

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 23, 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 John Lattimer as chief administrative officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

Commissioner Brentano called the meeting to order.

**PUBLIC COMMENT**

None.

**PRESENTATION**

Dog Shelter Update – Allison Barrows, Roxann O’Bryant

Allison Barrows introduced the new veterinary technician at the Marion County Dog Shelter, Roxann O’Bryant. Ms. Barrows updated the board with a quarterly report regarding the dog shelter (attachment A). Originally they had estimated 150 dogs per month as an average at the shelter, but the average is actually 195. She felt this number might increase in the next few months due to properties being foreclosed and owners not able to care for their dogs. Recently Marion County coordinated with the Marion-Polk Food Share and a barrel was placed at the dog shelter for donations. These donations will go to the Marion-Polk Food Share. Ms. Barrows reported that about one third of the dogs are returned to their owners, one-third are euthanized and about one third go to adoptions, transfers and rescues.

**CONSENT**

BOARD OF COMMISSIONERS

Approve an order adopting a revised County Litigation Defense Policy.

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

## **ACTION**

### BUSINESS SERVICES – HUMAN RESOURCES

1. Consider ratification of the MCEA collective bargaining agreement effective July 1, 2008, through June 30, 2010. – Pat Donenfeld

Pat Donenfeld, human resources supervisor, reported on the MCEA contract, which is the largest bargaining unit with 740 members. The contract starts July 1, 2008, with the addition of the PERS pickup and that cost is partially offset by the turnover of one week of compensation credits. The contract also includes the sunset policy for new hires with no compensation credits, however they will receive the value of the compensation credits rolled into their salary rate.

Effective July 1, 2009, a 3 percent cost of living increase (COLA) is scheduled. In addition, on July 1, 2009, there will be an option for current employees covered under this contract to opt out of compensation credits and receive the higher salary rate. Effective January 1, 2009, there will be an 8 percent increase in the health insurance premium paid by the county. Effective January 1, 2010, there will be a 9 percent increase in the health insurance premium cap. Another item bargained with the MCEA group was the addition of the ability for employees to cash out one week of vacation, if they have accrued at least three weeks of vacation. This may be done only once per fiscal year.

**MOTION:** Commissioner Milne moved approval of the ratification of the MCEA collective bargaining agreement effective July 1, 2008, through June 30, 2010. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

The commissioners thanked all that worked on these contracts for their hard work and included the payroll and finance department for their speedy work to get all the changes done before payday.

### PUBLIC WORKS

2. Consider adoption of resolution authorizing Marion County Public Works to participate in the Conservation Reserve Enhancement Program (CREP). – Alan Haley

Alan Haley, Public Works, reported that in 1997 Marion County Solid Waste Management purchased 58.3 acres of farmland adjacent to the Willamette River. This was part of the Brown's Island Demolition Landfill property and for many years this property was actually farmed without cause for concern. However, in the mid 90's with the seasonal flooding of the Willamette River, it resulted in some severe erosion of the riverbank and farmland. This increase in flooding raised several concerns including the loss of topsoil, sediment getting into the river and potential impact of the closed municipal solid waste landfill. County employees investigated these concerns and came across this Conservation Reserve Enhancement Program (CREP). CREP encourages and assists landowners to voluntarily plant long lasting areas of ground cover, trees and shrubs on environmentally sensitive cropland. In return for participation in the program, landowners receive annual rental payments and cost share assistance for the planting. Under the CREP program, Marion County entered into a 15-year contract with the Commodity Credit Corporation (CCC) and the State of Oregon. Under this program there are annual payments and documents that need to be signed. The resolution actually changes the language that Marion County Public Works, which has absorbed the Solid Waste Management Department as a division, is now the authorized Marion County department to participate in CREP.

Commissioner Milne said this was a program that she didn't support when the county decided to participate in it. She said she has a basic disagreement about the merits of the program and whether the county should be involved or not. She said the concerns she had at the time of inception hadn't changed and there are three reasons. The first reason is this program was designed to help private landowners and farmers and one of the major objectives was to help stream restoration and salmon. She said it was really designed for private property owners who felt they didn't have too many options. She felt this was a program that government shouldn't be participating in. The second reason is that it takes farmland out of production. There are other programs that she felt better met the needs of this particular property. Commissioner Milne said she was very concerned when you take productive farmland out of production and then it is gone forever. She asked Alan if trees were planted and he confirmed. She said there was a cost to the county to plant the trees and would like to know how that is going and what the cost has been. Since trees are planted there, it really moves the property under the Forest Practice Act and the entire use of the property is changed. When something falls under the Forest Practice Act you have to comply with those federal programs when the leases run out. She said that her final concern is with regard to water rights. She stated that the water rights have signed away for this period of time and creates a subsidy. Mr. Haley explained that the county is being paid for the water rights. Commissioner Milne said that the county doesn't have full authority over the water rights and you have to follow certain restrictions because it's been agreed to participate in this program. When the fifteen years has ended then the county has some options.

