-06 with the proposed conditions, with findings to be adopted January 31, 2007. She stated that there is a clear need for more land in the city. The commissioners each expressed their appreciation to the applicant for his willingness to work with the neighbors. 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, one position;
 - 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.

The meeting adjourned at 12:11 p.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair KATHY GEORGE

Commissioner MARY P. STERN

Commissioner LESLIE LEWIS

January 24, 2007

DOCKET NO.: PA-04-06 (Newberg File No.UGB-06-002)
Request to bring NewB property into UGB:

Vicki Shepherd
30230 NE Benjamin Rd
Newberg, Or 97132

Commissioners,

It is nice to finally meet you. Yes, I am the one who has sent you many emails recently with numerous concerns.

As you can imagine it is because of those concerns that I am here today to speak with you. I am opposed to bringing the NewB property into the UGB at this time.

I can't begin to do justice to the numerous impacts bringing this property into the UGB will have on the area.

As a community we have been through countless meetings regarding this property and the Gueldner property next to it. Mrs. Lewis has been in attendance at some of those meetings where as many as 19 residents from the area testified they did not think this was a good idea. There is concern for wetlands, wildlife, creeks, streams, aquifers, wells and let's not forget the biggest concern of all **INCREASED TRAFFIC**.

Those with the 35-year crystal ball need to stop and truly listen to not only the developers but hear what the citizens of the community are requesting. As the city of Newberg continually pushes into Yamhill County's rural area the landscapes are drastically being changed. I will quote from Elaine Taylor (Newberg's associate planner) who said, "Rural roads are not designed for traffic". As the NewB property is developed with a shopping complex and new homes, traffic on rural county roads will suffer.

Benjamin is a perfect example; it is a county road approximately 1 & 1/3 miles in length. The road is extremely narrow, curvy has major creeks and drainage ditches on each side and homes have been built close to its edge. The proposal calls for the closing of Benjamin, which I am not opposed to. Yet they also would like an east/west frontage road with a connection onto Benjamin.

A few questions: Who will pay for the closing of Benjamin? Who will pay for the guardrail to keep people from driving into the McClure's pond at the east end of the frontage road? Someone is going to have to take responsibility for that, as a public concern. Lastly, who will pay to bring the road up to the needed standards for the traffic increase?

They say we don't value things until they are gone. I urge you to error on the side of time. Don't let the rush to develop capture this area.

Thank you

EXHIBIT A 1/1