

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, December 30, 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.

PRESENTATION

2008-09 CARTS Update – Mona West.

Mona West, planning and development specialist for Salem-Keizer Transit District, gave the 2008-09 Chemeketa Area Regional Transportation System (CARTS) annual report for Marion County (attachment A).

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS

OLCC APPLICATION – Recommend Approval
Hubbard 76 Station – Hubbard

Approve renewal of a five-year cooperative service agreement with the US Department of Agriculture (USDA) Animal and Plant Health Inspection Services (APHIS) Wildlife Services for the management of predatory and nuisance animals in Marion County.

Approve an order appointing Lori Doede, Craig Halupowski, John Sauer, Hope Segun and Mark Caillier to the Local Alcohol & Drug Planning Committee to terms ending June 30, 2011.

HEALTH

Approve amendment #1 to add \$100,000 to the contract with Michael Sholar, PMHNP, to provide mental health nurse practitioner services for the County’s Psychiatric Crisis Center.

PUBLIC WORKS

Approve amendment #5 to extend the term of contract with Total Transfer, Inc. through December 31, 2012, for hauling of waste from the METRO South Transfer Station to the county’s waste-to-energy facility.

PUBLIC WORKS – PLANNING

Notice of adoption of administrative ordinance granting comprehensive plan amendment/floodplain development permit, case #CP/FP #09-03, Windsor Rock Products, Inc., Clerk's File #5627. Adoption scheduled for January 6, 2010.

TAX COLLECTOR

Approve an order authorizing the cancellation of uncollectible personal property tax accounts.

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

ACTION

BUSINESS SERVICES – Human Resources

1. Consider approval of the amended County Leave Donation Program policy. – Pat Donenfeld

Pat Donenfeld, human resources supervisor, presented a proposed revision to Marion County Administrative Policy #302, Leave Donation Program. The policy's last revision occurred in 1995. The policy did not contain a separate procedure delegating specific responsibilities or an explanation of the process. She said the proposed revision to the policy before the board provides that procedure description.

Ms. Donenfeld went on to explain what human resources consider the major changes to the policy. She said human resources would determine the eligibility of applicants for vacation donations. Department heads have been performing this determination; however because of lacking medical information, this has been difficult for them. Ms. Donenfeld said human resources has access to the medical information and, under the proposed revision, is responsible for eligibility determination.

Ms. Donenfeld said the proposed revisions more closely align the donated leave policy with the county's family medical leave policy. This allows employees to receive donated time while they are out on family medical leave. Human Resources reviewed present practices under the policy and decided to limit events covered to the more catastrophic rather than routine.

Ms. Donenfeld said management has conducted update meetings on this proposal. Commissioner Milne commented that because of these prior meetings the board has a good understanding of the policy changes. Commissioner Carlson said she thought the revisions were good improvements to the policy and said she too recalled the update meetings. She reiterated the major change to the policy is to have human resources determine who is eligible for vacation donations, as supervisors are currently making the decisions. She said the revised policy more closely aligns with the family medical leave policy as it contains some of the same practices.

MOTION: Commissioner Carlson moved approval of the amended County Leave Donation Program policy. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS – BUILDING INSPECTION

2. Consider adoption of an ordinance establishing civil monetary penalties for building code violations by emergency procedure. – Warren Jackson, Scott Norris

Scott Norris, assistant legal counsel said the 2009 legislature adopted Senate Bill (SB) 915, which declares that any monetary penalty for a building codes violation assessed by a local government is a civil penalty and sets forth two requirements for the assessment of civil penalties. First, local governments must provide notice of the assessment of a civil penalty, which describes the alleged violation. It states that the local government intends to assess the civil penalty and the amount of the penalty and that the alleged violator may challenge the assessment, including a description of the means and deadline for challenging the assessment.

Mr. Norris said that SB 915 requires local governments to provide an administrative process, other than a judicial proceeding, for challenging the civil penalty. He said the proposed ordinance before the board this morning addresses the requirements of SB 915 by establishing that a violation of the building code is subject to a civil penalty not to exceed \$5,000 for a single violation or \$1,000 per day for a continuing violation. He said the proposed ordinance also establishes a process for assessing the civil penalty. The first step is that the building official will issue an order to correct the violation. The second step is if correction of the violation does not occur in the time set forth in the order, the building official may issue a notice of civil violation and assess a civil penalty. He said the proposed ordinance also establishes an administrative appeals process. The Marion County hearings officer will hear all appeals and issue a written decision in each case.

