

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, November 25, 2015
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Janet Carlson, Commissioner Sam Brentano, Commissioner Kevin Cameron, Gloria Roy as county counsel and Kristy Witherell as recorder.

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

PUBLIC COMMENT

None.

PRESENTATION

None.

CONSENT

COMMUNITY SERVICES

Approve Amendment 2 to the Contract for Services with Ingalls and Associates, Inc. to add \$471.52 for reimbursable expenses for the 2015 Marion County Fair.

Approve an order reappointing Brandi Buxton, Shannon Gubbels, Nathan Leao and Dylan Wells to the Marion County Fair Board.

HEALTH

Approve Amendment 3 to the Intergovernmental Agreement with the Oregon Department of Human Services to add an additional \$114,750 for Mental Health Block Grant.

PUBLIC WORKS

Approve an order appointing Steven Koch to the Marion County Parks Commission for a term ending September 30, 2019.

TREASURER'S OFFICE

Approve an order of distribution of the Chapter 530 timberlands revenues as required by ORS 530.115.

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

ACTION

BUSINESS SERVICES – HUMAN RESOURCES

1. Consider ratifying the new Marion County Law Enforcement Association (MCLEA) Collective Bargaining Agreement 2015-2017. – Amy Rose Fish, Sheriff Jason Myers

Summary of Presentation:

- 206 employees in the MCLEA unit;
- Tentative agreement through June 30, 2017;
- Negotiations began November 24, 2014:
 - Reached the 150 day mark of negotiations on April 22, 2015;
 - Went to mediation on October 27, 2015; and
 - Able to come to a tentative agreement.
- Over 30 of the 40 articles were tentatively agreed upon as current contract language;
- Article six, section seven, Flexible Work Schedules:
 - Previous letter of agreement around flexible work schedules; and
 - Chose to incorporate into the agreement.
- Article 10, section five, Sick Leave:
 - Updating bereavement leave to follow state and federal law.
- Article 14, Wage Adjustments:
 - Effective three weeks after the ratification of agreement, employees will receive a two percent cost of living adjustment (COLA); and
 - Two percent COLA effective July 1, 2016.
- Article 18, On-Call:
 - Behind with comparison agencies; and
 - Agreed increase of on-call compensation from 3 to 6 percent.
- Article 27, Trial Service Period:
 - Cleaned up language and removed redundancy.
- Article 28, Discipline and Discharge:
 - Internal affairs complaint investigations:
 - Previously required 15 days advance notice of shift change; and
 - Difficult to conduct interviews for investigation.
 - Changed to no less than 24 hours for shift change.
- Article 29, Lay Off:
 - Definitions of office seniority.
- Article 39, Extra Work:
 - Send electronic message to employees with available overtime;
 - Common practice in some divisions; and
 - Makes overtime available to more employees on a consistent basis.
- Article 42, Substance Abuse:
 - Update language to allow changing vendors.

- Letter of agreement for certification advancement training:
 - Of the 40 hours of in-service training, a minimum of 20 training hours will go toward advanced certifications.
- Letter of agreement on voluntary Oregon Physical Abilities Test (ORPAT) testing:
 - Department of Public Safety Standards and Training (DPSST) standards only requires ORPAT at the academy;
 - Would like to establish guidelines to encourage deputies to maintain health and wellness; and
 - Employees who take ORPAT twice a year, 180 days apart, and pass, receive one personal holiday each year.
- Letter of agreement on market reviews:
 - Historically, deputies market review was happening during negotiation rather than the market review process;
 - Addressing market needs rather than looking at COLA;
 - Four specific classifications out of market:
 - Will recommend adjustment to the board;
 - Will ensure adjustment is above a ten cent increase; and
 - Includes property specialist, facility security aide 2, corrections nurses, and deputies.
 - Potential inequity with longevity pay:
 - Potential for earnings to come in less than another employee with less seniority in market adjustment; and
 - Will move from step to step to ensure no inequity occurs.

