

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 1, 2008
Marion County Courthouse Square

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

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

ABSENT: Commissioner Carlson

Commissioner Brentano called the meeting to order.

PUBLIC COMMENT

None.

PRESENTATION

Annual update of Carts Program. – Mona West

Mona West gave the board an overview of services provided by Carts, part of the mass transit system in Marion County. She continued with a PowerPoint presentation providing ridership comparisons from August 2007 to August 2008, results of a rider survey and fare increases due to the increase in fuel prices.

CONSENT

BOARD OF COMMISSIONERS

Approve the following memoranda of understanding for the Kids First Initiative grant funds.

- \$166,400 to Children & Families for family home visitations/fostering attachment treatment court.
- \$13,898 to Juvenile for STAR Court mental health treatment.
- \$3,000 to Juvenile for STAR Court weekend drug testing.
- \$3,600 to Health for Fostering Attachment Treatment Court.
- \$190,200 to Sheriff’s Office for Children of Incarcerated Parents Initiative/Center for Family Success.

BUSINESS SERVICES

Approve amendment #7 to extend the contract with Olympic Security Services until November 30, 2008.

BUSINESS SERVICES – HUMAN RESOURCES

Approve the appointment of Mai Cao to the Health Insurance Study Committee.

Approve recommendation to adopt and establish the classification of drug treatment case manager.

CHILDREN & FAMILIES

Approve amendment #1 to add \$166,400 to the contract with Family Building Blocks to provide family home visitations and fostering attachment treatment court services for the Kids First Initiative grant program.

PUBLIC WORKS

Notification of bid award to Triad Mechanical, Inc., for \$275,923 for the Wheatland Ferry power conversion project.

PUBLIC WORKS – BUILDING INSPECTION

Schedule a public hearing for November 19, 2008, to consider adopting a revised fee schedule for Public Works Building Inspection.

PUBLIC WORKS – DOG CONTROL

Schedule a public hearing for October 22, 2008, to consider revisions to the Marion County Dog Control Ordinance, Nos. 1236 and 1241.

SHERIFF

Approve contract amendment #1 with Steven E. Mussack, PhD, for \$70,000 to provide sex offender treatment and recidivism assessment evaluations for indigent parole and probation clients through June 30, 2009.

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

ACTION

CLERK’S OFFICE

1. Consider approval of an order appointing Trevor Jacobson and Sue Thompson to the county governing body pool and Donald Miller, Paul Allen and Bruce Cuff to the non office-holding pool for the Marion County Board of Property Tax Appeals. – Jan Brown, Jackie Liebertz

Jan Brown and Jackie Liebertz from the Clerk’s Office introduced Paul Allen and Bruce Cuff as the proposed appointees to the non office-holding pool for the Marion County Board of Property Tax Appeals. Ms. Brown requested the board approve the order appointing Trevor Jacobson and Sue Thompson to the county governing body pool and Donald Miller, Paul Allen and Bruce Cuff to the non office-holding pool for the Marion County Board of Property Tax Appeals.

MOTION: Commissioner Milne moved approval of an order appointing Trevor Jacobson and Sue Thompson to the county governing body pool and Donald Miller, Paul Allen and Bruce Cuff to the non office-holding pool for the Marion County Board of

Property Tax Appeals. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS

2. Consider approval to receive \$1,550,000 in federal funds from the Department of Transportation for improvements to Ward Drive between Lancaster Drive and Fisher Road. – Cindy Schmitt

Cindy Schmitt, Public Works, requested that the board approve an intergovernmental agreement for the Ward Drive project. She proceeded with a PowerPoint presentation regarding the project and explained what Public Works wants to achieve. She said that Ward Drive is a key link to connect Portland Road to Lancaster Drive. A portion of the project is completed, but this part of the project will complete the urban upgrade between Ward Drive and Lancaster Drive. She spoke of installing some much needed turn lanes and signals to help reduce accidents. She added that bike lanes and sidewalks would also be added and will be a very useful improvement.

Ms. Schmitt said the cost estimate for the project is \$2.3 million and \$1.5 million will be from service transportation program funds, which are federal funds. County staff would be doing the design work and the soft match would be \$310,000. The county will have to make up the remainder of the cost of the project. However, this particular project is eligible for urban system development charges. She added this has been on the project list for many years and those funds have been budgeted for this project.

Ms. Schmitt said the project is approximately one half mile in length and was a project that had been delayed a year because of the need to come up with some additional funds for another project. She said these funds are coming through the Mid-Willamette Valley Council of Governments.

MOTION: Commissioner Milne moved approval of the receipt of \$1,550,000 in federal funds from the Department of Transportation for improvements to Ward Drive between Lancaster Drive and Fisher Road. Second by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS – EMERGENCY MANAGEMENT

3. Consider approval to receive \$1,000,000 from the Oregon Military Department, Office of Emergency Management, for improvements/upgrades to the communications systems used by the county, agencies within the county and surrounding areas. – John Vanderzanden

John Vanderzanden, emergency manager for Marion County, said that about four or five months ago he came before the board to get approval to apply for a public safety communications grant. He said they applied for this federal grant opportunity so they could install a microwave infrastructure network. This would allow the enhancement and speedier communication capabilities throughout the three 911 centers in the county, as well as many of the public safety agencies. Mr. Vanderzanden said that the county has been awarded a \$1,000,000 grant and he is requesting permission to accept that grant and move the process forward. The grant is a two-year project slated to end mid year 2010.

