

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, April 16, 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

OLCC APPLICATIONS:

Recommend Approval:

Arco AM/PM, Salem
Firehouse Cabaret, Salem
French Prairie Garden, St. Paul
Red Lobster, Salem
Roberts Publick House, Salem
US Market #115, Salem

CHILDREN AND FAMILIES

Approve amendment #1 to receive \$132,000 from the Oregon Commission on Children and Families for the claimed Medicaid administrative activities performed by Healthy Start.

PUBLIC WORKS – PLANNING

Reschedule public hearing to consider Planning Commission's recommendation in subdivision, case #SUB07-12, Elkhorn Golf and Resort, LLC, Clerk's File #5577, from April 16, 2008, to June 18, 2008.

PUBLIC WORKS – SOLID WASTE

Designate John N. Lattimer and Willis Worcester as authorized county representatives to act on matters related to the Marion County, Oregon Solid Waste and Electric Revenue Refunding Bonds, 1996.

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

ACTION

ASSESSOR

Consider approval of the 2008-09 Assessment and Taxation (CAFFA) Grant application for the amount of \$1,334,331. – Richard Kreitzer, Leslie Box, Shawn Beaton

Richard Kreitzer and Leslie Box of the Marion County Assessor's Office presented the CAFFA Grant application. CAFFA is an acronym that stands for County Assessment Function Funding Assistance. It is an annual statewide grant that is used to assist in funding the operation of assessment and taxation departments. The total statewide grant is approximately \$20 million. This includes approximately \$7 million from recording fees (35 percent of the total), \$7 million from delinquent fees on property taxes (35 percent of the total), and \$6 million in state funds (30 percent of the total). Mr. Kreitzer said the distribution of these funds is based on the total expenditures incurred by each county, with Marion County receiving approximately 6.5 percent of the total statewide grant money. This distribution is based on the county's total certified expenditures of \$6,442,584 for assessment and taxation in Marion County. The total grant amount to Marion County for FY 2008-09 is estimated at 10 percent less this year than it was for FY 2007-08. The 2007-08, the grant was \$1,482,590, and the 2008-09 grant is estimated at \$1,334,331, plus legislative appropriations of \$174,518 for a total of \$1,508,849. Mr. Kreitzer said this money is deposited in the general fund to offset the costs of maintaining an adequate assessment and taxation program. He said that funds received from this grant free up general fund moneys to be used by other departments. Mr. Kreitzer recommended that the board approve the grant as submitted.

Commissioner Carlson said she had reviewed the paperwork from this grant. She noted the high quality of the application the department submitted. She said that after reviewing staffing reports from 2003-04, she saw that they are now working with fewer staff, particularly in cartography. She asked Mr. Kreitzer if he could discuss some of the changes in staffing and the measures they have taken at the Assessor's Office to improve service delivery.

Mr. Kreitzer said there have been 26 staff changes in the department over the last 14 months. There have been 18 new employees hired due to retirements or other vacancies. When a position has come open, he has reviewed the situation carefully to see if the position needs to be replaced at the same level. He said that in many cases they have been able to hire someone at a lower pay scale or transfer some job duties to other employees. Their proposed budget for this year is approximately \$100,000 less than last year.

Commissioner Carlson asked about manufactured structure valuations. Mr. Kreitzer said that the current tax laws under Measure 50 lead to most residential properties having a higher real market value than the valuation they are taxed on, and the maximum 3 percent increase in taxable valuation is mandated by law. He said that when they reappraise those accounts, most of them are staying near market value. Manufactured homes present a different situation, because three or four years ago the market for these homes got very low and created a large surplus on the market, leading to a situation where real market value went below assessed value. The lower of these two figures is what the owners pay taxes on, so owners of manufactured

homes in many cases are paying taxes on the real market value of the home. In the last few years, the real market value of manufactured homes has increased between 10 percent and 15 percent, which means these owners are seeing a similar percentage increase in their taxes. Mr. Kreitzer said they are trying to get more consistency in appraising manufactured homes by assigning one person to do these appraisals.

