

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, August 13, 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

Joe Fabbri, 4773 Brandon Court NE, Keizer, a CCTV volunteer, said he wanted to congratulate the commissioners on the fantastic job they do. He recognized that their job is not always easy, but they always try to do what is best for the county.

Caroline Childers, 6336 Mahalo Drive SE, Salem, said Commissioner Brentano told her before the meeting that she could not comment on an action item on the agenda. She understood the denial was in place for case PLA/CU 08-08, Ridgetop Ranch. She asked if she was able to say anything at this time. Jo Stonecipher said it is a matter pending before the board at this moment and it is a quasai judicial process. To be sure there is no question of any *ex parte* contact, until the board takes action on this matter, nothing can be commented on at this time.

Commissioner Brentano clarified that if Ms. Childers had some comments after the close of the meeting she could submit them in writing or return next week during the public comment period, as long as the matter is resolved today.

John Lattimer, chief administrative officer, introduced the new director of Business Services, Dave Henderson. Mr. Lattimer welcomed Mr. Henderson to Marion County. He said that Mr. Henderson comes to Marion County with great experience in managing the business of the legislature and the capitol building. Mr. Lattimer stated he will be a great addition to the management team.

Mr. Henderson thanked the board for the opportunity to work for Marion County.

CONSENT

BOARD OF COMMISSIONERS

OLCC Application: Recommend Approval

Lucky Lounge Pub, Gervais

BUSINESS SERVICES

Approve amendment #1 to add \$30,000 to the contract with McDonald & Wetle, Inc., for the lower roof replacement for jail pod C and extend the contract until August 31, 2008.

BUSINESS SERVICES – HUMAN RESOURCES

Approve recommendation to uphold the pay range for the managerial accountant, countywide.

PUBLIC WORKS

Approve a five-year lease with McKay Farms to lease 40 acres of land adjacent to the North Marion County Disposal Facility for \$13,014 per year.

Approve a fee for service contract with Stuart Quarry Rock Products to provide rock products through June 30, 2009.

PUBLIC WORKS - PLANNING

Receive hearings officer's decision granting administrative review, case #AR08-10, Berryman, Clerk's File #5592.

SHERIFF

Approve a renewal of an agreement to provide law enforcement services through June 30, 2009, to the City of Jefferson for \$237,494.

TREASURER

Approve an order distributing revenues from ORS Chapter 530 timberlands.

Approve a resolution to increase a change fund at the North Marion Transfer station from \$450.00 to \$650.00.

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

ACTION

PUBLIC WORKS

1. Consider hearings officer's recommendation to deny variance petitions, case #N08-01, Shirin and Graham, Clerk's File #5591. – Sterling Anderson

Sterling Anderson, planning director, reported the item before the board involves a request for a variance to the provision of the Marion County Ordinance #663, which is the nuisance abatement ordinance. The property is located at 5475 River Road S, Salem. The hearings officer held a public hearing on case #N08-01, Shirin and Graham, Clerk's File #5591, on May 7, 2008. On August 4, 2008, the hearings officer issued a recommendation to the board to deny the variance. Mr. Anderson said there has been no request for a hearing so this item is now before the board for consideration.

Commissioner Carlson asked if the applicants were actually asking for a variance from the process of

going through the hearing or the fact that they have an enforcement issue. Mr. Anderson said the applicants were asking for a variance from the provisions of the nuisance abatement ordinance, which requires inoperable vehicles and other related materials on a property be cleaned up. Their request for a variance is to be relieved from the requirement to clean up the property. Commissioner Carlson said that a number of the photos of the property were from 2005. She asked if this was just for comparison. Mr. Anderson said it shows that this has been going on for a few years and as they go through this process, it extends their time.

Commissioner Milne commented that although the applicants were basically asking for an extension, by the time the process was completed they had an extension of approximately 90 days. She added there is no evidence of any effort to remove anything from the property.

