

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 21, 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 Jo Stonecipher as legal counsel and Kim Hulett as recorder.

PRESENTATION & PROCLAMATION

Consider approval of a proclamation designating October 18-24, 2009, to be Hands & Words Are Not For Hurting Week. – Ann Kelly, Pete Teller, students from McNary High School in Keizer.

Ann Kelly, founder of the Hands & Words Are Not for Hurting Project, requests the board proclaim October 18-24, 2009, as the official 12th annual Hands and Words Are Not for Hurting Week. Ms. Kelly stated she feels honored to have students from McNary High School as their partners in the peace education movement. She said since January 2009 the students have done an amazing amount of work for the promotion of awareness and participation in the project's pledge to end abuse and violence in their school and throughout the community. The students are present to tell the board about a specific project helping to raise funds for the project's materials, banners, posters, signs, to be sent to schools in South Africa. She said that the Hands & Words Are Not for Hurting Project is reaching out to not only our community and our state, but literally around the world.

Kameesha Lane, a senior at McNary, said Ms. Kelly shared with them that there were schools in South Africa that want to be involved in the Hands and Words are Not for Hurting Project, but do not have the budget or supplies required. Ms. Lane has teamed up with fellow students, Renee Wolfe and Kyle Kuhns, to hold a benefit variety talent show (South African Effort Benefit Performance) scheduled for Friday, October 23, 2009, at 7:00 p.m. in the McNary auditorium. Tickets will be \$5.00 sold at the door. All proceeds will go to buy materials and supplies needed to send to the schools in South Africa that want to be involved in the project. There will be about 20 schools and about 4,000 students that will have the benefit of having the Hands & Words Are Not for Hurting Project signs and banners permanently displayed. The address for donations is the Hands & Words Are Not for Hurting Project is P.O. Box 2644, Salem, OR, 97308.

Mr. Kuhns, a junior at McNary, and Ms. Wolfe, a senior, introduced themselves to the board. Ms. Wolfe said the students were very fortunate to have the assistance of Jim Taylor, vocal instructor at McNary, as he has been instrumental in his support for this project at the school. Ms. Wolfe said she has noticed a big change in their entire school over the six months since the

project's implementation. She said students are noticing when someone is being picked on and are making the abuser stop.

Commissioner Carlson thanked the students for their presentation. Combining the music program with the Hands & Words Are Not for Hurting Project is wonderful.

Ms. Kelly then described the Hands Are Not for Hurting Project in greater detail. She said their mission is to educate each person in every community about the moral and legal right to live free of abuse and violence for all ages and all people around the world. It will take one person at a time, one family at a time, one school at a time to break the cycle. Ms. Kelly said they base their mission on respect and equality: *respect* is to value, appreciate, care for, and protect; and *equality* is one person having the same value as another. The pledge is 14 words: "I will not use my hands or my words for hurting myself or others."

Ms. Kelly then gave a PowerPoint presentation showing the work of the Hands & Words are not for Hurting Project.

MOTION: Commissioner Carlson moved approval of a proclamation designating October 18-24, 2009, to be the 12th Annual Hands & Words Are Not For Hurting Week. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

The commissioners then read the proclamation.

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS

Approve the proposed intergovernmental agreement concerning special advocacy fund for extension and expansion of the safety net for the Association of O&C Counties.

Approve an order appointing Mark Krautmann to the Oregon Garden Foundation Board for a term ending December 31, 2011.

BUSINESS SERVICES – HUMAN RESOURCES

Approve the recommendation to uphold the classification of management analyst 1, Health Department.

Approve a recommendation to reclassify department specialist 2 to department specialist 3 and reclassify the incumbent with the position, Public Works.

Approve a recommendation to reclassify the position of accounting clerk to accounting specialist, Juvenile Department.

Approve a recommendation to reclassify the position of civil engineering associate 1 to civil engineering associate 2, Public Works.

CHILDREN AND FAMILIES

Approve an order appointing Sheriff Jason Myers to the Marion County Children and Families Commission for a term ending June 30, 2013.

HEALTH

Approve amendment #1 to add \$67,200 to the contract with Salem Hospital to provide prenatal care for Marion County and extend the term to August 31, 2010.

