

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, January 9, 2008
Marion County Courthouse Square

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

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

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS

Approve the reappointment of Teresa Cox to the Board of Trustees of Public Defender of Marion County, Inc., for a three-year term ending December 31, 2010.

BUSINESS SERVICES – HUMAN RESOURCES

Approve the fifth and sixth amendments to the Marion County 401(k) Employee Savings Plan to bring the plan into compliance with new regulations.

Approve recommendation to reclassify a position in the Juvenile Department from learning specialist to family support specialist and reclassify the incumbent.

HEALTH

Approve amendment #13 to the intergovernmental agreement for the financing of mental health community crisis services and jail diversion and case management services in the amount of \$709,092.

Approve amendment #14 to the intergovernmental agreement for the financing of local administration and developmental disability services in the amount of \$578,141.

PUBLIC WORKS

Approve the renewal of an agreement with David Wurdinger for the use of 10 acres of land for grazing purposes.

Approve a two-year extension to the agreement with Clean Harbors Environmental Services for operation of the Marion County Household Hazardous Waste Program.

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TAX COLLECTOR

Approve an order authorizing a property tax refund in the amount of \$20,805.80 to Grassland Holdings, LLC.

Approve an order authorizing a property tax refund in the amount of \$20,860.13 to Unique International Co., LLC.

Approve an order authorizing a property tax refund in the amount of \$99,999.61 to First Pacific Corporation.

MOTION: Commissioner Carlson moved approval of the consent calendar. Commissioner Milne seconded; motion carried. A voice vote was unanimous.

ACTION

DISTRICT ATTORNEY

1. Consider approval of intergovernmental agreement with the Department of Justice to assist district attorney representation of the state in juvenile dependency proceedings in the amount of \$205,075.85. – Walt Beglau, Sarah Morris

Walt Beglau, District Attorney, and Sarah Morris came forward to discuss the intergovernmental agreement with the Department of Justice to assist in district attorney representation of the state in juvenile dependency cases. Mr. Beglau said his office oversees over 1,000 juvenile dependency petitions a year. The only other county that handles more is Multnomah County, which has more than twice the population of Marion County. The dependency actions allow the district attorney's office to wrap their arms around vulnerable families and guide them through difficult times. Although prosecutions are important, dependency court represents the core of Marion County's response to its children. This is a local responsibility that is intertwined with everything they do for children, including representation through CASA, foster care, and service delivery through Family Building Blocks, their relief nursery. Today he is bringing forward a rare opportunity to enhance the Dependency Court program. Marion County was awarded \$205,000 by the state, based on a formula of children in poverty, to enhance the district attorney's capacity to work in the juvenile court around dependency. The funding extends through June 30, 2009, continuing the last biennial award.

With these dollars they intend to dedicate 2.0 FTE, a deputy district attorney and a support staff person, to this program. The Attorney Generals' goal is to create consistency in the early stages of dependency statewide and this allows them to achieve that equilibrium better in Marion County. By entering into this intergovernmental agreement they can achieve three primary goals: meeting the obligations of their agreement and their contract; ensuring that they are enhancing and supporting the work of their partners in the Juvenile Department; and, finally, doing better for kids. Mr. Beglau says they can deliver on these objectives through entering into this contract. He introduced Sarah Morris to discuss the agreement and partnerships. If the board approves the contract, she will be providing organizational leadership for this program.

Sarah Morris has worked as a deputy district attorney for Marion County for 12 years. For the past three years, she has been the designated drug-endangered children prosecutor. She has spent considerable time developing partnerships with law enforcement and other departments such as the Department of Human Services, Child Welfare, the Juvenile Department,

and Family Building Blocks. When this opportunity presented itself just after the biennium, she and District Attorney Beglau discussed how she might be able to assist in enhancing their services. She researched the services they currently provide and explored the question of how this agreement could better serve the needs of children and families in the community. In her view, the most important component is that it gives a chance to help drug-endangered families by holding parents accountable but also providing services in an appropriate and efficient manner and allowing children to go home when that is appropriate.

Ms. Morris said that the current staff has done an excellent job of processing these petitions, but that by having a more active role in the courtroom, they will be able to assist families in making sure they are getting the services they need and that their children are safe and healthy. That is the main goal of this contract. It will provide enhanced presence by the district attorney's office in court hearings. There is not a promise for them to be present at every court hearing, as this probably would not be possible even with the addition of another deputy district attorney. Bill Howell and Andrea Poole, who have been the two deputy district attorneys at Juvenile Court managing this large caseload, are excited about the opportunity to enhance the services as well. Adding a new member to this team will help assure that children and their families will have enhanced service in court hearings through partnerships with the Juvenile Department, DHS and the courts.