MOTION: Commissioner Carlson moved that the board approve the hearings officer's recommendation to deny the variance petition, case #N08-01, Shirin and Graham, Clerk's File #5591. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

2. Consider hearings officer's recommendation approving vested rights determination, case #VRD 05-80, MacInnes, Clerk's File #5080. – Sterling Anderson

Sterling Anderson, planning director, reported this is a request to determine whether the applicants have a common law vested right to complete and continue the use granted to them under state and county waivers under Measure 37. The applicants initiated the use by filing a property line adjustment/partition and administrative review to adjust lot lines between two parcels creating a 2.02-acre parcel and a 6.07-acre parcel. They then want to partition the 6.07-acre parcel into three parcels. In addition, the applicants want to reduce the special 200-foot setback adjacent to land also zoned exclusive farm use (EFU), with the intent of placing non-farm dwellings on each parcel. The property is located at 7014 Fruitland Road NE, Salem. A public hearing was held on this application on April 2, 2008, and on July 30, 2008, the hearings officer issued a recommendation to the board that the applicants had met the vested common law rights requirements.

MOTION: Commissioner Milne moved to approve the hearings officer's recommendation approving vested rights determination, case #VRD 05-80, MacInnes, Clerk's File #5080. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

3. Consider hearings officer's recommendation approving vested rights determination, case #VRD 06-26, Endresen, Clerk's File #5191. – Sterling Anderson

Sterling Anderson, planning director, reported this is a request for a determination as to whether or not the applicants have a common law vested right to complete and continue the use granted under state and county Measure 37 waivers. The applicants applied for a partitioning case #07-05, to partition 193.38 acre parcel that is zoned EFU located at 13019 and 13125 Finlay Road NE, Silverton. The public hearing was held on March 26, 2008. On June 30, 2008, the hearings officer issued a recommendation finding the applicants had met the common law vested rights requirements to proceed. There has been

no request for a hearing.

MOTION: Commissioner Carlson moved to approve the hearings officer's recommendation approving vested rights determination, case #VRD 06-26, Endresen, Clerk's File #5191. Seconded by Commissioner Milne; motion carried. A voice vote was unanimous.

4. Consider applicants request to withdraw lot line adjustment/conditional use application, case #PLA/CU 08-08, Ridgetop Ranch, Clerk's File #5590.

Sterling Anderson, planning director, reported this application is for a property line adjustment on a 26.9-acre parcel and a 6-acre parcel to create a 20.90-acre parcel and a 12-acre parcel. It is also for a conditional use to establish a school on the resulting 12-acre parcel. The property is zoned urban transition (UT) with a 10-acre density and is located in the 3200 block of Wiltsey Street, SE, Salem.

A public hearing was held on May 28, 2008, and on July 22, 2008, the hearings officer issued a decision granting the property line adjustment, but denying the conditional use. On August 4, 2008, the applicants submitted a request to withdraw the application. The request is before the board for consideration.

Jo Stonecipher said the title of this agenda might be a little deceptive. She said this actually wasn't a request to withdraw, but they have withdrawn their application. The process that the board would follow to essentially close the books on this case is to issue a final order of dismissal in this matter.

Ms. Stonecipher clarified that the opponents allege there is basically no authority for the board to dismiss at this point because the order has gone into effect due to the fact that there was no appeal and that the board did not call this matter up. She said the board could treat this as an opportunity to call this up and dismiss it pursuant to the fact they have nothing to decide because the application has been withdrawn. She said the board could treat it as the application has been withdrawn and the dismissal is basically a closing act of the board to close the case. This would be appealable to LUBA.

Discussion followed amongst the board that they were following the correct process. Ms. Stonecipher said that it is staff's opinion that this matter has been withdrawn and there is nothing for the board to decide. She said it should be dismissed.

Sterling Anderson said there is a prohibition of reapplication of at least six month, if not twelve. He wants to verify which is correct. Ms. Stonecipher said there is a limitation on the ability to refile. If the matter is dismissed, there will be no limitation because the final order will not be on the merits of the question, but on the merits of the application.

Commissioner Carlson clarified that last week it was on the agenda to receive the hearings officer's decision and the withdrawal didn't occur until after it was received. Ms. Stonecipher confirmed that was correct. Commissioner Carlson asked what would have happened if the withdrawal hadn't transpired and there was no appeal. Ms. Stonecipher said the hearings officer's order would have become the final order.

MOTION: Commissioner Milne moved that in recognition of having received a

withdrawal of the application, that the board approve this case to be dismissed, case #PLA/CU 08-08, Ridgetop Ranch, Clerk's File #5590. Seconded by Commissioner Carlson; 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 9:35 a.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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