

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 10, 2011, at 10:00 a.m. in Room 32 of the Courthouse, Commissioners Mary P. Stern, Leslie Lewis, and Kathy George being present.

Also present were Laura Tschabold, County Administrator; Rick Sanai, County Counsel; Mike Brandt, Planning Director; Ken Friday, Planning Division Manager; Dave Morgan, NewsYamhillCounty.com; Mike Gelardi, 1300 SW 5th Ave, Ste 2300, Portland, OR 97201; Grace Carney, 10550 SW Star Dr, Tualatin; and others as listed on the attached attendance list.

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

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. None offered.

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

Personnel

1. **B. O. 11-710** - Approve the change of status of Toren Cole, contract employee, to .75 FTE in HHS Adult Mental Health, \$36.85/hour, retroactive to November 9, 2011.

Contracts/Grants

2. **B. O. 11-711** - Approve the 2011 Fund Exchange Agreement #28163 between Public Works and Oregon Department of Transportation to exchange \$431,243 federal funds for \$405,368 state funds for the County Road Overlay Program.

3. **B. O. 11-712** - Approve Amendment #1 to an agreement between the Assessor’s Office and First American Title Insurance Company, provider, for title examination services, effective through November 30, 2011.

4. **B. O. 11-713** - Approve Grant Agreement #136986 between HHS Public Health and Oregon Department of Human Services for the My Future, My Choice health education curriculum for Newberg School District, \$9470, retroactive to October 1, 2011, through June 30, 2012.

5. **B. O. 11-714** - Approve a Preferred Provider/Group Agreement between HHS Public Health and First Choice Health Network of Oregon, Inc., to allow Public Health to bill for services provided at the Willamina School-Based Health Center.

C. **OLD BUSINESS:** None.

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

1. **B. O. 11-715** - Consideration of the change of status of Pricilla Villa to extend temporary part-time employment in Community Corrections, 27 hours/week, effective November 17, 2011, through May 16, 2012.

Ms. Stern moved approval of item D(1). The motion passed, Commissioners Stern, Lewis, and George voting aye.

2. Consideration of approval of agreements between HHS Family & Youth and the following subcontractors for HUB program services, effective through June 30, 2012:

a. **B. O. 11-716** - Chehalem Youth and Family Services, Mentoring HUB program, not to exceed \$49,432;

b. **B. O. 11-717** - Lutheran Community Services Northwest, Parent HUB program, not to exceed \$76,250.

Ms. George moved approval of item D(2). The motion passed, Commissioners Stern, Lewis, and George voting aye.

3. **B. O. 11-718** - Consideration of approval of an agreement between HHS Public Health and Smith Medical Partners for family planning supplies.

Ms. George moved approval of item D(3). The motion passed, Commissioners Stern, Lewis, and George voting aye.

4. **B. O. 11-719** - Consideration of approval of the annual renewal of the maintenance contract between Maintenance Division and Carrier Commercial Services for courthouse air conditioning services, \$9600/year, effective December 1, 2011, through November 30, 2011.

Ms. Stern moved approval of item D(4). The motion passed, Commissioners Stern, Lewis, and George voting aye.

E. **PUBLIC HEARINGS:**

1. Consideration of Planning Docket C-15-11/SDR-14-11(KF), a request for a winery with 44 events and limited food service, applicant Ernest Munch representing Stoller Vineyards, appellants Gladharts and Friends of Yamhill County. *[Continued to November 22, 2011, 9:00 a.m., at the point of Deliberation.]*

Ms. Stern opened the public hearing. There were no abstentions or objections to

jurisdiction. Ms. Stern stated that a few people had contacted her with questions or comments, and she had forwarded them to Ken Friday to share with everyone. She said that the commissioners were all very familiar with the site, so no group site visit was taken. 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 - Mr. Friday described the subject property and the request, explaining that the Stollers have hosted a number of charitable events to benefit the community, and the Planning Department, out of concern that the Stollers may have been exceeding the authorized number of events, had encouraged them to make this application to accommodate the events they are already having and those they plan to have. He said no letters of opposition were received at the time of initial notice and no referrals were received, but the Planning Director's approval had been appealed.

