

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, December 16, 2015  
9:00 a.m.

Senator Hearing Room  
555 Court Street NE  
Salem, OR 97301

PRESENT: Commissioner Janet Carlson, Commissioner Kevin Cameron, Commissioner Sam Brentano, John Lattimer as chief administrative officer, 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**

*(Video Time 00:01:20)*

PUBLIC WORKS

Awards presentation for 2015 Student Recycle Art Calendar Contest. – Griselda Puga, Todd Irvine

***Summary of Presentation:***

- Marion County Public Works Environmental Services and Mid-Valley Garbage and Recycling Association team up to promote waste prevention and resource conservation in local schools through the Student Recycle Art Calendar Contest;
- Students submit illustrations;
- Theme this year supports Save the Food campaign:
  - Food waste prevention; and
  - Food is a large portion of the waste stream.
- Recognize the educator of the student selected as grand prize winner:
  - Teachers play a crucial role in the success of the contest;
  - Class time to work on drawing; and
  - Support and encouragement for students.
- Public outcry two years ago when the contest was suspended for one year; and
- High participation this year.

The commissioners then presented the awards.

## CONSENT

*(Video Time 00:17:44)*

### BUSINESS SERVICES – HUMAN RESOURCES

Approve an order establishing sick time for certain employees.

### DISTRICT ATTORNEY’S OFFICE

Approve a Grant Agreement with the State of Oregon Department of Justice for \$832,448 for Victim Assistance through September 30, 2017.

### PUBLIC WORKS

Approve a recommendation to extend Charter Cable Television Franchise agreement through December 31, 2016.

Approve a recommendation to extend Wave Cable Television Franchise agreement through December 31, 2016.

Receive hearings officer’s recommendation and schedule a public hearing for December 30, 2015 for Comprehensive Plan (ZC/CP) Case #15-002/White Family Trust.

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

## ACTION

*(Video Time 00:19:00)*

### BOARD OF COMMISSIONERS

1. Consider approval of an order appointing Kevin Cameron as chair, Sam Brentano as vice-chair and Janet Carlson as second vice-chair of the Marion County Board of Commissioners effective January 4, 2016 through January 2, 2017. – John Lattimer

#### ***Summary of Presentation:***

- Leadership of the Board of Commissioners traditionally rotates in Marion County;
- There is a chair, vice chair and second vice chair;
- Commissioner Carlson served as chair in 2015; and
- Commissioner Cameron was appointed as commissioner in June of 2014.

**MOTION:** Commissioner Brentano moved approval of an order appointing chair, vice-chair and second vice-chair of the Marion County Board of Commissioners effective January 4, 2016 through January 2, 2017. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

## BUSINESS SERVICES

2. Consider approval of an order appointing Terry Hancock to the Salem Foundation Distribution Committee for a term ending December 31, 2016. – Lisa Miller

### ***Summary of Presentation:***

- Foundation is a charitable trust administered by Pioneer Trust Bank;
- Trust provides that a member of the distribution committee is appointed by the Marion County Board of Commissioners; and
- Mr. Hancock has volunteered to fill the vacancy:
  - Commercial realtor in the area; and
  - Wants to better the community.

**MOTION:** Commissioner Cameron moved approval of an order appointing Terry Hancock to the Salem Foundation Distribution Committee. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

## HEALTH

3. Consider approval of an order appointing Garone Pineda and Daryl Thomas to the Local Alcohol and Drug Planning Committee (LADPC) for a term ending June 30, 2017. – Lisa Miller, Scott Smith

### ***Summary of Presentation:***

- Two vacant positions on the committee;
- LADPC provides information regarding assessment, treatment, and prevention services;
- Ms. Thomas has volunteered to fill a vacancy:
  - Drug and alcohol treatment counselor from 1978-1995;
  - Went to Oregon State University for public health; and
  - Works at Western Oregon University.
- Mr. Pineda was unable to attend today.