Commissioner Carlson said it was good to have this additional representation. Many of the questions about this program have already been answered from an earlier presentation at Management Update. She has some concern about the sustainability of the positions if the state dollars go away at some point. Walt Beglau said that Hardy Myers, the Attorney General, made a very focused effort to the legislature to support this program. This same question was asked at the Oregon District Attorneys Association Executive Meeting in December. Mr. Myers made it clear that he has a high level of confidence that this was a long-term investment that would be continuing. Mr. Beglau said that he has a level of confidence that this funding will go on, but he recognizes that it is still at the mercy of the legislature.

MOTION: Commissioner Milne moved to approve the intergovernmental agreement with the Department of Justice to assist district attorney representation of the state in juvenile dependency proceedings in the amount of \$205,075.85. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano praised Ms. Morris for her skills and experience and said she would be an excellent advocate for children in this program.

CHILDREN AND FAMILIES

2. Consider approval of the Children and Families Commission six-year plan for improving outcomes for Marion County children and families. – Tamra Goettsch, Pamela Abernethy, Rod Calkins, Maureen Casey, Faye Fagel and Dick Withnell

Tamra Goettsch, interim director of the Children and Families Commission, introduced the Commission's six-year plan. All six presenters are commission members. They will be discussing each one of the focus areas of the plan. According to the Oregon statute, the main purpose of the county Children and Families Commissions across the state is to promote wellness for children and families, to mobilize communities, and to develop policies to oversee the implementation of the coordinated plan, which in Marion County is the Six- Page -3-

Year Plan to Improve Outcomes for Children and Families. In addition, some of their other responsibilities at the commission level are to inform and involve the community and its citizens, identify and map resources, develop local policies, priorities, outcomes, and targets, and monitor the implementation of the plan and its results. They will evaluate the targeted outcomes of the five focus areas of the plan. Ultimately, the outcomes from their progress will be turned in to the state and reported to the state legislature.

The local planning process is community-driven, with many voices providing information and input into the process. This provides them an opportunity to look critically at what is happening in the community. They review data and identify the impacts on services to children and families. They develop strategies to address the gaps and identify outcomes and systems to measure success. This also helps them to identify partners and other systems they need to tap into. This process helps inform the state on where they need to be focusing attention, money, and staffing.

She has chosen some data points from the Oregon Progress Board to review the situation in Marion County. These items are included in the plan summary packet. The third grade reading scores in Marion County have improved but are still lagging behind the state average. The high school dropout rate has been fairly static but is still unacceptable and is an area where they want to achieve improvement. The indicator for eighth grade use of alcohol has shown a three percent increase in the rural areas. In Salem/Keizer they use a different survey, and this has found that in the past 30 days, one of every five eighth graders is using alcohol. They will be trying to find strategies for dealing with this problem. Because of methamphetamine use and other issues, many families are struggling in the areas of child abuse and neglect.

The agreement on the community issues is what has brought the group together as a common voice. There is a list of 20 of these issues on page seven of the packet. There is also a list of identified gaps and barriers on page eight. Mental health/substance abuse is a particularly underfunded area where the need is greater than the availability of services. They hope to focus on the system gaps, especially in five key focus areas.

The questions they ask at the commission are: how they will measure their success, and how many children are they able to save? The state guidelines for the plan allow the identification of a maximum of five focus areas. Their five focus areas are:

1. Runaway and homeless youth;
2. healthy development of young children;
3. student success;
4. health care access and availability; and
5. family preservation.

Faye Fagel, Marion County Juvenile Department, is also a member of the Children and Families Commission. She is co-chair with Elaine Martin of Youth Consortium. She is here to speak about focus area 1, runaway and homeless youth. The Commission on Children and Families has targeted runaway and homeless youth and developed an action team around this issue. The extent of the runaway and homeless youth problem is unknown, since there are many different ways to count these youth. There are homeless families, portions of families that are homeless, runaways living on their own, and youth of various ages. Because of their transient nature they may not be looking for services or wanting to be counted. There are also different definitions of runaway, homeless and abandoned youth, which can complicate matters

further. Based on information from the Law Enforcement Data System, they estimate there are about 3,120 Marion County runaway and homeless youth. HOST and HOME (two of their providers) see about 800 kids a year. The police reports for 2006 gave a number of about 786 runaway reports, with many runaways going unreported. The Salem/Keizer School District reported in 2007 that they had roughly 1,160 kids enrolled in school even though they or their families were either runaway or homeless. They want to keep kids engaged in the school system even if they are homeless or runaways. They are trying to develop an integrated system of prevention, intervention, case management, accountability, and goal-directed options to ensure that runaway and homeless youth are safe and not living on the street.