Mike Brandt reviewed the history of winery approvals in Yamhill County, stating that the applicable criteria has not changed since 1994. He said that in his opinion, most wineries don't adhere to the criteria limiting events to three per year and limiting food service. He discussed new laws affecting agriculture and the Farmland Activities Task Force created by the Association of Oregon Counties. He said that his greatest concern is the ability to give the public an opportunity to comment on winery applications, and the county's ability to place conditions of approval to address public health and safety issues, both of which the conditional use process allows. He added that this process also allows for case-by-case review, addressing concerns raised by neighbors, and placing conditions regarding public facilities such as roads. He stated that he doesn't believe House Bill 3280 precludes the conditional use process, but that won't be clear until the law is challenged.

He stated that this is an existing winery and, with the exception of some food service, the Stollers have already been doing what they are requesting approval for. He said that he is disappointed in and bewildered by the letters from the Department of Land Conservation and Development (DLCD) and the Department of Agriculture because the county has followed the same practice for the past 17 years and that practice was actually suggested by DLCD. He said that House Bill 3280 is not applicable to this application because it became effective after the application was filed, so Senate Bill 1055 is the applicable state law. He said that wineries are permitted outright in the Exclusive Farm Use zone, as are wine tours, wine clubs, unlimited tastings, and similar activities for promoting wine.

Proponents' Case - Bill Stoller, representing himself and his wife, provided personal, professional, and family background information. He described the current vineyard and winery operation and said that he is preparing more land for planting. He stated that in order to survive as a business and meet the demands of the wine industry, he needs facilities to provide food and activities and attract visitors to his site. He said that he had conducted approximately 37 events this year, all focused on selling wine and developing his brand. He said that the events comprise four categories: wine country events, charity events, business events, and industry events. He stated that he has no desire to have a restaurant, but instead uses local restaurants to do catering for events.

Ernie Munch, representing the Stollers, distributed copies of a report already in the record and exhibit maps of the subject property. He reviewed data related to population, employment, average wages, and wine sales in Yamhill County and Oregon. Ms. Lewis pointed out that the employment data on page 37 of the report is for all wine sold in the state, not just Oregon wine. Mr. Munch later confirmed that Ms. Lewis was correct, but noted that the table on page 56 refers to Oregon wine. He stated that the Stollers are not trying to have a restaurant or an event center, but to do better at hosting the visitors to their site.

Mike Gelardi, attorney from Davis Wright Tremaine, LLP, explained the applicable law and highlighted information in the record that demonstrates the applicants' compliance with the law. He said that DLCDC was incorrect in stating that all wineries have to meet the requirements of House Bill 3280. He said that under the state's goalpost rule, HB 3280 does not apply to this application. He reviewed the legislative history and submitted audio and written testimony of legislators stating in Conference Committee that their intent was to provide the broadest possible options for winery applications, including the option to apply through the conditional use process.

The meeting recessed at 11:30 a.m. and reconvened at 11:37 a.m.

Mr. Gelardi continued his testimony, stating that according to a LUBA ruling, commercial activity must enhance the local farm enterprises to which the use relates and must comply with ORS 215.296. He said that even if the standard from the City of Sandy case were to apply, which it doesn't, the Stoller application conforms to that standards. He stated that the rules are different for conditional use wineries than for permitted use wineries, and there is substantial evidence to show that the Stollers have adequate facilities and are not creating any adverse impacts on neighboring uses.

Mr. Friday clarified that the Stollers would need to come back to the Planning Department with a new application if they wanted to exceed the limit of 72 guests.

Other Proponents - Allen Methven stated that HB 3280 will end in a couple of years and nobody knows what will happen after that, so it would be in the Stollers' best interest to continue with their plans. He said that this is not the time to curtail expansion of jobs. He stated that he had received approval for 25 events on his 102-acre property, and the Stollers' property is three times as big with five times as many grapes, so they should probably be allowed five times as many events. He said that they don't impact the agriculture and the county should support this growth.