**MOTION:** Commissioner Brentano moved approval of an order appointing Garone Pineda and Daryl Thomas to the Local Alcohol and Drug Planning Committee for a term ending June 30, 2017. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

## **PUBLIC HEARINGS**

**9:30 A.M.**

*(Video Time 00:33:24)*

## PUBLIC WORKS

A. Public hearing on appeal of planning commission's decision approving Subdivision (SUB) 15-003/Yarbrough, Clerk's File #5703. – Joe Fennimore

### ***Summary of Presentation:***

- Modified application to subdivide two parcels containing 2.31 acres into 19 lots with access limited to Elma Avenue NE, 44th Avenue NE, and 44th Place NE, Salem;
- The original request was to subdivide three parcels containing 4.95 acres into 24 lots and to access the lots by existing streets that dead end into the property; and



- Neighboring property owners were concerned primarily with storm water run-off and the impacts the development would have on existing streets:
  - Testimony indicated that the existing streets are narrow, in poor condition and are inadequate to serve more homes.
- The planning commission issued a decision on October 21, 2015 that approved subdividing the property into the 14 lots originally proposed:
  - To be served by the three county-maintained roads, Elma Avenue, 44th Avenue, and 44th Place.
- Decision was appealed to the board and hearing was scheduled; and
- Applicant requested that the board consider a modified request to subdivide the two parcels into 19 lots to be served only by the County-maintained roads:
  - The properties are undeveloped and consist of two lots in the former 80 foot wide railroad right-of-way in east Salem;
  - One parcel extends west from Elma Avenue approximately 600 feet;
  - Adjacent property to its west is zoned Commercial General and developed with mini-storage warehouses;
  - Adjacent properties to north are zoned Multiple Family Residential and developed with duplexes;
  - Property to the south is zoned single family residential (RS) and available for residential development; and
  - The other parcel extends east from Elma Avenue approximately 1,500 feet:
    - Evelyn Avenue, Eldin Avenue, 44th Avenue NE, and 44th Place all dead end at various locations along the south property line.
  - Adjacent properties are zoned residential and developed with dwellings; and
  - All of the proposed lots that have over 20 feet of frontage on a public right-of-way or will be served by private access easements.
- Public Works identified needed improvements and right-of-way dedication for Elma Avenue as well as driveway approaches to the public streets;
- In addition, storm water and water quality facilities must be constructed prior plat approval;
- Marion County Fire District commented on their requirements for access and water supply;
- All of the proposed lots exceed the 4,000 square foot minimum lot size:
  - The width of the proposed lots is over 40 feet and the lot depth is over 70 feet.
- The proposal satisfies the minimum lot size and dimension standards in the Marion County Code;
- The board has the options of :
  - Continue the public hearing,
  - Close the public hearing and leave the record open;
  - Close the public hearing and approve or deny the application or approve a modified proposal; or
  - Remand the matter back to the planning commission or to the hearings officer.

***Testimony***

- Keith Weisenhunt:
  - Engineering surveyor representing the applicant;

- Scope of the appeal is very limited; and
- Asking to access:
  - Two additional lots on 44<sup>th</sup> Avenue;
  - Three additional lots on Elma; and
  - One additional lot on 44<sup>th</sup> Place.
- Area west of Elma does not change;
- Asking for three lots in the area east of Elma;
- Asking for one lot to access 44<sup>th</sup> Avenue;
- Asking for one lot to access 44<sup>th</sup> Place;
- Meets Marion County zoning code; and
- Worked with Marion County Fire:
  - Fire hydrant locations turn around sizes and locations meet fire code.
- Doug Proffit:
  - Letter received indicates development on Draper Street:
    - Was not addressed previously.
  - Draper Street dropped during the appeal process; and
  - Scope of the development has changed.
- Bob Thorn:
  - Owns property on Hudson Avenue;
  - Mr. Yarbrough requested they clean up their fence line, which they did;
  - Concern with water collecting;
  - Concerns with burglary and vandalism; and
  - Railroad right of way could be sold to a neighboring property.
- Lucinda Spicer:
  - County roads negatively impacted with new subdivisions;
  - Concerns regarding traffic and street lighting;
  - Negative impact on her property and surrounding properties;
  - Salem code limits flag lots to no more than 15 percent of a subdivision;
  - Proposed subdivision is 100 percent flag lots;
  - Aware the proposed property is outside Salem limits, but is within the urban growth boundary;
  - Crowded and inadequate with livability issues;
  - Spent a lot of money to clear berries and trees;
  - Called police several times to remove people setting camps;
  - Set fires under redwood trees;
  - Increase in garbage, clothing and sleeping bags left behind on property;
  - Evidence of drug use on property;
  - Several incidences of theft;
  - Asking board to take information into consideration;
  - Do not want to see neighborhood to be subpar, low-income housing; and
  - Insist on north side of property to build fence.
- Elizabeth Pfeifer:
  - Questions regarding mineral rights on railroad and right of way for the utility.
- Keith Weisenhunt:
  - Developing the area will reduce illegal activity;
  - Connects Elma Avenue;

