

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 17, 2018
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97305

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

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

PUBLIC COMMENT

None.

CONSENT

(Video Time 00:00:50)

CLERK'S OFFICE

Approve an order appointing Bob Riggi, Jennifer Sasaki, Paul Allen, Gerald Bauman, Victoria Palmer, and Jack Yarbrough to the Marion County Board of Property Tax Appeals with terms ending June 30, 2019.

COMMUNITY SERVICES

Approve an order appointing Gladys Blum as an honorary member of the Marion County Children and Families Commission.

HEALTH

Approve the Lease Agreement with Pioneer Trust Bank, N.A. Trustee in the amount of \$366,290.56 for the Salem Foundation for leasing space used by Health and Human Services, formerly used by the Sheriff's Office, at 3867 Wolverine Drive NE, Building F, Salem through June 30, 2021.

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

ACTION

(Video Time 00:02:17)

DISTRICT ATTORNEY'S OFFICE

1. Consider approval of a proclamation declaring October 2018 as Domestic Violence Awareness Month in Marion County. – Paige Clarkson, Susana Escobedo, Jayne Downing

Summary of presentation:

Board discussion:

- The District Attorney's Office provides a safe environment for victims to report issues of domestic violence;
- Marion County works collaboratively with the Center for Hope and Safety to help victims of domestic violence;
- The Center of Hope and Safety had over 26,000 contacts through their program last year:
 - Over 7,000 people walked through their doors.
- There is a lot of work needed to help support victims;
- The District Attorney's Office has a victims advocate that's available for victims at any stage of the process they're at; and
- Jayne Downing expressed her appreciation of Commissioner Carlson and her years of advocating for victims of domestic violence.

Board discussion:

- It's difficult when hearing the numbers of domestic violence reports are up;
- The numbers rise because of awareness of help;
- The commissioners appreciate the work that's put in to help victims of domestic violence;
- The biggest caseload in the District Attorney's Office is domestic violence cases; and
- The majority of individuals murdered in the United States were either out, or attempting to get out of an abusive relationship.

The commissioners read the proclamation.

MOTION: Commissioner Brentano moved for approval of a proclamation declaring October 2018 as Domestic Violence Awareness Month in Marion County. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:29:22)

PUBLIC WORKS

2. Consider adoption of an ordinance concurring with the City of Sublimity Urban Growth Boundary (UGB) Amendment. – Brandon Reich

Summary of presentation:

- On May 14, 2018, The city of Sublimity held a first reading on an ordinance:

- The final reading will approve amending the city's urban growth boundary adding 10 acres of land:
 - 9.6 acres for public use for a city park and maintenance yard; and
 - .75 acres for residential use for an existing residence.
- The city has requested that the county concur with the UGB amendment;
- On August 29, 2018, the board approved a resolution initiating amendments;
- On October 3, 2018, the board held a public hearing:
 - After considering evidence in the record, concurred with the city's amendment and directed staff to return with an ordinance consistent with their decision.

Board discussion:

- The public hearing was held on October 3rd and went through all of the information; and
- This ordinance is formalizing the decision that was made at the public hearing.

MOTION: Commissioner Cameron moved for adoption of an ordinance concurring in the City of Sublimity Urban Growth Boundary Amendment. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

(Video Time 00:31:39)

SHERIFF'S OFFICE

3. Consider approval of the Grant Agreement with the U.S. Department of Justice for Comprehensive Opioid Abuse Site-based Program Category 3 – System-level Diversion Projects, for \$899,562 through September 30, 2021. – Jeff Wood

Summary of presentation:

- The three year grant supports the Law Enforcement Assisted Diversion (LEAD) Program;
- The program looks at intervention and treatment first;
- It's innovative and creative;
- Tries to steer individuals away from the criminal justice system while addressing their needs;
- The program diverts low level offenders to treat addiction;
- Navigators go into the field and provide wraparound services;
- Gives access to healthcare;
- Collaborative effort with:
 - Marion County Health and Human Services;
 - District Attorney's Office; and
 - Sheriff's Office.
- Marion County Justice Reinvestment Council will serve as the governing body.

Board discussion:

- Having a LEAD navigator on the street reduces the amount of individuals cycling through the criminal justice system.

