

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 November 4, 2004 at 10:00 a.m. in Room 32 of the Courthouse, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present were John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; John Krawczyk, Director of Administrative Services; Ken Friday, Planning Division Manager; Richard Sly, Director of Community Corrections; David Bates, News-Register; Dave Bernert, 4131 Imperial, West Linn; Todd Sadlo, 1532 SE 36<sup>th</sup> Avenue, Portland; Chris Lidstone, Lidstone & Associates, Colorado; John Heiser, 20900 SE Grand Island Loop, Dayton; Marilyn Reeves, PO Box 1083, McMinnville; Frank Schnitzer and Bob Brinkman, 225 Broadalbin Street SE, Albany; Ellis Hester, Hawaii; Ken Finnicum, 21847 SE Grand Island Loop, Dayton; David Cruickshank, 11925 SE Cruickshank Road, Dayton; Alice Schindler, 21760 SE Grand Island Loop, Dayton; Linda Lamb, 2323 Latona Drive, Keizer; David Fuge, 15591 SE Lower Island Road, Dayton; Vicki Hehr, 21428 SE Grand Island Loop, Dayton; and Roy Rockhill, 4784 Walnut Street, West Linn.

Commissioner George called the meeting to order.

A. **PUBLIC COMMENT:** This fifteen-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.

Marilyn Reeves, Friends of Yamhill County, requested that the Board provide guidance to the Planning Department in the implementation of Measure 37 and make those implementation plans known to the public, along with an analysis of unintended consequences. She asked that whatever rules and regulations are adopted be fair and understandable to both claimants and respondents. She addressed issues to consider, such as the revision of current application forms, notification provisions, verification of property ownership, verification of which land use regulations were in effect at the time of acquisition, and the determination of value reduction.

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

Personnel

1. **B. O. 04-773** - Approve the employment of Tracy Contreras, McMinnville, as Office Specialist 2 in HHS, regular part-time, Range 7, Step 1, effective November 9, 2004.
2. **B. O. 04-774** - Approve the employment of Mary Jake, Willamina, as Human Services Tech in Abacus, temporary on-call, Range 11, Step1, effective November 4, 2004 until June 30, 2005.
3. **B. O. 04-775** - Approve the change of status of Laurie de Jesus-Victoria to Juvenile Probation Officer, regular full-time, Range 16, Step 3, \$2900/month, effective November 9, 2004.

Contracts

4. **B. O. 04-776** - Reject the apparent low bid of McMinnville Plumbing and Heating for plumbing work at the Moore Building as non-responsive; accept next lowest bid of Metro Plumbing as the lowest responsive bid. Authorize the Chair to sign a contract with Metro Plumbing for \$37,500 upon approval by County Counsel.

5. **B. O. 04-777** - Approve the renewal of a service agreement between Maintenance and Carrier Corporation for maintenance of the courthouse chiller, \$11,040, retroactive to November 1, 2004 until October 31, 2005.

Committees

6. **B. O. 04-778** - Approve the reappointment of James Ruggles to the Parks Board for a four-year term to expire October 30, 2008.

Surveillance Cameras

7. **B. O. 04-779** - Approve the expenditure of up to \$7500 from the Self-Insurance Fund for surveillance cameras in the Jail.

**C. OLD BUSINESS:**

1. Consideration of adoption of findings in denial of Planning Docket CTS-07-04, a request for a hardship dwelling, applicant David Seward, as tentatively denied October 28, 2004. *[Continued to November 9, 2004 at 10:00 a.m. in Room 32.]*

Ms. Lewis stated that she has some questions regarding the findings. She moved to continue the item to November 9, 2004. The motion passed, Commissioners George, Stern, and Lewis voting aye.

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

1. **B. O. 04-780** - Consideration of the appointment of Ken Austin III to the Budget Committee for a three-year term to expire June 30, 2007.

Ms. Lewis moved to appoint Ken Austin III to the Budget Committee.

Ms. Stern stated that although Mr. Austin is very qualified for the position, he has already served two terms on the Budget Committee in the early 90's and she would like to allow one of the other qualified applicants the opportunity to serve.

Ms. Lewis stated that Mr. Austin's past experience and business background would be valuable to the committee. Ms. George agreed and stated that she hopes the other excellent candidates will keep their applications in for future vacancies on the committee.