Commissioner Milne said the market changes are a challenge for the Assessor's Office every year, and she thanked them for their work. She said that this year's grant is down by about 10 percent from last year, with the Assessor's Office being required to do more with less money. Mr. Kreitzer said they are looking for ways to be more efficient. They have been observing Multnomah and Washington Counties as they go through their RFP processes to see what computer programs they are looking at. He said there are difficulties in finding a vendor for these programs who can meet the county's needs and work within the structure of the Oregon property tax system. Multnomah and Washington Counties are working together on this project. Multnomah County was planning to convert to a new system by January 1, 2010, but they have now moved that deadline to July 1, 2010. Washington County will probably follow Multnomah County onto the same system a year later. Mr. Kreitzer said he thought that Marion County would probably be changing to a new system in 2012, although he would not consider converting their system in July because that is when tax statements go out.

Commissioner Milne asked Mr. Kreitzer about how the Assessor's Office would be proceeding over the next few months, since real estate values have decreased in some areas. She said that the lower values would require some adjustments in values similar to what they have seen with manufactured housing. Mr. Kreitzer said this year would be the most challenging. This is because the assessment date is January 1, 2008, and as of that date, the values had not really dropped very much. By the time people get their tax statements, their home values may have dropped, but the Assessor's Office trails the market by about a year, which provides some advantages for the budget process and in other areas. He said it would be important for them to get appraisers out in the field, since they have not been out to look at individual properties for about five years. They need to get caught up on doing physical appraisals and thorough evaluations of each property over the next five to six years.

Commissioner Milne said that she has seen some properties that have sold in her area, but she knows most did not sell for the original asking prices. She said there would probably be some appeals coming in before the Board of Property Tax Appeals. Mr. Kreitzer said that different neighborhoods are reacting differently to the changing market. He said that in West Salem, there are many properties for sale and houses are taking longer to sell, but they are not necessarily selling for less. South of Battle Creek, there are fewer homes for sale. Even entry-level homes still appear to be selling for over \$100,000.

MOTION: Commissioner Milne moved approval of the 2008-09 Assessment and Taxation (CAFFA) grant application for the amount of \$1,334,331. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

FINANCE – CONTRACT REVIEW BOARD

2. Consider approval of an order granting an exemption allowing the use of an alternative solicitation for a public improvement pursuant to the Marion County Public Contracting Rules for the North Marion County Disposal Facility Lagoon Floating Cover Replacement project (**TO BE ACTED ON FOLLOWING PUBLIC HEARING**). – Peggy Mitchell, Don Alexander, Bill Worcester

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PUBLIC WORKS – PLANNING

3. Consider hearings officer's recommendation to deny vested rights determination and request for public hearing in case #M05-103, DeSantis, Clerk's File #5101. – Sterling Anderson

Sterling Anderson, planning manager, presented this application for vested rights determination. The request involves a determination of a common law vested right to complete and continue a use that was granted under both state and county waivers under Measure 37. The applicant also initiated the actual subdivision under Subdivision Case #06-05 to divide the 38.6-acre parcel zoned FT (Farm Timber) and located in the 1200 block of Silver Falls Drive SE and the 20,000 block of Winters Hill Road SE near Silverton. In this case, the hearings officer found that the applicant had failed to provide sufficient evidence to show they had met all the common law vested rights factors to be able to continue and complete the development under the Measure 37 waivers. The hearings officer found the applicant had failed to provide sufficient information to determine the amount of allowable expenses to meet the ratio of expenditures versus cost to complete the development. The hearings officer found the applicant failed to submit any information on the cost of placing six dwellings on the six lots. On April 4, the applicant's representative submitted a request to the board to hold a hearing on this application in order to clarify the issues raised by the hearings officer.

Mr. Anderson said that in a case such as this one, the board's options are similar to those that exist in a land use case. The board can accept the appeal and remand the case back to the hearings officer for additional consideration or accept the appeal and schedule a hearing before the board (suggested date May 21, 2007). The board could also choose to deny the request and adopt the hearings officer's recommendation.

Commissioner Carlson said that for this case, it appears that the vested rights criteria were met except for the information on expenses and the ratio of expenditures to costs. She said the hearings officers had been using this ratio to determine whether the applicant had met the requirement. She felt the case should be reviewed again, but was unsure whether the case should go to the board or the Hearings Officer. She said that if the board were to accept the appeal, they would need assistance from planning staff or legal counsel to help them understand what would be an acceptable ratio of expenditures to cost. They would also require background on the court cases that have provided the guidelines regarding what constitutes an acceptable ratio in this type of case. She asked Mr. Anderson whether he thought the board or the Hearings Officer would be a better choice for handling this kind of case.

