

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, August 5, 2009  
Marion County Courthouse Square

9:00 a.m. Board Session  
Senator Hearing Room

**PRESENT:** Commissioner Patti Milne, Commissioner Janet Carlson and Commissioner Sam Brentano. Also present were John Lattimer as chief administrative officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

**PUBLIC COMMENT**

**CONSENT**

BOARD OF COMMISSIONERS

OLCC APPLICATION – Recommend Approval

Lulu’s Latinos Market, Inc. - Salem

BUSINESS SERVICES – HUMAN RESOURCES

Approve an order appointing Chuck Sybrandt to the Marion County Health Insurance Study Committee (HISC).

Approve an order establishing orientation requirements for new employees.

HEALTH

Approve a two-year agreement to receive \$488,462 from Salem Area Mass Transit for the Wheels Local Match Project.

JUVENILE

Approve amendment #1 to receive \$454,003 from the Oregon Commission on Children and Families for financial assistance for juvenile crime prevention services.

PUBLIC WORKS – PLANNING

Approve a resolution scheduling a public hearing for September 23, 2009, to consider the Hubbard Urban Growth Boundary Expansion for Residential Lands.

**MOTION:** Commissioner Carlson moved approval of the consent calendar.  
Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

## **ACTION**

### BUSINESS SERVICES – HUMAN RESOURCES

1. Consider ratification of initial MCJEA collective bargaining agreement effective July 1, 2008, through June 30, 2010. – Pat Donenfeld

Pat Donenfeld, human resources supervisor, said that this is a new contract for the Marion County Juvenile Employees Association. She said this is a new union for the county. The Juvenile Department used to be part of the Marion County Employees Association and they split off and developed their own union. Ms. Donenfeld said this is the first contract and bargaining began in September of 2008. This is a tentative agreement before the board today and the union has ratified the contract. It is a two-year contract and it started in July 2008. This group was below market so retroactive to July 1, 2008, there would be a 3 percent market rate adjustment, but no wage increase for July 1, 2009. July 1, 2010, the agreement states the county will begin picking up the PERS contribution for those employees. In turn, these employees will reduce their compensation credits by one week. She said also included is the sun setting of the compensation credits for new hires beginning July 1, 2010, and the ability for current employees to also opt out of the compensation credits for the additional value in their pay. The contract states these employees will continue on the Heath Insurance Study Committee (HISC) insurance and they have the same caps as the Oregon Nurses Association. She added that this is a small group of only 35 employees.

Commissioner Milne commented that it was great to have the redline copy so the changes could actually be seen.

Commissioner Brentano commented that he would support the retro rate, but it didn't feel right to have a rate increase in these tough economic times. Commissioner Milne recognized how difficult it is to come to agreements, but said she would support it. Commissioner Carlson commented that this was reviewed previously at management update and she is happy it is completed.

**MOTION:** Commissioner Brentano moved approval of the ratification of initial MCJEA collective bargaining agreement effective July 1, 2008, through June 30, 2010. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

### PUBLIC WORKS – PLANNING

2. Consider appeal of hearings officer's decision denying administrative review, case #AR08-043, Chapman, Clerk's File #5619; suggested hearing date is August 26, 2009. – Sterling Anderson

Sterling Anderson, planning director, reported that this administrative review application was for a farm dwelling on an 18.68-acre parcel in the exclusive farm use (EFU) zone. It is located at 9003 Broadacres Road NE, Aurora. The hearings officer in this case denied the application due to the applicant's failure to provide any credible evidence that he meets any of the applicable criteria for establishing a farm dwelling. Specifically, the hearings officer found that the applicant's evidence of income generated from the subject 14-acre property was not credible due

