

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, January 18, 2017

9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Sam Brentano, Commissioner Janet Carlson and Commissioner Kevin Cameron. Also present were John Lattimer as chief administrative officer, Gloria Roy as county counsel and Kristy Witherell as recorder.

Commissioner Brentano called the meeting to order at 9:00 a.m.

PUBLIC COMMENT

None.

PRESENTATION

(Video Time 00:01:00)

PUBLIC WORKS

Detroit/Idanha winter storm update. – Ed Flick

Summary of presentation: (See Attachment A)

- Had a call from the City of Detroit asking for assistance;
- Received word from the National Weather Service that there was going to be a cold front coming that was going to have snow;
- On January 10, 2017, Mr. Flick, along with Public Works staff, participated in a webinar with the National Weather Service;
- Received notification from the Idanha/Detroit Fire District that they had significant concerns with the roads within the cities:
 - The roads were growing increasingly narrow;
 - Concerns with Idanha water supply; and
 - Structures becoming snow loaded.
- Both the City of Idanha and Detroit declared needs;
- Three to four feet of snow accumulated on the streets in Detroit and Idanha;
- Mr. Flick met with both elected officials of Detroit and Idanha and the fire district to review the situation and establish objectives:
 - Access to water;
 - Plow roads; and
 - Removing snow from structures.
- Worked with fire district to identify shelters of concern and the elderly;

- Was able to get Public Works up to the water system in Idanha to stabilize the water supply;
- Coordinated public messaging:
 - Allows specific and targeted alerts.
- Governor Brown declared a statewide emergency on January 11, 2017;
- Volunteers conducted door-to-door checks in Detroit and Idanha;
- Positive engagement with elected officials of both cities and the fire district;
- Appreciates the hard work of the volunteers;
- Public information was a valuable resource;
- Will be in Idanha on January 25, 2017 to lay out a hazard mitigation plan;
- Are still going to continue to build the geographic information system;
- Need to establish mutual aid agreements with the cities within Marion County;
 - It is a requirement of law under Revised Statute 401; and
 - Most agreements are out of date.

Board discussion:

- Appreciates the hard work of the volunteers;
- Idanha water system is fragile with chronic leaks:
 - City of Salem responded to a mutual aid agreement that they have with water providers and were up there working;
 - Mr. Flick talked with Idanha Public Works manager; and
 - Significant leaks were not found.

CONSENT

(Video Time 00:20:25)

HEALTH

Approve Amendment #5 with Public Partnerships, LLC to add \$165,000 in funding for fiscal intermediary provider services.

Approve Amendment #3 with Gilberto De Jesus-Rentas, MD to add \$100,000 in funding for medical assessment and supervision of the Children Behavioral Health Program.

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

ACTION

(Video Time 00:21:12)

SHERIFF'S OFFICE

1. Consider approval of the Intergovernmental Agreement with Department of Corrections (DOC) for \$425,000 to provide Women's Re-Entry Program services. – Sheriff Jason Myers, Commander Jeff Wood

Summary of presentation:

- In April 2016, the Sheriff's Office learned that the female prison population was exceeding capacity;
- Coffee Creek Correctional Institute has a capacity of 1,280 female inmates;
- Projected prison forecast shows that there will be 40-50 inmates above the 1,280 capacity;
- Would force the Department of Corrections and the state to open a prison in Salem at the cost of \$20 million;
- The Sheriff's Office did a pilot program several biennium's ago:
 - ORS 144 pilot program:
 - Brought male offenders that were 30-180 days from being released from prison back to the transition center;
 - Sheriff's Office held them in custody;
 - Had wraparound services;
 - Worked with their transitional planning back into the community; and
 - Only worked with offenders who were going to be released back into Marion County.
 - Program was successful, but was not funded in future bienniums.
- Sheriff's Office put together a proposal and presented to DOC:
 - Would provide same programs as before; and
 - Marion County has ample space in the transition center.
- IGA pays for the individuals in the program;
- Will take 15-20 women from Coffee Creek to transition center;
- Women in the program lived in Marion County previously;
- Program designed to provide mentoring:
 - Parenting classes;
 - Employment classes;
 - Mental health treatment;
 - Addiction treatment; and
 - Facilitates a smooth transition from custody to community.
- Women will be able to meet with their parole officers;
- Will be able to provide face to face transitional training;
- This is a reimbursement;
- This is good transitional planning:
 - Good public policy; and
 - Good for public safety.