Commissioner Milne asked Alan Haley to talk about the trees, how they are doing and what kind of cost had been incurred to maintain them. Don Alexander came forward and said he had been involved with the project from the beginning. He said the trees were planted and there was funding provided by the CREP program to purchase the trees. They were planted April 15, 2000, and since then the county has continued to maintain the area under the CREP contract. Mr. Alexander said they keep the area free of noxious weeds and invasive weed species. He said he would encourage the commissioner to go out and view the trees. They are now very large trees and it has been a successful program. The flooding that has occurred since the planting has kept the erosion down. As far as the maintenance goes, typically county inmate crews perform this duty. He said that we do receive a small stipend for the maintenance. Mr. Alexander said the trees are very nice and have added two miles to the Minto Brown Park trail system. Commissioner Milne said she read in the program that the property couldn't be used for recreation for 10 years. Mr. Alexander said as part of the original planting plan there were trail systems proposed to maintain a perimeter trail for people to use.

Commissioner Carlson asked why we purchased the acreage in the first place. Mr. Alexander said it was an old landfill that had been shutdown in the late 80's or early 90's. The owner permitted the county to use the area as a demolition landfill, which is debris that doesn't decompose. The county purchased the property from Bob Trussell, because the county had the authority over solid waste in the area. Mr. Trussell wanted to move out of the area so the county purchased the landfill property in addition to the 58.2 acres. Commissioner Carlson asked if there were plans in the future for that property to be set aside in the event the county needs more space for a solid waste system. Mr. Alexander said the strip is 400-500 feet wide, runs along the river and there is an elevated berm constructed by the Army Corps of Engineers. Commissioner Carlson asked how much per acre the county receives. Mr. Alexander said it is about \$212 per acre and when the county entered into the contract and because the county has the water rights, there was a choice of irrigated rates or non-irrigated rates. Mr. Alexander said they opted to get the irrigated rates and lease the water rights back to the State of Oregon. The water stays in the river versus it being drawn out of the river. Commissioner

Carlson asked what would happen to the county's water rights if they didn't enter into this agreement. Mr. Alexander said the county would have maintained the water right, but if you don't use your water rights over a certain period of time, you can lose them. Commissioner Carlson asked if Mr. Alexander was seeing any harm to the county's water rights by entering into this agreement with the state. Mr. Alexander said he didn't see any harm and the water rights are leased back to the state for a period of 15 years.

**MOTION:** Commissioner Carlson moved approval of the resolution authorizing Marion County Public Works to participate in the Conservation Reserve Enhancement Program (CREP) and authorize the Public Works Department to execute all the necessary documents. Seconded by Commissioner Brentano; motion carried. A voice vote was 2 for; 1 against (Commissioner Milne voted against).

### PUBLIC WORKS - PLANNING

3. Consider appeal of hearing officer's decision in conditional use CU07-76, Levy, Clerk's File #5587.  
– Sterling Anderson

Sterling Anderson, planning manager, stated this particular item is an appeal of a hearings officer's decision on a conditional use case. It was an approval of that application and it was a request to amend the conditions of approval and expand a home occupation approved and conditional use case #CU05-06 on a seven acre parcel in the exclusive farm use zone (EFU) located at 5822 66<sup>th</sup> Avenue NE, Salem.

In this particular case the hearings officer granted the application subject to certain conditions. In the appeal the applicants object to three of those conditions. They first object to a condition requiring that they provide proof that they have a driveway permit for the existing driveway, and because the use crosses a neighbors property, the appeal states that this condition which requires that they obtain evidence of adequate and legal access is not responsive to the criteria for granting this conditional use. The second objection is to a condition that limits the applicant to one commercial vehicle. They object to being required to count as commercial vehicles any vehicle that is used for the business. The applicant argues that state definitions of commercial vehicles should be used rather than the hearings officer applying basically any vehicle used in the business as a commercial vehicle for purposes of a home occupation. The third objection is to a condition requiring that an illegal kennel operation on the property be immediately discontinued, or that the applicant provide evidence within 30 days that it is a legal operation.