Board Discussion

- The fiscal impact of the COLA and market review is \$2.3 million over the course of two years;
- Took the opportunity to fix the market reviews for this unit during this bargaining session;
- Appreciate the employees and the work in this unit; and
- ORPAT is a physical agility course designed to match the physical requirements of a law enforcement job.

MOTION: Commissioner Cameron moved to ratify the new Marion County Law Enforcement Association (MCLEA) Collective Bargaining Agreement 2015-2017. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

2. Consider approval of a recommendation to adjust upward salary ranges for classifications: Corrections Nurse, #195, Facilities Security Aide 2, #143; Marion County Sheriff's Office (MCSO) Property Specialist, #067; Deputy Sheriff-Enforcement, #154; Deputy Sheriff-Institutions, #181. – Amy Rose Fish

Summary of Presentation:

- Related to letter of agreement in bargaining for MCLEA for market reviews;
- Significant level of low market positions; and
- Some were almost as low as 10 percent out of market.

Board Discussion

- National problem in hiring deputies:
 - Need salaries to be commensurate with other jurisdictions.

MOTION: Commissioner Brentano moved approval of a recommendation to adjust upward salary ranges for classifications: Corrections Nurse, #195, Facilities Security Aide 2, #143; Marion County Sheriff's Office (MCSO) Property Specialist, #067; Deputy Sheriff-Enforcement, #154; Deputy Sheriff-Institutions, #181. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

HEALTH

3. Consider approval of a two year contract renewal with Idanha-Detroit Rural Fire Protection District for Ambulance Service Area #7. **(TO BE ACTED ON FOLLOWING PUBLIC HEARING)** – Rod Calkins, Noah Olson, Sherry Bensema

PUBLIC WORKS

4. Receive and consider appeal of Marion County Planning Commission's decision approving Subdivision (SUB) 15-003/Yarbrough, Clerk's file #5703 and schedule a public hearing for December 16, 2015. – Joe Fennimore

Summary of Presentation:

- Request to subdivide three parcels containing 4.95 acres into 24 lots:
 - Three lots in the former rail road right of way in East Salem; and
 - Access to the subdivision is proposed by seven existing streets.
- Planning commission held a public hearing September 1, 2015:
 - Left the record open until October 5, 2015.
- Commission issued a decision approving a modified subdivision, to subdivide into 14 lots on October 21, 2015:
 - The decision was appealed.
- Neighboring property owners concerned with storm water runoff, and impacts to existing streets:
 - Privately maintained streets in the area are narrow, in poor condition, and in inadequate condition to serve more homes.
- Planning commission agreed with neighboring property owner concerns:
 - Approved subdividing the property into 14 lots to be served by three county-maintained roads.
- Applicant requesting public hearing to consider a modified proposal using county-maintained roads for 19 lots; and
- Recommendation of staff is to accept the appeal.

MOTION: Commissioner Cameron moved to receive and consider appeal of Marion County Planning Commission's decision approving Subdivision (SUB) 15-003/Yarbrough, Clerk's file #5703 and schedule a public hearing for December 16, 2015. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

5. Receive and consider appeal of hearings officer's decision denying Conditional Use (CU) 15-022/Croft, Clerk's file #5702, and schedule a public hearing for December 16, 2015. – Joe Fennimore

Summary of Presentation:

- Conditional use to establish a winery as a commercial activity in conjunction with farm use on a 18.6 acre parcel in the special agriculture (SA) zone;
- Public hearing on August 5, 2015:
 - The recording of that hear had been inadvertently deleted;
 - Testimony of the record was lost; and
 - Record reopened until August 28, 2015 to allow for additional testimony.
- Hearings officer issued a decision denying the request on October 25, 2015:
 - The decision was appealed.
- Hearings officer found the proposal does not satisfy all the criteria:
 - Additional information is required on wastewater disposal feasibility and roadway access;
 - Additional information is needed on the sensitive river status of the Willamette River, floodplain, geologic hazards and wastewater disposal; and
 - Applicant did not provide an in-depth description of the operation so noise impacts cannot be adequately addressed.
- Applicant is proposing a wine production facility, tasting room, food services and various activities and events as a commercial activity in conjunction with farm use:
 - Hearings officer concludes that wine production is the key activity because it is the only one that is a direct customer of grape growers;
 - Wine production must be established and maintained and cannot become secondary to other proposed uses; and
 - A greenway development permit is required.
- In the appeal:
 - Applicant claims staff did not identify the floodplain, geologic hazards and greenway overlay zones during a pre-application meeting and that they were not identified until the staff report was provided shortly before the hearing;
 - Applicant claims county's destruction of the public hearing testimony and evidence prejudiced the applicants' substantial rights because the decision is based, in part on inadequate evidence and that the lacking evidence was either provided or was not needed; and
 - Applicant claims a complete application was filed on June 5, 2015, and that the 150 day decision making deadline was November 2, 2015:
 - Staff determined the application was complete on July 5, 2015, and calculates the 150 day deadline as December 2, 2015; and
 - The appeal states that under Oregon Revised Statute (ORS) 215.427(8) violation of the 150 day deadline entitles the applicant to a refund of 50 percent of the conditional use application fee as well as the \$500 fee for this appeal.
 - Applicant disagrees with the hearings officer's interpretation that in order to be a winery grapes must be fermented on the property:

- Argues that wine production involves a range of activities including the crushing of wine grapes, fermentation, blending, aging, bottling and other activities;
 - Applicant initially intends to blend and age wines on the property and eventually begin fermentation once a customer base is established; and
 - Claims that the interpretation advanced by the hearings officer places impractical and unneeded restrictions on how these businesses may operate.
 - Applicant claims the hearing officer's decision is not supported by substantial evidence in the record:
 - Appeal includes a copy of a septic approval for a tasting room and indicates once the winery is established, wastewater will be applied as a soil amendment pursuant to a Department of Environmental Quality (DEQ) permit;
 - Information on access to the site and traffic concerns were adequately addressed by testimony and evidence in the record;
 - None of the winery related structures are proposed to be placed in the floodplain and included a copy of a geologic assessment that was prepared for expansion of the dwelling, and it did not reveal any significant geologic issues; and
 - Regarding noise, based on the location and geography of the property, and the small size of the facility, noise should not be an issue.
 - Applicants have proposed a substantial farm business in the SA zone, consistent with the purpose of the zone and requests the Board accept the appeal and refund the appeal fee and the appropriate portion of their application fee.
- Applicant will agree to a hearing:
 - Still believe the 150 day deadline has passed and are entitled to a refund.
- Hearings officer recommends the Board accept the appeal and schedule a new hearing.

Board Discussion:

- Information needed regarding permits, and evidence required is in question; and
- Two ways to have a winery:
 - Administrative review with onsite vineyard; or
 - Contiguous vineyard with lease.
- Not a commercial activity in conjunction with farm use;
- No grapes growing on the property;
- Determination of what fits a definition of a winery will come before the Board in the hearing; and
- If the hearing is accepted:
 - There would be more information that would come forward;
 - The decision to accept the appeal will be separate from the determination for waiving the fee:
 - In order to have a hearing any time after December 2nd, will need agreement to extend the 150 days; and
 - Not enough time to properly notice a hearing prior to December 2nd.
- Best interest for the county to have another hearing to have a recording to move forward:

- No intent to destroy evidence with the inadvertent deletion of the hearing recording.
- Conditional use fee was \$1,250 and a new fee for the appeal:
 - Waive the fee for the appeal because of extenuating circumstances; and
 - Legal Counsel recommends two separate motions for the decision on the appeal and the refund of the fee.

