

## BOARD OF COMMISSIONERS

### MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, March 17, 2010  
Marion County Courthouse Square

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

**PRESENT:** Commissioner Janet Carlson and Commissioner Sam Brentano. Also present were Jo Stonecipher as legal counsel and Kim Hulett as recorder.

**ABSENT:** Commissioner Milne and John Lattimer

## PRESENTATIONS

### Life Saving Award – Sheriff Myers

Sheriff Myers presented a Life Saving Award Medal to Nickolas Edwards, a Marion County citizen, who saved a woman from a burning car in October 2009. Sheriff Myers said that this past winter Mr. Edwards was recognized at the Oregon State Sheriff's Association for a life saving award. The accident occurred October 17, 2009, at 2:42 a.m. The Marion County Sheriff's Office responded to the report of a single vehicle crash on Hwy 22 at Joseph Street SE. When deputies arrived, a 2005 Honda Civic was on its side completely engulfed in flames and had heavy damage on all sides. Salem Fire personnel were on the scene extinguishing the flames and keeping the driver, 21-year-old Destiny Edwards, stable until medics arrived. Deputies made contact with a 19-year old Nickolas Edwards, who said he did not witness the crash, but saw the vehicle off the road and on its side. When Mr. Edwards got closer to the vehicle he saw flames coming from the engine compartment and a woman stuck inside the vehicle. Mr. Edwards said he ran to the car and could hear screaming for help. Mr. Edwards started kicking the windshield until he was able to force a crack in it. Mr. Edwards then used his hands to pry open the windshield enough so he could pull Ms. Edwards out of the car. Mr. Edwards then helped Ms. Edwards get away from the car and assisted until paramedics, fire personnel, and sheriff deputies arrived. Mr. Edwards received numerous cuts to his hands. His actions and stopping to help saved Destiny's life. Sheriff Myers then gave Nickolas Edwards the Sheriff's Office Life Saving Award.

Ms. Edwards thanked the Marion County Sheriff's Department for inviting her to attend and thanked Mr. Edwards for what he did. Ms. Edwards said that Mr. Edwards is an amazing young man and it takes a certain kind of person to do what he did. She said words couldn't explain how grateful and thankful she is for Mr. Edwards doing what he did.

Mr. Edwards thanked his friends and family for being present and supporting him.

### 2010 Census – Ping Khaw-Sutherland

Ping Khaw-Sutherland, policy specialist for the Census Bureau, said she was asking everyone to fill out and mail in the 2010 Census form. She said this year it is so important, because the

Census has a lot to do with funding and a portion of the congressional seats. By participating in the Census, it helps to bring dollars to communities. This funding is so important as it helps different programs. Ms. Khaw-Sutherland said the message is to count everyone sleeping in your home 60 percent of the time. If you have a child that is in college, the college will count them. Ms. Khaw-Sutherland then showed a PowerPoint presentation on the importance of filling out the 2010 Census.

## **PUBLIC COMMENT**

None.

## **CONSENT**

### **BOARD OF COMMISSIONERS**

#### **OLCC Applications – Recommend Approval**

Giorgio's Bar & Grill, Salem  
Lancaster Drive AM/PM Mart, Salem  
Los Dos Amigos Hacienda, Salem  
Los Temos Taqueria & Mini Mart, Salem  
Michelangelos, Salem  
Original Roadhouse Grill, Salem  
Portland Travel Center, Aurora  
Red Robin Burgers & Spirits, Salem  
Su Casa Imports, Inc., Salem  
The Pink Elephant, Salem  
The Point After, Salem  
U.S. Deli & Pub, Salem  
U.S. Market #108, Salem  
U.S. Market #115, Salem  
Woodburn Dragstrip Beer Concession, Woodburn

### **FINANCE**

Approve an order listing tax foreclosed property proposed to be sold, setting the auction date for April 30, 2010, at 10:00 a.m. and directing publication of the public notice in the Statesman Journal on March 28, April 4, 11, and 18, 2010.

### **HEALTH**

Approve amendment #7 to receive \$27,870 from the Department of Human Services for the 2009-2010 intergovernmental agreement for the financing of public health services.

### **PUBLIC WORKS**

Approve renewal of a multi-agency agreement for the provision of personnel, equipment and/or other support during emergency events to participating agencies.