Robert Bunn stated that he owns the trolley and provides wine tours and transportation for the wine industry. He read a letter in support of the request, stating that Stoller Vineyards plays a significant role in Oregon's agriculture and viticulture, and the wine industry is a significant part of the state's economy. He submitted a magazine article from the November 2011 issue of "Every Day with Rachael Ray" about the wine region and how family friendly it is.

Ingo Nehls stated that he is the owner of Konect Aviation, a local helicopter company, and supports Stoller Vineyards because it is a big part of his scenic tour business. He said that

one of his goals is to connect businesses and give a better experience to his customers, and he is pleased to be part of a community that has really supported his business. He submitted a letter for the record.

Ms. Stern noted that Dustin Wyant had also submitted a letter for the record.

Nicci Stokes stated that one of her businesses is a limousine tour company, and her customers love visiting Stoller Vineyards. She said that she has been to many events there and has never seen anyone else on that road. She expressed her support of the application.

Ralph Stinton, owner of Grape Escape Winery Tours, discussed the dramatic growth of his business from primarily local customers to now bringing in a majority of outside visitors as this is becoming known as a destination area. He said that he talks with his customers about other agricultural products as well as wine, and about how agriculture works together with urban areas. He discussed the importance of providing catered food for the guests as part of the educational experience, and stated that each customer buys an average of one bottle of wine in a day, which is \$100,000 to \$150,000 in annual sales generated by his company alone.

Leonard Rydell stated that the economic health of long-term county residents is important, and to promote a healthy wine industry, wine sales at wineries should be encouraged. He stated that there aren't many local alternatives for event locations and encouraged the approval of this application.

Following the opponents' and neutral testimony, Cal Kearns read a letter in support of the application and submitted it for the record. He stated that none of the events at Stoller Vineyards have ever created a traffic impact to his residence or business, and he has never seen vehicles causing congestion at the intersection due to an event. He said that the Stollers have contributed to the community and to the economy.

Opponents' Case - Russell Gladhart stated that the Stollers are excellent neighbors and his is not worried about the impact on his property, but about the issues of fairness among wineries and other business, and fairness to small towns. He stated that wineries have privileges that other businesses don't have, and the county has an obligation not to push those too far. He said that the laws should be applied fairly and equally. He said that the cities of Dayton and Lafayette have made huge investments in their sewer systems and it is not fair for local businesses to compete with rural businesses that don't have to make the same contributions to local infrastructure.

Peter Gladhart stated that those who farm in the EFU zone are limited in use and are under the expectation that their neighbors are under the same constraints. He said that there are important, legitimate public interests in the private use of property, and public and private interests must be balanced. He said that there should be periodic public disclosure of the applicants' compliance with permit limits, but the county has no means of monitoring or ensuring compliance. He stated that this application goes too far and needs to be denied.

Ms. Lewis responded that if Mr. Gladhart were to apply for commercial activity, he

would be treated the same as the Stollers, regardless of whether the activity is related to the wine industry or to other agriculture. Ms. Stern agreed, adding that the process is fair and open and has been in effect since 1994.

Sid Friedman, representing Friends of Yamhill County, stated that it has been the consistent policy of Yamhill County to limit the number and size of events at wineries in recognition of the overall impacts on roads, small towns, and neighbors. He said that not only does the staff decision not comply with the applicable law, but it departs from long-standing policy in that no public hearing was held prior to a decision being made. He said that the approval authorizes full food service 52 days per year in addition to the 25 days allowed outright, since it doesn't specifically state that the 52 days are not in addition to the 25, as the Methven approval did. He stated that every prior approval of this type limited the applicant to a limited food service restaurant or meals prepared offsite by a licensed caterer in an inspected kitchen, so this is a departure from policy.

He stated that urban uses belong in towns, not in rural areas and farm zones, and these food service jobs would compete with businesses in town. He said that this is an application for events and food and beverage sales, not for a winery, which already exists as a permitted use, and those activities don't qualify as commercial activity in conjunction with farm use. He explained that they are in conjunction with the winery, not with the farm use. He said that events such as third-party business meetings, private birthday parties, reunions, and Shakespeare productions can't accurately be described as tasting events because they don't have the sale of grapes as their central purpose.

