

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, June 17, 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**

Laurel Hines, 10371 Lake Drive SE, Salem, said she wanted to reiterate that more than 65 people have requested a hearing on the Laack Measure 37 claim for vesting rights. She said she wanted to urge the board to hold a public hearing, since there are a lot of people affected by the claim. She would like for the commissioners to have the most accurate information to base their decision on.

Brian Hines, 10371 Lake Drive SE, Salem, said he wrote a letter to the commissioners and didn't hear anything back for a couple of months. He requested that there be some kind of response to letters when they are received, so constituents know the letter was received. He also asked that constituents receive notification about the hearing when the letter is regarding a topic of discussion at a future board session meeting.

Commissioner Milne replied that customer service is a very high priority for the board of commissioners. She said there are some issues where the commissioners are not able to make any personal contact, because it is inappropriate. The board of commissioners encourages staff to make contact, so there is a response. Mr. Hines said he just wanted a notification that the e-mails had been received.

**CONSENT**

BOARD OF COMMISSIONERS

OLCC APPLICATIONS – Recommend Approval  
Kraemer's Farm Fresh Market, Mt. Angel

BUSINESS SERVICES – HUMAN RESOURCES

Approve recommendation to uphold the classification of medium equipment operator, Public Works.

Approve recommendation to adopt and establish the classification of community corrections educator at pay range 06 C61 AK, Sheriff's Office.

Approve recommendation to change the unit designation for administrative assistant, Sheriff's Office from Unit 12, confidential, to Unit 06, MCEA represented.

#### HEALTH DEPARTMENT

Approve amendment #1 to receive \$45,882 in additional funding from Salem Hospital for screening services for mental health patients.

Approve renewal of a contract for \$116,524 with Delia R Lemos Winchester Care Homes to pay a portion of individualized services that are not paid under the state's Community Base Care payment system.

#### JUVENILE DEPARTMENT

Approve renewal of a contract for \$240,000 to North Valley Medical Staffing, Inc., to provide nursing services for youth in the juvenile department's program.

#### PUBLIC WORKS

Receive bid award to Complete Wireless Solutions for the purchase of up to \$184,500 of Kenwood VHF radio communications equipment.

#### PUBLIC WORKS – PLANNING

Schedule a public hearing for July 8, 2009, for a mass gathering permit.

#### TREASURER

Approve an order authorizing the treasurer to invest surplus county funds.

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

### **ACTION**

#### BUSINESS SERVICES - SHERIFF

1. Consider approval of a contract with DePaul Industries Security for \$235,000, to provide entrance security personnel for the Marion County court facilities. – Kevin Schultz, Peggy Mitchell

Peggy Mitchell, finance, reported that the sheriff's office is responsible for providing security services at the court facilities. The contract is with DePaul Industries Security, which is listed on the state's qualified rehabilitation facility (QRF) program.

Commander Kevin Schultz stated that Olympic Security is currently providing security at the court facilities. When the sheriff's office was informed of DePaul's interest in providing court security for Marion County, staff from the sheriff's office went to the Washington County Sherriff's Office to see how DePaul Industries operates court security for their facilities. There have also been several meetings with management from DePaul, and the sheriff's office is confident that their service will be more than adequate.

Commissioner Milne asked about the time it would take for DePaul to get on board and if there would be a trial period. Commander Schultz said there is a transition plan in place. When the

QRF came to the attention of the sheriff's office, there were initially some concerns because of the perception prior to the visit and communications with Washington County. The sheriff's office is confident in transitioning to DePaul.

John Lattimer said that this is for DePaul to provide security screening for the public entrances at the courthouse and the juvenile facility.

Commissioner Carlson requested a summary of the QRF program and an explanation of why it is possible without a competitive request for proposal process. Ms. Mitchell explained that the state's qualified rehabilitation facility program is put in place by state statute and allows non-profit organizations in the business to employ disabled individuals. The Oregon Department of Administrative Services monitors the QRF program, and each company that provides services files applications with the state and has to be approved by the state in order to provide services. There is an application renewal process that takes place every five years. Each service the organization provides is evaluated at that time. The state monitors the programs, and the organizations are not required to compete with the private sector. In addition to security, DePaul Industries provides temporary employment services. One of the other big QRF programs in Salem is Garten Services, and they provide several services. If the QRF organization has the services or products that meet the needs of a state or local government agency, we are required by law to utilize those services whenever possible.

Commander Schultz said that DePaul Industries has a percentage of disabled employees.

