

## BOARD OF COMMISSIONERS

### MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, August 20, 2008  
Marion County Courthouse Square

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

**PRESENT:** Commissioner Sam Brentano and Commissioner Janet Carlson. Also present were John Lattimer as chief administrative officer, Jo Stonecipher as legal counsel and Kim Hulett as recorder.

**ABSENT:** Commissioner Milne.

Commissioner Brentano called the meeting to order.

### PUBLIC COMMENT

John Gallagher, 6248 31<sup>st</sup> Avenue, Salem, read a letter (Exhibit A) regarding the board's acknowledgement of the withdrawal of the Ridgetop Ranch application by issuing a dismissal at the previous week's board meeting.

Jo Stonecipher, legal counsel, addressed Mr. Gallagher's concerns. She advised Mr. Gallagher that if he was dissatisfied with the board's decision, there was another avenue of appeal available by going to the Land Use Board of Appeals (LUBA). She did not feel it would be appropriate to comment any further until that appeal period has ended.

Mr. Gallagher said his concern was that under the statewide planning goals for citizen involvement, there is a requirement that technical items be available in a readable and understandable form. He added that these items were not available in a readable form and were not understandable based on the explanation offered at last week's board session.

Carolyn Childers, 6336 Mahalo Dr. SE, Salem, serves on the Board of Directors of the Rural Battle Creek Road Association. She said that at last week's board meeting, during the public comment period, a gentleman noted that the commissioners had a difficult job and advised them to keep up the good work. She acknowledged that the commissioners have a difficult job, but she did not feel the board did a good job on case #PLA/CU 08-08, the Ridgetop Ranch application. She said the county's ordinance allows for very limited actions once the hearings officer's decision has been mailed. She felt the board took a totally different action, one that she could not find listed anywhere in the county ordinances. She said none of the discussion by the board during the 12 minutes spent on that agenda item enlightened her or anyone else as to the basis for their ultimate vote. She did not understand why the board took an action that did not appear to be supported by the county's ordinances.

Ms. Childers said that for citizens of Marion County to have any interest or confidence in county governance, transparency and sound decisions based on the rules are critical. Ms. Childers said she did not believe the commissioners did their job well last week, and she was disappointed that their action was done at the expense of her neighborhood.

Judith VanOstol, 3375 Blake Court SE, Salem, said she received a letter yesterday and was confused because at first it stated the Ridgetop Ranch request was denied, but then later in the letter it said the case had been dismissed. She said this really discourages participation in the public process, because each time an issue like this case arises, the opponents spend an enormous amount of time, effort and money to present a particular side they feel has merit. Ms. VanOstol said that their neighborhood has terrible water problems and her well has gone from 14 gal/min down to 3 gal/min in the last 25 years. She said the message to the public is that the commissioners really don't want public participation in the process.

Ms. VanOstol said that in this case as well as another one she was involved with last year, it appears that the county did not apply its ordinances and requirements to the original applicants. She said this means the opponents in a case are required to demonstrate why a particular application would cause problems for the neighborhood. She said this requires a huge amount of money, time, and effort, and the dismissal of this case meant their work was essentially for nothing. She said it appears that the opponents have no voice. She said this was very discouraging and wanted to make sure the board was aware of it.

Commissioner Carlson said she appreciated the concerns of the speakers. She said her vote last week was based on her understanding that when an applicant withdraws his or her own application, the commissioners have no authority to rule on the application. She said there have been many withdrawals in other cases, and withdrawal is a right and privilege of the applicant. This leaves the board with limited options on how to handle the case, including dismissal. She said the basis of the board's decision in this case was not for or against the applicant.

Ms. Stonecipher pointed out that this matter was driven by the applicant's decision to withdraw the application. If there is no application, there is no land use decision to be made. The statutory scheme puts the burden of going forward on the applicant, but also allows the applicant to withdraw if he or she chooses to do so. Ms. Stonecipher said she advised the board last week to be sure they had a final order to close this case so it would be appealable to the Land Use Board of Appeals. This order ensured there would be no question that the county issued a final order. The order also provides protection against any possible mandamus action being brought against the county. She said this was the basis for the board's decision last week.

Commissioner Carlson said there are opportunities for the public to participate throughout the process in these cases. She said they board reviewed the letter from the opponents and understood their point of view, so participation had been allowed.

This concluded the public comment period.

Commissioner Carlson announced that an item had been brought before the board to add to their Action Agenda for today and made a motion as follows:

**MOTION:** Commissioner Carlson moved approval to add as item #3 of the board's Action Agenda the consideration of a board order delegating authority to the Marion County Chief Administrative Officer to sign contract documents, amendments and notices to proceed for the Energy Savings Performance Contract with McKinstry Essention, Inc. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

## **CONSENT**

### **BOARD OF COMMISSIONERS**

Approve Memorandum of Understanding with the Sheriff's Office to Receive Title III funding for Forest Patrol and Search and Rescue Services.