to the applicant's own 2007 schedule F federal income tax form, which indicates an expense of over \$83,000 for hay. The applicant states that the hay was grown on the subject property and it was not grown on the property. In addition, the hearings officer found that the yields per acre of hay needed to produce the stated income exceeded by two to four times the average yield of Marion County or nationally. The hearings officer also found the applicant provided no evidence to support his contention that he produced wheat on the property in 2008. Receipts for nursery stock that the applicant stated was produced and sold from the property in 2008 included only receipts for 2009. Again the hearings officer found the applicant had not provided any credible evidence of generating the required income from the subject property. The hearings officer also found the property is not currently employed for farm use that generated the claimed income, which is required by the Oregon Administrative Rules. The hearings officer also found the applicant's operating a commercial trucking business from the property, based on an Oregon Department of Transportation (ODOT) audit. The auditor stated that the applicant did not maintain any records, which could support any farm operations. The operation of a commercial trucking business from the property without land use approval does constitute a violation of the ordinance and under section 110.680 of the ordinance the county is prohibited from issuing land use permits when there is an ongoing violation. Based on all the evidence, the hearings officer did deny the application.

Mr. Anderson said that in the appeal the applicant essentially states that he submitted the evidence and the hearings officer was incorrect. He also argues that there is no commercial trucking business on the subject property. He offers no additional evidence to support his position or evidence that he met the criteria, while current evidence indicates that the applicant is continuing to run the commercial trucking business from the property. The applicant does state that he is ordering a soils test to prove that the land is not high value, which would reduce the required income requirements. He should have the results in 90 – 120 days. However, the soils test option is not an option available under the OARs for a farm dwelling. As a result, the test would not be considered in this case.

Mr. Anderson then summarized the board's options. The board could accept the appeal and remand the case back to the hearings officer for further consideration; the board could accept the appeal and schedule a public hearing for August 26, 2009; or, the board can deny the appeal and adopt the decision of the hearings officer if they find this decision is correct. Staff recommends that the board deny the appeal and adopt the hearings officer's decision.

Commissioner Carlson stated that it appears the applicant didn't have any have hired counsel and chose not too.

Commissioner Brentano said he typically looks for ways to make land use work for people, but he is not finding a way in this case. Commissioner Brentano stated he would support the staff recommendation.

Commissioner Carlson stated the first criterion was met, but adequate evidence was not provided for the income test. She said it appeared if the applicant was able to come up with legitimate receipts from 2008 and answer other questions in a way that meets the requirements of the law, there might be an opportunity for this administrative review. Commissioner Carlson said she would like to give the applicant the opportunity to provide this information, but if someone who understands the process does not guide him he may not provide the adequate evidence to the board.

Commissioner Milne said that sometimes people have a tremendous amount of difficulty knowing what they have to provide for adequate evidence. She said that the applicant did say that his taxes were prepared by a certified public accountant. She felt there were various areas in the application where the applicant could meet the criteria. She said she was open if there was any opportunity for the ability to review some additional information because sometimes things are not presented properly when a person is doing the work on their own with no professional help. Commissioner Milne said that on one hand it sounds like the structure is going to be converted to a home, but the applicant states that structure is not the proposed dwelling. She asked Mr. Anderson what they were to be looking at for a structure.

Mr. Anderson said the applicant originally applied for an equine structure on the property. There was no dwelling on it, but when it was discovered that he had completely converted it to a dwelling, illegally, with no building permits and no land use approval. This has been a long ongoing enforcement case including the illegal construction business being located on the property. Even if the applicant was able to provide the income for 2008 and 2009, the fact that the land is not in the same type of farm use, (hay and wheat) as it was previously. He has converted it now to nursery stock. The OARs require that it be in the same farm use at the time the approval is obtained as the farm use that was on the property before. Even if the applicant were able to meet the income test he still would not be able to meet the requirements that it be in the same farm use that produced the income on the property. Mr. Anderson said that now that the property is in nursery stock, the applicant might have to wait and produce the products and come back to make an application at a future date. He added that this was probably the most viable approach in this case.