Another question Commissioner Carlson had was whether the hearings officer had a large backlog of cases that might make it more expedient to have the board handle the case instead. Mr. Anderson said there would be no problems with having planning staff assist the board in dealing with the evidence and the ratios in this case. He said the hearings officer is somewhat backed up at this point, so they are trying to catch up on reports that are close to deadline. If the case were remanded to the hearings officer, it would probably be one of the first to be decided. However, he thought the board could probably handle the case more expediently.

Commissioner Milne said the hearings officer in this case offered clear guidelines about the specific information that would be needed in order to determine the expenditure-to-cost ratio, including the time frames and cost breakdown per lot. Commissioner Milne said she favored having the board hold a hearing. She said that the hearings officer was very clear about the information that was missing and needed to be added, but she also complimented

the applicants on providing due diligence and being honest in their efforts. There were some other issues involved in the case, such as the applicant's need to work with a neighbor to provide a different access point for the subdivision. Commissioner Milne said that because they had sufficient comments from the hearings officer about what kind of further information was needed, the board would be able to make a decision in the case as long as this additional information was made available.

Mr. Anderson said the hearings officer was clear about the areas that required further information, finding that the applicants had met the criteria except in the area of providing information on the ratio of expenditures to cost. He said these areas are quantifiable information, although there is some subjectivity involved in deciding which expenditures would count towards the expenditures and costs.

Commissioner Carlson said she hoped that staff would bring forward some guidelines in advance for the board, such as a table that would state clearly which items would or would not be applicable towards expenditure and cost ratios. This would allow them to be consistent with other cases the hearings officer has handled in the past. She said the applicants should work this out with the staff prior to the hearing, so that there would be no question at the time of the actual hearing regarding which items qualified to be counted towards the total. This would allow the board to ask clarifying questions about the subdivision project instead of having to juggle the various numbers. She said it would be better to start the hearing with the required information in hand so the board would not have to figure these things out on the day of the hearing. She said that in order to be consistent with the other cases, it would be necessary for the board to come up with a ratio, so they would need to have information showing the total costs and which of these costs would be allowable within the time frames. This would allow them to come up with a ratio more easily, and they could then determine whether that ratio would be allowable within the framework of the previous court cases. Mr. Anderson said this sounded like a good suggestion, and he said he would contact the applicant's representative so they could start on this process together. He said this would allow the board to move the case along more quickly. Commissioner Milne pointed out that the applicants have representatives who can help them to present the information clearly so the board can determine whether the ratio meets the necessary criteria.

Commissioner Brentano mentioned the hearings officer's statement that the applicant "may be able to" prove they can meet the criteria. He said this would be true, assuming that the applicants are able to provide sufficient information to prove their case. He said that if they could not provide this information, he would probably have to agree with the hearings officer's recommendation. He said he hoped the applicants did have this additional information and would bring it forward.

MOTION: Commissioner Carlson moved that the board accept the appeal of the hearings officer's recommendation to deny a vested rights determination and set a public hearing for case #M05-103, DeSantis, Clerk's File #5101, for May 21, 2008. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

PUBLIC HEARINGS

9:30 A.M.

FINANCE

A. Public hearing to consider granting an exemption allowing the use of an alternative solicitation for a public improvement pursuant to the Marion County Public Contracting Rules for the North Marion County Disposal Facility Lagoon Floating Cover Replacement project. – Peggy Mitchell, Don Alexander, Bill Worcester

Peggy Mitchell, Finance, presented this item to the commissioners for consideration in their role as the Contract Review Board. This item is a request to grant an exemption that would allow the use of an alternative solution for a public improvement project pursuant to the Marion County Public Contracting Rules. Ms. Mitchell said the board has discretionary action when it comes to public improvements and can grant alternate procurement processes. She said the traditional process for a construction project or public improvement is to do the design portion and then go out for a bid, followed by construction. Each component of the construction process requires a particular solicitation process. Ms. Mitchell said the design portion of this project has already been completed. When they reviewed the options for going out for a bid in construction, this project had somewhat more complexity than most, so they decided to ask the board for an exemption in this process that would allow them to use a request for proposals (RFP) instead.