Approve renewal of a three-year contract for \$121,680 with Elizabeth G. Griffin, FNP, to provide nurse practitioner services to the county's school based health center.

INFORMATION TECHNOLOGY/ASSESSOR

Approve renewal of an annual maintenance contract not to exceed \$125,000 with Tyler Technologies, Inc. for technical/software support of the assessment and taxation system.

PUBLIC WORKS – PLANNING

Notice of adoption of administrative ordinance, case #ZC09-010, Willamette Estates II, LLC, Clerk's File #5628; adoption scheduled for October 28, 2009.

Notice of adoption of administrative ordinance, case #ZC/CP09-06, SMMK Ventures, LLC, Clerk's File #5626; adoption scheduled for October 28, 2009.

SHERIFF

Approve a grant for \$314,061 from the Bureau of Justice Assistance for the State Criminal Alien Assistance Program (SCAAP) award.

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

ACTION

PUBLIC WORKS – PLANNING

1. Consider adoption of an ordinance amending the Marion County Comprehensive Plan by adopting text and plan amendments to the City of Hubbard Comprehensive Plan, Legislative Amendment Case #09-03, by emergency procedure. – Brandon Reich

Brandon Reich, planning division, said the City of Hubbard has proposed an urban growth boundary (UGB) expansion of 112 acres for residential and public land. As part of the

amendment the City of Hubbard is also proposing adopting new policies into its comprehensive plan regarding residential development, coordinating with the county, and adopting a population forecast of 4,632 people for the year 2029. The City of Hubbard will be redesignating properties added to the UGB from a Marion County rural plan designation of rural residential and primary agricultural, to a city urban plan designation of residential. The zoning would change from acreage residential (AR) and exclusive farm use (EFU) to urban transition 5 acre (UT-5) and urban transition 1.5 acre (UT-1.5) and urban transition farm (UTF).

On Wednesday, September 23, 2009, the board held a hearing on the matter and approved the amendments. The board closed the hearing and left the record open for additional testimony until October 7, 2009, and particularly concerning the impact of the proposal on existing Measures 37 and 49 claims in the area. Staff presented the option of zoning the properties as such that they would continue to have the options for development in the UGB, as they did under Measures 37 and 49. After reviewing the testimony in the record, the board voted unanimously to concur with the amendments to the City of Hubbard UGB. Mr. Reich said the ordinance before the board today reflects that decision and staff recommends that the board approve the ordinance as proposed.

MOTION: Commissioner Carlson moved that the chair read the ordinance by title only twice. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Milne read the ordinance by title only twice.

MOTION: Commissioner Carlson moved adoption of an ordinance amending the Marion County Comprehensive Plan by adopting text and plan amendments to the City of Hubbard Comprehensive Plan. This includes a coordinated population forecast of 4,632 for the year 2029, an urban growth boundary expansion of 112 acres to meet residential land needs, amendments to Hubbard Comprehensive Plan policies and Marion County zoning designation for properties added to the urban growth boundary and declaring an emergency. Legislative Amendment Case #09-03. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC HEARING

9:30 a.m.

PUBLIC WORKS – PLANNING

A. Public hearing to consider appeal of hearings officer's denial on administrative review, case #AR09-012, Levy, Clerk's File #5623. – Sterling Anderson

Sterling Anderson, planning director, stated this particular item involves an administrative review application to determine if a kennel is a legally established, nonconforming use in the exclusive farm use (EFU) zone. He said the property is located at 5822 66th Avenue NE.

Mr. Anderson said the board might recall that at the last public hearing on the case, the staff requested a continuance of that hearing until today in anticipation that it might have been possible to develop an agreement with the applicants in this case. The agreement would effectively reduce the scale and scope of this dog operation to the point where the agreement in effect would have aspects limiting the operation to the point where it would no longer constitute a violation of our definition of a kennel, which applies in the EFU zone of our rural code.