Staff feels that these conditions are appropriate and are based on the criteria and regulations in the code, however in this particular case there's a rather significant issue that was not adequately dealt with by the hearings officer or was missed. This involves the fact that the appeal of the planning director's decision to the hearings officer was not timely. The appeal was filed seven days after the appeal period ended. The applicant did receive notice of the decision prior to the end of the appeal period, although admittedly with only two days left before the end of the appeal period. There was still actual time for the appeal to go forward if the applicant had responded upon receiving the notice of decision and had questions on the conditions. However, the appeal was not actually filed until 11 days after the notice was received by the applicant. In addition, the applicant's representative attorney indicates they did not actually receive the appeal. The record clearly shows that a legally required appeal was sent in a timely fashion to all those on the notice list. The staff's concern with accepting, processing and ultimately

approving an appeal after the end of the appeal period is a serious issue and feels the board needs to deal with in this case. Basically, accepting and processing an appeal after the end of the appeal period opens the door and sets a precedent for any appeal being filed and never having an end to an appeal period. Mr. Anderson reiterated that everything was done correctly and legally for the notice and the appeal should have been dismissed for failure to have a timely filing.

The board has a number of options regarding appeals of land use decisions. The board can accept the appeal and remand the case back to the hearings officer for further consideration; accept the appeal and hold its own hearing; or deny the appeal and adopt the hearings officer's decision. A suggested hearing date is September 10, 2008. Since the appeal was late, staff recommends that the board accept the appeal, overturn the hearings officer's decision and dismiss the application due to the appeal being late. Another alternative is the board could accept the appeal, remand it back to the hearings officer to reconsider the decision on the record without a public hearing relative to the one question of timeliness of the appeal.

Commissioner Carlson asked if it was the appeal to the planning director's decision that was not timely? Mr. Anderson confirmed. Commissioner Carlson said she couldn't see what the planning director's decision entailed. Mr. Anderson said it was a denial of the application. Commissioner Carlson summarized that it would be a complete denial to have the home business and they wouldn't be able to have it with all the conditions. Mr. Anderson said that was also correct. Commissioner Carlson then asked how the enforcement action of the kennel played into the lower level decision. Mr. Anderson said that the county's code states that if there is an ongoing violation that is not resolved by the land use application then issuance of permits is not allowed, whether land use or building. The hearings officer concluded that there be a condition that required evidence proving the kennel is legal, and if not provided, that its operation be ceased. Mr. Anderson said this has been done in some situations before. He said the applicants have indicated they are not willing to comply with this condition.

Commissioner Carlson asked if the notice was sent certified or if there is any proof of when the notices are received. She said although we know it was sent in a timely way, how do we know they received it in a timely way. Mr. Anderson said that we don't know if they receive it. Under the law, failure to receive an appeal is not justification for an appeal. He said it does not validate an appeal because the notice wasn't received. He added that they do send it certified. He said the notice was received and the applicant's affidavit indicates it was received, but only with about two days left before the appeal period expired. The applicant had assumed his attorney had received the notice as well and would take the necessary action. The applicant apparently did not contact his attorney until after the appeal period had expired and then seven days later the appeal was received. One possible option for the board to consider is if they agree the appeal should not go forward because it was not timely filed, the board could waive the one year reapplication time period that applies to conditional uses when there is a denial. In addition, if the board felt it appropriate they could wave the fee. This would allow the applicant to get back into the process as cheaply and timely as possible.

Commissioner Brentano asked Mr. Anderson what the fees are? Mr. Anderson said the conditional use fee is at least \$1500. Commissioner Brentano said he was looking for some way to do a do over and if there could be a partial reduction in fees. He felt that he didn't want to waive the entire fee because there will be some work that the county has to do. Mr. Anderson said certainly the board has that authority to waive or reduce the fees. He said the decision could be left up to the planning director and probably one half the fee would be waived.