MOTION: Commissioner Brentano moved for approval of the Grant Agreement with the U.S. Department of Justice for Comprehensive Opioid Abuse Site-based Program Category 3 – System-level Diversion Projects, for \$899,562 through September 30, 2021. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

4. Consider approval of the Grant Agreement with the U.S. Department of Justice for Comprehensive Opioid Abuse Site-based Program Category 1 – First Responder Partnerships, for \$460,806 through September 30, 2020. – Jeff Wood

Summary of presentation:

- Category 1 is a two year grant:
 - Provides a program coordinator and two navigators;
 - Includes housing;
 - Provides recovery mentors;
 - Access to healthcare; and
 - Provides office space and access to computer software.

MOTION: Commissioner Cameron moved for approval of the Grant Agreement with the U.S. Department of Justice for Comprehensive Opioid Abuse Site-based Program Category 1 – First Responder Partnerships, for \$460,806 through September 30, 2020. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

(Video Time 00:42:00)

Recessed as Board of Commissioners
Reconvened as Contract Review Board

CONTRACT REVIEW BOARD
SHERIFF'S OFFICE

1. Consider approval of an order allowing the reinstatement of the Marion County Jail Food Service contract. – Camber Schlag, Commander Tad Larson

Summary of presentation:

- Contract expired June 30, 2018;
- The Marion County Public Contracting Rules do allow for a reinstatement of the contract within 90 days;
- The county was unable to get the reinstatement done within the 90 days;
- Finance Department started their process in June 2018 to get the contract signed within the June 30th deadline:
 - The contract sat with the vendor due to name change.
- The county has not paid the vendor since the contract was expired, but will pay once the contract has been reinstated:
 - The vendor is still providing food for the jail.
- If approved, the contract will be reinstated until June 30, 2019.

MOTION: Commissioner Brentano moved for approval of an order allowing the reinstatement of the Marion County Jail Food Service contract. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:46:29)

2. Consider approval of Amendment #7 to the Contract for Services with A'viands, an Elior Company, for the Marion County Jail Food Services, extend through June 30, 2019, and add \$1,100,304. – Camber Schlag, Commander Tad Larson

Summary of presentation:

- Finance hopes to issue a Request for Proposals in January 2019; and
- Will issue a new contract July 1, 2019.

MOTION: Commissioner Cameron moved for approval of Amendment #7 to the Contract for Services with A'viands, an Elior Company, for the Marion County Jail Food Services, extend through June 30, 2019, and add \$1,100,304. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

Recessed as Contract Review Board
Reconvened as Board of Commissioners

PUBLIC HEARINGS

9:30 A.M.

(Video Time 00:48:50)

PUBLIC WORKS

A. Public hearing to consider appeal of hearings officer's decision denying Conditional Use (CU) 18-030/Lee, Clerk's file #5780. – Joe Fennimore

Summary of presentation:

- Request to establish a conditional use for a bed and breakfast inn as a home occupation on a 9.4 acre unit of land zoned Special Agricultural (SA), located on Ballyntyne Road, Salem;
- On May 14, 2018, the planning director issued a decision approving the request subject to conditions;
- On May 23, 2018, the decision was appealed by property owners in the area who opposes the approval;
- The hearings officer conducted a public hearing on June 21, 2018 and left the record open until July 5, 2018;
- The hearings officer issued a decision on September 7, 2018 denying the request;
- The applicant appealed the decision on September 24, 2018;
- The board accepted the appeal on October 3, 2018 and scheduled the public hearing for October 17, 2018;
- In the denial, the hearings officer found two criteria were not satisfied:
 - Requires the applicant to demonstrate that the proposed use will not unreasonably interfere with other uses permitted in the zone; and

- The use will not significantly increase the cost of farm or forest practices in surrounding lands.
- The hearings officer stated that the applicant did not provide information on the day-to-day operation of the business and did not analyze whether farm or forest practices in the area would be impacted;
- The hearings officer concluded that the burden of proof was not met and denied the request;
- The applicant, through an attorney, has submitted additional information for the board to consider at the public hearing;
- The board has the option to continue the public hearing:
 - Close the hearing and leave the record open;
 - Close the hearing and approve, deny, or modify the request; or
 - Remand the matter back to the hearings officer.

Board discussion:

- Seasonal farm work housing is not permitted in this zone;
- Any aspect of the criteria is open to discuss in this public hearing;
- It is required that the resident of the dwelling lives on the property full time, who is Ms. Lee in this case;
- The Bed and Breakfast is an accessory to living in the house:
 - The primary use of the property is as the person's residence;
 - The bed and breakfast is a subordinate use of the property;
 - Number of times the bed and breakfast is used does not matter, but there is a limit of up to five rooms able to be used as a bed and breakfast.
- There are size limit uses in Acreage Residential zones, but not in the zone the property is in.

