

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 15, 2008
Marion County Courthouse Square

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

PRESENT: Commissioner Sam Brentano, Commissioner Patti Milne and Commissioner Janet Carlson. Also present were Jo Stonecipher as legal counsel and Gordean Ash as recorder.

PUBLIC COMMENT

None.

PRESENTATION AND PROCLAMATION

Consider approval of a proclamation designating October 19-25, 2008, to be “Hands & Words are not for Hurting” week. – Ann Kelly, Pete Teller

The Hands & Words Are Not For Hurting Project ® (Hands Project) a nonprofit organization is making dramatic positive changes in school climates. Schools across the nation use this abuse and violence prevention education program. Ann Kelly & Pete Teller introduced the young people from Walker Middle School. They invited everyone to support this 12-year-old project and shared the history of their hero, Janet Brown.

MOTION: Commissioner Milne moved approval of the proclamation designating October 19-25, 2008, to be “Hands & Words are not for Hurting” week. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

The proclamation was read.

PRESENTATION

United Way Annual Campaign – Cyndi Astley, Dick Withnell

Dick Withnell and Cyndi Astley, United Way, showed a PowerPoint presentation expressing the importance of United Way campaign funds. Cyndi thanked the commissioners and the leaders for making an impact with the record-breaking numbers of last year.

Cyndi said that with the low administrative costs of 11 percent, United Way was able to place over \$1 million into the community last year.

CONSENT

BUSINESS SERVICES – HUMAN RESOURCES

Approve recommendation to uphold the pay range of the senior environmental engineer classification.

CLERK/FINANCE

Approve amendment #2 to extend the contract with ACS Enterprise Solutions to provide recording services through June 30, 2009.

HEALTH

Approve amendment #56 to receive \$922,096 from the Department of Human Services for the 2007-09 financing of community mental health, developmental disability and addiction services.

PUBLIC WORKS – BUILDING INSPECTION

Approve an intergovernmental agreement to collect construction excise tax (CET) on the behalf of Silver Falls School District 4J.

PUBLIC WORKS – PLANNING

Schedule a public hearing for October 29, 2008, to consider amendments to the Marion County Rural Zoning Ordinance.

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

ACTION

FINANCE

1. Consider approval of an order adopting a new administrative policy and procedure No. 909, Establishment and Use of Procurement Cards. – Peggy Mitchell, Jeff White

Peggy Mitchell said that the procurement card (P-Card) pilot program has been running since 2004 in seven departments. P-Card services were included on a request for proposal for banking services and Marion County became a partner in the Oregon Consortium with Bank of America.

The P-Card is for transactions under \$5,000 and requires no quote process. This is a more efficient and cost effective way of obtaining small dollar goods. P-Cards will replace all other credit cards used by county departments. They will be used for all authorized county business complying with all federal, state and local purchasing laws, rules, and regulations. Appointed and elected department heads will establish the appropriate financial and budgetary controls surrounding P-Card use within their departments.

There is a provision for unauthorized or fraudulent use uncovered through the program. There will be training, rules, and responsibilities for all managers and cardholders.

Peggy said that with the traditional VISA charge card there is a finance charge. With the new program, when the payment is made within thirty days there is no finance charge. Bank of America offers a rebate program to the public sector.

There are no more than 120 P-cards used in the county. The cost for tracking the traditional invoice check payment process is estimated at \$90 - \$120 per transaction. The P-Card cost has been estimated at about \$29 - \$30 per transaction.

MOTION: Commissioner Carlson moved approval of an order adopting a new administrative policy and procedure No. 909, Establishment and Use of Procurement Cards. Seconded by Commissioner Milne, motion carried. A voice vote was unanimous.

2. Consider approval of an order revising administrative policy and procedure No. 901, Public Contracting Rules. – Peggy Mitchell

Peggy Mitchell reminded the board that in January 2008, there were revisions to the Public Contracting Rules following legislative changes in the 2007 session. The rules were changed and these are the administrative policy and procedures that outline the public contracting rules that Marion County will operate under. The only change is the newly adopted format, and references were added to the changes, adopted by ordinance, last January.

MOTION: Commissioner Milne moved approval of an order revising administrative policy and procedure No. 901, Public Contracting Rules. Seconded by Commissioner Carlson, motion carried. A voice vote was unanimous.

