

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, December 10, 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

Student Recycle Calendar Awards Presentation – Bailey Payne, Kelly Cooley-Salem/Keizer Public Schools, Mary Kanz-Mid-Valley Garbage and Recycling Haulers Association.

Kelly Cooley, recycling and waste reduction coordinator for Salem/Keizer Public Schools, said her job is to provide education outreach in the schools. She was in attendance to help present the yearly awards for the student recycle calendar awards. Ms. Cooley then introduced Mary Kanz from the Mid-Valley Garbage and Recycling Association and Bailey Payne from Marion County Public Works Environmental Services commenting that they did the leg work to make this project a success. Ms. Cooley said this contest was an effort to promote waste reduction and recycling in local schools. The Mid-Valley Garbage and Recycling Association and Marion County Public Works Environmental Services teamed up to create 5,000 full color recycled art calendars. Beginning in October students throughout the county started submitting illustrations to address this year's theme, which was "Reduce Your Use". Marion County was recently named the top recycler in all of Oregon. The county now recycles or composts 56.5% of its waste. Fourteen winners were selected based not only on their artistic ability, but on the message they conveyed regarding recycling. The calendars are printed on recycled paper and saved the equivalent of 3,822 pounds of greenhouse gases, 1,959 pounds of solid waste, 17,522 gallons of water, 41 fully grown trees and the same amount of energy as 232 gallons of gasoline.

Mary Kanz, Kelly Cooley and the Commissioners presented the students with their awards.

CONSENT

BUSINESS SERVICES/SHERIFF

Approve contract amendment #8 with Olympic Security Services to extend the term of the fee-for-service contract through June 30, 2009.

CHILDREN AND FAMILIES

Approve an order appointing Gayle Caldarazzo, Mathew Lucas, Gregg Peterson, Luz Rivera and Steve Silberman to the Marion County Children and Families Commission with terms ending June 30, 2012.

PUBLIC WORKS – PLANNING

Receive hearings officer's decision dismissing variance, case #08-04, Southend Airpark, LLC., Clerk's File #5604.

Receive Planning Commission's decision granting conceptual and detailed approval for subdivision/adjustment, case #SUB/ADJ 08-2, Sedoruk, Clerk's File #5605.

Schedule public hearing for January 14, 2009, for zone change/comprehensive plan amendment, case #ZC/CP08-04, Abbott, Clerk's File #5603.

MOTION: Commissioner Milne moved approval of the consent calendar. Seconded by Commissioner Brentano noting the change to 2009 for the date on the Abbott public hearing; motion carried. A voice vote was unanimous.

ACTION

PUBLIC WORKS – PLANNING

1. Consider request to reconsider appeal in partition, case #P08-14, Miller Trust, Clerk's File #5600. – Sterling Anderson

Jo Stonecipher advised the commissioners of the process to follow in this case. She said that first they must accept the request to reconsider and vote on that and then they can decide what action they want to take.

MOTION: Commissioner Milne moved to approve the request to reconsider the appeal in partition, case #P08-14, Miller Trust, Clerk's File #5600. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Sterling Anderson, planning director, said this is an application to divide a 5.95-acre parcel in the acreage residential zone, which has a two-acre minimum, to a 2.0-acre and a 3.95-acre parcel. The hearings officer found that under the unique circumstances in this case the property is no longer zoned acreage residential. At the time of the application the property was zoned urban transition. Mr. Anderson said there is a complex history on this property. It started as a Measure 37 claim, which was rejected by the state. Because the property is in an urban growth boundary now, the county did a review

of the Measure 37 claim under Measure 49 and also found that the claim was not valid under Measure 49. The applicant then submitted the application for the partition as if the property was in the old acreage residential zone, which it no longer is. Unfortunately, the hearings officer concluded correctly that under the acreage residential zone, she could not grant an approval for a partitioning because it was zoned urban transition. The applicant appealed the decision to the board and the board felt that there was really no alternative for the applicant. However, discussions with staff and the applicant's representative, concluded there may be a possibility for partitioning if the applicants actually applied for the partitioning as if the property was zoned urban transition and asked for an adjustment to some of the standards in that zone. As a result, the applicant did submit a request for the board to reconsider their appeal. They requested that the board accept their appeal and remand it back to the planning director to allow the applicants to amend their application to include the necessary adjustment to some of the standards in the urban transition zone.