Testimony:

Support:

Andrew Cole, Attorney for applicant:

- Addressed the concerns of the operation of the bed and breakfast:
 - The applicant submitted the day-to-day operations.
- The applicant failed to adequately analyze the cost of or interfere with farming practice in the neighborhood:
 - The applicant stated that there are no impacts to farming around the property.
- Have not undertaken a traffic study because Public Works believes the road is adequate to absorb the increased traffic;
- The greatest activity would be on weekends and the summer;
- Certain criteria does not apply to their property;
- The application has generated a lot of interest based upon Ms. Lee's business activities in Portland;
 - Opponents have raised the possibility that the property will be converted for nefarious purposes, which is untrue.

- The county roads are evaluated based on data collected by the city to rate the roads for its capacity, based upon the observed use of the road:
 - Certain factors affect how many vehicle trips are expected for that road; and
 - It was determined Ballyntyne Road is not currently operating at capacity and can absorb additional vehicle trips.
- A forest dwelling was approved by the county across from the property:
 - Removed property that was designated as a wood lot to build a residence.

Carol Lee, applicant:

- Owner of the property;
- Purchased the home in December 2017;
- Has a home in Lake Oswego;
- Bought the Ballyntyne home as a primary residence;
- Stays in Portland a couple days a week;
- The Ballyntyne home was purchased furnished;
- Applicant stated that she started staying in the home at the end of January or beginning of February 2018;
- Applicant met one adjacent neighbor while visiting the property;
- Every room will have different themes:
 - There are seven rooms and two guest houses, but will only use five bedrooms at any given time; and
 - The applicant will reside in one of the two guest houses.
- The applicant would like the guests to be able to enjoy the whole house and the amenities.

Board discussion:

- The applicant has not supplied a floor plan or obtained the necessary permits to serve food, but would be happy to supply that information if the board would leave the record open;
- Ms. Lee's driver's license is registered at Ballyntyne Road:
 - Changed the address a couple of months ago, but can't recall when.
- The applicant will be advertising the property as a high end bed and breakfast:
 - The commissioners asked how the applicant would market the bed and breakfast and price range of the rooms:
 - The applicant will advertise on the internet around the world;
 - The price would be roughly \$300 - \$800 a night:
 - Prices could change.

Opposition:

Robert and Jana Gunn:

- Owns residence to the east of the property;
- Ballyntyne Road is a very steep road with little line of sight;
- No shoulder;
- Concerns of the neighborhood is not the concept of having a bed and breakfast;
- Nature of property seems to be expanding as we speak:

- The hearings officer addressed amenities:
 - The building is a single family dwelling;
 - Morning meals and sleeping room is allowed;
 - Additional meals are not allowed;
 - Only five sleeping rooms are allowed and must be bedrooms only, not rooms with a kitchen;
 - The home occupation must be subordinate to the residential use of the dwelling;
 - The hearings officer was quoting Marion County Code 171.110.195;
 - There are many amenities:
 - Must be off limits to the guests;
 - Guests cannot host events; and
 - Cannot be advertised as anything more than a room to sleep in and a morning meal.
- The neighbors are objecting to the applicant's use of the home, which is defined as a boutique hotel;
- This home was purchased solely to run as a business as a primary function of the property;
- The objection of the neighbors has to do with how this business will be run and what kind of clientele might be expected:
 - Understands that this is speculative;
 - Ms. Lee could not even tell how much she is going to charge for a room;
- Ms. Lee changed her residency on her driver's license on May 31, 2018:
 - Previously, her address was at a Lake Oswego address, which is where all correspondence and mail should be sent to.
- Believes the purpose for Ms. Lee to purchase the property was for a commercial enterprise;
- The applicant's partner Mr. Johnny Zuckle is not in attendance, but both have been connected with businesses in the Portland Metro area since the early 2000's;
- This applicant's property is zoned SA;
- Ballyntyne Road is a dead end road that starts at Kuebler Blvd;
- Believes the bed and breakfast is not appropriate for the neighborhood;
- There are two parcels listed on the applicants Trust Deed:
 - One parcel is 9.4 acres, which is zoned SA; and
 - Another parcel is zoned Residential Agricultural.
- Asking that the board sustain the hearings officer's decision, which follows the law.