Board discussion:

- Will further the county's goals and the state's goals for reentry in terms of maintaining the prison population;
- Lane County currently participates in this program:
 - Jackson and Multnomah Counties are looking into a similar program.

MOTION: Commissioner Carlson moved for approval of the Intergovernmental Agreement with Department of Corrections for \$425,000 to provide Women's Re-Entry Program services. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

PUBLIC HEARINGS

9:30 A.M.

(Video Time 00:32:28)

PUBLIC WORKS

A. Public hearing on appeal of hearings officer's decision denying Conditional Use (CU) 16-014/Klopfenstein, Clerk's file #5716. – Joe Fennimore

Summary of presentation:

- In CU 78-80, a one acre parcel in an Exclusive Farm Use (EFU) zone located on Selah Springs Road NE, Silverton, was approved for a farm equipment and machinery repair business;
- Conditions in that case limited the number of employees to two:
 - Did not permit repair, service or maintenance of automobiles.
- The current case is to amend these conditions to allow more employees and the repair of some automobiles;
- The planning director issued a decision approving the request subject to meeting certain conditions:
 - Limit the income generated by the repair of non-farm vehicles to no more than 25 percent of the gross sales;
 - Required the operator to maintain detailed information to be submitted to the planning director every six months; and
 - Limit the number of employees to be determined by the capacity of the septic system holding tank on the property.
- The applicant filed a request for reconsideration and suggested changes to the conditions to define what constitutes a farm related vehicle:
 - Modify the income reporting requirements;
 - The applicant requested language to be included regarding the 75/25 percent split:
 - If the sales fall below 75 percent for any particular year that, in itself, would not be grounds to terminate or disallow the use, unless it falls below 51 percent; and
 - This particular language was not included in the reconsidered decision approved by the planning director.
- The reconsidered decision was appealed to the hearings officer who held a public hearing on September 7, 2016;
- On November 3, 2016, the hearings officer issued a decision denying the request after finding that, under provisions in Marion County Code, the conditional use was discontinued for a period of more than six months and considered abandoned:
 - This conclusion was based on a letter in the record from a farmer in the area who stated that, due to a death of the owner, he had to tow equipment to town for service.
- The applicant claims that the hearings officer incorrectly interpreted the Marion County Code by drawing inferences from the submitted letter; and
- The business was never abandoned.

Testimony:

Don Kelly:

- Lawyer representing Walter and Karen Klopfenstein;
- The request was originally meant to modify two of the conditions:
 - Go from two employees to six employees; and
 - Farm versus non-farm vehicles:
 - Farmers use a variety of vehicles in their fleet.
- The hearings officer focused on one letter from one supporter that referenced the business being closed;
- All issues raised by hearings officer were addressed:
 - Septic tank; and
 - Water source.
- Asking for the same language that was used in the Rowat case, concerning the conditional use not being pulled unless it falls below 51 percent for consecutive years; and
- The operator will be required, under the conditions of approval, to keep records of what was repaired, who it was repaired for and whether it was farm related or not farm related and submit it to the county on a regular basis.

Support:

Walter Klopfenstein:

- Previous owner of the building;
- Bought the building to help with the community's needs for farm equipment repair;
- Worked with Mr. Butler who was the previous owner, for 10 years; and
- The business is a great asset to the community.

Tammy Perez:

- Lives near the business; and
- Takes farm equipment in to get repaired.

Lorenzo Perez:

- Lives near the business; and
- Asset having a repair shop close by.

Earl Veach:

- Lives near the business;
- Creates no adverse effects to his property;
- No traffic issues; and
- Asset having a local business nearby to work with.

Lisa Lesh:

- Lives across the street from the business; and

- Mr. Klopfenstein has been very helpful with working on her farm equipment.

Board discussion:

- The applicant is looking for a safety net when proposing to add the verbiage containing 51 percent:
 - Previous Marion County Commissioners came up with 51 percent as the county’s understanding of the word in the law, “predominantly”;
 - 51 percent protects the county; and
 - 51 percent recognizes what the law states.
- There are a lot of farms in the community that will not only bring their farm equipment to the business, but also bring their vehicles as well;
- The commissioners would like to base the income of the business by sales, not on vehicle type:
 - Categorizing the sales based on the business owners documentation will suffice; and
 - The county is not trying to be unreasonable, but want to make sure people aren’t using farmland as general commercial use.
- Would like to agree on a decision that is easily monitored.

Joe Fennimore:

- The 51 percent language came from a previous case, Rowat 02-40:
 - Manufactures tarps for farmers;
 - Business was located on Mehama Road;
 - The commissioners decided at that time to use the 51 percent benchmark for the case; and
 - The business was not able to maintain the 51 percent and moved to an industrial property.