The action team has been working for about 18 months to bring together a large number of service providers, law enforcement, faith communities, and housing people to discuss the background issues regarding homelessness. These issues include high-conflict families, poverty, housing issues, drug and alcohol issues, neglect and abuse, and family function issues. They have outlined a model to try to preserve families before children run away from home. They are also trying to identify runaways quickly to do assessments, interventions and reconnections with the family. They have partnered with Community Action, which is working on the 10-Year Plan to End Homelessness, and the action team is working on the youth portion of that plan.

The CFC has also submitted a grant application to the legislature to get a portion of the \$900,000 allocated for runaway and homeless services. The state liked their plan and has talked about providing some funding, although they have not made their final allocation decisions. Marion County will probably be able to count on the state for at least a small portion of their plan. The next portion is a broader community discussion to discuss the model and how to make it work. The following are areas of measurement they are looking at in the youth focus area:

1. Increase attendance at school by youth identified as runaway or homeless.
2. Reduce the average period of time to clear runaway reports.

The eventual goal is to have no homelessness or kids living on the street. In the meantime, they are trying to minimize homelessness by providing protection, support, and family preservation methods, and working with the other systems that are in place.

The next speaker was Pamela Abernethy, Marion County Circuit Court Judge, assigned full-time to the Juvenile Department. She is also vice-chair of the Children and Families Commission. She is here today to talk about focus area 2, Healthy Development of Young Children. In the last year she has been named a National Fellow of Zero to Three, a national organization dedicated to improving the emotional and social development of infants and toddlers. Regarding the issue of healthy development of young children, she repeated a quotation from p. 18 of the plan, "Probably the most important period in everyone's life is the one they cannot remember." The flip side of this is that the quality and reliability of a child's first relationship are what forms the physical architecture of the child's brain. What happens to small children affects the eventual development of adolescents and families.

They have chosen three strategies to focus on two targets. The three strategies are multi-agency networking, improving coordination to address gaps and barriers, and system-wide training. They are trying to do more with less by being better coordinated and more systematic about providing services to families. They have chosen to target two important aspects of the zero-to-

five arena: home visits for families and childcare training for friends, families and neighbors who care for children. They provided a pilot program last year in these areas, and it was very successful.

Maureen Casey, superintendent of Willamette Education Service District, is also a member of the commission and is here to speak on focus area 3, student success. The student population of Marion County includes a high percentage of children living in poverty. There are nine districts that have more than 40 percent of the student population designated as economically disadvantaged. In two districts, the percentage of economically disadvantaged students exceeds 70 percent. There are many children who are not healthy physically, emotionally, or socially. There are homeless children and children who live in homes that are not safe or nurturing. The children of Marion County are culturally and linguistically diverse, and in many cases English is not their first language. Seven out of the ten WESD districts exceed the average number of English-language learner students in the district. There are very high mobility rates, and many children enter school unprepared to learn. There are children with disabilities and special needs, along with talented and gifted children who need to be challenged. All these factors affect student achievement and graduation rate. They have teachers and administrators who do a remarkable job of making sure students are successful, and there are daily success stories in the system. In Marion County, there is an army of people from throughout the community who are willing to partner with their school districts to create solutions to maximize student success.

Her focus area, Student Success, is an effort to engage the entire community in a partnership with school districts to focus on reading and to become part of the solution. This includes changing the views of adults in the community regarding their role in promoting reading, including mentoring and modeling recreational reading as an enjoyable activity to be done outside a school setting. They want to emphasize that reading is fun and also a lifelong tool for success. They have representation from all ten Marion County school districts, and their first planning meeting will be held on February 7. Every individual district will customize a plan to roll out the reading initiative in their own community using local volunteers and support systems. In April, after the planning is done, the individual programs will be launched. The outcomes will include a change in reading achievement scores, lower student dropout rates, and a change in the culture of adults and extended family members who will learn they can make a difference in the academic achievement of youth. There has been a tremendous response of enthusiasm for this program in the community. The focused goal will be the same for all districts, though each program will be designed and implemented locally. In three of the districts, there are no public libraries, which is a problem during the summer months. The adults can make a difference by taking children on a field trip to the library or otherwise making books available. Every member of the community has a chance to play a role in this program, and she thanks the board for their support.