Commissioner Brentano suggested waiving the one-year timeframe and reducing the fee by \$1,000 to start over. Commissioner Milne agreed. Ms. Stonecipher reminded the board that either they have to take the appeal and conduct a hearing to reach the results they were discussing or to remand it to the hearings officer for her to reconsider the timeliness of the appeal. If the applicant then chooses, the appeal could be brought back to the board again. Commissioner Milne clarified that the motion would be to hold a public hearing. Ms. Stonecipher reiterated that the board would either accept the appeal and hold a public hearing or accept the appeal and remand the matter to the hearings officer for her to reconsider on the record the question of the timeliness of the appeal. Commissioner Milne asked which process would be the shortest timeframe. Mr. Anderson felt the remand would be the fastest process. Ms. Stonecipher clarified that if this case is remanded back to the hearings officer the board can direct her to consider on the record the question of the timeliness of the appeal. If the case comes before the board at a hearing it is an open hearing that anything can be brought forward including the questions of the conditions.

Mr. Anderson said the applicant's representative raised some questions regarding whether or not the issue of the timeliness of the appeal is actually before the board because that's not what was appealed. What was appealed were the conditions, but any appeal opens up the entire record before the board and anything in the hearings officer's decision is on the record and before the board for consideration. The board can re-evaluate anything that's in a decision. The applicant's representative also raises the question about the board's one-year waiver and the \$1,000 fee reduction not being an actual decision. It is not a decision, but it's direction to staff.

Commissioner Carlson asked Ms. Stonecipher in what forum would the board waive the one year. Ms. Stonecipher said the board would waive the one-year as an administrative matter. Commissioner Carlson stated she wasn't interested in hearing the merits of this case in a hearing until the timeliness issue is solved.

Mr. Anderson said the applicant's representative has an alternative idea. One would be to dismiss the case for an untimely appeal as quickly as possible or allow the applicant's representative a week to talk with his client and see if he agrees to withdraw the application with the understanding that the one-year is waived and the \$1000 fee reduction. The case could be withdrawn and then started over.

Mr. Kelley, the applicant's representative said he would waive the time period in which to make a decision for seven days.

Ms. Stonecipher suggested that no action be taken and this come back on the July 30, 2008, action calendar.

4. Consider appeal of hearings officer's decision denying administrative review, case #AR07-35, Branferd Properties, Clerk's File #5589. – Sterling Anderson

Sterling Anderson, planning manager, said this application for a determination approval of a nonfarm dwelling given in conditional use, case #88-103, is no longer valid. This 5.17-acre parcel is zoned exclusive farm use and is located in the 8400 block of Jackson Hill Road S, Salem. The hearings officer heard this case on October 10, 2007, and was continued December 12, 2007, and again on February 6, 2008, at which time the hearing went forward. The hearings officer in this case denied the application

due to the failure of the applicant to show compliance with the applicable criteria for a non-farm dwelling. In this case, the applicant obtained a conditional use permit in 1988 for a non-farm dwelling. That permit expired on May 22, 1989, without being exercised. The hearings officer concluded that the applicant did nothing to implement the conditional use permit. Improvements to the property by an intervening owner were done without any permits. The hearings officer considered whether the applicant had a vested right and concluded no vesting occurred and that the applicant cannot meet the current criteria for a non-farm dwelling on the subject property due to changes that occurred in state law in 1993. The applicant argues in the appeal that the under the unusual circumstances with the history on this property the county should consider the previous approval as adequate to find that the parcel meets the requirements for a non-farm dwelling. Although staff understands the difficult situation the applicant is in, the arguments ask the county basically to ignore the statutes, state rules and our ordinance requirements regarding the current criteria required to be met for a piece of property like this. The criterion in this case is the property has to consist of predominantly Class IV-VIII soils and the property in reality is Class II-III soils, which are considered good farm soils. This request is asking the board to ignore that criterion and apply the criterion that was applied back in 1988 in the original conditional use permit.

Commissioner Carlson asked Mr. Anderson to explain Mr. Tross' letter. Mr. Anderson said he wasn't certain what the letter was referring to concerning parts II and III. He believes they were the other criteria for a non-farm dwelling. Planning is not arguing that they don't meet those criteria. It is soils criteria, which is a subjective criterion and has to be based on the soils on the property. The Soil Conservation Service and the National Resource Conservation Service identifies the soil types. By state law the county has to go by that information. It is this piece of information that the applicant can't get over now because that was put in state law in 1993. They could meet the other criteria, and fact, it was originally found they met the other criteria, which are pretty much the same in 1988. In 1988 there was more objective criterion that could be used. Unfortunately, this particular approval expired and the law changed and we can't take what was old law and move it forward in time. Mr. Anderson felt there wasn't any alternative at this time due to the way the laws are written. Commissioner Milne said it appears there isn't a loophole.