SHERIFF

3. Consider approval to receive \$354,878 from the Bureau of Justice Assistance for the State Criminal Alien Assistance Program (SCAAP) for incarcerating undocumented criminal aliens in county correctional facilities. – Undersheriff Jason Myers

Undersheriff Jason Myers said that yearly an amount is received from the Bureau of Justice Assistance. It changes according to a number of factors such as money available, and how many undocumented criminal aliens have been incarcerated. Because they did not know how much they would receive and desiring to budget conservatively, the Sheriff's Office budgeted for \$150,000. Commissioner Carlson pointed out that this money is coming as a reimbursement for services provided to illegal aliens in jail. She said that the Sheriff's Office is on the right tract and doing well.

MOTION: Commissioner Carlson approved receipt of \$354,878 from the Bureau of Justice Assistance for the State Criminal Alien Assistance Program (SCAAP) for incarcerating undocumented criminal aliens in county correctional facilities. Seconded by Commissioner Milne, motion carried. A voice vote was unanimous.

PUBLIC WORKS

4. Consider approval of a resolution authorizing a loan from the Environmental Services Fund to the Department of Public Works for the purpose of converting the Wheatland Ferry to electrical power. – Bill Worcester

Bill explained that a diesel-powered generator driving the electric motor powers the current boat. This engine is past its service life. With the current cost of diesel, \$60,000 can be saved per year by converting the boat back to overhead electric power. Public Works has a contract for \$276,000 for the conversion. Lowering that total amount is a \$41,000 grant from DEQ.

Bill said that with the conversion, the diesel-powered generator would be taken off the boat. Power lines crossing the river provide the trolley with electricity to power the boat. The cost includes poles, electrical line, construction of the trolley and the power lines.

The conversion work will begin immediately and continue through December. The boat will be down about 30 days and probably in December when the boat is usually down due to high water. A press release will be submitted with details informing the public.

MOTION: Commissioner Milne moved approval of a resolution authorizing a loan from the environmental services fund not to exceed \$236,000 to the Department of Public Works for the purpose of converting the Wheatland Ferry to electrical power. Seconded by Commissioner Carlson, motion carried. A voice vote was unanimous.

The meeting was adjourned for a ten-minute recess.

PUBLIC WORKS – PLANNING

5. Consider decision regarding subdivision, case #SUB 07-12, Elkhorn Golf and Resort, LLC, Clerk's File #5577. – Sterling Anderson, Joe Fennimore

Joe Fennimore, planning division, said that the issue before the commission today is the application from Elkhorn Golf and Resort LLC for detailed approval to implement the conceptual approval granted for Elkhorn Estates plan development in Plat Case No. 879 and Marion County Ordinance No.677 which includes subdividing 65.3 acres into 153 lots, (150 single family lot, one condominium lot and two commercial lots), and an exception to Statewide Planning Goals 11 (Public Facilities) and 14 (Urbanization), on a total of 464 acres in an AR-LU (Acreage Residential – Limited Use Overlay), P(Public), and TC(Timber Conservation) zone located at 322295 North Fork Road SE, Lyons.

On June 18, 2008, the Marion County Board of Commissioners conducted a hearing on the proposal. The hearing was closed to oral testimony and the record left open for written testimony until July 10, 2008, for general rebuttal until July 23, 2008, and for final rebuttal by the applicant until July 30, 2008. On August 12, 2008, the board conducted a work session to discuss recommended conditions if the proposal is approved. During the work session the board reviewed the recommended conditions and directed staff to develop options for several conditions and to schedule the case for consideration on a regular board session agenda. Attachment A contains a list of recommended conditions consistent with the direction given at

the work session. Optional wording is provided for 5(j), 15, 23, 30, 39(b), 42, and 46. Five options have been outlined for the board to consider.