Rod Calkins, Marion County Health Department administrator, is also a member of the CFC. His topic is focus area 4, health care access and availability. The objective for this focus area is that parents, youth and children will have universal access to health insurance, primary medical care, mental health and substance abuse services. The lack of access to health care is a major impediment to many of the goals the commission has for children. One major hole in the system is the lack of coverage or funding for services. That lack of funding tends to kick in just when it is most needed. For example, when parents have their children taken away, they lose their eligibility for the Oregon Health Plan, which makes it much more difficult for them to undergo substance abuse treatment so they can get their lives in order and get their children back. There is also no money under Oregon Health Plan to pay for substance abuse

treatment. The lack of access to care affects everyone, because if people do not have care, they tend to wait until the problem becomes difficult, if not impossible, to treat. They end up seeking care in emergency rooms, which is the highest-cost level of care, with costs is passed on to the rest of the community. The lack of prenatal care also leads to a high risk of birth defects.

There are some positive community projects going on. The Mid-Valley Independent Physicians Association and Salem Hospital have partnered together to fund prenatal care for women who do not have health insurance coverage. This partnership has served hundreds of women over the past few years and has probably prevented many adverse outcomes and saved many dollars. However, because the lack of health care access is a much larger problem than these projects can address, the CFC has come up with this focus area. Over the last few years, there have been a number of discussions at the commission on this topic. This focus area envisions community education, advocacy, and a call to action to expand that understanding. The goal is to provide universal health care coverage for children either through insurance, OHP eligibility, or additional funding. This may seem to some to be an impossible goal, but he believes it is worth aiming for. The outcomes they are seeking include attitudinal change, informational education, and measurable impacts in health care. There is no easily identified data source that can provide the full picture on this issue.

Dick Withnell is a member of the Children and Families Commission Executive Committee. His topic is focus area 5: preserving families. He is concerned that Marion County is around the bottom of the scale on half of the 50 benchmark measurements for all 36 Oregon counties. There are serious needs in the community but there are also many opportunities to make a difference. A huge piece in preserving families is the need for foster care. Coming out the methamphetamine initiative in 2005, they asked the community to come forward as foster care families. They asked the faith community in particular to come up with 75 families, which they did. The total need for foster care families is 250, which they requested a year ago. They presently have between 210 and 218. This is not because they are not recruiting families, but because there are many families coming off of foster care. One of their strategies for foster care is to provide assistance with respite care. Foster Parents Night Out is a new program that has started out very successfully. It allows foster parents to drop off the children and have an evening out. These events have been held at the Salem Christian & Missionary Alliance Church. The first event had 45 children present. For the second event, there were 75 children present for a Christmas party with Joe Broeker, former Willamette University football coach, playing Santa Claus. More of these events will be held in the future.

The need for more foster care homes is clear, but the other four focus areas of the plan also need to be addressed to help preserve families. All of the focus areas are intertwined. As a businessman, he enjoys focusing on economic development, but is also essential to focus on the community and keep it strong and healthy. He thanked the Board of Commissioners and the Children and Families Commission for the work they are doing.

Ms. Goettsch asked the group if they had questions. Commissioner Carlson thanked the group for their presentation and said they had covered much territory in discussing the plan and the issues it addresses. These comprehensive plans are intended to be the community's plan, not the commissions's plan, and the responsibility is that of the entire community. The CFC is a large commission of 37 people, but they cannot tackle it all themselves. Most of the Commission on Children and Families funding comes from the legislature, and a big piece of the plan focuses on measurement, which is an art instead of a science. The state commission has been involved in some discussions at the request of the legislature about how to measure

progress. Commissioner Carlson noted that in some areas, such as child abuse, the statistics may worsen (as they have in the case of Marion County) but this can be because of increased awareness and reporting, not because there is more child abuse going on than before. This can be somewhat deceptive for measuring progress because even though things are better than five years ago regarding child abuse, the statistics come out looking worse. She is looking forward to their continued work and results in this area.