Commissioner Brentano asked if the applicant wanted the equine dwelling that was converted plus another dwelling. Mr. Anderson said if the applicant were to obtain approval for a farm dwelling on the property, based on working with this individual, he would probably build another house, and whether he would convert the existing equine structure back to an actual equine structure is questionable.

Commissioner Milne summarized that the equine structure had been converted to a living unit. She said perhaps the applicant realized the dwelling isn't the best living unit and he is wanting to build a bona fide living unit, but there is no guarantee he would convert the structure back to a equine dwelling.

Mr. Anderson said that inspections were conducted on the property and it is not an inhabitable structure. He added that there is no septic approval for septic systems and again, no building permits at all. It actually has cherry wood hardwood floors in it. Mr. Anderson said that it is a nice house, not too large, but definitely a nice house from the inspections that were conducted on the dwelling.

Commissioner Carlson asked what the rationale was for the OARs that require the applicant to be in the same crop. Certainly the economy is going to dictate what markets are going to be more lucrative. As long as the property is being used for farm use, why are the OARs so rigid regarding what you can plant and what you can't plant? Mr. Anderson said he believed it was based on whether the property is capable of producing the income and if it is produced for two consecutive years, it needs to still be in that farm use and not be converted to some other farm use or actual crops that could not produce the income prior to obtaining the approval for the

dwelling. He said that is the only link he could think of because after an applicant gets a farm dwelling they can grow any crop. Commissioner Carlson asked if the applicant had planted any nursery stock in any of the prior three years if it would meet the letter of the law. Mr. Anderson said the nursery stock was not planted until this year. If he had planted nursery stock and had sold some, which he had no evidence of any sold, then it might possibly count.

Commissioner Milne asked when the nursery stock was planted. Mr. Anderson said the nursery stock was planted in 2009 and the income requirements were for 2007 and 2008, so any crops produced or sold on the property this year would not count towards the two previous years. They could count toward the year 2009 once it is completed in 2010.

Commissioner Milne asked how people are supposed to know these things. Mr. Anderson said the applicant was aware of these things because planning had been working with him since 2007. He was told what the criteria were, what the tests were and what the income requirements were. Mr. Anderson said the applicant had a substantial amount of time to gather and prepare that evidence for those income years.

Commissioner Carlson said that on page eight of the report it indicates that the nursery operation on the subject property was in its infancy in December 2008, and was unlikely to grow significant income for the 2008 tax year. Mr. Anderson advised that it has to be income generated and still would not apply to 2007 income, which was strictly a hay-based operation. The applicant would have had to have the same income for two consecutive years. Commissioner Carlson said it concerned her that the applicant ordered a soil study, which is going to cost him money, when it is not even going to be looked at. She added that on page two of the hearings officer's report, it said that the applicant testified that he did not believe the soil is high value based upon his experience farming the property. However, the applicant did not contest the soil determination by providing an individualized soil study performed by a qualified soil scientist. She said if she was the applicant and reading this it would make her think this is something she should do in order to contest the denial. Mr. Anderson said the provision for the soils test is only available for a very single and specific use and that's a non-farm dwelling. It cannot be used for any other purpose in the EFU zone.

Commissioner Milne said the board cannot change Oregon law, and this is a roadblock for this applicant. Mr. Anderson said that at this point the most viable options are the income from 2009 and 2010, from the nursery operation or the non-farm dwelling application. He added that this denial doesn't stop him from farming the property and having a nursery operation to generate income. The non-farm dwelling could be another avenue for him if he gets the soils test completed.

**MOTION:** Commissioner Carlson moved that the board uphold the hearings officer's decision and deny the appeal because the applicant didn't meet the criteria for a primary farm dwelling on the subject property. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Milne adjourned the meeting at 9:50 a.m.

**Attachments:** None.

ABOVE MINUTES APPROVED

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CHAIR

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COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

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Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: [www.co.marion.or.us](http://www.co.marion.or.us)