Recommended conditions of approval:

1. Deny the request and direct staff to prepare an order for adoption by the board.
2. Determine that an exception to Statewide Land Use Goal 11 and/or Goal 14 is required and deny one or both of the goal exceptions and therefore, deny the detailed approval requested by the applicant and direct staff to prepare an order for adoption by the board.
3. Determine that an exception to Statewide Land Use Goal 11 and 14 is not required, or are required and approved, and grant detailed approval of the proposal with some or all of the recommendations of the planning commission, including some or all of their proposed conditions as well as any additional conditions the Board feels are needed. Direct staff to prepare an ordinance for adoption by the Board.
4. Determine that an exception to Statewide Land Use Goal 11 and 14 is not required or are required and approved, and grant detailed approval of the proposal with some or all of the recommendations of the planning commission, including some or all of their proposed conditions, as well as any additional conditions the board feels are needed and grant the applicant's request to allow the golf course to be in a separate ownership from the remainder of the development. Direct staff to prepare an ordinance for adoption by the board.
5. Based on testimony and evidence provided at the public hearing, conduct further review of the proposal by continuing the hearing or remanding it, or any part of it, to the planning commission or hearings officer.

Commissioner Carlson mentioned that the background work on this application includes an evening hearing, work sessions, the hearings and the staff work. It has been a lengthy process. The board's role is not to decide if this is a good idea but to determine if the applicants have met the criteria allowing them to move forward. The board's latitude is under the law.

Unresolved conditions:

5(j) Option 1 (original wording):

The pavement of North Fork Road and Gates Hills Road is relatively thin and could be damaged by trucks carrying construction materials and equipment to and from the proposed development. In order to reduce repair costs and the public detriment associated with damaged roads, the developer will be required to repair or replace these areas upon request of the County. The Public Works Department will review the road (and other public facilities) approximately four times per year (or more if necessary) and will inform the developer and maintenance association of any damage attributable to site construction. The developer and/or maintenance association would then have 90 days (or other time frame as agreed to by Public Works) to repair the damage. If areas remain unrepaired after this time, building permits may not be issued for the subject property until the damage has been repaired.

Option 2 (dispute resolution added):

The pavement of North Fork Road and Gates Hills Road is relatively thin and could be damaged by trucks carrying construction materials and equipment to or from the proposed development. In order to reduce repair costs and the public detriment associated with damaged roads, the developer will be required to repair or replace these

areas upon request of the County. The Public Works Department will review the road (and other public facilities) approximately four times per year (or more if necessary) and will inform the developer and maintenance association of any damage attributable to site construction. The developer and/or maintenance association would then have 90 days (or other time frame as agreed to by Public Works) to repair the damage. If areas remain unrepaired after this time, building permits may not be issued for the subject property until the damage has been repaired. *The applicant shall provide an agreement that outlines a dispute resolution process to be followed in case of disagreement over the amount of damage caused by construction. The agreement shall be reviewed and approved by County Counsel prior to issuance of any building permits.*

The commissioners support option 2.

15. Option 1 (original wording):

Prior to approval and recording the final plat for any phase, the developer shall file with the Board of Commissioners a memorandum of understanding, approved by County Counsel, acknowledging that the County may, when evidence shows that facilities are not meeting state or county requirements, cause the maintenance of the private streets, drainage, paths, common open spaces and community water, sewer and forest protection facilities with the expense becoming a lien against all property in the planned development.

Option 2 (additional wording to recover costs):

Prior to approval and recording the final plat for any phase, the developer shall file with the Board of Commissioners a memorandum of understanding, approved by County Counsel, acknowledging that the County may, when evidence shows that facilities are not meeting state or county requirements, cause the maintenance of the private streets, drainage, paths, common open spaces and community water, sewer and forest protection facilities with the expense becoming a lien against all property in the planned development. *Developer will provide a maintenance bond, letter of credit or other form of financial security or assurance in a form and amount acceptable to Marion County Legal Counsel for the purpose of reimbursing the County for costs incurred to perform necessary maintenance.*

The commissioners support option 2; approve conceptually.

23. Option 1 (original wording):

Prior to issuance of permits for any of the development in the commercial area the applicant shall submit a development plan to be approved by the Department of Public Works and the planning division. No commercial development, other than a sales office, shall occur until 50 residences have been constructed. All uses shall be connected to the community water systems and be located within the area designated “Commercial Area” on the Development Plan.