Commissioner Milne thanked the group for their report. The report and comments are very compelling and she supports their work strongly. She said that when a plan like this is put together, there is always disagreement about how details will be worked out. She mentioned Rod Calkins' comments regarding universal access to healthcare and noted the difficulty of achieving these results. "Universal access" is a phrase that comes with a lot of controversy. Commissioner Brentano said all the subject areas are important, and that he continues to find out about problems in the community that surprise him. The press has recently challenged local government regarding issues such as Marion County's low reading scores. He is watching these scores carefully and is intensely interested in the topic although he is aware the county Commissioners have little or no control over school budgets and other key aspects of this issue. He was shocked about the figures on alcohol use by eighth graders. He believes that with this plan, they are on the right track toward making progress, although the situation is dire in some areas. Commissioner Milne noted Mr. Withnell's comments on the economy. Studies have proven that a healthy economy is the best defense against poverty and its accompanying social problems. It is important to consider how these issues are connected with the issues of providing jobs and economic stability for families to be able to take care of themselves. Mr. Withnell's participation has been especially helpful in dealing with these questions. Commissioner Brentano mentioned his continuing concerns about hunger and food issues among children and families.

MOTION: Commissioner Carlson moved to approve the Children and Families Commission's six-year plan for improving outcomes for Marion County's children and families. Commissioner Milne seconded; motion carried. A voice vote was unanimous.

PUBLIC WORKS

3. Consider approval of a resolution for a loan not to exceed \$79,000 from the Environmental Services Fund to the Fleet Fund for the purchase of vehicles to be used for sheriff services at Chemawa Indian School. – Alan Haley

Alan Haley, Public Works, reported that the issue before the board today is to approve a loan from the Environmental Services Fund to the Fleet Fund to purchase three sedans and one off-road vehicle for the Sheriff's Office to use in providing services to the Chemawa Indian School. The Sheriff's Office has an agreement with the Bureau of Indian Affairs (BIA) to provide police services to the school, which includes payment to the Sheriff for the cost of vehicles to use in providing these services. The Fleet Fund provides light duty vehicles for the county, including Sheriff's vehicles. However, the Fleet Fund did not plan on supplying these vehicles and does not have the funding to make this purchase. Therefore, the Public Works Department is proposing a five-year loan from the Environmental Services Fund to the Fleet Fund, in an amount of not more than \$79,000. The Sheriff's Office will make monthly lease payments for five years to the Fleet Fund for the three sedans and an annual payment for the off-road vehicle for three years. The Fleet Fund will, in turn, make annual payments to the Environmental Services fund in the amount of \$20,000 for three years and \$14,000 for

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the remaining two years. These payments include interest equal to the one-year Treasury curve plus fifty basis points. The monthly lease rate and the annual payment from the BIA will generate \$21,287. This is sufficient to cover the loan payments each year and to cover the administrative costs of providing these services. Purchase of the vehicles will allow the Sheriff's Office to provide the police services to the Chemawa Indian School. The Bureau of Indian Affairs will provide funds to pay for the leasing of the vehicles from the Fleet Fund, which in turn will allow the repayment of the loan to the Environmental Services Fund. The department is recommending that the Board approve the resolution authorizing the loan not to exceed \$79,000 from the Environmental Services Fund to the Fleet Fund for the purchase of these vehicles.

Commissioner Milne asked about the number of vehicles and why one vehicle is an off-road vehicle. Mr. Haley said there is a great deal of acreage without roads at the Chemawa campus and they needed an off road vehicle for these conditions. The vehicle is a two-seat ATV. The Chemawa Indian School determined the number of officers needed. Commissioner Carlson noted that while the cost is to be covered by the Bureau of Indian Affairs, there is a line that says that the Sheriff's Office has agreed that if their contract were not renewed covering this five year period, the Sheriff's Office would pick up the cost of the lease. Since the Sheriff's budget is made up of General Fund dollars, what this means is that the county will pick up the cost. She hopes the five year contract will indeed go for five years, and Mr. Haley agreed with this.

MOTION: Commissioner Milne moved to approve the resolution for a loan of funds from the Department of Public Works Environmental Services Fund to its Fleet Fund, not to exceed \$79,000, for the purpose of purchasing vehicles to be used for Sheriff services at Chemawa Indian School. Commissioner Carlson seconded; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

4. Consider approval of applicants' request to withdraw zone change/comprehensive plan amendment, case ZC/CP 06-11, Ross, Clerk's File #5550. – Sterling Anderson

Sterling Anderson, planning manager, reported that this particular case comes from an application to change a zone from IUC (unincorporated community industrial) and AR (acreage-residential) to CC (community commercial) and to change the comprehensive plan designation from industrial and rural residential to commercial on 1.83 acres located at 5030 Rockdale Street NE, in the urban unincorporated community of Brooks (T6S; R2W; Section 17DB; Lots 400,700 and 800). In this particular instance, the case went through the process and a recommendation was issued to grant this request from the county hearings officer, who held the initial hearing. It came to the board for a hearing and at that time the applicants requested the board set the hearing over, as the circumstances for this request have changed and they wanted to go through some negotiations with the property owners. As a result of that, they have now submitted a request to withdraw the application. The staff has presented the necessary order and is recommending approval of the applicant's request to withdraw the application.