Commissioner Milne asked if this was a reimbursement grant and Mr. Vanderzanden said it was. She said this looks like this could be an opportunity to save some money, but it doesn't always mean that the least expensive purchase is the best. She asked Mr. Vanderzanden if he felt the \$1,000,000 is adequate

to fund everything needed and how soon does the reimbursement happen. Mr. Vanderzanden stated that the county could actually submit for reimbursement once a quarter so the turnover is fairly quick. The minimum requirement is to submit at least once every six months. He said that once the project is started they would submit for reimbursement as often as allowed. The validation process is substantial for a lot of these federal grants and it is extremely important to accurately track what is done. He said with respect to the ability to complete the total project, he is more confident now than he was six months ago because the relationship with Marion County and the Oregon Wireless Interoperability Network (OWIN) has just taken another step forward. OWIN is now going to pick up a portion of the cost of development of this microwave backbone that he is hoping to install.

Commissioner Brentano asked what the emergency service really gains by these microwave transmission abilities. Mr. Vanderzanden explained that what is gained is capacity and the ability to transmit at a much higher speed. He added that it allows data to be transmitted in much larger volumes and it is a much more robust wireless communication system. It is centrally linked to a central server that allows one agency to be able to talk to another agency even if they have different types of radio systems.

MOTION: Commissioner Milne moved approval to receive \$1,000,000 from the Oregon Military Department, Office of Emergency Management, for improvements/upgrades to the communications systems used by the county, agencies within the county and surrounding areas. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

4. Consider approval of a wireless communications site sharing agreement with the State of Oregon for the Oregon Wireless Interoperability Network (OWIN). – John Vanderzanden

Mr. Vanderzanden, emergency manager Public Works, said that he is requesting approval of an intergovernmental agreement between Marion County and the Oregon Wireless Interoperability Network (OWIN). He explained this is a general sharing agreement that states when it makes sense to partner and work together we will do so. He added that this intergovernmental agreement starts the sharing process.

MOTION: Commissioner Milne moved approval of a wireless communications site share agreement with the State of Oregon for the Oregon Wireless Interoperability Network (OWIN). Second by Commissioner Brentano, motion carried. A voice vote was unanimous.

PUBLIC WORKS – ENVIRONMENTAL SERVICES

5. Consider approval of a memorandum of understanding with North Santiam Watershed Council as required by the National Pollutant Discharge Elimination System Program. – Tanya Beard, Bill Worcester

Tanya Beard, Public Works, reported the memorandum of understanding with the North Santiam Watershed Council is following along the line of a previous memorandum that the board has approved with the Marion Soil and Water Conservation District. Both of these memorandums are outlined in the National Pollutant Discharge Elimination System Program (NPDES), which is part of the county's storm water management plan. The NPDES program is actually a permit that allows the county to operate

within its jurisdiction following particular rules that are outlined by the federal government. The county's program includes memorandums of understandings so it can continue operations, be more efficient and more effective. It also proves that the county is maintaining good citizenship and maintaining appropriate partnerships with other organizations and agencies in the area.

MOTION: Commissioner Milne moved approval of a memorandum of understanding with North Santiam Watershed Council as required by the National Pollutant Discharge Elimination System Program. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

6. Consider adoption of ordinance amending the Marion County Comprehensive Plan by adopting the City of Donald Comprehensive Plan map amendments, by emergency procedure. – Les Sasaki

Les Sasaki, planning department, said the City of Donald initiated plan amendments that involved a 42.5-acre urban growth boundary (UGB) expansion to meet employment land needs. These land needs were identified through an economic opportunity analysis. The plan amendments went through the local process with the City of Donald and the city has approved the amendments and forwarded them to the county for its concurrence and approval. The board held a public hearing on September 10, 2008, to receive testimony and following the hearing, essentially approved the proposed amendments, which includes the UGB expansion. He explained that the ordinance is before the board today and implements the board's decision through emergency procedure

Commissioner Milne asked if there was anything out of the ordinary that the board should be aware of. Mr. Sasaki said the ordinance does clarify to some extent the discussion on the population issue. The procedural issues are contained in the findings of the ordinance and were previously laid out by staff as part of the report.

Commissioner Brentano asked if the population number was 1588. Mr. Sasaki said that was correct.

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

Commissioner Brentano then read the ordinance by title only twice.