Option 2 (allow the boutique inn to be constructed prior to establishing 50 residences):

Prior to issuance of permits for any of the development in the commercial area the applicant shall submit a development plan to be approved by the Department of Public Works and the Planning Division. No commercial development, other than a sales office and boutique inn shall occur until 50 residences have been constructed. All uses shall be

connected to the community water systems and be located within the area designated “Commercial Area” on the Development Plan.

Option 3 (allow commercial development before establishing any residences):

Prior to issuance of permits for any of the development in the commercial area the applicant shall submit a development plan to be approved by the Department of Public Works and the Planning Division.

The commissioners support option 2 with modifications.

30. Option 1 (original condition in Plat Case 879):

The golf course may be held in separate ownership from other common open space in the planned development but shall always be considered a part of the planned development. The owner of the golf course shall be a member of the planned development homeowners association and shall cooperate with the association in maintenance and use of the treated wastewater storage pond and irrigation system.

Option 2 (condition in Ordinance 677):

The golf course and other improved recreation facilities shall not be owned separately from the remainder of the development.

Option 3 :

The residential homeowners association (HOA) and the golf course HOA shall be joined in a master HOA.

Option 4:

The golf course and other improved recreation facilities may be owned separately from the remainder of the development.

The commissioners support option 3.

39(b) Option 1 (language recommended by applicant):

Feeding and Hunting of Wildlife: Feeding and hunting of wildlife is prohibited on the property. No owner shall feed or hunt wildlife, including big game species, within the property. All owners shall comply with this restriction and shall assure that their tenants, licensees, invitees and family members so comply.

Option 2 (allow bird feeders)

Feeding and Hunting of Wildlife: Feeding and hunting of wildlife, *other than bird feeders*, is prohibited on the property. No owner shall feed or hunt wildlife, including big game species, within the property. All owners shall comply with this restriction and shall assure that their tenants, licensees, invitees and family members so comply.

The commissioners support option 2.

42. Option 1 (recommended by applicant):
Prior to approval and recording the final plat the applicant shall develop an education resource center on the property in conjunction with ODFW, the local private timber industry, and the Opal Creek Ancient Forest Center that will be open to the public.

Option 2 (make condition optional):

The applicant *may* develop an education resource center on the property in conjunction with ODFW, the local private timber industry, and the Opal Creek Ancient Forest Center that will be open to the public.

Option 3:

No condition.

The commissioners support option 2.

46. Option 1:

Sale of packaged liquor products from the convenience store shall be prohibited.

Option 2:

No condition

Discussion and explanation continued covering the conditions of approval and costs to the developer. Commissioner Carlson requested a separate motion for condition 46 allowing her to go on record opposing.

Commissioner Carlson mentioned the need for economic development in this area and concern for this pristine area being spoiled with the development. The applicant has met goals 11 and 14 exceptions and with the conditions meets the legal requirements under the land use laws. The exceptions to goals 11 and 14 are required and approved.

MOTION: Commissioner Carlson moved that in the case #SUB 07-12, Elkhorn Golf and Resort, LLC, Clerk's File #5577, the board determines goal exceptions 11 and 14 are required and approved as their conditions have been met. Seconded by Commissioner Milne, motion carried. A voice vote was unanimous.

MOTION: Commissioner Carlson moved to grant detailed approval of the proposal for the first 45 recommendations included in attachment A, Conditions of Approval, to approve recommendation of 5(j), option 2; approve recommendation 15, option 2, conceptually asking staff to clarify the wording; approve recommendation 23, option 2, conceptually with word smithing around the issue and in conjunction with phase development and removing the requirement of 50 residents; approve recommendation 30, option 3; approve recommendation 39 (b), option 2; approve Condition 42, option 2. Seconded by Commissioner Milne, motion carried. A voice vote was unanimous.

MOTION: Commissioner Milne moved to approve condition 46, option 2. Seconded by Commissioner Brentano. A voice vote passed with Commissioner Carlson opposing.

MOTION: Commissioner Carlson moved to direct staff to prepare an ordinance for adoption by the board that encompasses the prior three motions for case #SUB 07-12, Elkhorn Golf and Resort, LLC, Clerk's File #5577. Seconded by Commissioner Milne, motion carried. A voice vote was unanimous.

Commissioner Milne remarked that there are strong feelings surrounding this subdivision. The promise of future economic development brought to the canyon through the golf course and resort could aid in a financial turnaround.