Karen McKay:

- Lives to the east of the property;
- The neighbors are concerned with Ms. Lee's association with Johnny Zuckle and their history working together on different business ventures, which includes strip clubs;
- Believes that Ms. Lee isn't telling the full truth;
- Ms. McKay walks her property everyday between 7:30 a.m. and midnight;
- Only sees weekly landscapers that arrive at 8:45 a.m. every Wednesday morning;
- Has never seen lights on inside the house until last night;
- No vehicles come or go;

- Ms. McKay's home office faces the Lee house;
- The house is designed to entertain guests; and
- By not residing on the property, Ms. Lee has failed to meet the required condition of approval.

James and Tanya Cotterell:

- Lives 500 yards from Ms. Lee's property;
- Cannot see anyone living on the property;
- Both work from home;
- Just moved to the area July, 21, 2017, which she clearly remembers;
- Finds it difficult to believe when buying a property, it is hard to recall when residency began;
- Daughter works on adjacent property;
- Chose the property because of the quiet, safe, neighborly nature of the neighborhood;
- Owns a vacation rental property in Florida:
 - Knows exactly how she was going to market it; and
 - Knows price.
- Believes that there are intentions to expand on what is being presented; and
- Concerned with the plans for the property.

Lorie Gunn:

- Lives east of the property;
- Raised children in the neighborhood;
- Appears that the house closed on December 29, 2017;
- Application for a bed and breakfast was submitted on January 6, 2018:
 - Was not completed until April 2018.
- Believes that the home was purchased for the purpose for a business venture;
- Having a bed and breakfast would not cover the cost of the home;
- Has not seen Ms. Lee at the property; and
- Does not believe that this is Ms. Lee's primary residence.

Rhonda Grefenson:

- Lives next door to the property;
- Concerned that Ms. Lee is not occupying the property;
- Has seen no activity;
- Only landscapers;
- First time seeing the applicant today;
- Intentions to run a business out of the property;
- Pulled loan documents, which Ms. Lee signed:
 - Ms. Lee promised the federal government that she would occupy the residence within 90 days for a lower interest rate; and
 - Had to move in by the end of February 2018.
- The neighbors are not enthused about the prospect of spending years filing complaints against applicant for years to come.

Jeb Baram:

- Live 900 yards from the property;
- The road is dangerous:
 - No shoulder on road.
- Never seen applicant until today; and
- Only has seen landscapers.

William and Joan Gavan:

- Immediate neighbors to the west of Ms. Lee's property;
- Shares fence with property;
- Can see the Lee home from the windows of their home;
- First time meeting Ms. Lee and Mr. Zuckle in March 2018:
 - Haven't seen her or Mr. Zuckle since.
- Walks his property every day;
- For the first time in 10 months that Ms. Lee has owned the property, lights were on in the house and garage door open last night;
- All of the neighboring properties have opposed the bed and breakfast;
- As a forest property, the Gavan's are obligated to operate land in forest production:
 - Logging;
 - Continuously thinning trees;
 - Log trucks and heaving equipment running seven days a week; and
 - Running chippers and chainsaws.
- Main objection is that Ms. Lee intends to run a business and has no intention living in the residence;
- Objects to heavier traffic on the road;
- Does not want that type of operation in the neighborhood;
- Prior to moving to Oregon, the Gavan's were hoteliers;
- Acquired hotel in Ogden, UT in 2008:
 - Took up residency in the hotel;
 - Daughter was a manager of the hotel;
 - Took eight years to clean it up;
 - Considerable effort to turn it around and resolve issues; and
 - Today it operates as a first class hotel.
- Looked into purchasing the Morrow mansion to operate a bed and breakfast:
 - Non-economic;
 - Figured much higher rents than Ms. Lee; and
 - Looked into renting rooms with kitchens as apartments and created an event center, still would not turn a profit.
- Ms. Lee clearly has other plans for the property.

Shelly and Andrew Warner:

- Lives west to the property;
- Owns half of the forest land;
- Hears nothing coming from the property;
- No activity at all;
- Ms. Lee testified under oath that she lives on the property:

- It is clear from the testimony of the neighbors that she does not live at the house.
- Believes that the intent of applicant is that she will live in Lake Oswego, where she receives her mail;
- The house exceeds five bedrooms; and
- There is no way to monitor Ms. Lee's use of space.