Approve an order appointing Jill Foster as a hearings officer for Marion County and establishing the hearings officer's jurisdiction.

### **BUSINESS SERVICES – HUMAN RESOURCES**

Approve recommendation to reclassify a position from office specialist 2 to office specialist 3.

### **BUSINESS SERVICES – RISK MANAGEMENT**

Approve an order adopting revised policies for Health Insurance Portability and Accountability Act (HIPAA) Protected Health Information privacy rule requirements and security rule requirements.

### **HEALTH**

Approve amendment #50 to receive \$148,799 from the Department of Human Services for the financing of community mental health, developmental disability and addiction services.

### **PUBLIC WORKS**

Approve an order appointing Fred Stearns as vice-chair of the Marion County Solid Waste Management Advisory Council for a term ending July 22, 2009.

Approve a permanent drainage easement to East Salem Service District to ensure the ability to maintain the drainage pipeline within the district.

### **PUBLIC WORKS – PLANNING**

Receive hearings officer's recommendation dismissing case #PLA 08-012, Netter, Clerk's File #5593.

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

## **ACTION**

### **PUBLIC WORKS**

1. Consider approval of an order appointing Sharon Johnson to the Solid Waste Management Advisory Council for a term ending July 31, 2012. – Glenis Chapin

Glenis Chapin, volunteer coordinator, introduced Sharon Johnson as an appointee to the Solid Waste Management Advisory Council in the Community Organization Representative position. Ms. Chapin said this is a very difficult position to fill. Ms. Johnson is a member of the League of Women Voters, who recommended her as their representative.

Ms. Johnson said she was part of the original committee that started the solid waste advisory system for Marion County. She also chaired the energy advisory committee for the City of Salem. She was part of the group that worked on the recommendation for the waste burning plant. Ms. Johnson said she has a long-term interest in water, land use, and energy issues, including solid waste issues. She has traveled widely and learned about different approaches to handling solid waste. As a health teacher at Judson Middle School, she has worked with many students on projects involving solid waste, recycling, and other environmental issues. Ms. Johnson said she has been very involved in the community through serving as Neighborhood Association chair and working on the Solid Waste Committee of the League of Women Voters and the Salem City Club Planning Committee. Ms. Johnson said she is able to see various sides of an issue and likes to get all the information before taking an action or making a final decision.

Commissioner Carlson welcomed Ms. Johnson and thanked her for her service. Commissioner Brentano said he remembered Ms. Johnson from the initial group that worked on the burner. He asked her if the burner had worked out as she had hoped it would. Ms. Johnson said that at the time of the initial hearings, the haulers did not want the big burner, but now they would like something even larger than what was built. She said that what she had not foreseen at the time was that Marion County would be taking in solid waste from other areas, and that the medical waste and pollution impacts would be more serious than originally expected. She said she would be taking a class on this issue in January to get more information on the related issues. She said that overall the burner appeared to be working relatively well.

Commissioner Carlson said that there is currently a consultant working with a group to put together a study of the burner, and she pointed out that there are still critical questions around the burner though it is now twenty years old. She said there is some hope that new technologies may address some of these issues. There will be an open house workshop for the public on this issue, which is tentatively scheduled for Monday, September 22.

**MOTION:** Commissioner Carlson moved to approve an order appointing Sharon Johnson to the Solid Waste Management Advisory Council for a term ending July 31, 2012. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

#### PUBLIC WORKS – PLANNING

2. Consider approval of recertification for the National Flood Insurance Program. – Les Sasaki, Brandon Reich

Les Sasaki, Planning Division, said he and Brandon Reich would be presenting information on Marion County's flood plain management activities and how these translate into participation in the Community Rating System (CRS) program. The CRS is a voluntary program under the National Flood Insurance Program, which is administered by the Federal Emergency Management Agency (FEMA).

Mr. Sasaki said the county has participated in the National Flood Insurance Program since 1979. The program allows residents of the county to purchase flood insurance because Marion County meets the minimum standards required by the NFIP. There is an additional voluntary program of NFIP, the Community Rating System (CRS) program, which rewards communities that go beyond the minimum standards and thresholds set by FEMA. These jurisdictions are rewarded through reductions in flood insurance premium costs for their residents.

Under the CRS program, Marion County Public Works is required to certify annually that they are keeping up or maintaining the programs they have established to retain their rating. As part of this year's recertification package, they are also seeking to transfer the responsibilities of working with FEMA and the Insurance Services Office of the CRS to a different member of the Planning Division staff.

