

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 7, 2019, at 10:00 a.m. in Kent Taylor Civic Hall, Commissioners Richard L. “Rick” Olson, Mary Starrett, and Casey Kulla being present.

Also present were Ken Huffer, County Administrator; Justin Hogue, Business Services Director; Christian Boenisch, County Counsel; Todd Sadlo, Senior Assistant County Counsel; Josephine Ko, Assistant County Counsel; Mikalie Frei, County Counsel staff; Ken Friday, Planning Director; Stephanie Armstrong, Assistant Planner; Jarod Logsdon, Parks Division Manager; Carrie Martin, Grants and Special Projects; Dave Adams, KLYC Radio; Nicole Montesano, News-Register; and others as listed on the sign-in sheet.

Commissioner Olson called the meeting to order at 10:00 a.m.

*Welcome! Thank you for attending today’s meeting. Public participation is encouraged. If you wish to address the Commissioners on any item not on the agenda you may do so as part of the public comment period at the beginning of the meeting. If you desire to speak on any agenda item please raise your hand to be recognized after the Chair announces the agenda item. Please fill out a public comment card to indicate your intent to speak.*

**A. PUBLIC COMMENT:** This thirty-minute time period is reserved for public comment on any topic other than: 1) agenda items, 2) a quasi-judicial land use matter, or 3) a 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.

There was no general public comment.

**B. CONSENT AGENDA:**

Commissioner Starrett moved approval of the consent agenda. The motion passed, Commissioners Olson, Starrett and Kulla voting aye.

Minutes

1. a. **B.O. 19-62** -January 24, 2019, Formal Session;
- b. **B.O. 19-63** - January 31, 2019, Formal Session; and
- c. **B.O. 19-64** - February 7, 2019, Formal Session

Plans

2. **B.O. 19-65** - Approval of a revised 2018-19 Capital Improvement Project List to include the additional amount, not exceed \$111,484 for the restoration of the Public Health building exterior.

Contracts/Grants

3. **B.O. 19-66** - Approval to accept a quote from Artecor Inc. for the restoration of the Public Health building exterior in the amount of \$111,484.

4. **B.O. 19-67** - Approval to accept a proposal from Farnham Electric for installation of a backup generator in the amount of \$44,274.

5. **B.O. 19-68** - Approval of an agreement between Yamhill County Health and Human Services and Wayne Scott for training on trauma informed practices not to exceed \$13,431.25.

6. **B.O. 19-69** - Approval of amendment #8 to Agreement #153142 (B.O. 17-207) between Yamhill County and the Oregon Health Authority for funding of Community Mental Health, Substance Use Disorder and Problem Gambling Services for \$36,846, retroactive to January 1, 2019.

7. **B.O. 19-70** - Approval of an intergovernmental agreement between Yamhill County Health and Human Services and the State of Oregon Department of Human Services for Behavior Support Services not to exceed \$3,350,500.

Authority

8. **B.O. 19-71** - Approval of a memorandum of understanding between the Housing Authority of Yamhill County and Yamhill County Health and Human Services for shared supportive housing case management projects, retroactive to March 1, 2019.

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**C. OLD BUSINESS:** None.

**D. OTHER BUSINESS** (Add-ons and non-consent items): None.

**E. PUBLIC HEARINGS:**

1. Docket #G-01-18: Consideration on remand of Ordinance 904, relating to the Yamhelas Westsider Trail.

Commissioner Olson opened the public hearing at 10:05 a.m. There were no abstentions or objections to the jurisdiction of the Board to hear the matter before it. Commissioner Kulla disclosed ex-parte contact via e-mail with Bryan Schmidt of Stop the Trail and Wayne Wiebke of Friends of the Yamhelas Westsider Trail. Wendy Kellington sought permission to interview Commissioner Kulla regarding the contacts but was not allowed to do so.