Commissioner Carlson said they are also going to use DePaul Industries for security at the Marion County Fair. Ms. Mitchell said this is a one-year contract, so we can see how it works out. We also included two one-year renewal options. The expectations and contract deliverables have been defined in the contract, so it can be monitored over the next year.

Commissioner Milne asked if this would employ any local people. Commander Schultz said DePaul employed local people when it started providing court security in Washington County, and sheriff's office staff has had similar discussions in talking with DePaul.

**MOTION:** Commissioner Carlson moved approval of a contract with DePaul Industries Security for \$235,000, to provide entrance security personnel for the Marion County court facilities. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

## HEALTH

2. Consider approval of two commercial leases with Cascadia Behavioral Healthcare, Inc. for 3321 Harold Street NE and 3325 Harold Street NE in Salem, OR. – Rod Calkins

Rod Calkins, health department administrator, introduced Roy Deede, division director for administrative services at the health department. There are a couple of items today related to the transition of addiction services in Marion County from Cascadia Behavioral Healthcare to a more diversified panel of providers. Mr. Calkins said the first item consists of the two leases at 3321 and 3325 Harold Street NE. They are properties owned by Cascadia Behavioral Healthcare. By leasing the facilities, Marion County will secure access for facilities for operation of essential addictions and mental health services. These include outpatient, residential

and detox service in the community. The plan is for the services to be operated by a new, local non-profit organization, Bridgeway Recovery Services, which is the next item on the agenda.

Mr. Deede indicated that the two leases are located next to each other at the intersection of Lancaster and Silverton Roads. The initial monthly rent will be \$9,065 for one facility and \$6,942.50 for the other facility. The focus of the sub-lease is that the costs for monthly rent be passed on to Bridgeway Recovery Services. The requirements of the two leases are attached to the sub-lease agreement with Bridgeway. The lease will start July 1, 2009. In the event of a loss of funding or reorganization of Marion County services, the contract can be terminated. Facilities staff, legal counsel and risk management have done an analysis and looked at the maintenance and type of repairs that will need to be done.

Commissioner Milne said the contract review sheet describes 3321 property as retail space. She asked if the zoning was appropriate for the services. Mr. Calkins said it is a retail space, but that is the location of the outpatient office building. The 3325 property will be used for residential detox. One of the reasons to lease these buildings is that they were specifically designed for this type service. The state and county invested in the initial construction of the buildings, and continuing to use them would protect the investment.

**MOTION:** Commissioner Brentano moved approval of two commercial leases with Cascadia Behavioral Healthcare, Inc. for 3321 Harold Street NE and 3325 Harold Street NE in Salem, OR. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

3. Consider approval of a sub-lease with Bridgeway Recovery Services for 3321 Harold Street NE and 3325 Harold Street NE in Salem, OR. – Rod Calkins

Rod Calkins said this is a sub-lease, and the anticipation is that Bridgeway Recovery Services will assume responsibilities of the lease through a sub-lease with the county. He said this ensures these properties are available to Marion County if there were future financial trouble with Bridgeway. He doesn't anticipate any problems, but that is the reason for the lease and sub-lease. Bridgeway Recovery Services will be responsible for repairs according to the sub-lease. Mr. Deede said the funding for services is received from various state service elements and is passed on to Bridgeway. The county will reduce the monthly amount passed through to Bridgeway by the amount of the lease that needs to be paid to Cascadia. If the funding pass-through service dollars are ever reduced below the amount of the monthly rent, Bridgeway Recovery Services would be liable for the balance. There are various termination clauses for the county to end the contract with Cascadia, if needed, based on funding.

Commissioner Carlson asked about the termination clause that says the tenant, Bridgeway Recovery Services, can terminate the lease after providing 90 days notice. It appears more difficult for the county to terminate the lease. Mr. Calkins said that Marion County is the tenant under the lease. If funding were not available to provide addiction services, the county would be able to terminate the lease with 90 days notice. The sub-lease with Bridgeway Recovery Services could also be terminated with 90 days notice. If the county stops operating addiction services at the facility, Cascadia would be able to review what future services would be provided in the buildings. Cascadia could end the lease with 180 days notice if they determined that the county was trying to operate a service that competes with Cascadia's services.

