

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 December 6, 2012, at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Leslie Lewis, Kathy George, and Mary P. Stern being present.

Also present were Laura Tschabold, County Administrator; Chuck Vesper, Deputy County Administrator; Rick Sanai, County Counsel; Christian Boenisch, Deputy County Counsel; Mike Brandt, Planning Director; Ken Friday, Planning Division Manager; Ken Huffer, Parks Coordinator; Dan Linscheid, Surveyor; Bill Anderson, Public Works; other county employees; Nathalie Hardy, News-Register; Joseph Gall, 1156 SW Westvale St, McMinnville; Michal Wert, 24025 Ellis Ln, Newberg; Andrew McRae; Stuart McRae, Amity; Kris Bledsoe, 18695 SE Upper Island Rd, Dayton; Alan Gilmore, PO Box 46, Yamhill; Mercedes & Dan Upshaw, 15480 SW Briedwell Rd, McMinnville; and John Bridges, 515 E First St, Newberg.

Commissioner Lewis called the meeting to order at 9:00 a.m.

**SPECIAL RECOGNITION:** Presentation of 2012 Years of Service Awards to county employees.

The meeting recessed at 9:20 a.m. and reconvened at 10:00 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.

Joseph Gall stated that once the commissioners leave office, they will lose the authority given them in Oregon law to ensure that the county is in compliance with the rule of law, such as not coveting his personal property through repeated illegal tax assessments. He said that he has appealed to the Board for years for redress of grievances against him, and has been ignored by the Board and threatened by Rick Sanai. He said that on his tax assessment statement, it says that the county can seize his personal property, but that is coercion and extortion.

Ms. Lewis later explained for the record that manufactured homes are taxed by the county, but recreational vehicles are not.

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

### Personnel

1. **B. O. 12-669** - Approve the change of status of Katyna Omidfar-Tran to Management Analyst-Health Educator in HHS Public Health, temporary full-time, Range 20, Step 1, effective December 9, 2012, through June 30, 2013.
  
2. **B. O. 12-670** - Approve the change of status of Maricela Flores and Irma Saldana del Rayo to Bilingual Clerical Relief in Health & Human Services, temporary part-time, Range 7, Step 1, effective December 9, 2012, through June 30, 2013.

### Contracts/Grants

3. Approve the following Service Element Prior Authorization (SEPA) Approval Units for the 2011-13 Financial Assistance Agreement #134297 between HHS and Oregon Department of Human Services:
  - a. **B. O. 12-671** - SEPA Approval Unit #675213, \$48,359;
  - b. **B. O. 12-672** - SEPA Approval Unit #671718, \$1488.
  
4. **B. O. 12-673** - Approve an agreement between HHS and Yamhill Valley Treatment dba Provoking Hope, provider, for recovery support services, not to exceed \$4500, retroactive to October 1, 2012, through September 30, 2015.

### Budget Transfer

5. **B. O. 12-674** - Authorize a transfer of \$18,623 in funds and expenditure authority from the O&C Reserve Fund (50-52) to the Community Corrections Fund (21-44) for the Pre-Trial Services Officer position.

### Surplus Equipment

6. **B. O. 12-675** - Declare an inventory of mobile data equipment as surplus county property to be offered for sale on e-Bay.

### Refunds

7. **B. O. 12-676** - Approve a \$525 refund from HHS to Managed Health Network for overpayment.

### C. **OLD BUSINESS:**

1. **B. O. 12-677** - Consideration of approval of Ordinance 880 in support of Planning Docket G-02-12, a request to amend the Yamhill County Transportation System Plan to accommodate the Yamhelas Westsider Rail With Trails Project, as tentatively approved November 29, 2012.

Rick Sanai provided the first and second readings of Ordinance 880 by title only, declaring an emergency. Ms. Lewis moved approval of the ordinance. The motion passed, Commissioners Lewis, George, and Stern voting aye.

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

1. **B. O. 12-678** - Consideration of the reappointment of Joyce Morrow to the Yamhill

County Housing Authority Board for a five-year term to expire December 31, 2017.