MOTION: Commissioner Carlson moved that the board approve the applicant's request to withdraw their application for a zone change/comprehensive plan amendment in case ZC/CP 06-11, Ross, Clerk's File #5550. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

5. Consider adoption of an ordinance amending the Marion County Comprehensive Plan by adopting the City of Aumsville Comprehensive Plan amendments including a

43.5 acre UGB expansion, a new industrial land policy, redesignating and rezoning of properties included in the UGB amendment, by emergency procedure. – Les Sasaki

Les Sasaki, Planning Division, said the city of Aumsville approved amendments to the comprehensive plan, which included an urban growth boundary expansion proposal for industrial lands. They submitted this request to the county for its concurrence and approval. The board held a public hearing on this particular matter, which ended up being a continued hearing to address some right-of-way issue and the inclusion of rights-of-way, and subsequently made a decision on December 19 to approve the amendments. The ordinance finalizing the board's decision is now being presented today, including a provision for emergency procedure so that the decision would become effective immediately.

Commissioner Milne said they have had a hearing about this and discussed numerous issues. From looking at the background materials presented today, it appears the City of Aumsville is in agreement and there are no outstanding issues. Mr. Sasaki said all the issues from previous meetings have been resolved.

MOTION: Commissioner Milne moved that, this being an emergency, to have the chair read by title only twice. Commissioner Carlson seconded; motion carried. A voice vote was unanimous.

Commissioner Brentano read the ordinance by title only twice as follows:

In the matter of an ordinance amending the Marion County Comprehensive Plan by adopting plan and plan map amendments to the City of Aumsville Comprehensive Plan a 43.5 acre urban growth boundary expansion to meet industrial land needs; an industrial policy restricting the conversion of land within the amendment area; rezoning of land in the amendment area; and declaring an emergency.

MOTION: Commissioner Milne moved to adopt the ordinance as read by Commissioner Brentano. Commissioner Carlson seconded; motion carried. A voice vote was unanimous.

6. Consider appeal of Planning Commission's decision denying subdivision and administrative review, case #SUB 07-15, Schipporeit, Clerk's File #5565.

Sterling Anderson, planning manager, reported this particular case was for conceptual and detail approval to subdivide a 23.25 acre parcel into 21 lots and an administrative review to reduce the special 200 foot dwelling and 100 foot accessory structure setback to 50 feet in an EFU (exclusive farm use) zone located in the 1900 block of Hampden Lane NE, Salem.

In this case the planning commission denied the subdivision application due to the failure of the applicants to show compliance with the applicable criteria that were in effect at the time of the waiver date for this application under Measure 37. The planning commission found specifically that the subdivision was not consistent with the general nature of the area, which was predominantly agricultural, and that the proposed lots would conflict with farm use on adjacent parcels. The appeal states that the planning commission denial was not based on substantial evidence in the record and seems to have been made in an arbitrary and capricious manner. In appeals of this kind, the board has several options. The board can accept the appeal as it stands, remand it back to the Planning Commission for further consideration, or

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accept the appeal and hold its own hearings. If the board decides to hold its own hearing, the suggested date would be January 30. The other option is for the board to deny the appeal and adopt the Planning Commission's decision as their own if they find this to have been the correct decision. Legal counsel may have additional comments, especially now that Measure 37 has been replaced with Measure 49. He said this is a decision that can no longer be made based on the Measure 37 waiver now that Measure 49 has voided or vacated those waivers.