Don Alexander, Environmental Services, said that on February 20, 2008, the board awarded a contract with MWH Americas, which is the design consultant that has been helping them with the design of the floating lagoon cover. MWH will also be assisting by doing quality assurance during the construction process. As part of the design review process, MWH has recommended that the county consider using an alternative competitive process for the fabrication and installation of the floating lagoon cover due to its highly specialized and technical nature. The fabrication and installation of a flexible floating cover is a specialized field of construction requiring both the fabricator and the installer to be well trained and have experience with previous projects. Mr. Alexander said the design life of the floating cover is highly dependent on the workmanship performed during the fabrication and installation and the handling of the materials in the field during the field installation. Mr. Alexander said that for these reasons, they are recommending inclusion of minimum qualifications in the procurement documents for both the fabricator and the installer on this process.

Mr. Alexander said that in addition to the qualifications, they want to be sure that the fabricator and installer have done this type of work before and are experienced with this kind of project. He said there is a complicating factor because there is still about six feet of leachate sitting in the lagoon. By the time they install the floating cover, they will actually have to float the cover across a partially filled lagoon. Floating covers are usually installed over empty lagoons, as in the case of reservoirs that can be emptied before installation. In this case, however, there would not be sufficient time to haul away the leachate before installing the lagoon cover. Installing a cover on a partially filled lagoon requires special expertise, since the cover must be seamed in the field, put together on the shore, and then incrementally pulled across the lagoons with the floats and access hatches being installed at that time. This kind of work requires a specialty contractor with successful past experience in this sort of work, and this is another qualification they want to include in the procurement documents.

Mr. Alexander said another issue they need to consider is the removal of the existing lagoon cover. He said that by using an RFP process, they would be able to require the contractors to provide a plan for the removal of the existing cover as part of the proposal criteria. The existing floating cover on the lagoon will need to be removed before installation of the

new cover. Environmental Services has ideas on how this should be done, and they want to involve the contractor in that process to make sure they are removing the existing cover in a way that would not do any damage to the underlying liner of the lagoon.

Mr. Alexander said the RFP selection criteria would include the unique qualifications and experience for the contractor. They would consider costs and value engineering ideas as part of the proposal. In contrast to the contract approach, the RFP process would allow them to accelerate their schedule. This would also encourage teamwork in the construction piece of the project, because they would have the contractor on board to provide suggestions regarding any issues that may develop with the removal of the old cover. He said the work needs to be done in the summer, and the RFP process would speed things along so they could have the work done by the end of September before the winter rains begin.

Mr. Alexander said that by choosing a qualified fabricator and installer through the RFP process, the county would benefit through proper installation of the cover, which would ensure proper performance of the cover in terms of general appearance, performance, and life expectancy. It would also improve life cycle costs for the solid waste management system.

Commissioner Carlson said that it would make sense not to simply go with the lowest bidder when there are this many specifications and circumstances involved. Commissioner Milne pointed out that too often, a project such as this may go to the lowest bidder and then have to be redone, which is much more expensive in the long run.

Ms. Mitchell said that because this is a public improvement, the county is required to give a 14-day notice to provide time for public comment on this issue. She said the 14-day deadline expired at 5:00 p.m. on Monday, April 14, 2008, and as of that time, she had received no comments from any general contractors or members of the public regarding proposed use of this alternative process.

Commissioner Brentano said he had no problem with using the RFP process, but did have some questions about the technicalities of building on a partially full lagoon. He asked if it would be possible to leave the current cover in place and put the new cover on top of it, to be followed by removal of the old cover. He also wondered if it would be possible to leave the old cover in place along with the new one, since this would provide more total coverage. He asked if it was absolutely necessary to get rid of the old cover, and if so, when it would need to be removed.

Mr. Alexander said that it is necessary to remove the old cover because of the way they will be anchoring the new cover during installation. He said they will be creating a concrete anchor curb around the perimeter of the lagoon, and the place where the curb would be installed is the same place where the current cover is installed in an anchor trench. He said that because the cover floats out across the lagoon, it has floats and access hatches that require the existing cover to be removed. Mr. Alexander said that if the new cover were to go on top of the old cover, they would not line up correctly.

Commissioner Brentano said no members of the public had signed up to speak regarding this matter.

MOTION: Commissioner Milne moved to close the public hearing and return as the Contract Review Board. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

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MOTION: Commissioner Milne moved that the board, in its capacity as the Contract Review Board, approve a board order granting an exemption allowing the use of an alternative solicitation for a public improvement pursuant to the Marion County Public Contracting Rules for the North Marion County Disposal Facility Lagoon Floating Cover Replacement project. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano read the weekly calendar.
Commissioner Brentano adjourned the meeting at 9:45 a.m.

Attachments: Agenda

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

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