

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 2, 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

ASSESSOR

Approve an order authorizing the property tax refund of \$15,025.85 to New Edge Network, Inc.

BOARD OF COMMISSIONERS

Approve renewal of a contract with Conkling, Fiskum and McCormick, Inc., for \$103,345 to provide federal lobbying services through June 30, 2009.

Approve an order appointing the deputy county administrative officer as emblem supervisor.

FINANCE

Approve amendment #4 to the master service agreement with VanderHouwen and Associates, Inc. to increase the not-to-exceed amount to \$225,000, extend the term, and authorize the chief administrative officer to sign off on new task orders or extension of task orders for consulting services.

Notification of bid awards for the following contractors through June 30, 2009:

- 1) Blue Line Transportation to furnish and apply lignin sulfonate on various Marion County roads at \$1.32/linear foot.
- 2) Albina Asphalt to furnish and apply emulsified oils and liquid asphalt on a fee-for-service basis.

PUBLIC WORKS

Approve renewal of three five-year fee-for-service agreements with Allied Waste of North America, Inc. for:

- a) Hauling of solid waste from the north Marion County Disposal Facility to the Marion County Solid Waste-to-Energy Facility;
- b) Hauling and recycling of tires from the Salem-Keizer Recycling and Transfer Station and north Marion County Disposal Facility to the Marion County Solid Waste-to-Energy Facility;
- c) Hauling and recycling of appliances from the Salem-Keizer Recycling and Transfer Station and north Marion County Disposal Facility to the Marion County Solid Waste-to-Energy Facility.

PUBLIC WORKS – PLANNING

Receive hearings officer’s decision granting conditional use, case #CU 07-76, Levy, Clerk’s File #5587.

SHERIFF

Approve receipt of \$122,494 to continue to provide marine safety law enforcement services to the State of Oregon Marine Board at various locations in Marion County.

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

Commissioner Brentano noted that he has a brother-in-law who works for Allied Waste as a welder in Albany. He said his brother-in-law would not have any involvement with any of the matters in the fee-for-service agreement with Marion County.

ACTION

PUBLIC WORKS

- 1. Consider the transfer of drainage easements from Marion County to East Salem Service District by quitclaim deed. – Bill Worcester

Bill Worcester, Public Works director, said Public Works had received a plat for the MacKenzie Rae subdivision, a new subdivision located in the East Salem Service District north of Monroe and just east of Snoopy Lane. He showed the vicinity on a map as part of a PowerPoint presentation. He said the easements for drainage ditches are highlighted in red on the map. At one time, the drainage ditches were supposed to run through this property in two directions. He said the actual rudimentary ditch that exists at the location runs more along the north and east sides and is highlighted in green on the map. Mr. Worcester said the developer has requested that the red easements be vacated because they interfere with construction on the lots he is developing. He added that Public Works does not have a problem with this vacation. Public Works has asked the developer to dedicate the right-of-way of for the existing drainage ditch (the areas in green on the map) as an easement for a future ditch that would be an improvement over the current drainage in the area.

Mr. Worcester said that when Public Works spoke with legal counsel on this matter, they found out that the red easements are actually deeded to Marion County, not the East Salem Service District. This left them with several possible choices. One choice was to run

the case through a regular vacation process, which would take longer because the property owner surrounding the easements does not surround these locations completely. There are other property owners that touch on those easements, which would complicate matters if a hearing were held in order to vacate. Mr. Worcester said legal counsel has advised them that the county could quitclaim the red easements to the East Salem Service District, which would make these areas the Service District's property, and the Board of Commissioners, in its role as the board for the Service District, could make a future decision on how to handle those.

Mr. Worcester said their recommendation is that the board sign the attached quitclaim deed, which deeds the drainage easements marked in red on the map to the East Marion Service District.

Commissioner Milne said that in this case, there is really only a transfer of where the decision is being made, since the Marion County Board of Commissioners also serves as the board for the East Salem Service District. By transferring this decision, the board can follow all the proper legal processes. Mr. Worcester said this sounded accurate to him.

Jo Stonecipher, legal counsel, said this recommendation would do two things. First, it transfers the decision to the body that is actually responsible for governing the Service District that provides the service and is responsible for the drainage in the area. Even though the Board of Commissioners is made up of the same people as the Board of Directors of the East Salem Service District, this would put the board in the position of making the decision on the behalf of the Service District with advice and input from the people of that district. Ms. Stonecipher said the second thing to be considered here is that the purpose of vacating the county's interest would require a public hearing and a rather expensive process, while the Service District is not bound by those same rules. Under the Service District, the vacation can be made upon the determination that is in the interest of the district to vacate and that the recipients of its service would be best served by vacating this easement.

Commissioner Milne said that it appears this decision would streamline the process and put it in the hands of the appropriate body while saving time and money.

Ms. Stonecipher said this decision would also clear up any possible confusion over whether the county was giving the East Marion Service District any interest in this land by establishing the Service District and giving it jurisdiction over these matters. Through this decision, the county's interest and any interest the service district may have would be united, and the service district can make its own decision to convey the property as needed.

Commissioner Carlson asked about the statement that the service district is not bound by the same rules as the county. She asked if this would be considered a land use proceeding, and whether the service district would be required by ordinance to hold a public hearing in the same way the county would be required to do. Ms. Stonecipher said the processes are statutory, and there are rules regarding how a county disposes of property at various levels. The rules for counties differ from the rules for other sorts of jurisdictions such as service districts.

Ms. Stonecipher introduced Scott Norris, legal counsel, to explain more about how the process works at the service district level. Mr. Norris said the vacation statutes are in the Oregon Revised Statutes, Chapter 368, which governs county roads. However, the vacation standards contained in the chapter are not limited to county roads but also apply to the vacation of any property interest the county owns. The standards in ORS 368 apply only to county

property, not to service district property. He said this is why the vacation statutes would not apply in this case.

Mr. Norris said the standard for dealing with property held by the service district is whether the action is in the public interest. This comes from a different chapter of the statutes, ORS 451. Commissioner Carlson asked Mr. Norris if ORS 451 required a public hearing or notice to neighbors in a case of vacation of service district property, and he confirmed that the hearing and notice are not required. He said that no specific statutory process is required as in ORS 368.

Commissioner Brentano said that his concern here was that the board should not transfer the vacation of this easement just so they could avoid notifying the neighbors and holding a public hearing. He said he would be willing to vote for vacating the easement, but he thought that if further discussion or action were to take place in this case, the affected neighbors would need to be notified about the planned actions and the time and location of the meeting. Commissioner Carlson said she agreed that the neighbors should be notified of the East Salem Service District's meeting so they would have an opportunity to contribute their views on this subject if they wanted to do so. Commissioner Brentano said he would be comfortable approving this action as long as there was a promise that this would be done.

Mr. Worcester said Public Works would have no problem with notifying the neighbors and talking to anyone who wanted to discuss the matter. He said they would get to work on the notification immediately, since the East Salem Service District meets next week.

MOTION: Commissioner Carlson moved approval of the transfer of drainage easements as described above from Marion County to the East Salem Service District by quitclaim deed. Commissioner Milne seconded; motion carried. A voice vote was unanimous.

**PUBLIC HEARINGS
9:30 A.M.**

None.

Commissioner Brentano read the calendar.
Commissioner Brentano adjourned the meeting at 9:20 a.m.

Attachments: Agenda
ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

Page -4-

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