MOTION: Commissioner Brentano moved to receive and accept the appeal of hearings officer's decision denying Conditional Use (CU) 15-022/Croft, Clerk's file #5702, and schedule a public hearing for December 16, 2015. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

MOTION: Commissioner Brentano moved refund the \$500 appeal fee. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

6. Consider approval of a Purchase and Sale Agreement with Peltier Real Estate Company to purchase 2.91 acres at 9613 Mill Creek Road SE, Aumsville in the amount of \$705,000. – Alan Haley

Summary of Presentation:

- Property has been on market for four years;
- County has been looking at it for two years;
- Negotiating over the last year;
- About one third larger than Aumsville shop property and better facilities;
- Six bays on property;
- Closer to Silverton shop for quicker response and easier shipping; and
- Current shop property is on Mill Creek:
 - Potential issues with run off; and
 - Moving away from creek is a smart move with current Department of Environmental Equality (DEQ) standards.
- One prior executive session; and
- Agreement to purchase sets a timeline and steps to proceed to closing:
 - If the board and Peltier both execute the agreement, begins the process;
 - Anticipate closing in 60 days;
 - County would have to submit a deposit of \$20,000 within five business days of closing;
 - Potential survey; and
 - Opportunity for inspection.
- Required to include a lease agreement:
 - Negotiate terms of the lease after executing sale;
 - Lease would be three years;
 - Four opportunities to renew ; and
 - Rent \$2,400 per year with a two percent annual increase.
- Unfavorable negotiating position for county;
- Marion County would take the property as is, responsible for all environmental liability;

- Restriction on use of the property for recycling and garbage hauling was removed for the county;
- There are three lots associate with the property created through a deed process:
 - Some lack of clarity with lots;
 - May require seller to clear it up; and
 - Not a liability.

Board Discussion:

- Underground tank removed years ago and put away correctly, above ground tank replaced it:
 - Confident the environmental analysis will come back clean.
- The City of Aumsville is very supportive of purchasing the property; and
- Will complete a level one environmental test, if needed will request a level two test.

MOTION: Commissioner Brentano moved to approve a Purchase and Sale agreement with Peltier Real Estate Company to purchase 2.91 acres at 9613 Mill Creek Road SE, Aumsville in the amount of \$705,000. Seconded by Commissioner Carlson; motion carried. A voice vote was 2-1.

Recessed as Board of Commissioners
Reconvened as Contract Review Board

CONTRACT REVIEW BOARD
BUSINESS SERVICES

7. Consider approval of the Public Improvement Agreement with P&C Construction Company for \$5,140,989 for the Health Services Building Renovation Project. – Camber Schlag

Summary of Presentation:

- Correct amount of agreement is \$5,506,745;
- Findings for exemption to conduct alternative solicitation method at previous board session; and
- Conducted a request for proposals (RFP):
 - Received five proposals; and
 - Awarded to P&P Construction after evaluation phase.
- Estimated cost of the work is \$5.5 million; and
- 5.6 percent contractor fee:
 - Composite of fee/performance and payment bond/liability insurance;
- Three alternates in contract:
 - Replace round handled locksets with lever handles;
 - Provide luxury vinyl tile (LVT) in suite lobby spaces; and
 - Sound insulation for walls and ceilings in third floor offices.

Board Discussion:

- Very large investment of county funds:
 - Includes health department reserves and some borrowed funds in addition to general fund dollars.
- Planning for renovations for several years;

- Corrects problems with windows and heating, cooling, ventilation and air conditioning (HVAC) systems;
- Building was built before legal requirements to keep health records confidential; and
- The upgrade will fix confidentiality issues.

MOTION: Commissioner Cameron moved to approve the Public Improvement Contract with P&C Construction Company for \$5,506,745 for the Health Services Building Renovation Project. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Adjourned as Contract Review Board
Reconvened as Board of Commissioners

PUBLIC HEARINGS 9:30 A.M.