Mr. Anderson said this would give the Millers a second chance to try and justify their proposal using a different approach. New evidence would have to be generated to show compliance with the adjustment criteria.

Commissioner Brentano summarized that this is not a done deal, but is an avenue the Millers could pursue with some hope of success. Mr. Anderson said that at least there is a procedural alternative that had not been examined before. Commissioner Milne agreed and asked if the applicant has to reapply. Mr. Anderson said it isn't entirely a new application. The review for the adjustment would be a separate new application that would be added to the existing partition application.

MOTION: Commissioner Milne moved to send this application back to the Planning Director so the applicants can amend their application to try to meet the standards of the urban transition zone. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Commissioner Brentano recessed the meeting at 9:26 a.m.
Commissioner Brentano reconvened the meeting at 9:34 a.m.

PUBLIC HEARINGS

9:30 A.M.

PUBLIC WORKS – PLANNING

A. Public hearing to consider zone change/conditional use, case #ZC/CU07- 006, Sacher, Clerk's File #5601. – Sterling Anderson

Sterling Anderson, planning director, said this is an application of Kurt and Lynne Sacher to amend the Marion County Comprehensive Plan by adding a new aggregate site to the county's Mineral and Aggregate Inventory list, and for a conditional use permit to allow an aggregate mining and processing operation on a 34.4-acre parcel located in the farm/timber zone located at 158 Silver Falls Dr NE, Silverton, Marion County.

Mr. Anderson said the applicant filed this application on July 2, 2007. The Marion County hearings officer issued a recommendation to the board on March 2, 2008. The hearings officer recommended an extensive list of conditions for approval and the applicant requested additional time to compile the information to meet the conditions before proceeding to the board hearing. The applicant responded to the hearings officer's recommended conditions and supplied the required documentation. Most of the recommendations were requirements for additional information. Mr. Anderson noted that ODOT and Marion County Public Works concurred that a traffic impact assessment was not necessary due to the small scale of the operation. The applicant had prepared a conceptual reclamation plan to be submitted to the State Department of Geology and Mineral Industry (DOGAMI), as required by their laws. The required acoustical study was performed at the site. Staff reviewed the additional documentation submitted by the applicant and concluded that the information was complete. Staff recommends approval of the request subject to the applicant maintaining a current DOGAMI operating permit, obtaining DOGAMI approval of the submitted reclamation plan and meeting ongoing standards for operation of the site that are contained in the Marion County zone code. These standards include setbacks, access, hours of operation, environmental standards subject to DEQ permits and other criteria to address the impacts of the operation at the location. In addition, staff has prepared a recommended list of conditions if the board approves this application.

Mr. Anderson said the applicant has letters of support he will be submitting and that the board should have received a letter from a neighbor that asks them to consider such things as additional limitations on blasting and operation at the site primarily related to the noise impacts. The neighbor is not opposing the operation, but just asking additional mitigation measures.

Commissioner Brentano asked what other conditions would help alleviate the neighbors concerns. Mr. Anderson said there are requirements for berming at the site that the applicant will be implementing to help mitigate sound impacts. Mr. Anderson said there are already limitations on hours of operation and time of blasting.

Commissioner Brentano stated that the applicant has four neighbors within 1500 feet that are not opposed. Commissioner Milne said that everything seems to be in order and there doesn't seem to be anything unusual. She asked if the requirements by planning were typical of this smaller scale operation. Mr. Anderson said that was correct and this is base rock instead of a river rock operation. Because of the small size of this operation the Oregon Department of Transportation said it would not require a traffic assessment.

Commissioner Brentano said that the applicants state they are only going to blast five to six times per year.

TESTIMONY

Support:

Lee Layton, director of planning with Westlake Consultants, said the Sachers have come to his firm as well as consulting geologist Tom Cooper to help them with the follow through on all issues mentioned by the hearings officer. He said they have no disagreement with the conditions. Mr. Layton did say he wanted to respond to the letter from the Slaters. He said this is a very neighborly application and the

Sachers have invited people to gather and watch when they begin blasting. He referred to the noise study and the mitigations. He then spoke about a berm that will be constructed to cutoff the sight and reflects sound up into the sky. He said the berm would be 30 feet tall measured from inside the pit and 12 feet tall from the existing grade. Mr. Layton said the most important detail is the grinding operation and that it will be down in the hole to help eliminate much of the noise. Mr. Layton then introduced Lynne Sacher.