MOTION: Commissioner Milne moved adoption of an ordinance amending the Marion County Comprehensive Plan by adopting the City of Donald Comprehensive Plan map amendments, by emergency procedure. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

7. Receive and consider appeal of zone change, case #ZC 08-05, Fultz, Clerk's File #5597; suggested public hearing date is 10/29/08. – Sterling Anderson

Sterling Anderson, planning director, said this first item involves an appeal of the planning staff change to the zoning map to reflect zoning of the subject properties as exclusive farm use (EFU). This is on a 10-acre parcel in the 12100 block of Brick Road, south of the City of Turner. A public hearing was held

on this application on April 30, 2008. In this case the hearings officer dismissed the zone change case finding that the zoning on the property was not changed from EFU to acreage residential (AR), nor from AR to EFU and the county has not stopped from enforcing its valid zoning ordinance and from enforcing state law. The appellant argues that the county staff rezoned the property when they corrected an error on the unofficial zoning display maps that are used at the counter to reflect the actual board adopted and state acknowledged EFU zoning that was applied to this property in June 18, 1980. They argue that since the unofficial display maps show the property as zoned AR, the correction rezoned the property. The hearings officer considered this argument and other legal arguments and rejected it because the official zoning map that was adopted and recognized by the state as the official zoning map, has not changed and therefore no zone change occurred. Mr. Anderson said that staff recommends that the board deny the appeal and adopt the hearings officer's decision dismissing this appeal.

Commissioner Milne asked if these people would have any options if the board denied the appeal. She said apparently there is a disagreement of how information was conveyed and what information the individuals used to proceed. She asked if the board would have the ability to do anything. Jo Stonecipher said no because it would not be consistent with state law. Everything that the board does in land use flows from state statutes and administrative rules. In order to change the zone on this property the county would have to go through a comprehensive plan amendment. There would have to be a change of designation on the property and she didn't think the board could do this. Commissioner Milne reiterated her question that the board does not have the authority to change a land use designation regardless of what happened. Ms. Stonecipher said the board has the authority to do this, but it has to be consistent with state law. Commissioner Milne said that it does disturb her when a property owner feels they relied on information and it turns out the information was not accurate. Commissioner Brentano said it appears poor advice was given and in his private life when he made a mistake he would stand by it and he would like to hear if this is really what happened. However, when you are precluded by state law from that option it doesn't leave a choice.

MOTION: Commissioner Milne moved to deny the appeal, accept the hearings officer's decision and instruct staff to issue a final order. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

8. Receive and consider appeal of partition, case #P07-78, Fultz, Clerk's File #5596; suggested public hearing date is 10/29/08. – Sterling Anderson

Sterling Anderson, planning director, said this is an application to divide the 10-acre subject property into three parcels consisting of two 2-acre parcels and one 6-acre parcel. A public hearing was also held on this case on April 30, 2008. The hearings officer found that the application did not meet the criteria and denied the application because the property is actually zoned EFU, not AR. As a result, the county code and the state law required 80 acre minimum lot size in the EFU zone for partitions of this kind and that these particular parcels do not meet that minimum. The hearings officer also found that the state could not violate state law as was already mentioned regarding the lot sizes and placement of dwellings. The applicant makes the same argument and points that were made in the previous appeal and before the hearings officer. The board has the similar options as before and again, staff recommends the board deny the application and adopt the hearings officer's decision.

Mr. Anderson commented that he understands and sympathizes with the situation and this is not a common problem. This is the first time he has ever run across a situation like this in Marion County where there has been an error on the map and actually an error on the counter maps. He said it was very

unfortunate and that planning tries to take extra care in making sure that they are reflecting the actual zoning adopted on the counter maps.

Commissioner Brentano asked if a property line adjustment to absorb the 10 acre piece into the larger parcel might still give some options or different abilities to partition. Mr. Anderson said it could, but there is also the option that any property owner has to actually make an application to rezone the property from EFU to AR.

MOTION: Commissioner Milne moved to deny the appeal, accept the hearings officer's decision and direct staff to issue a final order. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS

A. Public hearing to consider vacation of a portion of Monterey Avenue in Brooks, Clerk's File #2101R. – Patricia Nordahl

Patricia Nordahl, Public Works, gave a PowerPoint presentation regarding the road vacation. She said on August 8, 2008, a petition was filed to vacate a portion of Monterey Avenue, a public right-of-way in Brooks. Brooks is located approximately two miles north of Keizer and seven miles south of Woodburn between I-5 and Hwy. 99E. Monterey Avenue was established as a 60-foot wide right-of-way and it was on the original plat of the town of Brooks recorded in 1871. The right-of-way proposed for vacation is 60 feet wide by 360 feet long and 30 feet wide by 60 feet long. The south portion of this right-of-way was vacated in 1984 by board order. The petitioner holds title to the property surrounding the proposed vacation area. The buildings along the right-of-way are part of Chemeketa Community Colleges regional training center. There are no utilities that would have to be protected by easements within this right-of-way. Public Works has determined that it would be in the public interest to vacate this right-of-way as it serves no practical purpose to the general traveling public.

TESTIMONY:

Support:

Bill Riffle, 4000 Lancaster Drive NE, Salem, said he was only here to answer questions that the commissioners might have. The commissioners did not have any questions.