He stated that there was no testimony submitted about the potential impacts to the intersection with state highways, and, to his knowledge, ODOT has not been notified. He said that the subject property is not suitable for the proposed activities due to its location and incompatibility with existing uses in the area. He added that Yamhill County has thousands of farms, and this decision will set the bar for every one of those farms as well as for the wineries.

Craig Markham stated that he supports the testimony given by the Gladharts and Sid Friedman. He expressed concern about Yamhill County and Oregon becoming like Napa Valley. He said that the county needs to take a hard look at what kind of future it wants for agriculture and whether or not adding these kinds of activities to agriculture is a good idea.

Neutral Testimony - Jason Lett stated that this application raises important questions for the future of Oregon's wine industry and how it is to be perceived on the world stage. He said that Oregon produces less than 1% of the world's wine, but gets about 20% of the press because of the innate quality of its wines. He said that the reputation of a growing region hinges on what is allowed to be built on the ground, and Oregon would look much better if it took the same seriousness as regions such as Bordeaux and Napa Valley, which will not allow even a winery to be built on farmland. He stated that Dayton already has the infrastructure to support the proposed use.

Public Agency Reports - Mr. Friday stated that letters from the Department of Agriculture and the Soil and Water Conservation District are in the record. He said that a letter of approval

was sent to ODOT, and they did not respond with any concerns.

Rebuttal - Mr. Munch stated that a right-hand turn lane makes the intersection of Highway 18 and Highway 99W extra safe and is the reason that there hasn't been any congestion there. He estimated between 4200 and 7000 visitors per year to Stoller Vineyards and noted that the Stollers are required by state law to provide food along with their wine. He said that there is a special relationship between wine, food, and the consumer that isn't found with other types of agriculture, and this application is not for a restaurant or events center. He said that it isn't a competition between urban and rural businesses for jobs, but is about cooperation between the two, and he has seen that paying off in Yamhill County.

Mr. Gelardi stated that Condition #18 requires an annual report showing that the applicants are in compliance, and the 25% standard is an enforceable condition. He said that the Stollers would only provide food as required by law. He stated that Mr. Friedman's interpretation of the rules is not supported by supreme court decisions, LUBA decisions, or the plain text of the county's rules. He said that the definition of "farm products" includes processed farm products and DLCD has always interpreted wine to be a farm product. He stated that the Stollers do not intend to exceed the limit of 52 days per year for full food service, and Mr. Stoller would not object to a condition explicitly stating that the 25 days allowed outright are included in that number.

Regarding a letter in the record objecting on the basis of traffic hazards during harvest time, Mr. Gelardi stated that Mr. Stoller's winemaker forbids that kind of activity, and there is no testimony in the record that the Stollers have ever created a traffic hazard in the past.

Mr. Gelardi clarified that the 25% rule applies to income brought in through onsite retail sales of wine over the course of time, not per event. Grace Carney, Events Director for Stoller Vineyards, provided additional information about events fees, explaining that the \$1000 fee is not usually charged. Mr. Stoller said that groups typically pay for their own catering, and his total non-direct wine sales revenue from event fees is typically only about \$6000 for the whole year. He said that his focus is on promoting and selling wine.

Staff Recommendation - Mr. Friday recommended approval of the request with the conditions presented and an additional condition to prevent "double dipping" by limiting the total number of events in a calendar year to 44. Mr. Brandt stated that ORS 216.296 outlines a detailed process that can be used if the conditional use permit is violated. Mr. Friday added that the county has revoked conditional use permits in the past.

Close of Public Hearing / Deliberation - Ms. Stern moved to continue the hearing to November 22, 2011, at 9:00 a.m. at the point of Deliberation, explaining that she would like more time to review the materials submitted. 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. Local Investment Advisory Committee, one position;
- b. Housing Authority Board, one position for a five-year term, applications accepted through November 23, 2011 (see county website for additional information);
- c. Parks & Recreation Board, two positions;
- d. Special Transportation Advisory Commission (STF), two positions;
- e. Yamhill County Transit Area (YCTA) Advisory Committee, one position.

The meeting adjourned at 2:11 p.m.

Anne Britt
Secretary

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair MARY P. STERN

Commissioner LESLIE LEWIS

Commissioner KATHY GEORGE