Mr. Norris said the overriding goal throughout the entire process is to gain compliance with the building code and not necessarily to collect funds. He said that in order to make proposed ordinance effective on January 1, 2010, it contains an emergency clause.

Mr. Jackson, building official, said that these changes would affect very few cases. He said they have approximately 300 complaints a year that they investigate. Of those, only about 15 cases in 2009 actually got to the point where the building codes enforcement officer had to issue a citation to gain compliance. Of those 15 cases that have been resolved this year, Marion County dismissed the majority of them prior to their court date because of compliance. Under the new system, instead of the code enforcement officer issuing a citation or citing the owner into justice court, the building official will be required to assess a civil penalty. He will provide the information to the owner on how to appeal that penalty, which in this case will be before a hearings officer at Marion County. He said the idea being that the owner would still have their day in court and be able to present their case and provide evidence or information regarding why they believe the civil penalty is not correct. Mr. Jackson said that was the main change and is in the last step that they very rarely used. He said their goal is to achieve compliance without any penalties and in very few cases do they have to go to such extreme measures.

Commissioner Milne asked Mr. Jackson if he knew what reason was so compelling to cause this effort. Mr. Norris said he understood that one city in Marion County was citing building code violations as criminal offenses. The legislature deemed that was not the proper way to handle building code violations.

Jo Stonecipher said the intention is to address problems with some cities. She said the Association of Oregon Counties tried to weigh in and point out that the county justice court

system was very different from the municipal court system, which is what the cities were using. She said they were apparently not successful, so they now have to change the process to take this out of justice court and put it before administrative process in the county. She said they will see how this works and it can always go back to the legislature if there is a problem.

Commissioner Milne said, once again, it is an unfunded mandate on the county. She appreciates that cities could do things differently, but she asked why the county has to bear the expense to fix the problem. Even if there is one more case or type of situation that county hearings officers have to deal with, the costs add up and not to mention the time it took to develop this proposed ordinance. She said these unfunded mandates are difficult and everyone has to learn the new process. Commissioner Milne said she was having a very difficult time understanding why the county needed to throw out the old system and create a new one for so few cases.

Commissioner Brentano asked what the fee was to file an appeal. Mr. Norris said the proposed ordinance has a \$25 appeal fee. Commissioner Brentano asked what the next step would be if one does not like the hearings officer's decision. Mr. Norris said the hearings officer's decision is final for the county, but can be appealed to the circuit court by writ of review. Jo Stonecipher said the alleged violator could take it to the circuit court pursuant to the writ.

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

Commissioner Milne read the ordinance by title only twice.

MOTION: Commissioner Brentano moved adoption of an ordinance amending Marion County code provisions relating to the assessment of monetary penalties for building inspection violations and declaring an emergency. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

3. Consider approval of zone change/comprehensive plan amendment, case #ZC/CPA 09-0001, Phillips, Clerk's File #5625 – David Epling, Cindy Schmitt and Karen Odenthal.

Commissioner Milne stated that the commissioners held a public hearing on this case two weeks ago. She said they listened to a lot of testimony and are very appreciative of the people who come and share their thoughts, ideas, and concerns for the commissioners to consider as they determine how they want to proceed with the application. She said the board closed the record after the hearing and instructed staff to work on recommendations for conditions for the applicant. The board would be able to consider those conditions that staff recommends at the meeting today in order to make their determination. In the meantime, letters, phone calls and emails voicing opinions, ideas, and pleas have arrived at her office. However, she could not allow these after record closure communications to affect or influence her decision making process. Therefore, she did not open any except perhaps two emails inadvertently. She said that the board in the future should see a reason surface to revisit the matter; they could add those comments and opinions.

Commissioner Milne apologized if there is someone listening who added some information thinking it would help the commissioners, but they were not able to consider it. She said she

talked to a couple of people about this issue and this has been a little frustration of hers for a few years. It could simply be that people do not know what has happened when the board has a public hearing and then they close the record. She said not everybody understands the legal lingo and not everybody is able to follow the steps. She hopes that in the future, when they have a public hearing and whatever the determination is, particularly in the case of closing the public record and coming back, the commissioners look at doing a press release covering a wider area of people potentially affected. She said many people feel strongly about this topic for a variety of reasons and the commissioners are not trying to disregard any input.