Jo Stonecipher, legal counsel, said this case came before the Planning Commission on December 5. It was denied, not because of anything pertaining to Measure 37, but on its merits, because the subdivision did not meet the criteria that would be applied under the Measure 37 waiver that was still valid at that point, two days before Measure 49 went into effect. In some ways, from the Planning Commission's perspective, it was not a Measure 37 case because of the Measure 37 and Measure 49 interactions. Measure 49 is now in effect and the board has its usual options. Her recommendation in this case is that since Measure 37 waivers are no longer in effect under the statute, the applicant would have to meet the current standards for a subdivision. Mr. Anderson can confirm that this would not be possible because this is farmland, plus the state waiver is no longer valid as pursuant to the administrative rule that was adopted after Measure 49 passed. So, in effect, there is no way for the board to approve this application at this time. She spoke to the lawyer who was involved in this case, and one of his interests is to have an order, which he can appeal to the Land Use Board of Appeals (LUBA) and then put into abeyance pending resolution of the questions about how Measure 37 and Measure 49 interact with each other and the other land use rules. There are still many questions about how this will all play out. There is no longer a state waiver, even if the county considers that the county waiver may still apply, although the board has not resolved this either. By denying this application now, the board would get a final order. The applicant could then appeal that order through LUBA, where it would stay until the Measure 37/Measure 49 questions have been resolved by the courts, which will probably be sometime within the next year.

Commissioner Carlson clarified that if the board does not agree to accept the appeal, this still allows the applicant to continue their remedies through the land use process. Ms. Stonecipher said that yes, if the appeal is denied, the county will issue a final order in this land use decision, which will be appealed to LUBA. Commissioner Milne asked whether it is true that because Measure 37 is no longer in effect, even if the board were to accept the appeal, they would not be able to consider it under the terms of Measure 37. Ms. Stonecipher said that is also correct, because the state has specifically repealed its waivers, but it is still unclear if the county waivers have simply gone into abeyance or have been repealed. It is the opinion of the state that the county waivers became invalid in the same way, but the county has not taken any action. However, even without any action by the county, because this is on resource land, the state rules trump the county rules, and under the state rules this subdivision could not legally be approved at this time. Commissioner Milne said this would mean the board would have no authority, even if they had a unanimous opinion saying that the applicant's argument had merit. Ms. Stonecipher said this would be true because the state laws would prohibit the subdivision at this time. However, if the county denies their appeal, they would be able to appeal that decision to LUBA. This would also allow them to pursue their claim under Measure 49 and perhaps render this moot. It would also keep their options open until the interactions of the different laws are sorted out at the state level, as well as preserving the merits of the appeal before LUBA.

MOTION: Commissioner Carlson moved that the board deny the appeal of the Planning Commission's decision denying subdivision and administrative review, case #SUB 07-15, Schipporeit, Clerk's File #5565.

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Commissioner Milne seconded; motion carried. A voice vote was unanimous.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS – PLANNING

A. Continuation of public hearing to consider Measure 37 claim, case #M06-284, Doman, Clerk's File #5521. – Sterling Anderson

Sterling Anderson, planning manager, said this was a Measure 37 claim that was a continuation. The applicants are requesting compensation under Measure 37 for being denied, in a land use verification letter, the subject property. The property is designated primary agriculture in the plan and correspondingly zoned EFU (exclusive farm use). The subject property is south of East Lincoln Road and west of the Pudding River, about one mile east of the Woodburn city limits. The property is in five tax lots and contains a dwelling, greenhouses, and accessory structures. There is a somewhat complex ownership history to this particular case, and based on the staff's review of the criteria, there were some questions about the waiver date because of ownership changes. However, there is also a question about whether they can continue to process this claim, or whether this claim is still valid because Measure 37 is now expired. At this point, the hearings officer's analysis of this case found that Earl A. Doman, LLC, might have a valid claim for compensation under Measure 37. However, the board needed to determine whether the family acquisition date of Earl and Donna Doman's acquisition date or Earl A. Doman, LLC's acquisition date is the correct one. Tim Doman apparently has no interest in the property and should be denied as an applicant, but there appears to be some possible justification of waiver for Earl and Donna Doman or Earl A. Doman, LLC. The hearings officer recommended denial of the compensation claim but concluded that if the board found compensation was due, there are dates identified for each one of the separate tax lots.

At the hearing, the applicant requested that the hearing be continued to today to see how the vote played out on Measure 37 and 49, and that is why it is being continued today. Commissioner Carlson said she is confused because she does not see how the board has ability to approve or deny this claim now that Measure 49 has passed. She asked if Mr. Anderson had heard any more from the applicant. Mr. Anderson introduced the applicant's representative, Tim Doman.