Approve the 2010 Target Weed List.

## PUBLIC WORKS – PLANNING

Receive request to dismiss variance, case #V04-2, Garden World, LLC, Clerk's File #4967.

Receive hearings officer's decision dismissing administrative review, case #AR 09-018, Sharabarin, Clerk's File #5644.

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

## **ACTION**

### BUSINESS SERVICES

1. Consider approval of a contract not to exceed \$148,497 with Heery International to provide building commissioning services and business services management for the Courthouse HVAC mechanical and control systems project. – Dave Henderson

Business Services Director Dave Henderson said this is a contract he is requesting the board approve in an amount not to exceed \$148,497 with Heery International. The contract is to provide both third party commissioning services and quality control services for the courthouse HVAC project. This contract was arrived at by a list of approved vendors established by the Oregon Department of Energy. Mr. Henderson said that the Oregon Department of Energy went through a very rigorous process that included competitive proposals from companies. Mr. Henderson said that the county was able to use the cooperative procurement language that was in the contract to be able to identify Heery International to provide these services. Commissioning services are an effort to test systems that are installed to insure they meet the specifications that were established. This basically insures that the heating and cooling systems are doing what the specs state. The actual commissioning will be done by McKinstry who is the contractor performing the work, but Heery will provide third party oversight to insure that the county's interests are protected in this process. The QA/QC role is a process where the Heery Consultant works with the county's project coordinator and the contractor, as an independent third eye on what is going on to protect the county's interests. Mr. Henderson said that typically services such as these would run approximately 2.5 percent of the amount of the contract. Because the commissioning and the QA/QC have been combined the cost is approximately 2.1 percent of the contract amount.

**MOTION:** Commissioner Brentano moved approval of a contract not to exceed \$148,497 with Heery International to provide building commissioning services and business services management for the Courthouse HVAC mechanical and control systems project. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

### HEALTH DEPARTMENT

2. Consider approval of a three-year contract for \$234,000 with Gilberto De Jesus-Rentas, MD to provide skilled medical assessment and supervision for the Children's Behavioral Health program. – Rod Calkins

Health Department Administrator Rod Calkins said this is a request for approval of a three-year contract for \$234,000 with Gilberto De Jesus-Rentas, M.D., to provide skilled medical assessment and supervision for the Children's Behavioral Health program. He said it is a contract for psychiatric services for mental services to children, adolescents and families. He said the contract is for three years and up to 10 hours per week for child psychiatry services. Mr. Calkins said that psychiatric services in Marion County are scarce. He said that Dr. De Jesus-Rentas is a valuable resource due to being a psychiatrist interested in community psychiatry. Mr. Calkins said that there are a number of psychiatrists in the community that have retired a number of times and have come back to work due to the lack of services available. He said that child psychiatrists are actually rarer because they have to take a specialized course of study to be board eligible. In order to maintain the county's certifications with the Department of Human Services, the person has to be a board eligible child psychiatrist. Mr. Calkins said that if this contract is approved the county will then have two psychiatrists.

Commissioner Brentano confirmed that the \$234,000 was for one person to work up to 10 hours per week over a three-year period.

**MOTION:** Commissioner Brentano moved approval of a three-year contract for \$234,000 with Gilberto De Jesus-Rentas, MD to provide skilled medical assessment and supervision for the Children's Behavioral Health program.

#### PUBLIC WORKS – PLANNING

3. Consider adoption of administrative ordinance granting comprehensive plan amendment/conditional use, case #CP/CU 07-6, Sacher Revocable Living Trust, Clerk's File #5576.

Sterling Anderson, planning director, said this item today is to correct an error in the purpose section of the previous ordinance #1284 and an error in section 1 of the Findings of Fact and Conclusions of Law. On February 18, 2009, the board adopted Ordinance #1284 granting the application of Lynne Sacher and the Lynne Sacher Revocable Living Trust for a comprehensive plan text amendment to add a mineral and aggregate site to the "significant sites" inventory of the Marion County Comprehensive Plan and a conditional use to allow extraction and processing of aggregate materials on the site. The subject property in that ordinance was identified as consisting of 34.4 acres located in a farm timber (FT) zone at 158 Silver Falls Drive NE, Silverton.