MOTION: Commissioner Milne moved to close the public hearing and approve the vacation of a portion of Monterey Avenue in Brooks, Clerk's File #2101R. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

B. Public hearing to consider the sale of Marion County property from Spongs Landing County Park to Matthew and Donna Swisher. – Jeff Bickford

Jeff Bickford, environmental services manager, said that this issue was brought to his attention last spring by an adjacent neighbor that a fence that separates the Swisher property from the county property was not on the actual property line. He requested that the county surveyors go out and see where that property line actually was. He said the surveyor's findings were that the fence was actually on county property between nine and twenty-two feet into the park along the south edge and a couple feet over along the west edge. Initially, they had requested that the Swishers move their fence back to their side of the property line. Based on discussions with the board and with the Swishers, Public Works was directed to investigate if there was any possibility of the sale or lease of the property. Mr. Bickford said the encroachment is about 6,135 square feet. He said upon investigation it was determined that ORS 275.330, allows the sale of parks property, but under a couple of very specific conditions. The first condition is that it go to a general election and the public be allowed to vote on the possibility of the sale. The second condition is it be brought to a public hearing and if found to be in the county's interest to do such, then the sale could move forward. The property value of the encroachment was determined to be \$5,000. Mr. Bickford said if this were to move forward it would require a property line adjustment through the county's planning department and an appropriate fee of \$440. Mr. Bickford said he did have a discussion with the Swishers in July and they stated they were interested in purchasing the property and a public hearing was scheduled for today. Mr. Bickford said that if the board approved the request to move forward with the sale, he recommends that the Swishers acquire the burden of additional surveying, creating a legal description and any additional recording fees.

Commissioner Milne asked what the \$3300 additional fee was for. Mr. Bickford said his department estimated that it would cost approximately \$3300 to finish the additional surveying to create the legal description. Commissioner Brentano asked if the Swishers had the option of hiring their own surveyor. Mr. Bickford said that the estimate of \$3300 is for the Swishers to hire their own surveyor.

TESTIMONY

Support:

Mrs. Swisher, 6575 22nd Avenue N., Keizer, OR, submitted a folder for each commissioner (exhibit A) with documentation and pictures of their property. Ms. Swisher testified that the information regarding Spongs Landing Park states there is an agreement with a private party to maintain a small house near the park entrance. This person opens and closes the park on a daily basis. She said they have had numerous people come to their home when the park is closed and ask them to open the gate. She wanted to bring this to the attention of Public Works so they could remedy the fact that the Swishers do have strangers that come up to their house asking them to open the gate to the park.

Ms. Swisher said they purchased the home from Mr. Stinnett and that the property description stated it was a fenced yard. Mr. Swisher had asked Mr. Stinnett about the property markings and he was told there weren't any due to being washed away with the flood. She said they were under the impression they were purchasing the property. Picture one is an aerial shot taken after they had started improvements to the property. She said they have added grass, planted 21 different grapes vines, seven different fruit trees, a garden and a chicken coop.

She said that picture two shows Bonneville Power wires crossing a large portion of their property, which makes that part of the property unusable. You cannot build anything under the lines. She said the

easement is 50 feet from the middle wire and they have no structures under that wire.

Ms. Swisher then showed before and after pictures illustrating what the property looked like before they began their improvements. She added that if they had to remove the fence it would leave open access for people that enter the park and that is a safety issue.

Ms. Swisher said they have had many compliments from the neighbors about how much work they have done to the property and how much better it looks. She reviewed some of the expenses they incurred by trying to improve the property. If this proposal to purchase county property were not approved they would have to tear out the fencing and all vegetation they have planted, and they would have no privacy.

Ms. Swisher said that a quarter of an acre is 10,890 square feet and she said the county property is around 6,000 square feet. It is not that much to make a difference and that part of the park is not being used. Ms. Swisher said it basically is dead land with the power lines running over the top, but it is not dead land to them. She then showed a picture of the flood in 1996 and said that if they lose the protection from the vegetation they have planted, they could have much more damage to their home if there was another flood. She commented that in her packet to the board is a list of names of people who support their effort to purchase this county property. She added that they have not moved the fence or caused damage to county property, but only have tried to improve it. They have been there three years and have worked very hard to upgrade the property. She said they have also worked very closely with Bonneville Power by letting them trim the trees when needed and have never denied them any access to the property.

Ms. Swisher reiterated that she was surprised to hear about the additional \$3300.00. They understood that the cost would be \$5400 for the property and never received the information of the additional \$3300 to complete the surveying.

Commissioner Brentano said that he also had not heard the surveying figure of \$3300. He added that he has had surveying work done for a lot lower price. He added for the record that Ms. Swisher had supplied some names in favor of the sale and there were a couple of letters submitted late the previous afternoon in favor of the purchase.

Ms. Swisher said the neighbors had told her not to worry about the fence and they were aware the previous owner moved the fence. She wanted to know why the fence issue was not addressed when the previous owner was doing so much damage to the property. Why is it being addressed now after so many improvements?

Commissioner Milne thanked Mrs. Swisher for sharing this information. She asked if the Swishers had an agreement with the county to open and close the gate. Ms. Swisher said it was not them and apparently there used to be a house somewhere in Spongs Landing and years ago they did take care of the gate. She said she now understands why people were coming to their home requesting the gate be opened. The website under county parks states that someone living there opens and closes the gate.