HEALTH

A. Consider approval of a two year contract renewal with Idanha-Detroit Rural Fire Protection District for Ambulance Service Area #7. **(TO BE ACTED ON FOLLOWING PUBLIC HEARING)** – Rod Calkins, Noah Olson, Sherry Bensema

Summary of Presentation:

- Renewal of franchise to operate ambulance services in ambulance service area (ASA) #7;
- Requesting two year contract from January 1, 2016 through December 31, 2017;
- ASA #7 is the eastern most of 11 in the county;
- Broad area with a low population;
- Difficult area to serve well;
- Working on improving services in this ASA for a number of years;
- ASA Advisory Committee considered this request and voted unanimously to support the request; and
- Recommendation from Rod Calkins to approve two-year contract:
 - Contractual requirements for one-year contract in 2015;
 - Requirements fulfilled or better;
 - Community passed a bond allows hiring a full-time emergency medical technician;
 - Awarded a federal grant for recruitment and retention; and
 - Regular receipt of reports from the ASA.
- Able to manage consistent staffing seven days a week;
- Two-year contract puts this ASA on the same schedule as other franchises;
- Lyons ambulance provides advanced life support ambulance to ASA #7;
- Tremendous community support in Detroit area; and
- Aligned position advisors for Lyons and ASA #7:
 - Same protocols and operational guidelines.
- Participating in regional training;
- Mutual aid relationship much improved; and

- Improved recruiting for volunteers.

Board Discussion

- Isolated from medical services in Detroit;
- Supportive of the agreement; and
- Can be difficult to get services to people in this area of the county.

MOTION: Commissioner Brentano moved to close the public hearing and approve a two year contract renewal with Idanha-Detroit Rural Fire Protection District for Ambulance Service Area #7. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

PUBLIC WORKS

B. Consider zone change and comprehensive plan amendment, Case #14-004 ZC/CP, Kinch, Clerks file #5705. – Joe Fennimore

Summary of Presentation:

- Application to change the comprehensive plan designation from Special Agriculture (SA) to Rural Residential and to change the zone from special agriculture to AR – 5 (acreage residential with a 5 acre minimum lot size):
 - On an approximate 14 acre parcel located on Gath Road SE.
- Property contains a single family dwelling;
- Lands to west and south are zoned SA and contain farm parcels, stands of trees and residential home sites;
- Lands to the north and east are zone acreage residential (AR) and are developed with residences;
- The Hearings Officer held a public hearing on this application on July 30, 2014; and
- On October 27th issued a recommendation that the board deny the request.
- The property is subject to Statewide Planning Goal 3 - Agricultural Lands:
 - The applicant must justify an exception to this goal;
 - There are three types of exceptions to this statewide planning goal:
 - The first is based on the concept that a property is too physically developed to be available for resource use;
 - The second is based on the concept that the land surrounding a property is developed to such an extent that the property is irrevocably committed to uses other than resource use; and
 - The third requires the county to show other reasons why a goal exception is appropriate.
 - In this case applicant proposed a committed exception.
- Oregon Department of Land Conservation and Development (LCDDC) reviewed information submitted with the application:
 - They conclude that the information submitted did not justify a committed exception.
- Hearings officer determined that the applicant has not proven by a preponderance of the evidence in the record as a whole that the subject property is irrevocably committed

because of existing adjacent uses and concludes that the goal 3 exception is not recommended;