**MOTION:** Commissioner Carlson moved that the board not accept the appeal of the hearings officer's decision denying administrative review, case #AR07-35, Branferd Properties, Clerks File #5589. 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 Hubbard Comprehensive Plan amendments, by emergency procedure. A public hearing was held July 16, 2008. – Brandon Reich

Brandon Reich, Planning Department, reported the City of Hubbard is proposing an urban growth boundary expansion of 19 acres for commercial industrial employment land located toward the southwest of the city on either side of Schmidt Lane. As part of the amendment proposal the city is also proposing adopting new policies into its comprehensive plan regarding economical development. On July 16, 2008, the board held a public hearing on this matter and concurred with the amendments. Mr. Reich stated there is an ordinance before the board today reflecting their decision from the hearing. Staff recommends that the board approve the ordinance.

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

Chair Brentano read the ordinance by title only twice.

**MOTION:** Commissioner Milne moved to approve adoption of the ordinance amending the Marion County Comprehensive Plan by adopting the City of Hubbard Comprehensive Plan amendments, by emergency procedure. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano called a five-minute recess at 10:28 a.m.  
Commissioner Brentano reconvened the meeting at 10:33 a.m.

## **PUBLIC HEARINGS**

### **9:30 A.M.**

#### PUBLIC WORKS

A. Public hearing to consider increasing the minimum solid waste charges at the Marion County Transfer Stations. – Don Alexander

Commissioner Brentano noted for the record that he has a brother-in-law who works for a related company, Allied Waste. He did not feel this would cause a conflict.

Don Alexander, Marion County Environmental Services, stated this is a proposed increase to the minimum charge at the transfer stations. The rates at the transfer stations were last increased in January 2002. The minimum current rate is \$9 minimum per transaction, which is up to 200 pounds of solid waste brought to the transfer station. The curbside collection rates have increased substantially over the years with various agreements with the haulers and the cities. He added that the traffic volumes had increased at both transfer stations and had created delays, safety issues and additional waste.

Mr. Alexander said that the minimum charges at other landfills regionally are currently higher than Marion County and have also increased over the years. The customer counts have steadily increased over the last five years at both transfer stations. This is attributed to the county having the lowest rates in the valley and customers are coming in from out of the county bringing their waste. Twenty-seven percent of the waste customers bringing in their garbage are only paying the minimum charge. Instead of these customers having curbside collection, they save their garbage and then bring it to the transfer station. Mr. Alexander said they continue to use their zip code study and have found that 12 percent of the customers at the Salem/Keizer station are out of county. At North Marion, 32 percent of the customers are from out of the county.

Mr. Alexander reported that the current minimum charge at Coffin Butte is \$22.00, plus a \$5.00 environmental fee; the River Bend landfill minimum charge is \$13.00; the Lebanon transfer station's minimum fee is \$18.00, plus a \$5.00 environmental fee; the Metro transfer stations minimum for tarped solid waste is \$17.00, and for untarped is \$20.00.

Mr. Alexander said that staff is proposing a two-step increase for the minimum charge of Marion County's transfer stations. The first would increase from \$9.00 to \$13.00, effective October 1, 2008; and, from \$13.00 to \$15.00 effective October 1, 2009. These increases would potentially generate \$240,000 additional revenue per year; however, it is more than likely a neutral reduction because the increase will deter many customers from bringing their solid waste into Marion County. Mr. Alexander clarified that these increases would apply to solid waste only. The minimum rate of \$9.00 would be retained for wood waste and yard debris.

Commissioner Brentano asked if the per ton fee was being increased. Mr. Alexander said the per ton fee would remain at \$87.00 per ton or \$.02 per pound. Anything over the minimum of 200 pounds is \$.02 per pound.

Commissioner Carlson said that the night before she had attended the Solid Waste Advisory Council meeting. She summarized that they are trying to encourage people to use curbside collection.

**MOTION:** Commissioner Milne moved to close the public hearing and approve increasing the minimum solid waste charge at the Marion County transfer stations, noting a two-step increase; the first increase is to \$13 on October 1, 2008; the second increase is to \$15 on October 1, 2009. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.  
Commissioner Brentano adjourned the meeting at 10:15 a.m.

**Attachments:** Agenda

ABOVE MINUTES APPROVED

CHAIR \_\_\_\_\_

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COMMISSIONER

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COMMISSIONER

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