Commissioner Milne confirmed that they had owned the property for approximately three years. She asked if there was any discussion regarding the property lines when they purchased the property. Ms. Swisher said her husband asked Mr. Stinnett about the property line and Mr. Stinnett said the property line was where the fence was. He added that the stakes were washed out in the flood.

Commissioner Milne asked if there was any surveying done prior to the purchase of the property and if the title company or realtor mentioned this issue. Ms. Swisher said no one mentioned it.

Brad Swinford, 7355 22nd Avenue NE, Keizer, said that the park is really used farther down by the river. Those that are opposed to the purchase of this property probably don't use that park either. He added that the Swishers are good watchdogs for the neighborhood. Mr. Swinford said that Mr. Swisher had tried to keep a drunk driver from leaving the park and was hit by the car. He said it sounds like it's personal issues between neighbors.

Opposition:

Aileen Kaye, P.O. Box 3274, Salem, OR, is with Friends of Marion County. She said that she submitted written testimony (exhibit C). Ms. Kaye said she felt this an abuse of power for the board to hold a hearing on this when it is black and white in statute that the only way park land can be sold is if it is in the public good. It doesn't say that if a homebuyer goofed and didn't hire a surveyor and a lawyer when they bought property that the county sells them parkland. She said it sets a very bad precedent and it should have been settled at the park bureau level. These people should have been told to move the fence and this issue would have been done. Ms. Kaye said to have everyone in consternation during the election season and the federal money crisis is irresponsible.

Ms. Kaye said she was opposed to the sale of the Spongs Landing County Park to a private party and that there was no logical reason to do it. This is valuable parkland and to allow a private party to purchase parkland because they made a mistake would be irresponsible. She reiterated that this would set a very dangerous precedent. When one buys property they need to get it surveyed before purchase. The property lines must be verified and understood by the buyer. Apparently, the applicant failed to investigate this legally before the purchase of the property was made.

Ms. Kaye said she has seen attempts before to drag the county into resolving disputes like this between buyers and sellers. She added that the Updegrade Hunsaker case was a perfect example of many hearings held when it should have been in court in the first place. It is now in court and between the property owner and the buyer.

Ms. Kaye stated the asking price of \$5,000 is ridiculously low. The work done by the parks department, hearing time and everyone's time is worth more than \$5,000. She said it is the responsibility of the commission or the parks department to demand that the property owner remove the fence from the county property as soon as possible. According to ORS 275.330 (2) parkland may be sold only upon a finding that it is in the best interest of the public.

Ms. Kaye said that when you look at the statewide planning goals, goal 8 and the comprehensive plan, it said you are to acquire 10-acres or more. This would also be in conflict.

Warren Saul, 6695 22nd Avenue N, Keizer, OR, said he thinks he might be responsible for this problem. He built this house on this property in 1948. Through the years he has lived on this property himself with his parents. He said it was built for his parents to live in. Mr. Saul said he planted trees along the property line, which is tax lot number 112. It measured approximately 78 feet across the front on the roadside, but as he understands it now it widens out about 22 feet farther. His family has occupied the property all these years.

The county purchased the property for the park in 1965. He said he wanted to add a strip of land about 6 feet wide to his property where the trees were because the county was not maintaining their property on the backside of the trees. He figured he should just own the property. He tried to purchase this property and nothing was ever done. Mr. Saul said he doesn't know why the Swishers bought the property from Mr. Stinnett when they did without knowing where the property line was. Mr. Stinnett is the one that put the fence up and the county should have recognized that he was over the property line and put a stop to it. The fence should have been either removed or at that time some kind of arrangement should have been made to keep the fence there. Mr. Saul said he doesn't see how the county can sell a piece of this park property because when he tried to buy the six-foot strip several years ago he was denied. He agrees if the sale is approved it would be setting a precedent.

Commissioner Milne asked Mr. Saul when he built the house if he put up a fence. He said the fence wasn't put up until the Stinnetts owned the property, but he couldn't remember when.

James Lorenz, 7225 22nd Avenue N, Keizer, OR, said the part of the park that is in question is not generally used much, but he doesn't feel that anyone should be able to buy part of the park, regardless of who made the mistake of the fence built over the property line.

Chris Lorenz, 7225 22nd Avenue N., Keizer, OR, said she also is opposed to the sale of part of the park. She said that owners have to know their property lines when they purchase and it is no one's responsibility except the purchasers. She added that this is part of the park property and feels it should remain so.

Ted Dingman, 6248 Arbordale Drive SE, Salem, said he is a member of the Marion County Parks Commission, but speaks today as a citizen not knowing what the commission or the parks department's position is. He thinks it is a disservice to prosperity to sell or remove parkland from the existing park inventory. He understands the unfortunate circumstances that have led to this. If there is no other solution and should the sale be deemed absolutely essential, he suggests that it be considered as a sale of life estate. Whatever disposition of the property at this time, ultimately it would be returned to the park for whatever uses needed. He said he admits that the park is lightly used at this time and the fence is not a serious impediment on the park. The park has functioned well, but it is a bad precedent to dispose of parkland not knowing what the future park needs would be.