**MOTION:** Commissioner Carlson moved approval of the sub-lease with Bridgeway Recovery Services for 3321 Harold Street NE and 3325 Harold Street NE in Salem, OR. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

#### PUBLIC WORKS

4. Consider approval of Reimbursable Agreement #DTF70-09-E-00011 to receive \$2,680,000 from the Western Federal Lands Highway Division for the county to provide preliminary engineering, construction engineering and work for the North Fork Santiam Stabilization project. – Bob Pankratz

Alan Haley, public works, reported that this is a reimbursable agreement with the Western Federal Lands Highway Division for repair to North Fork Road. This would be for preliminary engineering, construction engineering and work on the road, which would take place into fiscal year 2012. The county has contributed \$180,000 toward the design for preliminary engineering, which includes the geotechnical studies, site surveys and engineering design. Western Federal Lands would be responsible for the procurement of the National Environmental Policy Act (NEPA) decision documents and approval of the final plans once they are completed by Marion County. The full agreement is for \$2,680,000, but the current agreement is for up to \$230,000 toward preliminary engineering. This is a reimbursable agreement that will have additional future amendments.

Bob Pankratz said Western Federal Lands notified the county that the NEPA approval has been received. Mr. Pankratz provided a PowerPoint presentation of the affected area. Final design is to be completed by December 15, 2009, and construction is scheduled to begin June 2010. The new gravel roadway will be open to the public at the end of this summer, and it will be paved next year. Mr. Haley indicated that the road would be closed June 1 through August 31, 2009. The county has already contributed \$180,000 in funds that are not reimbursable. As soon as the agreement is in place, any funds spent from that point forward would be reimbursable. The current estimate of preliminary engineering will entail is \$150,000, so it is estimated that the county will not use the full \$230,000 currently under consideration. He then provided information about the total fiscal impact for the project.

This will provide for a 2-way paved highway with no weight restrictions when it is completed.

**MOTION:** Commissioner Brentano moved approval of Reimbursable Agreement #DTF70-09-E-00011 to receive \$230,000 from the Western Federal Lands Highway Division for the county to provide preliminary engineering, construction engineering and work for the North Fork Santiam Stabilization project. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

#### PUBLIC WORKS – PLANNING

5. Consider adoption of administrative ordinance granting zone change, case #ZC09-02, Brady, Clerk's File #5615. (Notice of adoption occurred on June 10, 2009). – Joe Fennimore

Joe Fennimore, planning, said the item before the board today is an application to change the zone from (UT5), urban transition with a 5-acre minimum lot size, to (CRLU), commercial retail with a limited use overlay, on a 0.57-acre parcel located at 224 Airport Rd. NE, Silverton,

Oregon. The hearings officer held a public hearing on this application on April 8, 2009. On May 18, 2009, the hearings officer issued a recommendation to grant the request subject to conditions. The board held the application for the mandatory appeal period and no appeal was filed. The hearings officer sent a memo to the planning director indicating that one of the approved uses was inadvertently omitted from the recommendation. The use has been added to the permitted uses in exhibit B and it is included in the ordinance. Notice of adoption was made on June 10, 2009. This is now before the board for final consideration and adoption.

**MOTION:** Commissioner Carlson moved adoption of administrative ordinance granting zone change, case #ZC09-02, Brady, Clerk's File #5615. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

6. Consider recommendation in vested rights determination on case #M05-17, Laack, Clerk's File #5002. – Sterling Anderson, Jo Stonecipher

Sterling Anderson, planning director, said this is a determination of vested rights. It involves receiving a hearings officer's recommendation. Under the provisions of the county's ordinance for processing measure 49 cases and vested rights cases, the hearings officer holds a public hearing. The hearings officer held a public hearing and issued a recommendation to the board. The board of commissioners needs to determine whether to hold a public hearing.

Commissioner Milne commented that she does not feel there is a need for a public hearing. This issue has been through numerous processes and there have been opportunities for everyone to submit information. She feels she has sufficient information to make a decision.

Commissioner Carlson said that she wanted to respond to the comment that was made during the public comment period about not responding back to constituents. She said she met with staff yesterday and went through the information. There were numerous measure 37 claims over a period of time. There were also multiple measure 49 claims, but it has been a while. She was somewhat confused with all of the various ordinances and when it is appropriate to respond and when it is not. She indicated her preference is for staff to respond to constituents when they ask questions, and she apologized that some people did not receive responses from the board of commissioners' office. She said when she receives emails regarding cases like this, she forwards them to Jo Stonecipher and Sterling Anderson to have the added as part of the official record.