Mr. Anderson said that in this particular case, the error was in the acreage reference listed in the Purpose and Findings Section. The correct acreage for that parcel should have been 74.4 acres rather than the 34.4 acres listed. He added that at the present time the applicants are attempting to work with DOGAMI to get their aggregate extraction permit. DOGAMI will not issue that permit until this acreage is corrected. This will correct the error.

**MOTION:** Commissioner Brentano moved adoption of administrative ordinance granting comprehensive plan amendment/conditional use, case CP/CU 07-6, Sacher Revocable Living Trust, Clerk's File #5576. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

## **PUBLIC HEARING**

**9:30 a.m.**

### PUBLIC WORKS - PLANNING

A. Continuance of public hearing to consider zone change/comprehensive plan amendment/partitioning, case #ZC/CP/P 09-007, Fultz, Clerk's File #5639. – Sterling Anderson

Sterling Anderson, planning director, said this is an application to request to change the zoning from exclusive farm use (EFU) to acreage residential (AR), to change the comprehensive plan designation from primary agriculture (PA) to rural residential (RR) with requests for exceptions to goal #3 (agricultural lands) and 14 (urbanization). This is on a 10-acre portion of an 85.9-acre parcel, and then to partition the 85.9-acre parcel into two parcels containing 75.9 acre and 10 acres each, located at 12184 Brick Road SE, Turner.

Mr. Anderson said that the hearings officer found that the applicants had failed to meet the criteria for the goal exceptions on change of plan amendment and partition. Specifically, the hearings officer found that the applicants failed to meet a majority of the criteria, based on the evidence that the hearings officer reviewed for goal exception #3 and #14. In addition, the hearings officer found that the applicant failed to provide sufficient evidence of compliance with Marion County Comprehensive Plan General Rural Services Policies that require that evidence be provided that there are adequate rural services available to support the proposed development, which in this case would have been residential. As a result, the hearings officer's recommendation to the board was to deny the application.

Mr. Anderson said that on February 17, 2010, the board held a public hearing on this application. At the hearing the applicant also failed to submit any significant new evidence showing compliance with the criteria identified by the hearings officer in the recommendation. At the conclusion of the hearing the board did offer the applicants a continuance to the hearing today to allow them to submit evidence of compliance with the Rural Services Policies and provide evidence of adequate rural services to support the use. These would include proof of fire district, evidence of access to the subject property from a public right of way, availability of septic to support residential use and water from a well system.

Mr. Anderson said that on March 11, 2010, the applicants submitted sufficient evidence that adequate rural services are either already available to the property or can be made available to the property. However, based on the criteria for compliance with goals #3 and #14 and the policies in the comprehensive plan and other criteria that are required to be met, staff recommends denial of the application as well.

Commissioner Carlson confirmed that the planning staff had reviewed the evidence and believes it meets some of the problems that the hearings officer found with regard to capacity to dispose of wastewater, to obtain domestic water and general services. She also confirmed that the applicant had clarified the number of lots to be three at the last hearing. She asked if all of this information was to planning's satisfaction. Mr. Anderson stated that the evidence the applicant submitted did show that there had been a septic evaluation done on the property, which would

show that there is suitable soils on the 10-acre parcel for residential development of septic systems. It also shows that there are adequate wells in the area that provide water service. The area is in a fire district and there is access to public right-of-way. Mr. Anderson stated the evidence was fairly clear and quite adequate showing that either the services are now available to the site or they could be made available.

Commissioner Carlson stated the other issues remaining would be the goal #3 exception and the goal #14 exception. She asked if the recommendation was still to deny the application because the property is zoned EFU. Mr. Anderson said it is very difficult for the exceptions process to take land from an EFU zone and convert to a development zone or AR zone. He added it is also very, very difficult to justify taking the land out of the EFU zone. Mr. Anderson stated that if the applicant could get through the goal exception process then many of the criteria or policies in the comprehensive plan and the zoning ordinance fall in line. Once through the goal exception process then everything left is simple and straightforward to show compliance. He reiterated that the goal exception hurdle is very high.