Commissioner Carlson said this was on her mind as well and had felt badly she could not reply to the messages. The commissioners have been forwarding all comments received past record closure to board staff member, Jolene Kelley, to acknowledge and explain why the board cannot consider their input. Ms. Kelley has confirmed with Commissioner Milne that she has responded to everyone who sent letters, emails, and phone calls, post record closure.

Commissioner Brentano said sometimes that it is after the fact before people become aware that something going on nearby may affect them. They do not receive the notice because they are not close enough. Coverage in the paper is sometimes vague and sporadic. He said there should be a better way to get the word out to a broader circle of concerned citizens prior to the hearing, so the commissioners can have a better feel for their interests as well as allowing these individuals to perhaps influence the eventual outcome, rather than shutting them out because the record is closed. He said calls and emails were inundating his office, but he had to pass them along. He understands that the commissioners are not supposed to let post comments influence their decisions, although he had some idea of what the letters and emails were expressing.

David Epling, planning, introduced Cindy Schmitt and Karen Odenthal from public works engineering staff. Mr. Epling said the case involves an application 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 to allow extraction and processing of aggregate materials on the site. He said the Marion County hearings officer held a hearing on this application on March 18, 2009, and issued a recommendation to the board of commissioners on August 27, 2009. The hearings officer determined that the applicant did not provide enough information to satisfy applicable standards and criteria and recommended denial of the application. The applicant requested additional time to compile information and address criteria before proceeding with the board hearing. The board held a duly noticed public hearing on the subject application on December 16, 2009. At that time, the applicant presented additional information and provided documentation in order to meet required criteria for the proposal. At the conclusion of the hearing, the board closed the record and set the board hearing decision date for December 30, 2009, in order to allow public works engineering and planning staff to refine conditions of approval that included traffic conditions and road improvement. Today the case is available for the board's consideration.

Commissioner Milne said they have a list of numerous recommended conditions. She asked Cindy Schmitt, public works engineering, to identify what was before the board today. Ms. Schmitt said her report contains the recommended conditions for approval for the applicant, Windsor Rock Products, and are a culmination of engineering traffic condition analysis as well as modifications and additions to the conditions suggested by DPW Engineering and Planning in their staff report of December 9, 2009.

Mr. Epling then explained the suggested additions and modifications to the conditions required for approval of the project by the board, which were identified as Q, V, W, and X. Commissioner Milne noted X was more specific than the site plan provided. Mr. Epling said the applicant must operate within those boundaries or file a new application for revision of the comprehensive plan.

Commissioner Carlson cross referenced the staff report of December 9, 2009, to the staff report submitted to the board today. She asked where in today's staff report does it mention, as a condition of approval, the area must continuously meet noise standards. She felt language must be explicit and be comprehensive to ensure the complete understanding by all parties. The commissioners discussed blasting methods and hours of operation as they pertain to noise levels. Mr. Epling said planning's condition W in Exhibit B prohibits noise from sequencing of charges and slow response levels from exceeding 98dB, which is a standard of the Department of Environmental Quality (DEQ).

Commissioner Brentano asked if a blending of zoning ordinances and comments from the hearings officer would go into the final document. Mr. Epling confirmed. Commissioner Carlson asked for clarification of "reasonable amount of regulation and process and standards." Mr. Epling answered that the geologist laid out the site processing standards. Processing standards include using the front end loader to mine the operation plus the crusher. Commissioner Carlson asked if the conditions clearly address that. Mr. Epling said the noise report states no equipment on the site can surpass those standards of 98dB. Commissioner Carlson asked if today's staff report on meeting conditions by applicants contains DEQ fugitive dust standard permits, stormwater management, and the discharge process into Mill Creek. She asked if the applicant had provided a more detailed depiction of the water discharge process designed to filter water into Mill Creek as requested. Mr. Epling said yes.