Commissioner Carlson commented that she was the no vote for the Measure 37 hearing, but she indicated that this is a different issue. She said this is more of a legal question as to whether the vested rights claim passes the test of the Marion County ordinance. She is setting aside the concerns she previously raised during the Measure 37 hearing. Commissioner Carlson did go back and look at the Measure 49 ordinance, and it said the hearing is at the hearings officer's level and is at the discretion of the board whether to have a hearing before the board of commissioners. She asked Mr. Anderson if an email was sent to all interested parties or if this was just posted by board session agenda. Mr. Anderson said the only notification provided was the standard board session notice that goes on the county website. He said he did have a request from someone who asked to be notified, and he did provide that person with notification.

Commissioner Carlson said that generally speaking in land use (although this isn't land use) the board of commissioners approves a public hearing when there is something new, when there is additional information to be provided or items that are unclear in the hearings officers report.

Commissioner Carlson said that as she was reviewing the hearings officer's report, there were several arguments at the beginning about whether the board of commissioners even had jurisdiction to take the claim. Having read through the hearings officer's report and after talking with staff she was satisfied that the board does have jurisdiction for the vested rights claim. She said there are a couple of issues that she thinks would need additional discussion, but she would like to narrow the focus of the public hearing to specific issues if the board were to decide to have a public hearing.

Jo Stonecipher indicated that the board would be able to narrow the focus of the public hearing if the board were to decide to hold a public hearing.

Commissioner Carlson said there is one thing in the hearings officer's report that refers to the Rainones. She asked if the board would need to hold a public hearing to review the new information.

Jo Stonecipher indicated that question was raised by the state and the state had resolved the question by issuing an order. It is something the board of commissioners can take notice of without having a hearing. Sterling Anderson confirmed that he checked the information and the zone that was in effect at the time of Mr. Laack's acquisition was applied to the property on November 13, 1970. That zone was in effect on the property until April 31, 1975, with no changes. When the Rainones obtained an ownership interest, it was the same zone as when Mr. Laack obtained his interest. It appears that both would qualify for vested rights.

Commissioner Carlson clarified that Mr. Laack and the Rainones would qualify for the vested rights, but not Gene Laack, Duane Rawlins or Greg Eide. The Holmes test, which has different things reviewed in all of the other Measure 49 claims that the board has approved, there were some discussions regarding exhibit 1 and information about the costs. The hearings officer recommended disallowing \$13,398, giving total costs incurred of \$485,308. Commissioner Carlson indicated that she agrees with that statement. The question was what the number would be compared too. Page 16 of the hearings officer's decision shows comparisons and legal counsel added the ratios. Commissioner Carlson asked if the board were to have people comment on the ratios whether that would need to be in the context of a public hearing. She also expressed concern that the hearings officer's report states that this is a judgment call for the board of commissioners as to whether the ratios are appropriate. She would like to establish a record in case a court was to look at the information in the future.

Commissioner Carlson asked Mr. Anderson and Ms. Stonecipher to comment as to whether a public hearing would help to determine ratios. Mr. Anderson said that it is correct that the high and low estimates are from the applicant and the opponents. The hearings officer made an effort to find something that appears more reasonable and was similar to the type of dwellings that could be built on the properties. The proposals range from placing a \$30,000 mobile home on each lot versus placing a high-end, stick built home on each lot. The hearings officer looked at homes in the south Salem hills area where the property is located. The ratio for a mobile home would be 1:8; for a low-end, stick built home would be 1:25; and the high-end, stick built home would be 1:31 according to the information provided by the hearings officer.

Commissioner Carlson asked if the applicant provided design plans with the application for construction permit that might have indicated the type of home that would be built on the lot. Mr. Anderson answered that it is typically the layout of the subdivision and parcel sizes that are

determined at that time. The hearings officer looked at parcel size ranges and land values when determining ratios.

Commissioner Milne said a developer could have considered a certain size home and possibly changed size later based on the economy. She asked what the values should be based on. Mr. Anderson said the numbers are based on when the information was reviewed by the hearings officer. Commissioner Milne asked if someone would be able to get financing with the current market in order to build a house or subdivision.

Ms. Stonecipher said that what information to review could be determined by the board of commissioners. She said that the board needs to make an equitable decision based on all of the factors. The board could have a hearing and limit it as decided by the board. The board is also entitled to consider current information. This process is not as limited as it is for land use.