Commissioner Brentano commented that he was clear on goal #3, but needed more explanation of what goal #14 is. Mr. Anderson said that goal #14 is the urbanization goal. Under goal #14 there are a number of things that have to be shown. The exception criteria that the state has adopted under goal #2 basically apply to both the goal #3 and goal #14 exceptions. Under current state regulations if a person has 10 acres in the AR zone, then a goal #14 exception is not needed. This is because a 10 acre parcel is a rural parcel, not an urban parcel. The state has decided that 10 acres splits the difference between urban and rural. Everything less than 10 acres is considered urban, unless an exception is obtained justifying that it's not urban. If the property is over 10 acres then no goal #14 exception is needed. Mr. Anderson said that in this case the three parcels on a 10 acre parcel would certainly be below the 10 acre threshold and kicked in the requirement for the goal #14 exception. Parcels of two and three acres have to show they do not constitute urban size parcels. If a property cannot make it past goal #3, then it cannot make it past goal #14 and show that those are not urban size parcels.

Commissioner Carlson asked if the land had been zoned as AR as the applicant believes it was, would an exception to goals #3 and #14 be required. Mr. Anderson said no due to the AR zone already has an exception called exception lands. Any land not zoned EFU outside of an urban growth boundary is considered exception lands. Commissioner Carlson asked if the exception process happened when Marion County first submitted its maps to the state in the 1980's and if there had been any adjustment to this area. Mr. Anderson said there has not been any significant adjustment. There have been a few parcels here and there that have met the requirements for goal exceptions and have been rezoned. When people look at the criteria and the difficulty of obtaining goal exceptions, they usually don't even try.

TESTIMONY:

None.

Commissioner Carlson asked Mr. Abel if he wanted to come up and speak. He declined saying he had submitted the additional information the board had requested. Commissioner Carlson said she did have a letter from Mr. Van Pelt who declined to speak who is in opposition.

Commissioner Brentano said he didn't know why we asked the applicant to provide more information if there was nothing that furthers their position. He said this is one of those situations where he would like to approve this, but under state law the commissioners don't have any authority to do that. He said he wasn't sure where to go with this case from this point.

Commissioner Carlson stated the commissioners had a discussion at the last meeting. The applicant had submitted a different application a year ago. Mr. Anderson clarified that the original application submitted was appealing the staff changing the zoning on the counter maps to reflect the adopted maps. Commissioner Carlson confirmed that application was in LUBA currently. Ms. Stonecipher said there was an appeal of the decision that the applicants characterized as a land use decision. She said she also believed there was an appeal to the decision denying the appeal of the zone change through the administrative process

Steve Abel, attorney for the applicant, said his recollection was the matter started with the actual partition request in the AR zone, which was denied because of the disagreement regarding whether the land was AR. It did go to LUBA and he thought it was on voluntary remand to the commissioners and being held here pending the outcome of this decision today. Mr. Abel said if the board was to deny this request today, then he and his client would be back in front of the board on the remand.

Commissioner Carlson confirmed that there was the first application, another legal proceeding outside of the land use realm and the application today. Three weeks ago when the board met there was a hearings officer's report and there were a number of things in the report that said they could not be satisfied. There was a lengthy discussion about whether it was worth the time to come back or whether there was a decision made at that point. She said the applicant agreed that they would clean up those areas so that if and when it moved on to a higher body, it is narrowed down to the issue of goal #3 and #14 exceptions as opposed to being denied at a higher body over whether there are general services. The applicant has submitted information stating there are general services and now the only thing left is the exceptions.

Mr. Abel said a year ago, they in their best efforts looked for a route to seek exception. He said they have provided the best evidence they could come up with and will just need a decision today and they will move on in the other forums, however they may go. Mr. Abel said that ultimately there are very few places to get justice in this case and it is either by the commissioners or the judicial system. The judicial system imposes responsibility to the extent that the question is who has the responsibility and who wants to share in trying to find a solution.

**MOTION:** Commissioner Brentano moved to close the public hearing and deny the zone change/comprehensive plan amendment/partitioning, case #ZC/CP/P 09-007, Fultz, Clerk's File #5639. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Carlson then read the calendar.

Commissioner Carlson adjourned the meeting at 10:05 a.m.

**Attachments:** None.

ABOVE MINUTES APPROVED

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CHAIR

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COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

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