Ken Friday read the ORS required by law at the opening of quasi-judicial land use hearings and read the “raise it or waive it” rule.

Staff Report: Ms. Armstrong presented the staff report stating the LUBA remand requires the county to conduct a quasi-judicial public hearing. Much of the property surrounding the corridor is in farm use.

Applicant: Mr. Sadlo presented a review of the remand of Docket #G-01-18. This is a continuation of original proceedings to adopt Ordinance 904. The ordinance was appealed to the Land Use Board of Appeals and remanded to the county with instruction to hold a quasi-judicial hearing and to adopt findings to address conditional use standards in the county zoning ordinance. He reviewed the remand process. He discussed potential farm impacts and conditional use standards. Mr. Sadlo stated state law does not require that use of an existing transportation corridor is subject to conditional use standards in any zone or prohibit such facilities. The county zoning ordinance needs to be amended to conform to state law. He proposed an additional condition prohibiting development of the trail in any zone where a trail is not allowed use. If the Board approves the trail on remand, Mr. Sadlo will provide findings that address issues raised on remand and will allow the county to continue trail development in the corridor, formerly the Union Pacific railroad corridor, which is now owned by the county.

Mr. Sadlo rebutted comments regarding the OSHA ruling regarding spraying. The county is only required to address accepted farm practices. Overspray on other properties, people or animals is illegal. Farm operators are not allowed to spray beyond their own properties without permission. He noted posting of signage indicating that there is spraying in the area for pedestrians and animals. Commissioner Kulla asked about OSHA; asking about the Oregon Department of Agriculture's stance. Mr. Sadlo responded that it's included in submitted testimony. He noted that ODA and OSHA have made conflicting statements. Commissioner Kulla asked if spraying will impact farm operators. Mr. Sadlo stated now that the county owns it, it's the county's responsibility to maintain and preserve the trail. Commissioner Starrett asked about the spraying for a pest problem of slugs and the toxic pesticides which pose risk as there are no barriers that prevent toxins from impacting people to the lands adjacent to the trail. Mr. Sadlo responded that the trail would be fenced in a manner of keeping dogs and people from trespassing onto adjacent farm areas near the trail. Commissioner Olson thanked Mr. Sadlo for his work and stated he helped to clarify questions regarding spraying.

Steve Harloff – He addressed remand items: 1. Use of fencing, landscaping and design. 2. Policy of closing trail. 3. Limiting access to avoid vandalism and dumping. He stated support for the development of the trail citing the benefits of land and wildlife preservation.

Wayne Wiebke – He commented in support of the adoption of Ordinance 904. He commented on the impacts to farming operations that border the proposed trail and how the master plan will become the blueprint of the trail.

Veronica Hinkus – She submitted written testimony and commented in support of the trail. She noted examples of other trails that originally shared the same concerns and have since worked out.

Linda Kline – She expanded on the affect to kids in the school district. She noted that some kids in the Carlton/Yamhill area have no adequate safe walking trails. She is in support of the trail.

Ken Wright – He commented on spraying, noting friends that live near other trails and have not stated any problems.

Stan Primozich – He supports the trail project. He reiterated the benefits of bringing compatibility between farmers and pedestrians. He said it will provide a healthy outdoor outlet to citizens and gives them a safe route instead of being on the roads. Mr. Primozich asked to send it back to LUBA in favor of the project.

Steve Wick, a farmer, he if familiar with spray rules and consequences. He stated that it is the farmers’ responsibility to notify nearby landowners regardless if it’s near a trail or a road. He commented on trespassing; he stated his dog stays on a leash which should be the rule on trails and should be enforced. He noted four people that have died on the unsafe road and supports a safe trail for pedestrians.

Commissioner Olson noted several who submitted written testimony has been entered into the record.