Commissioner Carlson said the applicants' low end was 1:7, and their high end was 1:19. A court would find 1:14 acceptable and 1:47 unacceptable with everything in between being considered a grey area. The opponents' estimates are 1:34 and 1:48. The hearings officers' range is 1:8, 1:25 and 1:31. Commissioner Carlson asked if the board were to look at 1:25, whether that would be acceptable. Ms. Stonecipher indicated that there is not a black and white answer, and the board would need to determine which ratio to consider. In this situation, the board is weighing the applicants' expenditure of \$485,000 in this case for a project that may range in final costs from \$3.3 million to \$23.5 million. The board will need to determine whether the applicants have spent enough money, committed enough time and effort, gone forward enough to have a vested right to continue the project. All of the factors before the board are part of that decision.

Commissioner Carlson said this case is very different from previous vested rights cases reviewed by the board. The requirement for a major construction permit was on page 4 of exhibit A of the board order, but it was not added in exhibit B as a specific condition. Commissioner Carlson asked for clarification because the opponents are arguing that the applicants were acting in bad faith because people started without a permit and the applicants are saying they were acting in good faith because of conflicting information provided by the county. Mr. Anderson said page 4 of exhibit A, the findings of fact and conclusions of the board order for the subdivision approval in August 2007, includes a list of comments, requested conditions and requirements relative to the development of this subdivision. It states a major construction permit is required before construction of a roadway and drainage improvements may commence. Exhibit B lists the conditions and condition 4 states that prior to recording the final plat, the applicants shall submit evidence of compliance with the requirements recommended by Marion County Department of Public Works through their comments (listed in exhibit A). It also includes about 14 specifically listed conditions that would apply to the subdivision, but it does not include a condition requiring a major construction permit. It is identified as a condition only as a reference back to the comments in exhibit A. A major construction permit is a standard requirement for subdivisions. The applicants' engineer indicated that there was confusion about whether the major construction permit would be required in this instance. Commissioner Carlson asked why public works staff did not testify at the public hearing to clarify what the applicants were told.

Commissioner Milne indicated that she believes the good faith issue was that the work was stopped until after permits were obtained. Commissioner Carlson indicated that the board does not have enough specific information to determine good faith.

Commissioner Carlson said she agrees with the hearings officer's report regarding notice. She would like to include soft costs as has been done in the past. In the nature, location and ultimate cost section, groundwater issues were considered in the subdivision case and were adequately addressed under land use regulations that were in effect at the time. The sensitive groundwater overlay ordinance has changed since then and it probably would not be acceptable now. This would be considered under the ordinance that was in place at the time the subdivision was approved. The mere preparation piece indicates the actual onsite work seems fairly minimal with brush cleared and the onsite roadway system graded in. Commissioner Carlson asked for clarification about mere preparation versus irrevocably committed.

Ms. Stonecipher explained that irrevocably committed is a term used for goal exceptions and whether property is irrevocably committed to a use that is consistent with an exception rather than the current zoning or comprehensive plan designation. Mere preparation can range from property purchase and removal of weeds to extensive work for development of homes.

Commissioner Carlson indicated that she would like to have more information about the ratio and what happened with the major construction permit.

Commissioner Brentano said he looked at each item and was able to conclude that this met the requirement. He is comfortable with the 1:25 ratio and indicated that \$500,000 is a lot of money spent. He doesn't feel like he would gain anything from further information or another public hearing. There is a question about the work done without proper permits, but he does not know if that really matters. Based on his evaluation, he feels that there is a defensible ratio and that the case meets the requirements to grant vesting.

Commissioner Milne said it would be difficult to put this project back to its natural state if it were not followed through. Ms. Stonecipher indicated that the property would be restored as necessary if it were determined that the applicants do not have vested rights.

Commissioner Milne indicated that she and Commissioner Brentano are in agreement. She said \$500,000 is a lot of money and a lot of time has gone into the project. She is satisfied that the issues have been addressed and the information provided answers to the question of equity. Commissioner Brentano said the status of the Rainones decision helped him out with his decision.

**MOTION:** Commissioner Brentano moved to approve the vesting determination in case #M05-17, Laack, Clerk's File #5002, with a notation that there were differences and also differences in the decision about Rainones. Seconded by Commissioner Milne; motion carried. A voice vote was 2 for; 1 against. (Commissioner Carlson voted against).

Commissioner Carlson made comments about Mr. Laack purchasing the property several years ago with the thought he could do something with it and now with the land use laws he is not able to do it. She indicated that she still has unanswered questions. It is likely that the applicants will get a right to build but will not build until the economy improves.

**PUBLIC HEARING**  
**9:30 a.m.**

None.

Commissioner Milne read the weekly calendar.

Commissioner Milne adjourned the meeting at 11:10 a.m.

**Attachments:** Agenda

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)