Commissioner Brentano wanted to go on record as saying that he thought the road could not support the anticipated volume of traffic but Public Works found that the road would support the increased activity. He said that this road has problems already with the slide areas that will be taken care of with this development. The \$1.8 million required for this roadwork could go to another project with the passing of this subdivision. Recycling the water through the golf course will work and help that area. He said that this is not a wilderness area and the approved conditions will protect the beauty of the area. Finally, economic development in the North Santiam Canyon will benefit from this golf course and resort.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS

A. Public hearing to receive comments on proposed revisions to the county's noise ordinance, No. 1190. – Sterling Anderson, Bruce Armstrong

Bruce Armstrong, Marion County Legal Counsel, said that in April 2004 the board approved the current noise ordinance. As it stands the ordinance works well with the Sheriff's Office handling after hours violations and code enforcement handling violations during the day. For the most part when someone is informed they are in violation they stop the noise. A violation is handled in Justice Court. In Justice Court, the enforcement officer has to witness the violation. The difficulty of the code enforcement officers to be present when noise is occurring was the impetus for a newly crafted ordinance.

Two areas of the ordinance that remain unchanged are (1) the decibel levels, 55 at night, 65 during the day and 80 decibels for off-road vehicles. (2) Within the Marion County UGB there is uniformity in dealing with noise issues.

Three significant changes are (1) the proposed ordinance clarifies where sound measurements are taken, (2) the proposed ordinance establishes a variance procedure for allowing specific events, and (3) the proposed ordinance establishes a new administrative procedure.

The new administrative procedure allows for violation of an excessive noise disturbance. Excessive noise disturbance is defined as sound from a sound producing device. The definition of sound producing device is the sound from a device that is plainly audible in the complainants dwelling unit that unreasonably disturbs the persons of ordinary sensitivity and detrimentally affects their ability to use their property. Including factors for unreasonable disturbance provides further guidance. Those four factors are (1) the duration and frequency of the sound; (2) the time of day or night of the sound; (3) the type of noise being unusual for time or place; and (4)

whether the sound is recurrent, intermittent or constant. Two people from different properties within 500 yards of the disturbance property need to witness and sign the excessive noise disturbance complaint. The complainant holds the burden of proof. The losing party would be responsible for the hearing process fee, established by the board.

The proposed ordinance for excessive noise disturbance clarifies that an event can include multiple violations and lead to multiple enforcement cases.

Commissioner Brentano said that no one was signed up to testify.

MOTION: Commissioner Milne moved to close the public hearing on the proposed revisions to the county's noise ordinance, No. 1190. Seconded by Commissioner Carlson, motion carried. A voice vote was unanimous.

B. Public hearing to receive comments on proposed revisions to the county's off-road vehicle ordinance, No. 1142. – Sterling Anderson, Bruce Armstrong

Sterling said that this hearing was set to receive testimony to this proposed amendment to the existing ordinance No. 1142. Complaints are received concerning noise and dust caused by all terrain vehicles (ATV) ridden close to homes, often for extended periods of times. Code enforcement has attempted to control this through the noise ordinance. This noise ordinance has not been effective in dealing with this issue. Based on direction from the board, options for amending the ordinance were discussed at management updates and work sessions. This ordinance applies to recreational use of off-road vehicles. This ordinance does not apply to ATVs that are used for farming, property maintenance, timber operations, military, fire prevention, emergency services or law enforcement. The main amendment to this ordinance addresses the recreational operation of off-road vehicles involving a track, a loop, a trail, a course, a raceway, a strip, a hill, or an area where there are jumps, turns and mounds or other similar terrain. There is a provision added for a 100-foot set back from adjacent properties to offset dust.

Commissioner Brentano said that no one had signed up to testify.

Commissioner Carlson said that the changes to this ordinance were generated by complaints received in the board office. She asked if there is a fact sheet provided during the sale of off road vehicles. Sterling said that he would look into providing a fact sheet to major outlets.

MOTION: Commissioner Carlson moved to close public hearing on the proposed revisions to the county's off-road vehicle ordinance, No. 1142. Seconded by Commissioner Milne, motion carried. A voice vote was unanimous.

Commissioner Brentano read the calendar.

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

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting.
TTY 503-588-5168

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