Brandon Reich, Planning Division, gave a PowerPoint presentation on how Marion County is minimizing the impact of flooding and saving residents of the county up to 20 percent on flood insurance. He showed a photograph of the flooding of the Willamette River near Keizer in 1996. Marion County is working now to minimize the impact of future flooding. The county has modified its floodplain ordinance to incorporate standards that protect buildings. The first floor of a building is required to be two feet above the floodplain. Electrical equipment and machinery serving buildings are required to be a foot above the floodplain, and no new dwellings are allowed in the most dangerous areas of the floodplain without a special variance.

Commissioner Brentano asked Mr. Reich to define the floodplain used to determine these regulations. Mr. Reich said the county is regulating to the 100-year floodplain, which is shown on the map as a flood that FEMA has determined has a chance of occurring once every one hundred years. However, floods are occurring far more often than that, and even floods such as the 1996 flood may cause major damage without reaching the actual 100-year floodplain level. Mr. Reich said FEMA also maps a 500-year flood, which would cause much more damage although it would occur far less frequently.

Mr. Reich said the county has trained staff to work with homeowners from the design stage through construction to minimize the impact of flood damage and to maximize their flood insurance savings. They also perform outreach to flood plain residents and all county residents through mailings, informative articles, and presentations on safer practices. Marion County's activities in the area of flood minimization are recognized by FEMA's Community Rating System and allow residents to save up to 20 percent on flood insurance. The Community Rating System is a voluntary FEMA program that reviews safer floodplain practices and rewards residents with insurance savings. Among the over 1,000 communities participating in the CRS program, only a few have as high a rating as Marion County, which is in the top 11 percent of jurisdictions nationwide for flood insurance savings for its residents.

In Marion County, there are \$76,000,000 worth of structures and contents currently insured against flood damage. Every year, Marion County residents pay \$180,000 in premiums for flood insurance. The county's participation in the CRS program saves residents \$45,000, a significant cost savings. Mr. Reich said there are several important reasons to purchase flood insurance. Standard homeowner's policies do not cover flooding. Only the federal government provides flood insurance through the National Flood Insurance Program. Marion County's participation in the CRS program automatically saves homeowners 20 percent on their flood insurance premiums.

Mr. Reich said that an important reason for homeowners to purchase flood insurance is that not all floods receive federal disaster assistance. Every year, smaller floods occur that damage property, and homeowners are not protected from these unless they have flood insurance. Even when a national disaster is declared, most of the assistance money is in the form of loans. Only flood insurance provides cash payments to rebuild a structure or replace its contents after a flood. Mr. Reich said that anyone interested in flood insurance should contact the insurance agent who provides their homeowner's or renter's insurance.

Mr. Reich said many Marion County departments work together to maintain the county's CRS rating. These include Public Works, Building Inspection, Emergency Management, Risk Management and Planning. They all work together to keep their ratings strong and even improve their rating. They have posted elevation certificates and other flood information online at [www.co.marion.or.us/PW/Planning](http://www.co.marion.or.us/PW/Planning) under the heading of "Floodplain Program." They also have electronic floodplain maps that they can overlay with tax lot maps and aerial photos to provide better information about where flood hazards are located. The county also recently adopted the Community Wildfire Protection Plan, which residents can use to see if they are near an area susceptible to wildfires. This is one component of the Marion County Natural Hazards Mitigation Plan, which also looks at other hazards affecting the county, such as landslides, earthquakes, wildfires and windstorms.

Mr. Reich said Public Works would continue working on keeping Marion County's CRS rating high. They will work with property owners to protect existing dwellings in the floodplain. They will also seek ways to update their flood maps with new information and to map areas that have never been mapped for flooding before. They will seek ways to work with other local jurisdictions and county departments to coordinate activities and outreach efforts on flooding.

Mr. Reich said that anyone having questions about floods in general or building in the floodplain should contact Brandon Reich at the Marion County Planning Division. His telephone number is 503-588-5038 and his email is [breich@co.marion.or.us](mailto:breich@co.marion.or.us).

Commissioner Carlson thanked Mr. Reich for the quality of his presentation. She said she was impressed that Public Works has worked to improve their already excellent performance in this program. She asked how a resident could request flood insurance through an insurance agent, since only FEMA provides flood insurance. She asked how an insurance agent would know about the discounts. Mr. Reich said FEMA provides all the flood insurance for the nation, but they do so through standard insurance agents. When the information is sent in for review by underwriters and actuaries, Marion County automatically receives a discount because of its location. This is a 20 percent discount for people who live in floodplains, and it is automatically applied when the insurance agent gets the rate for that property. The discount is 10 percent for people living outside of a mapped floodplain. However, everyone in Marion County is eligible to purchase flood insurance whether they live inside or outside the areas that are actually mapped as floodplain. Mr. Reich pointed out that localized flooding could happen even for residents who are not in a floodplain, and only flood insurance can protect against these hazards. Everyone in Marion County is eligible for flood insurance because the county participates in the NFIP program.