Opponent: Wendy Kellington, opponent representative, stated the county’s explanation of the farm impact standard is incorrect. She stated the county must deny the trail if it proves negative impacts on farming. She noted the farmers spray under federal rules and must suspend their application 150 feet near the corridor if there are citizens nearby, but spraying is necessary. She stated the farms, as highlighted in yellow in her presentation, is farmland that will no longer be able to spray. She proposed that the trail be put in a different location. She commented on the language such as “around”. With regard to food safety, Ms. Kellington commented on foreign sources such as feces, garbage and human contact. Regarding liability, she noted that most of the farms are grain or seed fields. She noted the fire risk in these areas and the inability for an operator to reach their fields in the event of fire. She expressed concerns that operator insurance policies can be cancelled if too many claims are made for reasons of liability (vandalism, fire, illness, etc.).

She spoke regarding the conditional use permit standards. She stated the road systems are inadequate for trailheads. She presented examples showing the road is inadequate for the increase of traffic impacts. She stated that there are no good access areas for emergency vehicles. With regard to trespassing, Ms. Kellington noted the ongoing litigation over ownership. She stated that farming should be the answer to using the right of way if the trail does not happen and that the property should be sold or leased back to farmers. She expressed that utilizing the land for a trail is a risk to citizens.

Sarah Mitchell, opponent representative, reviewed the application restrictions of pesticides. With regard to label restrictions, she stated that under both state and federal law, the

label is the law. She stated that some of the pesticides necessary for certain crops would be restricted.

Ms. Kellington asked that the record remain open for another seven days to review new submitted data.

Ms. Kellington's estimation of farming losses is fifty to sixty million dollars which was put together by farmer's estimated potential loss. Commissioner Kulla asked how the farmers currently deal with users of the road. Ms. Kellington was unsure. She deferred to the farmers to answer but she stated that a trail could incite citizens to linger on the trail to keep farmers from spraying. Commissioner Kulla asked if there are there split parcels/tax lots. She replied yes. Commissioner Kulla asked Ms. Kellington if her interpretation of ongoing conversation between Board and members of the staff, who are applicants, regarding a bridge grant was considered ex-parte contact. Ms. Kellington stated that while approval of the trail is pending; discussion of building a bridge is illegal. She noted that county counsel did not share this with the Board. Commissioner Kulla asked if there could be road and traffic counts on Gun Club Road. Ms. Kellington replied that the application would outline any road surveys. Commissioner Kulla asked if the trail would be a benefit in the event of a fire and Ms. Kellington replied no. Commissioner Kulla asked for clarification if it is an accepted farm practice to cross or spray another farmers' land. Ms. Kellington replied that farmers have an accepted practice and prescriptive right to do so across the right of way. She stated having a railroad was not a problem to the farmers, it does not put vulnerable people at risk. Commissioner Kulla responded that he had heard otherwise from farmers that are currently in opposition.

Commissioner Starrett asked to clarify about the OSHA application exclusion zoning rules. The Federal EPA rule is 100 feet and OSHA is 150 feet. Commissioner Starrett asked Ms. Kellington what she would like the Board to consider, should they decide to terminate the easement. Ms. Kellington responded that the land should be claimed out to farmers, or leased to farmers. Farmers would be amenable to work with the county to restore the lands. Commissioner Starrett asked about indemnification: farm insurance premiums would increase, what a farmer would have to incur for an indemnification in addition to their current policies. Ms. Kellington stated it still doesn't solve a legal test to protect the farmer from liability or lawsuit. Commissioner Olson asked if there is any indication that there will be a trailhead at Gun Club Road. Ms. Kellington is only going by preliminary design and does not have factual proof of intent to add a trailhead there. Commissioner Olson asked Ms. Kellington to clarify her comments relating to fire equipment on the trail stating bridges would not be designed to hold the weight of emergency vehicles. Ms. Kellington did not have information available regarding a master plan to show that the conceptual bridge would bear the weight of vehicles. Commissioner Starrett noted she did view a conceptual plan showing a bridge. Commissioner Kulla asked if the indemnification from the farmers began before or after she began representing them. She replied that it was the farmers who initiated the question on their own behalves. Commissioner Kulla asked hypothetically, how would practices change if certified organic would farm on railroad EFU lands. Ms. Kellington said the farm impact study wouldn't be an issue.