David Harrison, 585 Washington Street S, Salem, said he is also a member of the Marion County Parks Commission and wanted to express his opposition to the proposed sale of part of Spongs Landing Park. The 6,000 square feet involved may not sound like much, but selling off a part of a park because a neighbor built a fence on to the property would set a bad precedent. He said the small amount of money the county would receive in no way would compensate for the loss of part of one of the premier sites in our county parks system. Marion County currently has a shortage of parkland relative to its population and the last thing that should be done is getting rid of any of it. He noted that parkland could only be sold when doing so is in the public interest. This case clearly does not meet that standard and he urged the commissioners to reject this request.

Commissioner Milne asked Mr. Harrison if this issue went before the Marion County Parks Commission and if they had a discussion about it. Mr. Harrison said there wasn't an actual discussion, but it was mentioned that this sale of property was occurring. Commissioner Milne asked what that meant. Mr.

Harrison said the fact that there was a property dispute and surveyors were sent out and the fact that the fence was on park property came up in their meeting. There wasn't any discussion among the park commissioners that he could recall. Commissioner Milne asked who brought up this issue at the meeting. Mr. Harrison said it was someone from the parks staff, but he couldn't remember who it was. Commissioner Milne clarified that he had not had a discussion with anyone about this case. Mr. Harrison said that they had an informal discussion as parks commissioners.

John Beluski had to leave, but felt it was a bad precedent.

Julie Rowly, 2615 Niagara Street N., Keizer, said she lives behind the park and she does use it on a daily basis. She agrees that it is a bad precedence to sell county land.

Diana Flannigan, 2615 Niagara Street N., Keizer, had nothing to add, but was in agreement with statements made in opposition.

Robert Boyce, 6785 22nd Avenue, Keizer, said there were a couple things that have come up at this meeting that really surprised them. He said that Mr. Swisher had told the survey people that he felt the fence was not on his property. He said the fact that the Swishers didn't know the fence wasn't on their property is ludicrous at this point. He added that if the Swishers had an issue, it would be with the people they purchased the property from. He said nobody in their right mind buys property without knowing what they are actually buying. He said the Swishers have beautified the place, but just because this has been done doesn't mean they shouldn't have to move the fence. He believes this would set a terrible precedent.

Terry Berry, 6655 22nd Avenue, Salem, OR, said her property borders the east side of Spongs Landing Park. She said that when the Swishers bought their property in October 2005, the wire fence was in place and the property was overgrown in the back and had piles of debris. From the neighbors historical knowledge and the location of the utility poles, it was fairly well known in the neighborhood that the fence was in the park. She said they don't know whether or not any of this information was disclosed to the Swishers by the realtor or seller prior to the sale. She said that within a few months the neighbors assumed that the fence was not on their property line. She said this all happened over two and a half years ago and it didn't seem like there has been an attempt to even find out where the property line is. Ms. Berry said the Swishers could have gone upstairs to the Assessor's Office and got a plat map, which is actually more descriptive, that shows where the monuments were and shows the width and length of the property. She said the parks and recreation department's mission statement states that they protect natural scenic and recreational sites. Governor Kitzhaber's executive order and the Sustainability Act of Oregon both address the Sustainability Act of protecting natural resources for the community and for future generations. After the April surveyors report was completed by the department and in line with the mission statement, the parks department did issue the request to remove the fence. Ms. Berry said she also opposes the sale of this property purely on the basis that it was donated land for public enjoyment. She said approval obviously could set a precedent. Although this approval may be allowable under current statute, and it would be a kind and compassionate act, it would penalize the public. It would reduce the public space and is not in the best interest of the community or future generations.

Ms. Berry said if this sale is approved she felt the sale price was too low. She said that the previous survey cost the county over \$2,000, so money recouped from the sale would go back to the parks

department and it would pay for the cost already incurred and the remainder would go back to the maintenance of the park. She said this purchase would increase the owner's property size by 22 percent, so it's reasonable to think that they recoup that amount if they sold the land. The real land value of the property is closer to five dollars per square foot, so the proposed price of \$5,000 is only eighty-one cents a square foot. Ms. Berry said that her grandchildren and she go to the park often and she wants the park intact for when they are grown. She said she does have empathy for the Swishers and they have been pretty good neighbors to her, although she thinks the fence should definitely be moved back onto their own property. They have done extensive landscaping in front and have installed a vinyl fence along the right-of-way in front of their house. She felt the rest of the areas such as the grapes and sheds were easily moveable and that the fence needed to be moved off of public property.

Doug Tookey said he also was a member of the Marion County Parks Commission. He clarified that they were notified about this proposed sale and they did not discuss the merits of the sale. He added there are three colleagues from the Parks Commission that are in attendance. He echoed his colleague's sentiments, saying he opposed this sale because it doesn't reflect the broader ideals of a parks system and protection of the park for the broader public. Mr. Tookey said the Parks Commission is meant to represent the broader community, and again, the ideals of protecting, creating and promoting ideals of park systems. People use the parks for rest and recreation. He felt the Parks Commission interest was to represent the broader community and that the sale would set a bad precedent and should not go forward.