Mr. Anderson said he had been working with the applicant's representative and they have been rewording the agreement. He felt they have come up with something that he thinks the applicants and the planning division can both agree to and would be a workable solution. Staff would recommend that the board allow the applicant's representative to come up and discuss the agreement. He said there were actually three cases involved on this property. This particular application, another case which is on appeal to the Land Use Board of Appeals (LUBA) and which, if the violation of the kennel were resolved, the case would then have a stipulated remand back to the board of commissioners. The board could then remand it back to the planning director to review and issue a new decision. Mr. Anderson added that the only reason for the previous denial decision is the ongoing violation. If the violation is gone they could reevaluate the decision in light of that change.

Mr. Anderson said that there was another case on hold with the hearings officer revoking a previous conditional use because of the violation again. If that is the case and that violation no longer exists, the planning director will ask the hearings officer to dismiss that revocation action. In effect, the agreement will solve three cases at once, which is very unusual. Mr. Anderson is hopeful they can make this work for everyone.

TESTIMONY:

Support:

Donald Kelley, 110 W. 2nd Street, Silverton, legal counsel representing Tom and Christine Levy said this is a very convoluted affair. Some time ago the Levys applied for a conditional use permit, resulting in the granting of case #CU05-06. This allowed them to conduct a home occupation on their premises subject to certain conditions. These conditions, not being as clear as perhaps they should have been, nor staff's understanding of state law requirements left Mr. and Mrs. Levy facing revocation and violation. In order to resolve ambiguities and resolve enforcement violation actions, they made another conditional use application (#CU08-46), which staff was cooperating with by putting the revocation process on hold.

While reviewing #CU08-46, staff concluded the dog operation on the premises was an illegal kennel, pursuant to Marion County's Rural Zoning Ordinance. The hearings officer agreed and the case is presently on appeal to the Land Use Board of Appeals (LUBA). The Levys applied for an administrative review to have their dog operation declared a pre-existing non-conforming use, legalizing it under the zoning code. This is the matter before the board this morning. Mr. Kelley said the county's zoning code is subject to interpretation where it comes to the definition of a *kennel*. Staff has clarified the definition and, under that clarification, the Levy's operation is

legal. Since the operation is legal, there is no impediment to approving #CU08-46, which would result in revocation of #CU05-06.

Mr. Kelley said that the applicants enter into this understanding, utilizing the language worked out with planning staff, describing the allowable limits under the code, clarifying the definition of kennel as it is contained within the zoning code and as it applies to the Levys' operation. The Levys have already signed the agreement. The hearings officer for #CU08-46 said that if the kennel were to be determined legal, she recommended granting the conditional use, which clarified and amended the provisions of #CU05-06. Mr. Kelley said they will withdraw the application for review of the case (#AR09-12) today to planning staff and will submit the signed understanding with the Levys to resolve the question as to whether they have a legal kennel or not. They agree that the county would take voluntary remand of the LUBA appeal of #CU08-46 with the hope that the board would then remand it to staff to act on the hearings officer's recommendation and advisory opinion by dismissing the violation and the enforcement action on #CU05-06.

Commissioner Milne commented she understands there is no action for the board to take today other than closing the public hearing. However, there are still actions such as submitting and agreeing to terms that they have worked out. She asked if this would come back to the board at a later time because it is sounding like there has been a clarification of the definition. Mr. Anderson said the board had previously reviewed the definition of kennel and that it revolves around the number of dogs. Kennels have four or more dogs in their operations and what this agreement does is to explain, in terms of the applicants' operation, how they maintain three or fewer dogs. It is all site-specific and technically, this had to come back to the board. He felt there would probably be an amendment to the definition of kennel proposed after the first of the year in the next update of the rural zone code. It will be different from the urban definition, but should be similar. They will be revisiting the issue at that time.

Mr. Kelley reiterated he did not think there was anything other than acknowledging receipt of the withdrawal request. The board's decision to remand it to staff will come in the future.

Jo Stonecipher added her agreement with Sterling Anderson's comment that this is a planning matter and the only task for board at present is to close the public hearing and dismiss the matter. Despite the withdrawal by the applicants, there will have to be a final formal order of dismissal.

MOTION: Commissioner Brentano moved to close the public hearing and dismiss the application of Thomas and Christine Levy. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Milne then read the calendar.

Commissioner Milne adjourned the meeting at 10:30 a.m.

Attachments:

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168.

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