Commissioner Olson called for a recess at 12:36 p.m. and the meeting resumed at 12:51 p.m.

Matt Chessley – He reviewed the properties located adjacent to the corridor and within 150 feet. He outlined the use on both sides of the corridor which are used by farmers and livestock up to the corridor. He noted for every one hundred and thirty-two feet lost on the right of way is the loss of an acre of farmland.

Jim Van Dyke – He is opposed to the trail and addressed the personal safety of pedestrians. He spoke about crop spraying. He addressed an exclusion zone. He expressed frustration about the counsel of Mr. Sadlo stating his concern that testimony is not being provided to the Board. He asked the Board to take all of the testimony into consideration before making a decision.

John Van Dyke – He clarified the OBEC contract specifies that the bridges would be built according to preliminary designs. He submitted written testimony regarding his farming practices and the negative impact the trail would have on him.

Lee Schrepel, Fruithill Inc. – He stated he and his family have farmed fruit since the 1950's and submitted written testimony opposed to the proposed trail. He commented on the various products he processes and is concerned about the negative impact the risk of food contamination could have on his business. Production and warehouse sites are near the proposed trail area and he is concerned about trespassing issues which could invite potential contamination from people, animals, litter and waste. Audit and regulation failures or food recalls are a concern. He stated that the installation of gates, cameras, increased insurance are potential expense concerns. He stated that the application should be denied and requested the record be kept open for two more weeks. Commissioner Starrett asked about how the regulations have changed over the years. Mr. Schrepel replied that they have increased exponentially. Commissioner Kulla asked the history of his properties with regard to a trail or easement. How will the trail affect his property? Is there an easement through his property? He responded that he has three parcels that the trail would run through.

Sarah Mitchell - She declined to speak again.

Ben Van Dyke - He spoke about land use issues honoring the EFU laws put into place in the state. There has been no incumbrance to either side of the road on his lands, but a trail would due to fire, trespassing, purity implications on seed, etc. He states the applicant has failed to do impact studies on individual farms. Commissioner Kulla asked about the hours spent spraying annually (whole as a farm). Mr. Van Dyke replied 1200-1500 hours annually.

Casey Van Dyke – He spoke about his job as a pesticide applicator. He noted application is important to the health of crops. He said there are windows of opportunity to spray and if there is trail traffic, it would delay spraying windows. It would hinder their efforts to work

efficiently, having to move equipment from field to field. He noted the lands are specifically zoned for farm use and not for trails. Commissioner Kulla asked how often he encounters unprotected people. Mr. Van Dyke replied that it's not common but he has to stop spraying when he does see people.

Corey Van Dyke - He manages a local grass seed company and thinks the trail would affect the grass if not properly managed. He is opposed to the trail.

Bryan Coussens – He stated trail users do not stay on the trail. He commented on access points of driveways and field access ways will become trailheads. He is concerned about the affects on people of pesticides and stated this could be a potential issue due to trespassing. If they aren't able to spray, then it could cause tree disease. He is also concerned about property values.

Commissioner Starrett asked about the Banks-Vernonia trail regarding emergency issues. Mr. Coussens replied that a majority of problems is because most visitors are from out of the area and have no idea where they are and have no concept of the potential dangers that result in dangerous scenarios. He also commented about dogs off leashes which create issues around horses. Commissioner Starrett asked if two deputies would be sufficient to cover the trail. He responded it would not. Commissioner Kulla asked Mr. Coussens how he feels about the existence of the Banks-Vernonia trail. Mr. Coussens said he feels it is a proper use of the land it covers.