MOTION: Commissioner Carlson moved to close the public hearing and cap the number of employees at six, approve the condition of proportion of farm related sales as proposed by the applicant in Mr. Kelly’s letter dated November 15, 2016, adding a clause to the end of the letter that states, “unless the sales to the local agricultural community falls below 51 percent for two consecutive years” and direct staff to come back with an order with the stated provisions. Seconded by Commissioner Cameron; A voice vote was unanimous.

(Video Time 01:23:02)

B. Public hearing on appeal of hearings officer’s decision denying Partition Case 16-014/ Kaufman, Clerk’s file #5719. – Brandon Reich, Cindy Schmitt

Summary of presentation:

- Consider a request to partition a nine acre parcel in an Acreage Residential (AR) Zone into three parcels;
- Request was approved by the planning director subject to meeting certain conditions;
- Applicant disagreed to two conditions and appealed the decision to the hearings officer;

- The conditions appealed required right-of-way dedication and improvements of a local access road, Canyon Street, SE Salem;
- The hearings officer held a public hearing on October 26, 2016;
- The hearings officer issued a decision on December 7, 2016 denying the partition request;
- In finding 11, the hearings officer concludes a 60 foot right-of-way already exists and no additional dedication is necessary;
- In findings 34 and 36, the hearings officer concludes there are no local access road development standards:
 - No provision tying local access road standards to other county road standards.
- In the denial, the hearings officer found the applicant needed to provide additional information on how the properties will be accessed, including site distance and slope standards for managing stormwater;
- Without specific information on the proposed access, it could not be determined by the hearings officer that there is adequate access to the parcels;
- The hearings officer concluded that the applicant did not meet the burden of proof by providing all applicable standards and criteria and denied the request;
- The applicant appealed the hearings officer's decision to the Board of Commissioners;
- The applicant must address five items:
 - The easement access from the right-of-way to the proposed parcels meets the standards for private easement, in particular, the grade does not exceed the maximum permitted of 12 percent;
 - The proposal has a means to evaluate and mitigate stormwater impacts and meet county standards and permitting requirements for stormwater;
 - There is adequate access on Canyon Street as it is or roadway improvements are necessary because of the proposed partition;
 - The access to the parcel along Canyon Street and the development on the new parcel will meet fire district standards, in particular, pavement width and turnouts; and
 - The proposal complies with Transportation System Plan (TSP) policies, limiting the creation of new parcels on local access roads.
- The applicant has provided written testimony that addresses the easement showing the grade won't exceed 12 percent:
 - The applicant will be able to obtain a permit to conduct a stormwater evaluation.
- Whether roadway improvements are required on Canyon Street is something for the board to consider;
- Ms. Schmitt's involvement has been trying to address the issues the hearings officer raised in regards to what standards apply to local access roads:
 - Marion County's statutory authority is outlined in ORS Chapter 368:
 - Deals specifically with county roads;
 - Canyon Street is a public right-of-way, which makes it a public road by definition;
 - It is a local access road, which makes it under county jurisdiction;
 - ORS Chapters 368.031 and 368.036 states that the county is not responsible for maintenance for those roads and has no liability for how the road is maintained:
 - Cannot spend gas tax receipts or road funds on that road.

- ORS Chapter 368.039 may become an issue because of fire code access standards, which differ from the standards that a jurisdiction generally has in their design standards.
- The board has adopted engineering design standards for the county road system;
- County roads are normally 22 feet wide travel surface with five foot gravel shoulders with a 60 foot right-of-way;
- Marion County has reduced standards for local access roads:
 - Minimum gravel surface with adequate drainage;
 - May be paved; and
 - No requirement for road to be paved.
- Most of the county's 80 miles of local access roads are gravel;
- TSP policies that are in the adopted plan that deal with local access roads were created because of the number of problems Marion County has run into over the years:
 - Policies 23 and 24 state that no new parcel shall be created that have access to the road unless the road is improved to county standards; and
 - Part of the policy states that if you have two or more homes using a local access road, the standard width raises to 16 feet.
- Marion County requested as a condition that the road be improved to 18 feet:
 - Not required to pave the improvement; and
 - Gravel would be acceptable.