Commissioner Brentano then asked the Swishers if they would like a chance for rebuttal.

Mrs. Swisher said they were aware more than a few months after they moved in that the fence was not on the property. They were told numerous times by neighbors not to worry about it and that the neighbors didn't care. She said that they made a mistake and they have admitted it. She said they had support from numerous neighbors saying they didn't care that the fence was on park property. She reiterated all the upgrades they had done to the property to improve it. She said she knows there are more than 33 signatures in support of her issue and she has received as many if not more phone calls to her home. The callers have said that they do not use that section of the park and that their children enjoy seeing the cows. People bring their dogs up to the fence and they play with the chickens. She said she has pictures of the pre-school children at the fence looking at the animals. Mrs. Swisher said that she and her husband know they made a mistake and take full responsibility for it. Again, there are wires that go over the property. She said they have the only property that has to deal with overhead wires. She said they have had numerous county workers supporting this purchase, but they weren't sure if they could put in their opinion because they were employed by Public Works.

Mrs. Swisher said if they had to move the fence at this point in time they would be killing vegetation. They have fruit and vegetables that they would have to move and they probably wouldn't survive. She said they have put the land to good use and she didn't want to lose it. She reiterated it is not an area that is being used. She said that working with the Stinnetts was extremely difficult in the purchase of this home. She also said they were wrong because they didn't research the lines. She was so excited about this home. It was her dream house and retirement home. She said her husband did ask Mr. Stinnett about the lines and they took his word for it. She said they trust people and take their word. She asked why the neighbors waited until they had improved the property before saying anything about the property line. She thanked the board for their time and asked if they had any questions.

Commissioner Milne asked Mr. Swisher to join Mrs. Swisher at the table. Commissioner Milne said that someone had made the comment that Mr. Swisher had said he knew the fence was not on his property. She asked him to respond to this comment. Mr. Swisher said he did not know about the fence being moved until Mr. Saul brought it to his attention about three or four months after the purchase. He said at that point he finally measured the property and it was off. He then talked to other neighbors and asked if they knew about this fence being off the property line. Some of the neighbors did know and said not to worry about it. He said they didn't build anything on this extra property, but did move things out of the way of the power lines and out of the easement. Commissioner Milne asked how this issue came to the board. Mr. Swisher said that one morning a surveying crew came out and started marching through the property and surveying. He said they never even knocked on the door and the Swishers had to go out and ask them what they were doing. Commissioner Milne asked when this took place and Mr. Swisher said it was in April 2008. She then reiterated that it was about three months after they purchased the property that the neighbors started making them aware there might be a problem with the fence line, but not to worry about it.

Mrs. Swisher said the county surveyors had communicated that everyone's property line was off approximately 50 feet and they had a very difficult time surveying it. Commissioner Milne said that someone had brought up the issue that some of the markers were washed away during a flood.

Commissioner Milne again asked what communication the surveyors provided when they came out to survey the property. Mr. Swisher said the surveyor said they were surveying because there was a complaint that his fence was on park property. Mr. Swisher said they surveyed the entire south side and then started with the west side. Mrs. Swisher added that there was no type of notification when they came out to survey. She said they were notified that they had so many days to move the fence and the vegetation and if it wasn't done, the county was going to come out and do it. Mrs. Swisher said that is when she decided she was going to fight for the property because they had invested so much money and work into it. She said she didn't want to have to move sheds and the vegetation. She added that the power lines are an issue. They felt because there is an easement in the field where the power lines are that at some point there could be a purchase. In addition, there is a difference in the property value today due to the improvements that have been made.

Bill Worcester, Mark Riggins and Jeff Bickford came back to the table. Mr. Worcester apologized for not notifying the commissioners about the property line on the north side. He said that in reference to the \$3300 that Mr. Bickford spoke about, their intent was to advise the Swishers that the county did not complete all the survey work that would be required to complete this transaction. Mr. Worcester said they would be glad to turn over all of their survey data, which would provide another surveyor a head start. He added that they would be happy to work with the surveyor to minimize any additional costs to the Swishers.

Commissioner Milne asked what work needs to be done in addition to ascertaining where the property lines are. Mr. Riggins said this case would obviously become a property line adjustment and the monuments would need to be set, a map prepared, legal descriptions prepared and the documents recorded. He added that the cost for a surveying crew is \$1,000 to \$1,200 per day. He said there is approximately a couple of days work on the property for a field crew and then the office support needed. He felt the \$3300 figure was quite close to what it would cost to complete this transaction.