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

2. **B. O. 12-679** - Consideration of an agreement between HHS and Bardossi & Associates, Inc., provider, for consulting regarding integrated recovery services, not to exceed \$9000, effective December 6, 2012, through June 30, 2013.

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

E. **PUBLIC HEARINGS:**

1. **B. O. 12-680** - Consideration of adoption of Ordinance 879 in support of Planning Docket PAZ-01-10/WRG-01-10(KF), request for plan amendment/zone change from EF-80 Exclusive Farm Use to MR-2 Mineral Resource on approximately 224 acres, applicant Baker Rock Resources, as remanded by the Land Use Board of Appeals (LUBA) on two issues.

Ms. Lewis opened the hearing at the point of Staff Recommendation.

Staff Recommendation - Ken Friday presented the Staff Recommendation after some statements of clarification regarding testimony given on November 8, 2012 (see Exhibit A).

Close of Public Hearing / Deliberation - Rick Sanai provided the first and second readings of Ordinance 879 by title only, declaring an emergency. Ms. Lewis moved approval of the ordinance, stating that the two limited issues remanded by LUBA have been dealt with by adding Conditions 24 through 30, and she is satisfied that those conditions clarify for LUBA what she believes was already in the record.

Ms. George stated that this application has been through extensive hearings and has been back and forth to LUBA, and she believes that the new findings meet the issues remanded to the county.

Ms. Stern agreed that the new conditions provide additional protections for the residents of Grand Island, and many of those protections were asked for by the opponents, so she is glad that they will be explicitly listed. She explained that the purpose of Ordinance 879 is to restate Ordinance 873 and modify the conditions, and since she voted against Ordinance 873, she will vote against this as well.

She said that LUBA's response to Ordinance 865, which determined the site to be a significant resource, makes her wonder whether LUBA would have given the county the same latitude if the Board had voted that the site is not a significant resource. She said that there is disparity in the state's language regarding what is significant at this site and what is significant right across the river in Marion County, and she doesn't believe that is fair. She said that the Board had drafted a letter to the state's Department of Land Conservation and Development (DLCD) last year, and now that this hearing process is completed, the Board will send the letter

requesting that the state look into the fairness issue.

She stated that gravel is a significant resource that the county cannot live without, but she believes that food is a resource of even greater significance. She said that if Mr. Sadlo comes before the Board again on another gravel application, she hopes it will only be to represent the residents on Grand Island. Ms. George stated that river rock is needed, and it is disappointing that many of the regulations attempting to protect one resource have ruled out another resource. She encouraged people to put energy into asking the federal government to allow the removal of river rock where it wouldn't have a negative impact, so that farmland would not have to be mined.

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

2. Request for legalization of a portion of Olive Street in Yamhill. *[Tentatively approved, findings to be adopted December 13, 2012.]*

Dan Linscheid submitted copies of his Road Official's Report, noting that John Phelan, Public Works Director, had also signed it. He provided background information on Olive Street, referring to a large map showing the actual road compared to the legally-defined road, according to an 1866 survey. He recommended that the request be treated like a road vacation, with the existing structures to be left in place. He reviewed the proposed changes to the legal definition of the road, explaining that this is a compromise to try to be equitable to everybody involved. He said that the city was notified, but he hasn't received a response.

After some discussion, the group came to a consensus on an amended definition of the road right-of-way. Ms. Lewis stated that the city has asked the county to consider funding a bicycle/pedestrian project on Olive Street, and it would be good to have the right-of-way legalized first.

Public Comment - Alan Gilmore expressed support of the proposed changes. He stated that he was ticketed for parking in his own driveway, where he has always parked, because it is in the legal right-of-way.

Close of Public Hearing / Deliberation - Ms. Lewis moved approval of the request as amended, with findings to be approved December 13, 2012. The motion passed, Commissioners Lewis, George, and Stern voting aye.

3. Receipt of public comment on proposed "Blue Sign Policy" for tourist- and business-oriented directional signs on county roads. *[Continued to January 3, 2013, at the point of Deliberation.]*

Ms. Lewis opened the public hearing.