Commissioner Carlson asked if they would be addressing the hearings officer's concerns as referenced in number 11 of the December 2009 report, which states "the National Pollutant Discharge Elimination System Permit as a means of regulating possible pollution runoff during the storm water events." Mr. Epling confirmed that was correct.

Commissioner Carlson asked if number 13 of the December 2009 report, where staff suggests a condition of approval that requires seismic monitoring of each blasting event at the nearest structure and limits the peak particle velocity at residential structures to ½ inch per second, is included in today's condition list. Mr. Epling said it was in S of the December 2009 report, which denotes the general blasting plan. Commissioner Carlson said that additionally, they could adopt a condition requiring air blasts to conform to the U.S. Bureau of Mines' recommended air pressure limit for residential structures. She asked if they should add that specific language to S so that it is clear. Mr. Epling stated the 98dB limit is the requirement for residential structures and the noise study discusses that. He said the noise study referred to 125dB. He said staff questioned that and asked the applicant if it would be possible for them to meet the 98dB. He said he received an email reply from them that is contained in the file, which stated that was possible and is for residential structures.

Commissioner Carlson said that number 13 of the December 2009 condition report says the condition of approval would require seismic monitoring of each blasting event at the nearest structure. It does not say residential or otherwise. It says it limits the peak particle velocity at residential structures to ½ inch per second. She asked Mr. Epling if what he is talking about is

different. Mr. Epling answered there was not really a difference because they have to be at or under the 98dB limit, which is for residential structures. He said under Q of today's condition list they discussed the front end loader and the monitoring of its noise by receivers at R5 and R6. Commissioner Carlson asked if either of those two require the seismic monitoring of each blasting event. Mr. Epling replied he thought they could add the language into the condition if it was not already there under the general blasting plan in S of the December 2009 report. Commissioner Carlson asked if it was actually in the general blasting plan. Mr. Epling said that was correct. The commissioners invited Sterling Anderson, planning director, to comment.

Mr. Anderson said he would suggest to the commissioners that they add that wording to S of the December 2009 report. He would also suggest that whatever report that inspires, the board require its submission to them so they may confirm that the applicants are meeting those requirements.

Commissioner Carlson asked Mr. Anderson if the applicant could be required to submit a more specific lighting plan prior to operations, as delineated in number 14 of December 2009 report. She said a condition of approval could also require the applicant to obtain all necessary state and federal permits. She said this is on state or federal air and water quality, which is T of the December 2009 report. She said the lighting plan was L of the same.

Commissioner Carlson asked if Ms. Schmitt was talking about driveways when she referenced sight distance. Ms. Schmitt confirmed. She said she thought those were all included as well in today's condition list. She said it looks like if they include the noise and the seismic monitoring, the condition list will be complete. Commissioner Carlson said she thought it was important to match what the commissioners said was necessary with what is actually included in the requirements.

Commissioner Brentano said he had one concern left and that was the roads. He said the traffic plan seemed vague. He said the present plan calls for the commissioners to wait for an analysis from the applicant and then they could agree and everything would move on. He said that does not give him a lot of assurance what it is really going to look like. He said they have talked about the calls, letters and emails that have come in since the closure of the hearing and the commissioners' inability to read or respond. He said a lot of those were the same things they heard in the public hearing, which were concerns about noise, lifestyle, property value, and views none of which has protection.

Commissioner Brentano said quarries anywhere in the state of Oregon are as much a permitted and accepted use in exclusive farm use (EFU) zones as a farm itself. They have just as much right, assuming the quantity and quality of material, to extract that rock and haul it to market as a farmer does to grow corn and haul it to market. That fact leaves the commissioners without the option to say no, we do not want a quarry in there. He said the only thing the board can do is to try to minimize the impact to the surrounding community. He said some of those impacts are what Commissioner Carlson just went through in addressing the different conditions for controlling noise and dust. However, the one thing he is personally concerned about is the road and the driving. He said he is very familiar with this area as his garbage company trucks had traversed those roads. He would only send their smallest trucks up that way because he knew what the road is like. They operated a transfer station that would use Fern Ridge Road with a truck and trailer a couple times a week, but not heavy usage. He said the area is lovely and he would hate to see it ruined.

