

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 March 19, 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 were John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; John Krawczyk, Administrative Services Director; Laura Tschabold, Administrative Services Assistant Director; Martin Chroust-Masin, Associate Planner; Walt Gowell and Louis Kern, PO Box 480, McMinnville; Stephen Hamilton and Felice Alden, 16900 SW Pit Rd, Hillsboro, 97123; Todd Milam, 16910 SW Pit Rd, Hillsboro, 97123; and Kenneth Schweiger, 710 Water St, Lafayette.

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.

At the end of the meeting, Kenneth Schweiger requested an update from the Board on his previous request regarding an internal investigation. Ms. Lewis stated that she had been provided with the entire file, but hasn’t had time to look at it yet. She stated that she was told by the Sheriff’s Office that all of the documents had been delivered to Mr. Schweiger and said she would review the documents in the file. She said that if there are any documents that have not been provided to him, she would ask for permission to share them. Mr. Schweiger stated that a mistake was made and he just wants an honest, transparent investigation.

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

Personnel

1. **B. O. 08-202** - Approve the employment of Randy Peterson, Sheridan, as Registered Nurse 2 in HHS Adult Mental Health, temporary on-call, \$32/hour, retroactive to March 17, 2008 through March 17, 2009.

2. **B. O. 08-203** - Approve the employment of Matthew Prentiss, Steven Sims, and Tracey Young as Utility Workers in Public Works, regular full-time, Range 11, Step 1, \$2248/month, effective March 24, 2008.

3. **B. O. 08-204** - Approve the change of status of Nicole Orlaineta to Appraiser 3 in the Assessor's Office, Range 20, Step 2 in the Assessor's Office, effective March 24, 2008.

Contracts/Grants

4. **B. O. 08-205** - Approve a memorandum of agreement between Yamhill County and the Yamhill County Employees Association (YCEA) for payment of past shift differential pay to specific employees in the Juvenile Corrections Division, \$162 total.

5. Approve the following amendments to the 2007-08 Financial Assistance Agreement #121033 between HHS Public Health and Oregon Department of Human Services:

- a. **B. O. 08-206** - Amendment #3;
- b. **B. O. 08-207** - Amendment #4.

6. **B. O. 08-208** - Approve an agreement between the Juvenile Department, provider, and Multnomah County for a thirty-day bed rental program in the Yamhill County Juvenile Detention Facility, \$135/day base rate, effective March 19, 2008 through June 30, 2008.

7. **B. O. 08-209** - Ratify the submission of a grant application to Oregon Water Resources Department for Phase 2 of the Yamhill County Water Supply Analysis, \$20,000.

C. **OLD BUSINESS:** None.

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

1. **B. O. 08-210** - Consideration of approval of a memorandum of agreement between HHS Public Health and the Willamette Educational Service District for the use of school district property in a public health emergency, effective March 19, 2008.

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

2. Discussion of a request for a letter in support of a \$4 million appropriations request by Congressman Wu on behalf of the Newberg-Dundee Bypass. *[Consensus to sign.]*

Ms. Lewis stated that she would prepare the letter of support immediately following this meeting.

E. **PUBLIC HEARINGS:**

1. Consideration of NCU-06-07(MCM), a request to recognize existing development as substantial development to allow placement of a single family dwelling and to recognize Tax Lot 2317-600 as a legal lot, applicant Louis Kern, appellant Stephen Hamilton. *[Continued to April 2, 2008 at the point of Staff Recommendation; record left open for submission of written information by any party until 5:00 p.m. March 25, 2008, for submission of written rebuttal by any party until 5:00 p.m. March 31, 2008, and for submission of written rebuttal by the applicants until 5:00 p.m. April 1, 2008.]*

Ms. Stern 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 reviewed the requests and provided a description of the subject property. He stated that the property is near a quarry operation. He said that a manufactured dwelling was previously removed from the property and it is unknown whether or not the septic system is still functioning.

Proponents - Walt Gowell, representing the applicant, provided background information on the application and reviewed the exhibits in the packet of material submitted for the record. He explained that the property was sold to Mr. and Mrs. Powers in 1977 with a recorded land sales contract and Tax Lot 600 was released to them in 1978 in a separate deed. He stated that Tax Lot 600 was recognized by the Assessor's Office as a lawfully created parcel, which fulfills the requirements of the zoning ordinance in effect at the time.

He stated that the majority of his research shows that the parties had attempted to comply with the lawful provisions in effect at the time. He said that the Planning Department had recognized this fact and had issued permits for building improvements. He noted that a manufactured home was installed on Tax Lot 600 in January 1978, a wood stove was installed in it in 1982, and it is unknown when the manufactured home was removed.

He stated that information in the record clearly shows that a septic system was installed and remained in the ground until portions of it were removed in February 2008, which creates a vested interest for the single family dwelling requested. He acknowledged that the septic system would probably need to be replaced with a new system in order to meet the sanitarian's requirements.

He referred to statements in the staff report indicating that reconstruction of the single family dwelling would not exceed the former impact and pointed out that letters of support from the majority of the neighbors support that conclusion. He added that the applicant has no objection to a deed restriction clarifying the existing rights of the adjacent quarry operation.