Tim Doman, 2 Progress Way, Woodburn, OR, 97071, said he was unsure on what to do either. He said he has spoken to Mr. Anderson since Measure 49 passed but he is still unsure on how to proceed. One thing that was discussed at the last meeting was a statute that may be getting rewritten. Commissioner Carlson said she thought this was regarding the issue of the status of LLC's under Measure 49. Ms. Stonecipher said many counties are struggling with the question of transfer of ownership from family members into family LLC's, which created a break in ownership. Ms. Stonecipher asked if they had also filed a claim at the state level and Mr. Doman said they had. Ms. Stonecipher said that in that case, the state should be processing the claim with an acquisition date back to the date of the original family members for purposes of Measure 49. Mr. Doman said he had heard that the state has 120 days to respond to applicants. Ms. Stonecipher said the state is in the process of sending out packets, and that they will have a model of the packet available this Friday at a planning directors meeting. She was told yesterday at a meeting at the Department of Land Conservation that there would be materials being mailed out soon on how to help the counties deal with Measure 49 claims. The process will now be starting very soon under which the applicants will have 90 days to respond as to

which of the Measure 49 options they want to choose from for just compensation (option 1—up to three houses, option 2—four to ten houses, option 3—common-law vesting). At that point anyone with a claim with the state will receive that notice and be able to work through the state process. At this point it will be out of the county’s hands, as Measure 49 put this in the hands of DLCD for all cases in which a state claim has been filed.

Commissioner Carlson had some questions for clarification. Does it matter if the state or the county has not actually acted on or reviewed a claim, as long as it has been filed? Also, does it then matter if the county acts on this particular claim, and does the board even have the authority to do so? Ms. Stonecipher said that she suggests the appropriate action in this and the following case would be to dismiss the claims. That will generate an order, an action of the board. If anyone disagrees with the order, he or she would have recourse by word of review. It also clears up these remaining two Measure 37 cases before the board and demonstrates that they have been acted upon within the time allowed.

Mr. Anderson said that it is his understanding that in order to have a valid claim under Measure 49, it is only necessary to have filed with the state and the county, not to have actually received a decision. The state only got through about half their claims and then stopped, and many claims never got finished. Commissioner Milne asked what dismissal actually means in the context of these proceedings, and what the applicants would need to do next. Ms. Stonecipher said that if the case were dismissed, the county would have resolved it by essentially saying that the county does not have jurisdiction over this matter. This would close the case and afford the applicant a chance to take the action forward if he chooses to do so and would also provide a record that the claim was here, and that the board determined that it had no authority to act upon the claim and thus dismissed it. Commissioner Brentano said that he wanted to be sure that by dismissing this claim, the board would not be affecting any future Measure 49 claims in any way. Ms. Stonecipher said that as far as she knows, this would not be the case, and that if this did happen for some reason, the county could reopen it for reconsideration. Mr. Doman said that as he understands it under Measure 49, they would still have to come back to the county after getting a response from the state. However, it would be a completely new and different application. Mr. Anderson agreed this would be the case.

MOTION: Commissioner Milne moved to close the public hearing and dismiss the case of this Measure 37 claim, case #M06-284, Doman, Clerk’s File #5521, because the Board of Commissioners no longer has any authority to make a Measure 37 decision. This is with the understanding that the Domans would be able to pursue their claim at the state level under the new rules set out in Measure 49. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

B. Continuation of public hearing to consider Measure 37 claim, case #M06-247, Blades, Clerk’s File #5517. – Sterling Anderson

Mr. Anderson reported that this is another Measure 37 claim very similar to the last one, where an application was made under Measure 37 to subdivide the property or obtain a waiver for that purpose. In this particular case, some of the same issues arose in terms of different ownership dates on different portions of the properties, and with Measure 49 pending, the applicant’s representative requested that the hearing be continued to January 9 so they could keep their options open and see how the vote went on Measure 49. As with the previous case, it appears that the county and the Board of Commissioners have no authority to proceed

on this case, so his recommendation is to dismiss this claim as well. The applicant requested that the case be put on hold instead, but doing so probably would not serve any purpose at this time. Mr. Anderson has spoken with the applicant's attorney, who also prefers to have the case kept on hold.

Commissioner Brentano said he would rather dismiss the case at this time and then have them reopen the claim and hearing again if necessary. Commissioner Milne asked Ms. Stonecipher if this would be legally permissible, and she said that yes, if necessary, the board could reopen the hearing and undo its order. Commissioner Carlson said she felt the claim should be dismissed because the board has no jurisdiction in this case.

MOTION: Commissioner Carlson moved to close the public hearing and to dismiss Measure 37 claim, case #M06-247, Blades, Clerk's File #5517, based on today's discussion. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

Commissioner Brentano reading the weekly calendar.
Commissioner Brentano adjourned the meeting at 10:50 a.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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