Ms. Sacher said that she spoke with Mr. Slater and confirmed she would change the hours of operation if necessary. Commissioner Milne asked if these hours coincide with the typical business hours for this kind of operation. Ms. Sacher said that it is much easier to start earlier and get four or five loads out by 8:00 a.m. She said they would adjust the hours either way so as to not upset the neighbors. Mr. Layton added that they have taken steps to address the noise concerns and recommended to the board that they take a wait and see approach.

Commissioner Brentano said it seemed like a lot of reasonable people trying to make this business work.

Commissioner Brentano asked Mr. Anderson if the board could approve this and reserve the right at a later date to alter the times of operation if there are complaints. Mr. Anderson said generally once the decision has been made the conditions have to be followed. He added that maybe we could make a condition for a complaint, but then if you received one complaint the hours would need to be changed. Commissioner Milne suggested that the word reconsideration be added to the language so that it would be the minimum county standards for hours and if a formal complaint was made regarding the hours and noise it could be brought back to the board for consideration. Mr. Anderson said he could try to create a condition that says the applicant can operate within the county guidelines of Monday through Friday from 6:00 a.m. to 6:00 p.m. However, if three complaints were received within a six month period that provide some evidence of disruption of normal activities due to noise the applicant would then come back so the board could make adjustments. Mr. Anderson added that this is somewhat unusual. Commissioner Brentano suggested making the time start at 7:00 a.m.

Mr. Layton came back and said he just shared his summary of hours. He said he understood that according to the code, hours were 6:00 a.m. to 6:00 p.m. Monday through Saturday. His concern is there is simply no evidence to indicate that the neighbors would be bothered by the noise because they are so far away. If the applicant is not able to operate within these guidelines, it actually takes them competitively out of the business operation.

Commissioner Milne agreed that the applicants have to be competitive. She said if they can't be competitive in running their business then approving this doesn't help them at all. They have to be able to get the product to the job early to be competitive.

Ms. Stonecipher stated that a final decision needed to be made. She said if you put something in the ordinance setting a certain number of complaints it provides a weapon for one neighbor to use against another if they become upset. She said this could be crafted to be returned back to the board for review in a few years to see if there had been any complaints.

Ms. Stonecipher suggested that perhaps language could be added that the applicant is not exempt from the noise ordinance, which would enable people to make a complaint. Commissioner Milne said there is no reason for the Slaters to request this time change other than fear and speculation. She said she

doesn't want to restrict above the county's requirements just because someone is fearful of what might happen.

Commissioner Milne said that Commissioner Carlson often strives for some consistency. Commissioner Milne said she was concerned that if the board created standards above the normal requirement that they would be creating a precedent. She stated she is really uncomfortable creating standards that are above and beyond the required standards.

Commissioner Brentano asked Mr. Anderson what would happen if the county started receiving complaints. Mr. Anderson said as long as they are operating within the times and conditions listed, then there is no validity in the complaints. If there are violations then something could be done. He clarified that the hours of operation are 6:00 a.m. to 6:00 p.m. Monday through Friday and operations include extraction, processing and transportation. On Saturdays the only operation allowed between 6:00 a.m. and 6:00 p.m. is transportation. He said the board could consider a tighter limit Monday through Friday for the processing operation, but could still transport.

Mr. Layton then reviewed the acoustics of the rock quarry. The truck loading will be behind the berm so noise will be reduced. He then compared different decibel levels. He said there is an active approach in the design to create a lower decibel level and most of the neighbors are so far away they shouldn't be able to hear it.

MOTION: Commissioner Milne moved to close the public hearing, approve the zone change/conditional use case #ZC/CU07-006, Sacher, Clerk's File #5601, and direct staff to provide the order and ordinance that include the recommendations/conditions in the staff report. Seconded by Commissioner Brentano; motion carried.

Commissioner Brentano read the calendar.
Commissioner Brentano adjourned the meeting at 10:17 a.m.

Attachments: Agenda

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

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