Staff Report - Bill Anderson stated that Public Works began making and installing blue directional signs in the late 1980s, but the proliferation of the signs over the years has begun to cause problems. He said that Public Works approached the Road Improvement Advisory Committee (RIAC) to ask for guidance, and RIAC came up with the proposed policy.

Michal Wert, RIAC, stated that the policy incorporates recommendations made during an advertised public meeting and two meetings with special interest groups. She said that RIAC believes it is a fair policy that addresses needs and gives the county the control it needs for safety issues and the ability to make changes to signs. She noted that the fee schedule has been separated from the policy to allow updates without having to update the policy.

Ms. Wert stated that RIAC was divided on the issue of whether or not a blue sign should be allowed if the business has its own sign in the same location, so that issue was left for the Board to decide. She said that some committee members said the intent of the policy is to minimize the number of signs, but others pointed out that drivers are accustomed to looking for blue signs.

Ms. Lewis stated that the county tried hard to have the best possible outreach and to address the concerns that were raised. Ms. George said that Oregon Department of Transportation (ODOT) was also included in the discussions, and ODOT said that the blue sign program was initiated in Oregon with such success that it became a federal program. Ms. Wert noted that one of the options considered by RIAC was having ODOT administer the program, but that would be expensive and wouldn't address the needs of the community. Ms. George agreed that it would be wise to keep it under local administration.

Public Comment - None.

Ms. Lewis moved to continue the hearing to January 3, 2013, at the point of Deliberation. The motion passed, Commissioners Lewis, George, and Stern voting aye.

4. Consideration of Planning Docket PA-01-10(KF), request by the City of Newberg to include an additional 260 acres in its Urban Growth Boundary (UGB) and identify the area as Industrial and Public/Quasi-Public, as continued from November 26 at the point of Staff Recommendation. *[Continued to February 7, 2013, at the point of Staff Recommendation; remanded to the City of Newberg for adoption of the coordinated population figures and to consider a recommendation to bifurcate the UGB amendment request into two applications: the compromise area agreed to by 1000 Friends of Oregon and the remaining 100+ acres comprising two tax lots.]*

Ms. Lewis opened the public hearing at the point of Staff Recommendation.

Staff Recommendation - Mr. Friday stated that the City of Newberg is willing to accept the county's recently-adopted coordinated population projection, and recommended that that be incorporated into the findings. He said that the Planning Department's past practice is to support UGB amendments if they make sense, and the department wants to support anything that will hasten economic recovery.

He pointed out that 1000 Friends of Oregon had offered a compromise that accepted all but two of the proposed parcels, and it seems that the city is jeopardizing the entire project by not choosing that route. He stated that the presentation by the city at the joint meeting on November 26 seemed to make light of or ridicule the opponents' arguments, and it was also apparent that the city council was supportive of the compromise. He stated that he believes the law and the facts

are on the side of 1000 Friends.

He recommended that the Board remand the application back to the city to adopt the coordinated population figures, with a suggestion that the city bifurcate the UGB amendment request into two applications: the compromise area and the remaining 100+ acres comprising two tax lots. He explained that there are distinctions between the two areas and the first portion would hopefully get through the approval process quickly.

Close of Public Hearing / Deliberation - Ms. Stern moved to continue the hearing to February 7, 2013, at the point of Staff Recommendation, and to remand the application to the city for adoption of the coordinated population figures and consideration of a recommendation to bifurcate the request as described by Mr. Friday. She said that it is extremely important for the city to get access to industrial land quickly, so she hopes 1000 Friends is true to its word and doesn't appeal the compromise area. She agreed with Mr. Friday that the tongue-in-cheek nature of the city's presentation on November 26 seemed a little excessive.

Ms. Lewis stated that she supports getting the coordinated population figures adopted, but disagrees with the suggestion to bifurcate the application. She said that a UGB amendment ought to be meaningful, and she supports the city's vision for a planned industrial park like other cities have. She said that each of the city councilors made a great case for rejecting the infill concept and not rezoning commercial land to industrial. She said that removing the two large tax lots from consideration would reduce the buildable land from 132 to 47 acres, which wouldn't go very far when many of the potential users would need 20 to 25 acres each. She stated that the city has made a persuasive case and shouldn't accept the compromise.