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

2. **B. O. 04-781** - Consideration of approval of a memorandum of agreement between Yamhill County, Teamsters Local 223, and Lonna McCommons for reimbursement of overpayment of wages.

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

3. **B. O. 04-782** - Consideration of approval of a memorandum of agreement between Yamhill County

and Teamsters Local 223 to advance a grievance filed on behalf of Deputy Richard Geist directly to binding arbitration.

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

The meeting recessed at 10:15 a.m. and reconvened at 10:28 a.m.

**E. PUBLIC HEARINGS:**

1. Consideration of Planning Docket PAZ-02-04, Grand Island sand and gravel operation, applicant Joe Bernert Towing. *[Continued to November 30, 2004 at 10:00 a.m. in Room 32 at the point of public agency reports.]*

Commissioner George opened the public hearing. There were no abstentions or objections to jurisdiction. Ms. Stern noted that she had visited the site this morning. She reported a conversation with Dave Cruickshank about what happens to property taxes of farmland that becomes aggregate land, as well as an email question about the site that she had received and forwarded to the Planning Department. Commissioners George and Lewis confirmed that they had received the same email and had not discussed the case with the sender. Ms. George noted that her involvement in the Lambert Bend stakeholders group, which is working to reduce the effects of the gravel bar in the Willamette River, will not affect her vote on this issue.

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 entered the staff report into the record and reviewed the size and zoning of the parcel, surrounding zoning, and the request for zone changes to allow a mining operation. He noted that the Planning Commission had voted 5-2 to approve the request with 24 conditions. He proposed that the Board hear the applicant's presentation and then allow representatives from the Department of Geology and Mineral Industries (DOGAMI) to answer questions.

Proponents - Todd Sadlo, representing Joe Bernert Towing, stated that this mining application is different from others the Board has seen in the past because of its focus on reclamation of farmland and fish and wildlife habitat, and because of local community input.

Chris Lidstone stated that his firm, Lidstone and Associates, had prepared the bulk of the application and the geological evaluation, and had made adjustments to accommodate concerns of landowners in the area. He made a PowerPoint presentation about the technical aspects of the mining plan, site geology, area water wells, and historic bankline changes. He explained that all topsoil would be retained onsite for use in reclamation, and he explained the environmental benefits of wet-mining, contemporaneous mining and reclamation, and a restricted mining period.

He stated that he did not get a no-rise certification from FEMA because he doesn't believe FEMA has jurisdiction in Yamhill County, but his study shows that there will be no net rise in the floodway or floodplain.

Dave Bernert provided background on his family-owned company and reviewed its three-pronged business model, encompassing agriculture, environmental, and mining operations. He showed video of all three types of operations and examples of past reclamation sites. He stated that the company's objective is to protect and develop all resources on the Grand Island site, with a high priority on soils. He explained that the plan meets all Goal 5 requirements, creates 81 acres of additional wetland habitat, and includes self-

proposed conditions for improvements to roads. He stated that the Bernerts have owned the site for three or four months, although purchase contracts have been in place for two years.

Questions of Proponents - Mr. Lidstone clarified the location of 60 acres of land which will remain undisturbed. Mr. Sadlo explained why the entire 422 acres needs to be zoned consistently, even though only 245 acres will be mined.

Mr. Bernert stated that the existing fish passage and rip-rap will remain unchanged during mining operations, with the addition of fish gates to bring it up to code. He said he would be willing to look at an alternative location suggested by Ken Finnicum as a possibility for the new fish passage structure following the completion of mining.

He explained the process by which wetlands can be sold or donated for construction projects in exchange for creating new, viable wetlands elsewhere, usually at a 2:1 ratio.

Frank Schnitzer, DOGAMI, stated that he is still waiting for a response from the applicant regarding several issues before the technical review stage of the DOGAMI permit process can begin. He said that his general perspective of the application is that it has a very good diversity of land forms and no apparent concerns regarding flood evulsion issues.

Bob Brinkman, DOGAMI, stated that the applicant will likely be asked to collect baseline samples to determine water quality before mining operations begin, and to install one or more groundwater monitoring wells onsite to periodically gauge the condition of the water table. He stated that if neighboring wells are adversely affected in spite of this, contingencies would be in place to require the operator to remedy the situation. He explained that because of the flat gradient, removal of aquifer material would cause no perceptible change in the water table, and turbidity issues could be fixed before spreading offsite.