Commissioner Brentano said he saw the film of the truck driving the roads. They showed a lone truck and trailer at a slow speed, just barely having enough room. He could see it swinging out into the other lanes to make the turns and the trailer dropping off on the inside of the intersection. He said it is obvious that these trucks will have an impact on the road. As a former truck driver, he knows that they take the shortest and easiest route. He said the City of Sublimity asked that the applicant's truck traffic avoid Church Street and they apparently agreed to it. Commissioner Brentano said he did not think that was realistic. He said he knows there will be plenty of traffic on Church Street.

Commissioner Brentano said the only things the commissioners have left to control are protection in terms of safety, public property roads and streams. Commissioner Brentano said when applicants do a study, it is to minimize their cost and that is not satisfactory to him in this case. He said that he does not blame them and would do the same if it were his project. He said his plan identifies three haul routes instead of the two. In the original plan trucks were to go to Boedigheimer and then if they were heading south, they would go to Fern Ridge and if they were going north, they would go to Triumph Road and Cascade Highway. However, there would be plenty of trucks going down Church Street, so all three routes need addressing.

Commissioner Brentano said the existing overlay on the roads has a 20-year design life. He said it is troubling to him that Windsor Rock Products have never been able to give a firm number of how many trucks they are going to have. Based on what they have said he would like pavement increased on Coon Hollow, Boedigheimer, Fern Ridge, Triumph, and East Church. His basic plan would require road widening, overlay be done, and a minimum width obtained throughout with widening of intersections. He said the trucks need room to pass each other safely. He said the applicant must accomplish this prior to any mining operations. However, he said the applicant might have a year to accomplish the overlay of the road.

Commissioner Brentano asked Ms. Schmitt to clarify the width requirements DPW engineering has determined for the roads. He would argue for 22 feet. Ms. Schmitt said the roads are in the 22-foot range already, so the extent of the widening is minimal. She said part of an overlay's purpose is to get the road width more consistent throughout its stretch. Ms. Schmitt said those roads that are proposed to have a 22-foot width are almost 22 feet now. She said the target is probably 21-feet wide on the straight-aways.

Commissioner Brentano said the foregoing was his basic plan and concern. The test comes right away. He said if the commissioners put requirements on a project it is not because they are trying to stop the development, but must be proportionate to the amount of usage and impact the development has. He believes his suggested requirements will pass that test. He said he has one alternative: He would hold everything and let the analysis be done and agreed to and then present it to the board and, if determined by them to be acceptable, he would vote yes. However, without his proposed change or without the applicant's study, he is not willing to continue. He said he does not know how that affects board time limits, but he cannot approve the application as it stands.

In response to Commissioner Carlson's inquiry, Jo Stonecipher said they distributed copies of Exhibit B this morning and have more available and the applicant has seen it. Commissioner Brentano said the change described by number 8 of Exhibit B is "acknowledgment" that East Church would get substantial use. He said he asked public works engineers what would be

reasonably required by the roads affected for them to hold up over a 20-year period with normal maintenance.

Commissioner Milne asked what the requirement was currently for the depth of pavement on Coon Hollow and Boedigheimer Roads. Ms. Schmitt said she did not have that information available. Commissioner Brentano said the heaviest use by trucks coming and going would always be on Coon Hollow Road so it implies more depth. Commissioner Milne asked if five inches of overlay would be a reasonable requirement relative to other roads that have this type of traffic. Ms. Schmitt said it refers to additional pavement to what is there now. She said Public Works engineering did a quick assessment based on current information and the amount of truck travel predicted for each road. She said they do not have a completed analysis from the applicant in order to give them information about how much traffic the current road is able to sustain.

Commissioner Carlson asked if it would be possible to include in the language an alternative, such as if the applicant could get the study done and if it came out with a different number than predicted. Ms. Stonecipher said to determine the best treatment for the long term use of the road, the analysis is the appropriate way to go. It is a perfectly viable option to adjust the numbers if necessary.

Commissioner Milne asked if the minor road surface widening required for 21 or 22 feet is the best estimate based on expertise and because there is no study as yet. Ms. Schmitt confirmed that was correct. Commissioner Milne stated that without the study there really is no way to know for sure what the cost would be. Commissioner Brentano said any impreciseness in engineering's answers today is not their fault because he just brought this up in the last couple of days. Ms. Schmitt said when they go through a pavement-design process, the biggest questionable area is how much strength the existing structure has and they took their best estimate based on what they do know. She said the likelihood of the analysis radically changing their estimate is probably not very significant. Their confidence level on general thicknesses is reasonably high for most of the roadway.