- If the applicant were able to justify the goal 3 exception, then then property must be appropriately zoned:
 - In this instance the applicant is requesting an AR – 5 zone;
 - In order to apply a minimum lot size of less than 10 acres in a rural residential zone, a goal 14 reasons exception is required; and
 - A reasons exception is a very difficult test where it must be demonstrated that there are no lands available to accommodate the proposed use, which in this instance is a residence.
- The hearings officer concludes that the goal exception is not justified;
- Without the goal 3 and 14 exceptions, the hearings officer concludes that the proposal fails to satisfy all the applicable comprehensive plan policies and all of the zone change criteria and recommends denial of the request;
- Standard for the irrevocably committed exception to be proven is the activities taking place on surrounding properties do not allow this property to be in resource use:
 - Property is currently used for farming;
 - Zoned as special agriculture;
 - Applicant indicates land cannot be farmed because of soil type; and
 - Would have to show soil analysis reviewed by LCDC that soil is not farm land.
- Cannot get a goal 14 exception without a goal 3 exception; and
- Previously, Curry County attempted to adopt an half-acre lot size approved:
 - Court determined:
 - One acre or smaller is urban;
 - 10 acres or larger is rural; and
 - No line in between.
 - LCDC adopted rules indicating any new proposed AR zones have to meet a 10 acre minimum lot size, unless you can justify a goal 14 reasons exception.
- Reasons exception:
 - Look at many factors;
 - Show why use cannot go to another property; and
 - Difficult test when talking about a residence.
- Property in question is 14 acres:
 - Proposing AR-10 or more, would not need the goal 14 reasons exception;
 - Minimum lot size would be as such, the owner would be unable to divide the property; and
 - There is already one residence on the property.

William S. Kinch

- Property owner;
- Process complex, so hired a consultant;
- Purpose in building another home was not to subdivide a land to make money;
- Wanted to build one additional home for the last home they will live in;
- Bought adjoining 10 acres in 2002;
- Only about six of the 14 acres are usable for farming:
 - Steeply sloping ground; and

- Rocks damaging farm equipment.
- The acreage is not useable for farming;
- Hay production every year;
- Able to shown a profit, but not when factoring in expensive farm equipment;
- Four acre home site was not eligible for farming;
- Most of the 10 acres is non-high value soil or class four;
- Sloping ground, rocks, lack of water;
- Property soil type can be a relevant factor according to hearings officer:
 - Class three soils have severe limitations restricting plant choices or requiring special conservation practices, or both;
 - Class four soils have very severe limitations that reduce plant choices, require very careful management, or both.
- Surrounded by AR zoned properties;
- Several small properties SA zoned nearby:
 - Most timber related; and
 - Leased pasture land for cattle.
- Urban growth boundaries nearby;
- No neighbors nearby to cooperate with;
- Former neighbor assists with hay operation;
- Complexity of statute makes it complicated to rezone properties;
- Request is the board exercise authority and latitude in implementation of land use goals as it relates to what is reasonable and consistent with Marion County's policy; and
- Asked consultant to highlight documents being presented.

Frank Walker

- More latitude to officials who implement zoning than just soil classification;
- Oregon Revised Statute (ORS) 215 states farming is to be done with the intent to make a profit; and
- Oregon Administrative Rules (OAR) chapter 660 defines farmland based on soil type and suitability of properties for farming.
- Property not suitable for farming; and
- Asking the Board to broaden the authority to look beyond the mere soil classification.
- Provided materials for review including a one page abstract;
- Reviewed maps with nearby lots and zone designations;
- Soils quality varies across property;
- Visited nearby properties, with little or no farming or forest use evident;
- Area primarily rural residential; and
- Reviewed farming production for Mr. Kinch in prior years.

Board Discussion:

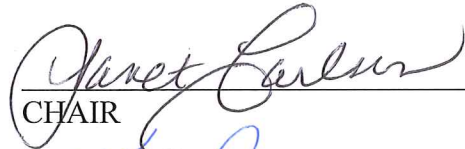
- The materials provided today are new and the hearings officer did not review them;
- Soils analysis with soil scientist has not been completed at this time;
- Original tax lot was 3.98 acres and the home was built at that time with a non-farm dwelling permit;
- 14 acres combined is part of one tract of land;

- Leaving the record open and providing planning staff the opportunity to review the new materials.

MOTION: Commissioner Brentano moved to close the public hearing and remand to the hearings officer to address the additional information. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Cameron read the calendar.

Commissioner Cameron adjourned the meeting at 11:32 a.m.


CHAIR


COMMISSIONER


COMMISSIONER

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