Ms. Stern stated that she understands the city's vision, and emphasized that her motion was only to ask the city to consider a recommendation to bifurcate the application, not to require it. She added that the city may be able to strengthen its arguments for the non-compromise area.

Ms. George expressed support of the city councilors' vision and agreed that the city's presentation was frivolous and disrespectful. She stated that she wants to see the completed documents before she approves them, but is supportive of the city's need for planned development. She said that she isn't sure of the best way to get this through the approval process, and hopes that it can be presented to DLCD in a way that makes the vision clear.

5. Consideration of Planning Docket C-13-11/SDR-11-11(MB/KF), request for approval of a county park, applicant Yamhill County Parks, as continued from October 25 at the point of Public Agency Reports. *[Tentatively approved, findings to be adopted January 3, 2013.]*

Ms. Lewis opened the public hearing at the point of Public Agency Reports.

Public Agency Reports - Ms. Lewis stated that the Department of Environmental Quality (DEQ) responded to the report from Hahn & Associates, and that response was entered into the record in time to allow all parties to respond to it. Mr. Friday stated that no other reports had been received.

Rebuttal - Ken Huffer reviewed his written rebuttal statement, noting that it had been submitted for the record prior to the last deadline. He stated that the proposed park has great potential to benefit the citizens of Yamhill County for years to come, fits with the master plan and zoning ordinance, and provides opportunities for diverse types of outdoor activities. He said that he had reviewed all of the issues raised and had made several changes to the proposal to help mitigate concerns, including a phased approach to development and opening the park to the public, an elaborate buffer, and relocation of the access road. He said that the Parks Board would work with agency partners and the community to address issues as they come up, including traffic concerns. He noted that many of the concerns raised are unfounded, based on the scope that is being proposed.

Staff Recommendation - Mr. Friday stated that the Planning Department has decided not to make a recommendation for either approval or denial because the application is from a county department and a recommendation could have the appearance of bias. He said that it would be more appropriate for the Board to make its decision without a recommendation from Planning. He stated that if the Board votes to approve the application, he would recommend placing the thirteen conditions of approval, with a modification to Condition #2 to state explicitly that camping is not part of the application. He explained that this would make it very clear that a new application would have to be filed in order to allow camping. He emphasized that the fence and landscaping referred to in Condition #10 as a buffer between the county property and the Upshaw property would be located entirely on county-owned property.

Close of Public Hearing / Deliberation - Ms. Stern moved tentative approval of the application with the conditions as outlined by Mr. Friday, with findings to be adopted January 3, 2013. She addressed some of the concerns raised by opponents, stating that the Board's job is to consider all citizens, not just special interest groups, and the county has a lack of adequate park space, which is very important to the citizens. She said that much of the grant funding the county would be seeking is earmarked for specific purposes, and the Board has an obligation to try to get that back for its citizens. She stated that traffic concerns have been adequately addressed by staff for the beginning phases, and the phased approach would help the county keep an eye on that and deal with it adequately. She said that the information presented about the need to protect buildings on farmland applies to all agricultural land and can't be blamed on parks. She said that public use of this property has always been the county's intent, and it has been shown over the years to be safe from any landfill seepage. She said that she is concerned about the hunting club on the Upshaw property and the liability to the county now that the county knows about it, and she encouraged county staff to continue working on that with the Upshaws. She stated that DEQ has been very supportive of having parks on closed landfills, and the county would follow all DEQ requirements, so the public would be safe where they have access to the property. She said that the Parks Board has fabulous members who have worked tirelessly on park land, and anyone not satisfied with them can talk to them or apply to serve on the Parks Board. She added that there is no need for personal attacks on Mr. Huffer, and no need to question someone's integrity because of a disagreement with what that person is proposing.

Ms. George stated that the Board has stepped back and allowed the Parks Board to do the work on this application, and the evidence presented and mitigations made have been extensive. She commended the Parks Board and thanked the neighbors for caring enough to make sure this

process was done correctly, and stated that she believes those concerns have been met.