Ms. Schmitt said it was the systematic testing along the roadway that helps find the spots where substructure might be particularly weak because it is over a creek or other reason. Commissioner Milne said so it is not going to be five inches from point A to point B, it is going to vary. Ms. Schmitt said they have done part of the assessment based on the information they have and their confidence level of their design for a 20-year life is 75 percent. They feel this would give the majority of the roads a 20-year life with the loading numbers applicant provided. They might have overestimated the strength of what is there at particular spots or slightly underestimated the strength in some places where the strength of the underlying base is quite good.

Commissioner Milne asked how many miles of roadway is being discussed. Commissioner Brentano estimated about five miles by just looking at the maps. Commissioner Brentano said there is some work he wants done before any rock hauling, such as adequate widths and intersections. He said paving can wait, but should be done within a year. He wants to delay a decision until the applicant provides analysis that both parties may agree to. He said, otherwise, it is all too vague and he cannot continue.

Commissioner Carlson suggested allowing for some negotiation between applicant and public works if applicant provides a study, which demonstrates differences. They could deviate from the specific plan as 3 inches of overlay could be required in one spot and 6 inches in another,

rather than assuming it is 5 inches. She was also curious as to how the applicant was planning to finance the road improvements because intersection work is expensive. Commissioner Brentano replied that those that profit from the changes should pay for them. Commissioner Milne said there needs to be flexibility that would allow the applicant to have a study done and if their legitimate study findings differ from staff's, they would have the opportunity to make their case for an adjustment of road requirements.

Ms. Stonecipher said she and Commissioner Brentano discussed the proportionality issue the previous day. She realizes that the one year timeline may be in effect. She said there could be influence to proportionality by the number of trucks using the road, how long it will take the operation to get into production, and the quantity of mined rock. She asked if the board would like to consider the idea of extending the one year timeline for a longer period or basing it on the idea of the amount of rock mined or the number of trucks. She said it would give better information to the engineers as to what effect it has on the pavement and safety factors. Ms. Stonecipher said there would be many start-up costs and there might not be a lot of money coming in at the very beginning.

Commissioner Milne said Commissioner Brentano has recommended a standard of what he thinks is appropriate and she is not challenging that. She just does not know if that is going to meet the needs to the best of ability. If the applicant chooses to provide that information from a credible source she thinks they ought to be able to do that.

Commissioner Carlson wondered if there were a way they could modify the language to talk about making improvements on a timetable negotiated between applicant and public works that would meet the proportionality test and suggested a cap of no later than five years. She said the timeline should be proportionate to the amount of aggregate proceeds gained from the quarry so applicant is able to pay for the improvements.

Commissioner Brentano said he wants to be firm to insure completion of improvements in a limited timeframe. He said this is the time the board has the leverage to insist. He knows by experience the road widths, overlays of pavement and intersections in the area are not adequate for the Windsor gravel trucks to traverse. He originally suggested a one year timeline for necessary improvements and felt that was adequate. Commissioner Milne said she does not know their budget, business plan or economics behind it. If they damage the road further, it will be a bigger expense for them to fix it. Ms. Schmitt suggested a security deposit could be required to help ensure the completion of road improvements.

Sterling Anderson said the board's options for flexibility are either the applicant performs the improvements delineated in condition number 8, or they perform their own study. He said if public works approves the predicted end result of their study as meeting the goal of maintaining the 20-year lifespan of the roads with that kind of impact, which needs analyzing with the existing underlying road structure, there is the flexibility. He thought there needed to be certainty in the timing aspect, possibly tied into a certain level of income generated or a certain amount of aggregate produced. He said he was concerned about the need for proprietary information. He said in the past, production levels were proprietary information and unavailable. DOGAMI collects that information, but it is private and they do not release it. He does not know if they can tie something to information that is not available, whereas time is a much more reliable catch point.

Commissioner Milne said regardless of flexibility to the applicant, the requirements themselves would not change. Commissioner Carlson asked if it would be possible to present options to the applicant. Mr. Anderson said if the applicant believes that the study will show that less improvement is necessary, and then they might choose that direction in order to save expense provided the 20-year life of the road requirement be satisfied.