Mr. Schnitzer stated that turbidity would be blocked from entering the Willamette River by secure gates which would remain closed during mining operations. He said that the Lambert Bend gravel bar is being caused by what's happening upstream and won't be affected by this operation.

Recess at 12:41 p.m.; reconvene at 1:00 p.m.

Ellis Hester, former owner of the subject property, stated that the land was difficult to farm and irrigate, and the loss of a little farmland would be a good trade-off for the wetlands that would be gained. He stated that he had the property on the market for two years without any offers before selling it to the Bernerts for farmland value.

Neutral Testimony - John Heiser expressed his respect for the Bernerts' willingness to work with the community to minimize conflicts and for their unique restoration plan. He stated that Baker Rock Resources already has a mining operation on Grand Island, although it is currently in a resting period, and two large operations is all that the local roads can safely handle, so he would be opposed to any additional applications in the future.

Opponents - Roy Rockhill stated that his family has owned land across from the proposed site for 92 years and he is a passionate supporter of environmental issues. His primary concern was that there is no guarantee that the high-value topsoil will remain onsite as promised. His second concern was the tremendous traffic impact on Grand Island's bridge and narrow roads, and he raised the possibility of using barges to transport material during higher water levels.

Vicki Hehr stated that allowing this operation would not be fair to neighboring landowners. She discussed traffic safety issues and the deterioration of the bridge and roads, which would affect taxpayers throughout the county. She asked that the Board not make a decision until all data has been collected and reviewed. Commissioner Lewis stated that it will be her recommendation that the hearing be continued until the end of November to wait for the bridge report.

David Fuge also addressed the impact of truck traffic on the bridge and roads and safety issues at the four-way intersection. He stated that he would rather see the Bernerts use barges than trucks for transportation.

Linda Lamb submitted written testimony and discussed concerns about bridge deterioration, groundwater levels, floodwater flow, and noise issues. She stated that the only benefit from the operation will be for the Bernerts and she requested that the Board deny the application.

Dave Cruickshank, President of Yamhill County Farm Bureau, discussed long-term negative consequences of this operation, including loss of economic value, tax revenues, and agricultural growth. He stated that the short-term supply of aggregate shouldn't come at the expense of high-value farmland.

Ken Finnicum stated that plans need to be made to deal with safety issues at the four-way intersection, and that there needs to be some accountability for replacement of the bridge if it fails and a contingency plan to get people on and off the island. He stated that the roads were not designed for the traffic loads that would result from this operation combined with Baker Rock Resources and A&R Spada Farms. He supported the idea of barging as a way to eliminate many problems.

Mr. Bernert stated that barging would be to his company's advantage as well, but it is not a viable option right now. He said they have had very little cooperation with National Marine Fisheries, but would continue pursuing barging as an option.

Ms. Reeves agreed with the need to wait for additional information regarding the structural integrity of the bridge. She asked that the applicant's self-imposed conditions be made part of the Board's conditions of approval to ensure that they can be enforced, and she made several suggestions to strengthen the language of the conditions.

Public Agency Reports - Mr. Friday stated that the response from Water Resources Department indicated no concerns since there would be no dewatering. Ms. George noted that some of the public agency reports are not ready yet.

Ms. Stern moved to continue the hearing at the point of public agency reports to November 30, 2004 at 10:00 a.m. in Room 32 of the Courthouse. The motion passed, Commissioners George and Stern voting aye, and Commissioner Lewis having been excused to attend another meeting.

**F. ANNOUNCEMENTS:**

1. Two positions are available in the Commission on Children and Families. Contact the Commissioners' Office for applications.
2. A position is available on the Parks Board. Contact the Commissioners' Office for applications.
3. Six positions are available on the Food Service Advisory Committee in various categories. Contact the Commissioners' Office for applications.

4. A position is available on the Housing Authority Board. Contact the Commissioners' Office for applications. Applications will be accepted through November 30, 2004.

Adjourn: 2:30 p.m.

Anne Britt  
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

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Chair KATHY GEORGE

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Commissioner MARY P. STERN

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Commissioner LESLIE LEWIS