Testimony:

Alan Sorem:

- Attorney for the applicant;
- Partition of a nine acre piece of land in AR zone;
- This partition application was approved;
- The application was subject to two conditions of approval in which the applicant took issue with and submitted an appeal;
- The argument in the appeal didn't have anything to do with the TPP Policy or engineering standards;
- The applicant submitted testimony and argument in front of the hearings officer concerning two additional parcels with two additional homes with 19 trips a day on the local access road:
 - Did not feel like it was fair or constitutional to require an improvement to Canyon Street; and
 - Applicant received bids for improvements:
 - Average bid was \$200,000.
- The hearings officer treated the issues as a first evidentiary hearing:
 - The standard of review is de novo.
- Applicant submitted additional supplemental draft findings:
 - Revised site plan with topography;
 - Letter from Mr. Goertzen, the surveyor who has approved and complied with county standards; and
 - Can satisfy criteria noting no impacts on stormwater.
- The hearings officer looked at the engineering standards:

- Page 13 of the hearings officer's decision states that she searched all Marion County Codes, Marion County Comprehensive Plan, including the Rural Transportation System Plan and Marion County Department of Public Works Engineering Standards dated April 11, 1990 looking for standards;
- Could find none;
- Did not clearly state what the standards were for improving local access roads; and
- The hearings officer felt the standards were for local roads, not local access roads.
- There was no testimony from staff at any level as to whether or not they can apply the moratorium on the property owner;
- In the revised site plan there is a hammerhead turnout for the fire department:
 - Submitted the site plan to the Fire Marshall who feels like it is consistent with the fire code and can be designed;
 - That improvement is not on the applicants property, it is on a right-of-way; and
 - The applicant will cover the cost of \$25,000 to do the public improvement.
- There will be up to 10 parcels serving that road, it is not fair to put the cost burden on one owner;
- Now that the applicant has raised the issue of it not being the applicants responsibility to improve the whole roadway of Canyon Street, it becomes the county's burden of proof to establish whether or not the request of conditions of approval are proportionate:
 - In particular, a moratorium.
- The applicant is willing to sign a non-remonstrance agreement that in the event the county ever inclined to expend funds, they would not appeal or object;
- The only issue with public safety came from a neighbors testimony stating she had no problem or issues with the roadway being too narrow:
 - As a longtime resident, she knows the county will not have funds to maintain the road.
- The applicant is requesting to affirm the hearings officer's opinion of her interpretations in findings 34 and 36, concerning the Transportation System Policy:
 - Noting that the applicant has satisfied the evidentiary issues:
 - The applicant has satisfied all of the criteria.
 - The board can approve the requested partition, subject to the conditions of approval requiring the hammerhead turnout as identified in applicant's site plan.
- The submission of the Transportation Safety Plan Policy isn't technically evidence:
 - The board can defer to the hearings officers interpretation of the TSP and engineering standards; and
 - The hearings officer concluded that the policy does not apply to local access roads.
- There are line item estimates from K&E Excavating:
 - The width of the paving makes up 25 percent of the estimate.
- The applicant believes they have satisfied all areas in question.

Carl Goertzen:

- Engineer for the project;
- Submitted the 12 percent road grade letter;
- The letter addresses two criteria the hearings officer used to deny the application:

- The letter describes the grade can be met:
 - The common access road grade can be achieved at about 10 percent; and
 - The two driveway grades can be achieved at approximately 8 percent, which is less than the 12 percent standard.
- The hearings officer denied the application based on stormwater drainage:
 - Stormwater drainage would be handled through infiltration type raingarden or an infiltration leech trench.
- The site plan shows two turnarounds:
 - The turnaround requires not more than a 5 percent grade; and
 - The turnarounds will be up to fire code standards.

Kent Kaufman:

- Property owner.

Brandon Reich:

- Would like to clarify the three streets in the area with three different jurisdictions:
 - 70th Avenue is not a public right-of-way:
 - County maintained road; and
 - County has jurisdiction over road.
 - Canyon Street is in a public right-of-way, but is not a county road:
 - County does not maintain road; and
 - Local access road in a county right-of-way.
 - North of the property will be an easement:
 - Will have a turnaround for the fire district, which is common if you go over a certain amount of feet.
- In this case, the county road is 70th Avenue and the homes that have frontage, whether they use it or not, it is not counted toward the local access road; and
- The site plan only addresses the subject property and the easement with some improvement on Canyon Street for a turnaround for the fire department.