Roxanne Coussens - She opposes the trail. 75 acres of their land border 23 miles of the rail line. She noted her experience living near the Banks-Vernonia trail. She stated there were trespassers, etc.

Scott Bernard – He commented in opposition of the trail stating that it will affect his business. He noted several instances where trespassers have created potential liability concerns.

Alice Patridge – She is a fairly new resident to Yamhill County and own property which runs adjacent to the proposed trail. The trail is five feet higher than her back yard which infringes on her privacy. She is opposed to the trail. She feels that the farming communities are urbanizing commercially which create issues for farmers.

Bryan Schmidt - He stated there is no farm study because the land was being preserved for a light rail. He stated there is a lack of transparency, that some people's testimony does not get submitted into the record. He asked that the record remain open for two weeks. He sprays his hazelnut crops and the spray is important to maintaining nut trees. His cows graze on both sides of the rail tracks; his neighbor's dog crossed the farm fence and attacked one of his cows which had to be euthanized. He has concerns about the homeless people coming onto his property.

Piper Sweeney – She discussed a potential natural gas line going through her property. She read a letter from her father in law regarding his concerns about the impacts of the trail. They have to notify neighbors regarding spraying. She stated there would be no time to notify pedestrians on the trail to spraying. She asked the Board not to accept the application.

Kelsey Freese – She is opposed to the trail as currently proposed. She said she doesn't believe that the trail would be a valid need to get kids to school, there are already buses and plans put in place for this. She feels the trail would become another tourist attraction and asked the Board to take the farmer's concerns into consideration.

Kristie Clophill – She is concerned for the residents of Gun Club Road and their safety. She said the proposed access roads to get to the trail are already congested. She is opposed to the trail.

Janet Fultz, Oregonians for Food and Shelter - Spoke regarding pesticide impacts. She discussed the AEZ regulations and outlined pesticide applications.

Tom Hammer – He expressed frustration and distrust of county counsel regarding the liability of improper spending practices.

Richard Clophill – He is not against the trail but stated it will be a problem for agriculture farmers. He noted anonymous calls to the Oregon Department of Agriculture and feels that this problem will increase with the trail.

Billie Jean Mathews - The close proximity of farming storage building is just feet away from the trail. She noted concern about recent physical attacks in the area and feels there is not enough security.

Chris Mattson - He expects his insurance will double. He asked how the bridges can be put out to bid if there are no specifications. Commissioner Olson responded that the contract can go out to bid for bridge designs, in this case three bridges. Christian Boenisch further clarified that the contract would allow construction management and the actual construction would be a separate contract. Commissioner Olson replied that several of Mr. Mattson's questions should be included in a master plan which has been scheduled to be done but the trail will not be started until the master plan is complete with the exception of the design of three bridges and the construction of one.

Greg McCarthy – He stated he will have to cross two pieces of property to farm. He said people riding 4-wheelers through their fields and garbage dumping will likely increase. The legal team and the group of farmers presented a stack of documents he hopes that this information is read and not just skimmed over.

Celine McCarthy – Lives in Yamhill and is concerned about the exclusive farm use zoning and she doesn't want a trail through the exclusive farm use zone.

Roy Bauerman – Has a corner lot and said all of the accidents happen on his property. He stated there are four major accidents per year, he is concerned about safety.

Mark Gabler – He agrees with what has already been said by other opponents. He is concerned about the 150-foot buffers because this would decrease the acreage he farms by 13 acres. He stated that they have been investigated by the ODA multiple times and they were not spraying illegally. He is concerned about the maintenance of the trail and whose responsibility this will be. He does not like the wedge that is being driven between the residents of the Carlton and Yamhill community.

Samantha Bear – She is concerned about the farm impacts test and she is against the trail because of the impacts to the local landowners. She does not feel that the fencing suggested by the county is adequate to protect the farms from people and animals from entering onto their property. Ms. Bear stated that there would be more liability involved with the use of the trail.