Mr. Anderson said the purpose is to mitigate the impact of the additional traffic. He said without the kind of detailed information that the study would provide, although staff is 75 percent convinced the present information is good enough, it gives the applicant the flexibility to do the study if they want to put the money and time into that up front. It may or may not work out in their favor financially. Mr. Anderson advised when it comes to a land use decision of this kind and the board is required to mitigate the impact, the commissioners can certainly take the economic aspects into consideration. However, if a reasonable cost associated with mitigating that impact is unacceptable to the applicant, then it is unacceptable. He said this might not be the best site because of the lack of adequate roads. If you cannot mitigate, you cannot approve.

Commissioner Carlson asked what types of financing options are available for developers such as Windsor Rock Products, since they are trying to finance something that includes a public roadway. Mr. Anderson mentioned some mining has grown very big recently, multinational corporations have bought several of the local mining operations, and they may have the money already available.

Commissioner Brentano said a timeline acceptable to public works would most likely be a comfortable position. Commissioner Carlson suggested a stipulation such as “before five years” or sooner if damage is being caused to the roadways. Commissioner Brentano said he still wanted to emphasize the importance of improving intersections and widths of roadways before hauling any rock, as it is a safety issue. Ms. Schmitt said the width requirement is a little tougher to tackle by itself, because it really needs to be included in the overlay process for the small amount of extra width as referenced. She said if they address roadway width as a standalone project the quality will suffer and the work could fall apart before placement of the overlay.

Commissioner Brentano said there were some areas that were 18-feet wide. He said those areas must be improved so a truck is not forced into another lane or even further out into breaking down the shoulder. He added the same with intersections before they haul any rock.

Commissioner Milne suggested letting the experts discuss how to meet the requirements the board has voiced today. Commissioner Carlson asked if everything was coming back in the final report, so they might conceptually talk today without the exact language. Jo Stonecipher confirmed that was correct. Ms. Stonecipher said the board could direct staff to take into consideration everything the commissioners have told them today and bring back the ordinance in final or in draft form if the board wishes to make corrections. She said if the commissioners cannot come up with a final decision that everyone can adopt, recognizing that there is some possible disagreement on the conditions, the board can always reconsider its decision before the final order is signed to allow dissent if necessary.

Commissioner Carlson commented the board is relying on public works and the permitting and oversight personnel to scrutinize closely all of the mitigating factors talked about in the public hearing and the board session today as they move forward.

Commissioner Brentano commented that the approval of the quarry is a matter of state law. Commissioners cannot say yes or no. All they can do is mitigate the impacts. Commissioner Milne added they take an oath to uphold state law. She said she is not basing her vote on personal likes or dislikes, because that does not matter. She suggested that people take their complaints about a state law to the legislature. She said she understands the personal issues and takes them to heart.

MOTION: Commissioner Carlson moved approval of zone change/comprehensive plan amendment, case #ZC/CPA 09-0001, Phillips, Clerk's File #5625 with the conditions set forth by Public Works. These conditions include replacing A through T in the originally submitted document dated December 9, 2009, from David Epling and Sterling Anderson with G-1 through G-15, which revises and expands language in Q about the management of noise standards, and adds V, W and X; and, in addition to those changes, add language to S of December 9, 2009 report regarding seismic monitoring of the blast events; and, with regard to changes proposed by Commissioner Brentano (Exhibit B), changes to G, are as follows. G-3 has additional language "from the west property line to a point at least 250 feet each of the access to the mining operation"; G-16 is renumbered G-15 and contains the new language "and striping," after the word signing. The original G-15 is incorporated into G-8 and G-8 is modified to include language, as proposed by Commissioner Brentano, to allow the option of a study to be done by applicant first and approved by Public Works, that staff would consider putting some upfront security into the language, and the timetable of completing overlay work would be changed to within five years and the addition of the Church Street route to have minimal use; however, if Church Street becomes a primary route, a weight limit restriction for the street may be imposed. If applicants choose the study option, completion must occur before hauling begins. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

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

None.

Commissioner Milne adjourned the meeting at 11:17 a.m.

Attachments: A – 2008-09 Carts Presentation

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