He discussed the issue of water runoff and stated that a culvert was installed between Tax Lots 603 and 604, which carries the majority of the water underground. He said that the applicant would have no objection to a condition of approval requiring improvements to the culvert to mitigate drainage problems.

He concluded by noting that the application includes two separate requests to recognize the existence of Tax Lot 600 as a legal lot and to allow a single family dwelling. He stated that the non-conforming use was commenced 31 years ago and improvements were made more than ten years ago and have remained on the property continuously for at least ten years prior to this application.

Questions of Proponents - At the request of Ms. Lewis, Mr. Gowell reviewed the legal

description of Tax Lot 600 in the 1978 deed. Louis Kern stated that the septic tank has been sitting on his property, Tax Lot 601, since it was removed from the ground in February.

Opponents - Stephen Hamilton stated that he had appealed the Planning Director's approval because of his concerns about water runoff and because he doesn't believe that the parcel or the dwelling were ever legal entities. He stated that the parcel was not lawfully created because it didn't follow the procedures outlined in the county's zoning ordinance for parcels created after 1975. He stated that, according to the recollections of both Mrs. Beaston and Mrs. Uken, the only mobile home they were aware of was located on what is now Tax Lot 602 and it was put there to house a building crew. He added that the wood stove permit was for a stick-built home on Tax Lot 601.

Felice Alden stated that the manufactured home, if it existed, was not placed there legally because it violated a condition in the purchase and sale agreement between Moreno/Cate and Powers, which stated that no mobile homes could be placed on the land and that the conditions would be passed on to future owners. She stated that the septic permit issued by the Planning Department was for the replacement of Mrs. Beaston's septic tank when she sold her property and there is no active water certificate to supply water to a septic system on Tax Lot 600, which would be necessary for it to be operational. Ms. Lewis explained that the septic system is not required to have been in use in order to show substantial construction. She added that the key to showing substantial construction is the presence of the septic system, not the manufactured home.

Mr. Chroust-Masin stated that the subject property does not meet the county's established procedure for lawful creation of a parcel. He said that he is not entirely reversing the Planning Director's earlier decision, but will discuss the issues further during the Staff Recommendation portion of the hearing.

Mr. Hamilton discussed the drainage problems that have been occurring since the subject property was logged a year and a half ago. Ms. Lewis stated that the applicants are willing to agree to a condition of approval that would address the drainage concerns. Ms. Alden pointed out that development on the properties above Tax Lot 600 will also contribute to the problem. She said that the applicants would like to see the area remain in five-acre minimum lot sizes. Mr. Kern discussed the effect on drainage of the utilities located in the ditch.

At the request of Todd Milam, Mr. Gowell showed the applicants the photos of the septic tank contained in the packet. He also showed photos of the excavated area and submitted them for the record. Mr. Kern indicated on the map where the septic tank had been located and explained that the leach fields had been discovered during the process of removing stumps. Mr. Milam stated that photos should have been taken of the tank while it was still in the ground. He said that the applicants have not established that any mobile home was located on what is currently Tax Lot 600, there are no signs of any improvements to the property, and he questions whether the septic tank in the photos was taken from that lot. He also noted the potential liability of building close to the quarry operation.

Public Agency Reports - Mr. Chroust-Masin reviewed the public agency reports in the record, noting that Meisel Rock Products had expressed some concerns that can be addressed. He stated that the county sanitarian has not been to the site.

Rebuttal - Mr. Gowell stated that there is correspondence in the record showing that the septic tank was removed from Tax Lot 600 and Mr. Powers knew how the different tax lots were divided. He said that the tank had been taken off the premises for evaluation and returned, which explains why it was seen by neighbors on the back of a flat bed truck. He assured the Board that the applicants have no intention of putting a manufactured home on the property or doing anything that would violate the Covenants, Conditions, and Restrictions associated with the property.

He stated that the applicants had used their best guess as to which home the wood stove had been placed in, but that is not a determinative issue.

He explained that a 1978 amendment to the 1974 Comprehensive Plan included a grandfather clause to allow sub-minimum parcels that otherwise complied with the language for lawful creation to obtain building permits. He concluded that the Board can interpret the parcel as being lawfully created, given the zoning ordinance in effect at the time of the deed. He stated that even though the subject property could be sold without being recognized as a legal lot, it would be much better to clean up the record. At the request of Ms. Stern, he agreed to provide additional written legal analysis for the record regarding this issue.

After further discussion, Ms. Lewis moved to continue the public hearing to April 2, 2008 at the point of Staff Recommendation with the record left open for submission of written information by any party until 5:00 p.m. March 25, 2008, for submission of written rebuttal by any party until 5:00 p.m. March 31, 2008, and for submission of written rebuttal by the applicants until 5:00 p.m. April 1, 2008. The motion passed, Commissioners Stern, Lewis, and George voting aye.

#### F. **ANNOUNCEMENTS:**

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

- a. Commission on Children & Families, two lay positions, two lay alternate positions, one youth position, and one professional alternate position;
- b. Parks Board, one position;
- c. Planning Commission, one position;
- d. Road Improvement Advisory Committee, one position;
- e. Special Transportation Advisory Commission, 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 11:04 a.m.

Anne Britt  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

---

Chair

MARY P. STERN

---

Commissioner

LESLIE LEWIS

---

Commissioner

KATHY GEORGE