Daniel Kearns, attorney - Stated that what is before the Commissioners today is a conditional use permit. He stated that he feels that the cart is before the horse because the details and impacts of the trail have not been worked out yet. He stated that the master plan should have already been done. He stated that the layout and planning process for a multi-use trail takes years and years to formulate. He referenced his research in regards to the Banks-Vernonia trail and stated that they spent many years planning out every detail of the trail before they moved forward. He addressed the overspray comments by the county stating that farmers can't overspray on property that is not legal and not warranted and the farmers can spray. He does not know why there is a permit before the Commissioners today because the county never applied for a permit. He addressed the indemnification issue stating that the county would be on their own because an insurance company would not insure something like this.

Public agency report – Stephanie Armstrong stated that there are no additional public agency reports.

Rebuttal – Todd Sadlo stated the application was filed April 3, 2018 and this is a remand on the application which did not go away. He filed for a remand and submitted a copy of the decision and all of the parameters of the application have remained unchanged. The “horror stories” heard today will not likely come to fruition and the trail would be a benefit to the surrounding communities. He addressed the letter from Ms. Kellington. He stated that all materials received have been submitted to the record and shared with the Board. With regard to the use of the corridor: Ms. Kellington noted the farmers are getting prescriptive rights and noted one cannot adversely possess property owned by a railroad or a county. The OSHA spraying rule does not apply to neighboring properties, and current law prohibits spraying neighboring properties. Preventing overspray is an inconvenience but is the responsibility of the operator. The maps presented are not realistic. He noted the Schrepel properties are not adjacent to the trail segment under review. He noted ways to avoid spraying along the property fringe without abandoning

farming practices. He stated Mr. Mattson is far north of the project area. Mr. Sadlo cited some of the opponent's testimony is derived out of fear or misinformation. He addressed testimony regarding fire before the adoption of Ordinance 904. He stated the county offered a condition for fencing to prevent trespassing impacts. The county purchased the corridor and it is zoned EFU even though it's not configured for farming, it would be hard to turn it back into farming because it is a corridor. He noted the three-mile stretch will likely be used by local people for mild exercise and does not envision it to be a major exercise path or a tourist attraction. Using another person's property is not an accepted farm practice and is in essence trespassing. He is concerned with proposals to indemnify neighbors, fencing and signage are intended to limit liability risks. Mr. Sadlo is confident that there is emergency vehicle access currently available.

Open Records: Ken Friday outlined the rules for open record. The first week would allow all parties to submit additional testimony up to 5:00 p.m. on March 14, 2019. The record shall be open for written rebuttal until 5:00 p.m. on March 21, 2019 and lastly, the record would only be open to applicant to submit final testimony with no new evidence until noon on March 25, 2019. At that point the record will be closed. The Board will reopen the hearing at 10:00 a.m. on March 28, 2019 in Room 32 of the county courthouse at the point of staff recommendation.

Commissioner Starrett moved approval as recommended by staff regarding the public hearing continuation schedule. The motion passed unanimously.

Commissioner Olson closed the public hearing and adjourned the meeting at 4:15 p.m.

**F. ANNOUNCEMENTS:**

1. For information on county advisory committee vacancies, please refer to the county's website, [www.co.yamhill.or.us/content/volunteer-opportunities](http://www.co.yamhill.or.us/content/volunteer-opportunities) , or call the Board of Commissioners' office at 503-434-7501 or 503-554-7801 (toll-free from Newberg).

For questions regarding accessibility or to request an accommodation contact the Board of Commissioners' office at (503)-434-7501 or (503)-554-7801 (toll-free from Newberg) or email at [bocinfo@co.yamhill.or.us](mailto:bocinfo@co.yamhill.or.us)

There were no Commissioner announcements.

Carolina Rook  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

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Chair RICHARD L. "RICK" OLSON

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Commissioner MARY STARRETT

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Commissioner CASEY KULLA