Cindy Schmitt:

- There is no issue with the review that Mr. Goertzen conducted;
- The portion of the site plan that is in the right-of-way is the hammerhead turnaround:
 - The proposal on the site plan is to do an 18 foot wide paved road from the end of the existing road up to the hammerhead and into the property; and
 - The county has no objection to the design.
- The only piece that is missing is what to do from the connection point back down to 70th Avenue;
- There is not an actual signoff from the Fire District entered into the record that satisfies the whole picture:
 - There are a series of emails that look at different scenarios that were entered into the record;
 - The Fire Marshall will support a slightly lesser standard to the road improvements, assuming at least a five foot gravel shoulder added to the existing 10 foot wide driving surface;
 - The Fire Marshall stated in the emails that she is okay with the hammerhead design in the site plan;

- The county has asked the Fire Marshall to clarify her standards and she has not responded yet; and
- To date, none of the proposals that have been put forth meet the fire districts approval.
- From an engineering standpoint, there are some exceptions on proportionality;
- When adding another house in a neighborhood, typically it adds another 10 trips per day to the road;
- The county is not liable to maintain Canyon Street, but requires posting of the speed limit:
 - Traffic control devices;
 - Adequate draining; and
 - At the expense of the homeowners.
- Originally, there was discussion to send some of the cars down Canyon Street and others to Burnett Road, which is another local access road:
 - Have been called out several times to Burnett Road to settle disputes of neighbors driving on other neighbors lawns; and
 - Want to avoid creating situations like on Burnett Road for Canyon Street.
- Suggested the board consider option of widening the road with gravel as opposed to paving:
 - Doing no improvements at all; or
 - Go for a lesser width of 16 feet.

Board discussion:

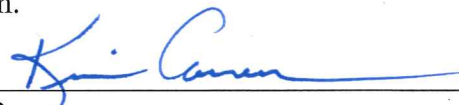
- Gloria Roy:
 - In ORS 368.001, county roads are defined separately from the local access road;
 - Some of the ambiguities can be cleared up;
 - The board can consider the issue as to proportionality of the full improvement compared to what has been proposed today; and
 - There is flexibility with local access roads in the statute, as well as in Marion County requirements.
- Mr. Sorem is satisfied with the easement and is looking to satisfy the proportionality for the improvements on the local access road;
- The applicant is willing to do improvements to Canyon Street, but they are willing to do less than what Public Works has asked for;
- The Fire District did not provide written comment for Canyon Street improvements:
 - The applicant did provide written comments regarding the easement on the property and the hammerhead turnaround.
- The fire district did not state that they needed Canyon Street widened;
- Public Works, Land Development Engineering did provide the fire code applications guide reference of what the fire district would normally ask for, which is a 20 foot width;
- The testimony indicates that there has been adequate access to Canyon Street to date:
 - There is a concern as parcels are added down the road that the normal everyday access could become inadequate.
- There needs to be safe access for the fire department on the road:
 - Needs to be safe for vehicles to pass each other;
 - The 10 foot wide pavement is very narrow; and

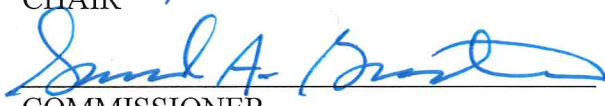
- Mr. Reich does not believe issue number 3 is resolved.
- Mr. Rasmussen stated that the email exchange between the county and the fire district was predicated on adding two more lots on Canyon Street:
 - One of the lots would be taken to Burnett Road;
 - Once the application was provided, auxiliary access to Burnett was off the table;
 - The notion of adding the five feet widening to Canyon Street was only for one additional lot needing access to Canyon Street; and
 - The Kaufman's were originally seeking an access easement from the Kuenzi's who live off Burnett Road.
- The commissioners suggested the applicant pave two feet of Canyon Street along the adjacent lots;
- Would like the fire districts input on Canyon Street improvements;
- State law sets a time limit for making decisions for these types of cases which is 150 days:
 - The 150 days expired on January 12, 2017;
 - The applicant agreed to an extension to this hearing date;
 - Staff suggests that the case be referred back to the hearings officer for another hearing on the issue; and
 - Referring back to the hearings officer would require a substantial extension from the applicant.
- The commissioners believe there are so little issues to clear up that referring back to the hearings officer is not appropriate; and
- The applicant agrees to another extension of the deadline and to schedule a continuance of the hearing for January 25, 2017.


MOTION: Commissioner Cameron moved to leave the record open and continue the public hearing on January 25, 2017. Seconded by Commissioner Carlson; A voice vote was unanimous.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 12:06 p.m.



 CHAIR


 COMMISSIONER


 COMMISSIONER

Board Sessions can be viewed on-line at <http://www.youtube.com/watch?v=VYF8Y6U7178>.