Laura Linares:

- Moved into the neighborhood in December 2017;
- Loves the neighborhood;
- Lives to the west of the property;
- Lives at the bottom of the hill; and
- Has three children that all drive, which is concerning if more traffic is added to the road.

Rolf Schooler:

- Ballyntyne Road is dangerous;
- The county does not plow the road in the winter;
- The hill is steep; and
- Not suitable for extra traffic.

Roy Esquivel:

- The first residence on the left side of the road;
- Lives at the arc of the hill;
- The road is steep;
- His driveway is a blind spot; and
- Would like to see some kind of plan for safety and improvements of the road if the application is approved.

Marc Gunn:

- Every single resident is in opposition to the usage;
- It is a family community;
- Lived on Ballyntyne Road since the 8th grade;
- Neighbors are cautious of others when pulling out onto Ballyntyne Road, because of the restricted sight distance;
- Ms. Lee is trying to skirt the rules;
- Ms. Lee changed her driver's license after the application was filed;
- Ms. Lee intends to run a commercial enterprise in a residential neighborhood; and
- The county has already denied the application with good cause.

Support:

Andrew Cole, attorney for applicant:

- If the code criteria is applied, it cannot be denied;
- People who are opposed to the application are questioning the integrity of the applicant, which is unfair;
- Operating a bed and breakfast for business is permitted;

- There has been speculation of dishonesty:
 - Ms. Lee is dividing her time between both homes; and
 - As long as she starts up residency in the home when the bed and breakfast opens, she is in compliance with the code.
- Only testimony heard from the opponents interfering with their logging business stated that the bed and breakfast will not affect their business.
- Asks the board to reverse the decision and approve the application.

Carol Lee, applicant:

- The house has seven bedrooms and two guest houses;
- The seven bedrooms are on the second floor, only five will be used for the bed and breakfast:
 - One guest house is upstairs and one is downstairs.
- Ms. Lee showed the commissioners her driver's license.

Board discussion

- Not buying Ms. Lee's residency and occupancy;
- The county has no ability to monitor or check conditions after the bed and breakfast opens;
- If the board determines that the residency requirements are not being met, they can deny the case;
- If there is more than five sleeping rooms, then it is considered a hotel;
- The board has the authority to limit use, or allow more accessory use;
- Concern with the house having nine bedrooms and seven bedrooms upstairs;
- Concerned with Ms. Lee's testimony wanting customers to enjoy amenities, which it is not allowed under code;
- The commissioners are not allowed to talk about land use applications in advance by law;
- The commissioners believe that Public Works did not do their due diligence with the road;
- There was no outreach to the neighbors from the applicant;
- Residency:
 - Not convinced Ms. Lee lives on the property; and
 - Not sure how to determine proof she is a resident in the future.
- Rose red flags for the board that the applicant didn't know when she took up residency;
- Main concern is the subordinate use issue:
 - There is no way to ascertain whether or not the use for the bed and breakfast is going to be subordinate to the residence;
 - Feels counter balanced if the resident stays in an apartment on the property; and
 - The residence would be subordinate to the business.
- The hearings officer stated that the applicant did not provide day-to-day run of the business:
 - Applicant still did not provide the information.
- The applicant did not know licensing from Health and Human Services was required;
- Lack of ability for the county to enforce if conditional use is followed; and
- The board is not inclined to reverse the denial based on the issues stated above.

MOTION: Commissioner Brentano moved to close the public hearing and deny the application and direct staff to draft an order of findings stated above. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Carlson read the calendar.
Commissioner Carlson adjourned the meeting at 11:57 a.m.

CHAIR

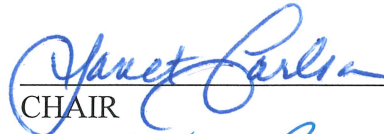
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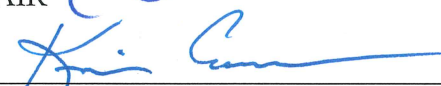
Board Sessions can be viewed on-line at
<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>

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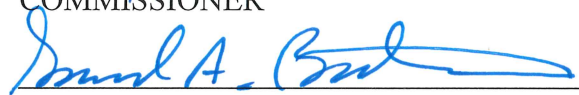
Commissioner Carlson read the calendar.
Commissioner Carlson adjourned the meeting at 11:57 a.m.



CHAIR



COMMISSIONER



COMMISSIONER

Board Sessions can be viewed on-line at
<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>