Mr. Worcester clarified that the county is not asking for more money if this case were approved, but he is advising the Swishers that there could be some additional transaction costs. Commissioner Milne asked if other property lines would be thrown off if the Swisher's property lines were corrected. Mr. Riggins answered no. Commissioner Milne asked if there would be any affect on the park property and Mr. Riggins said no. She asked why they decided to do a survey. Mr. Worcester said that Mr. Bickford had received a complaint about the location of the Swishers fence and some large fir trees that had been cut. He said there had been a question of whether there had been a timber trespass in terms of someone taking trees that actually stood on park property. Mr. Worcester said he asked Mr. Riggins to have the crew go out and initially check out the location of the trees. The trees were actually on the Swisher property and that issue went away, but in the meantime the fence issue was brought forward. Commissioner Milne asked what the nature of the complaint was. Mr. Bickford said that a neighbor in the area called and asked Public Works if they were aware the fence line was actually on park property.

Mr. Worcester said it concerned him when he heard that the crew would have gone out and suddenly entered the property without talking to the Swishers first. He asked Mr. Riggins to comment. Mr. Riggins stated that they do not enter anyone's property without asking first. He said they do have a right of entry, but they do not use it. He said they put sign hangers on doors and wait for a response or they actually speak with the owner. He said his crew indicated they were outside of the fence working and encountered Mr. Swisher and had a discussion. Mr. Riggins said the statements made regarding his crews trespassing surprised him because that is not what they do.

Mr. Bickford said he heard someone question the notification process for the public hearing. He clarified that notice of the public hearing was actually posted twice in the Statesman Journal. Additionally, it was posted in the courthouse and on the second floor of Courthouse Square as well as three postings out at the park. Mr. Bickford said the Parks Commission did discuss this issue, but took no official position. Mr. Bickford clarified that there used to be a caretaker building out at the park, but it hasn't existed for a very long time. Currently, the county uses ProStar Security to open the gate in the morning and close the gate in the evening. He added that the park is also closed from November 1 through April 30 every year. Mr. Bickford said the Swishers have been very good neighbors with the county and that they have cleaned up their lot and it looks very nice. He said he has received many emails and phone calls on the positive side for the Swishers.

Commissioner Milne said the issue of setting a precedent was echoed regarding this case. She asked if the county has had a similar situation where property lines are uncertain or in dispute with any county property. Mr. Worcester said he has never had a case like this before.

Commissioner Milne asked Jo Stonecipher to address the legality of this process. Ms. Stonecipher said that the board is following the process that is set out by statute. This statute governs the sale of property that has been dedicated to park use and the process has been what the board has followed today. The process is to hold a public hearing to take objections to the proposed sale. The statute also requires that any proceeds from that sale would be dedicated to park use. Commissioner Milne confirmed that the board is not doing anything that is not legal.

Commissioner Brentano said it was time for he and Commissioner Milne to discuss what they think and to make a decision. Commissioner Milne asked how to guarantee that other county parks property legal descriptions are accurate. Mr. Worcester said the county has a small survey staff consisting of two crews. Most of their time is spent restoring 5,000 or more government corners, which is the basis of all

surveys in the county. Typically, even surveying rights-of-way on the roads is on an as needed basis because the county doesn't have the resources to go survey every one of the right away lines or property lines. It is somewhat driven by apparent need and was brought to their attention by a complaint. Mr. Riggins added that there are probably less than 10 percent of park boundary lines that have actually been surveyed. He said there is an opportunity for this to happen again.

Commissioner Brentano noted that this property has had different survey lines on every presentation. He said he didn't think that allowing this would adversely impact the use of Spongs Landing Park in any way. Under the statute, the board is supposed to find it is in a public good. He said he finds the public good is two things, one is leaving it where it is continues the security. The second is that it provides protection from flooding, both to the Swisher property and adjoining lots. Commissioner Brentano said this doesn't set any precedent, because a person can always ask. It doesn't mean the county will agree or that in this case it has been agreed. The values were set by comparable properties. He added there has been some confusion and additional costs added on, surprising the board as well as the Swishers. Commissioner Brentano said the offer would be if the board accepts the proposal, this is the price and the Swishers carry the cost of closing, which would include a survey. He said it does appear to him an opportunity to accept or reject the findings of the hearing today and there should be a time limit set on that so they can proceed.

Commissioner Milne said she felt that she and Commissioner Brentano have slightly different perspectives, but are in agreement. She said she didn't feel this was setting a precedent and she didn't hear there was any harm to the public interest. Commissioner Milne asked what public interest harm there would be if the board approved a lot line adjustment. She felt it was in the public interest to solve this problem. A lot of work has been done to the property and it does not devalue the park it adds value to the park. Commissioner Milne's conclusion is that this in the best interest of the public, for the park and for the use of park to make this lot line adjustment.

Commissioner Brentano said this is no different than any property owners finding out they have a boundary dispute.

Ms. Stonecipher clarified that there still needs to be an application for a property line adjustment and there is still a land use process that will have to be completed. She said what the board is doing today is merely making a determination under the statute governing the possible conveyance and transfer of property dedicated to parks. This transaction itself will not be consummated until a lot line adjustment has been approved and is final and then the paperwork and the transaction can conclude

MOTION: Commissioner Milne moved to close the public hearing and approve pursuant to statute ORS 275.330 that the conveyance of this park property is in the public interest and direct staff to work with the Swishers to proceed with the land use process required for a property line adjustment. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 12:20 p.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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