Ms. Lewis expressed appreciation for Ms. Stern’s comments and said that she has covered all of the points. She thanked Mr. Huffer and the Parks Board for their outreach efforts, and reminded the neighbors of the many assurances they have been given that the Parks Division would work hard to be responsive to their concerns as it slowly phases in the park. She added her assurance that the Board would listen as well if those concerns are not being addressed. She stated that if the county ever wants to go to a more intensive use of the property, there would have to be another application, and that would be the time when major traffic concerns would have to be addressed by ODOT and by the county; however, transportation facilities are adequate at this time for the proposed use.

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

**F. ANNOUNCEMENTS:**

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

The meeting recessed at 11:45 a.m. and reconvened in the Commissioners’ Office Conference Room at 11:55 a.m. Present for this portion of the meeting were the three commissioners, Laura Tschabold, Christian Boenisch, and Nathalie Hardy. Mr. Boenisch stated that he would like to get a clear understanding of what the county’s interests are in negotiating a lease for the cell tower at the fairgrounds.

**G. EXECUTIVE SESSION** pursuant to ORS 192.660(2)(e) to discuss real property transactions. *[No formal decisions made.]*

The meeting recessed to executive session at 11:57 a.m. pursuant to ORS 192.660(2)(e) to discuss real property transactions. The meeting reconvened at 1:32 p.m. with no formal decisions made and a sense of the Board conveyed to Mr. Boenisch and Ms. Tschabold.

The meeting adjourned at 1:33 p.m.

Anne Britt  
Secretary

**YAMHILL COUNTY BOARD OF COMMISSIONERS**

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Chair LESLIE LEWIS

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Commissioner KATHY GEORGE

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Commissioner MARY P. STERN

## Baker Rock Remand Recommendation for 12/6/2012

There are some items I would like to clear up before I make the formal recommendation. During the last hearing it was reported that our staff had done an over-the-counter denial of a three-sided pole barn that was to be placed in the floodway. It was stated that members of our office told a potential applicant, quote "*Don't even bother to apply, because it is in a floodway and there is nothing that can be done in a floodway.*"

That is not an accurate statement for three reasons. First, I spoke with two of our staff members and confirmed that this was not what was said to the customer.

Second, the ordinance clearly allows application for development in the floodplain (and floodway) provided notice is sent out and certain standards in the code are met.

Third, for the past 20-plus years the Planning Director has had an edict, that even if we as staff members know we cannot approve an application, we shall offer to take one in. All of our office is well aware of this edict. The reason for it is the Planning Director strongly believes that everyone should be provided an opportunity for due process, regardless of what their land use request is for. So even if we know we will deny the request, we are to take in the application and process it.

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In order to put this in writing and making it clear to the affected property owners, our office will be sending out an application and the ordinance section with a letter explaining the application process and letting them know that they can build a three-sided barn in the floodway by following this process.

In addition, there was question that if this was approved, who would a citizen go to if there is a violation. The Board's previous approval included 27 conditions. Our office considers those conditions of approval to be like a contract between our office, the applicant and the public. If there is a violation of those conditions of approval, then we would initiate enforcement against the applicant until there was compliance.

Lastly, and this is somewhat a personal observation, this has been a long process, and I have felt that some of the opponents are upset with our office and the Board of Commissioners for somehow "allowing this to happen". I just want to remind the audience that the Goal 5 administrative rule places strict limits what we can consider as conflicts with a mining operation. In addition, the Goal 5 administrative rule supercedes the local code. In other words, under existing administrative rules, the Board is not even allowed to adopt regulations beyond the scope of the conflicting uses identified in the Goal 5 rule. If there is frustration with the criteria, and it is clear to me that there is, then that must be addressed by either LCDC through their rule-making process, or by the legislature.

Because our office is required to call them as we see them, based on the criteria and the evidence in the record, we recommend approval of the request with the addition of conditions 28, 29 and 30. These conditions are intended to clarify the requirement for placement of the recharge trench and the requirements for future floodplain approvals for any berm constructed in the floodway.