Commissioner Carlson asked how a resident could know if their home is located in a floodplain area. Mr. Reich said he would be the person to contact at the contact number given above for the Marion

County Planning Division. He said they would be able to review the property's location on a map and see if it is in floodplain area. Residents of the individual cities in Marion County can find out the floodplain information about their homes by contacting their city public works department, since each city has its own floodplain program, maps, and regulations.

Commissioner Carlson asked if the flood insurance discounts apply only to Marion County residents who live outside the cities. Mr. Reich said that this is correct, since the discounts apply only to those who live in Marion County but outside the cities. However, the City of Salem also participates in the CRS program and offers a 10 percent savings to city residents who live in the floodplain area inside the city limits. Polk County also participates in the CRS program.

Mr. Sasaki added that FEMA communicates with the insurance industry about the discounts related to the CRS program, so insurance agents are aware of the discounts. He said communities participate in the program at different levels and therefore receive different levels of discounts in their insurance programs. In the local area, Salem participates in the program but Keizer does not.

John Lattimer, chief administrative officer, asked if Marion County would be able to help the City of Keizer if they decided they wanted to get involved in the Community Rating System program. Mr. Sasaki said the Planning Division staff would be available to assist them if they asked for help. He said that when the City of Salem was going through the CRS application process, he offered his assistance to help them through the process. He said that though the cities can benefit from some of the flood-related services the county already provides, such as flood warnings and notifications, they are still responsible for setting up their own programs and activities as a jurisdiction to receive credit for these activities under the CRS program.

Mr. Sasaki added that the county designates an individual as CRS Coordinator. They are asking at this time to designate Brandon Reich as the new person to fill that position. The CRS Coordinator is responsible for all matters related to the CRS program in Marion County and serves as a contact person with the CRS program at the National Flood Insurance Program.

**MOTION:** Commissioner Carlson moved to approve the recertification for the National Flood Insurance Program and to designate Brandon Reich as the county CRS Coordinator. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

(The item below was added to the agenda by the motion made before the Consent Calendar).

3. Consider approval of a board order delegating authority to the Marion County Chief Administrative Officer to sign contract documents, amendments and notices to proceed for the Energy Savings Performance Contract with McKinstry Essention, Inc. – Peggy Mitchell

John Lattimer chief administrative officer, spoke regarding this item. He said the board has already approved the overall contract for this Energy Savings Performance Contract. These types of contracts allow the county to do major renovations of its buildings with some of the costs being paid for through energy savings. In order to do this, it is necessary to have an energy audit, which is followed by the Energy Savings Performance Contract process. Through a request for proposals, McKinstry Essention, Inc. was chosen as the contractor winning the bid. The Energy Savings Performance Contract process is

a complex process that involves various stages. They are hoping to get through the process as quickly as possible in order to receive some of the energy savings this winter for both the Courthouse and the Sheriff's Work Release Center projects. The first stages involve putting in energy-saving windows at the Marion County Courthouse, which will generate major energy savings for the building. They will also be working on the roof at the Work Release Center as the initial portion of that project.

Mr. Lattimer said he is requesting authority to sign the contracts at this time so the county can move through the process more quickly without having to return to the board for approval at each stage of the contract process.

Commissioner Carlson asked Mr. Lattimer how he would keep the board up to date on the progress of the project. Mr. Lattimer said he would be reporting to the board periodically at their weekly Management Update meetings. Mr. Lattimer said one of the first things that will be changed at the Courthouse is the huge area in the basement that is set aside for the large boilers and furnaces they currently use. These inefficient boilers will be removed and replaced with newer, smaller, more efficient ones. This change will also provide significant space at the Courthouse that could be used for other things. He said the board might want to tour the facility after these changes are made.

Commissioner Brentano asked why the names of the individual commissioners were not located next to their positions on the signature lines for the board order. Ms. Stonecipher said this allows the board to be more flexible in case the actual person in that position is not present to sign the order and some other officially designated person needs to sign the order instead.

Commissioner Carlson noted that some citizens might be under the impression that renovations to the Courthouse had already been carried out after the incident that damaged the building a few years ago. She said that unfortunately the insurance in that case only allowed the county to restore the building to its previous conditions and did not allow for any further improvements or changes. Ms. Stonecipher noted that this work was carried out as quickly as possible to get everyone back to work in the Courthouse. This was particularly true in the case of judges, since speedy trial rights could have been affected by any delays. This did not allow them to make any further improvements to the building at that time.

**MOTION:** Commissioner Carlson moved approval of a board order delegating authority to the Marion County Chief Administrative Officer to sign contract documents, amendments and notices to proceed for the Energy Savings Performance Contract with McKinstry Essention, Inc. Seconded by Commissioner Brentano; 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 9:50 a.m.

**Attachments:** Agenda

ABOVE MINUTES APPROVED

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CHAIR

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COMMISSIONER

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COMMISSIONER

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