- Stormwater issue exists today:
  - Developing site will not make issue worse; and
  - Improvements to address stormwater management.
- Single family homes typically generate an average of 10 trips per day.

***Staff Presentation***

- Mineral rights are a private agreement and not a land use matter;
- Portland General Electric has a right of way:
  - Owner able to modify easements; and
  - Will have to show lot is developable.
- Scope of this hearing:
  - Planning commission approved 14 lots;
  - Applicant appealed to increase to 19;
  - Hearing was approved for that appeal;
  - No opponents appealed the 14 lots; and
  - Decision today is between 14 or 19 lots.
- Planning Commission decision included conditions:
  - Number of lots;
  - Survey must be submitted to surveyor showing easements;
  - Meet fire district requirements on the plat before the plat can be recorded;
  - Meet requirements for road improvements, storm drainage, storm-water treatment before the plat can be recorded;
  - Obtain Department of Environmental Quality (DEQ) permit prior to clearing land;
  - All utilities must be placed under ground;
  - Obtain permits to do work in the right-of-way; and
  - Name private roads.
- Storm water requirements will address water issues through the engineering process, and treat the water before going into the system;
- All easements will show on the plat;
- Staff would not recommend giving the appeal back to the planning commission.

***Board Discussion***

- Suggests outreach to neighbors; and
- Some misunderstanding regarding the scope of the hearing today:
  - Determining if the applicant meets the land use criteria to increase the number of lots today.
- Land use process can be very complicated; and
- Development is within the urban growth boundary.

**MOTION:** Commissioner Cameron moved to close the public hearing and approve the modified application. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.



B. Public Hearing on appeal of hearings officer's decision denying Conditional Use (CU) 15-022/Croft, Clerk's File #5702. – Joe Fennimore

***Summary of Presentation:***

- Conditional use to establish a winery as a commercial activity in conjunction with farm use on an 18.6 acre parcel in and Special Agriculture zone located at 5475 River Road South;
- Public hearing on August 5, 2015:
  - On August 18th, the hearings officer notified the participants of the hearing that the recording had been inadvertently deleted and that testimony of the record was lost, the record was reopened until August 28th to allow any additional testimony.
- On October 25th the hearings officer issued a decision denying the request:
  - On November 4th that decision was appealed to the board; and
  - The board accepted the appeal and scheduled a public hearing for today.
- In the denial the hearings, officer found that the proposal does not satisfy all the criteria in MCC 17.137.060(A) that are listed in finding 10 on bottom of page 10 of the order;
- The hearings officer found that in order to demonstrate that adequate services are available additional information is required on wastewater disposal feasibility and roadway access:
- More information is needed on the sensitive river status of the Willamette River, floodplain, geologic hazards, and wastewater disposal in order to meet the criterion that the proposal will not have significant impacts on fish habitat, water quality, and soil and slope stability and that the applicant did not provide an in-depth description of the operation so noise impacts cannot be adequately addressed;
- In finding 7, at the bottom of page 7, the hearings officer discusses what defines a winery and concludes that in order to be a winery the facility must include the on-site fermentation of grapes;
- In finding 17 on page 14, the hearings officer finds that the 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;
- The 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
  - With a condition prohibiting other requested uses on the property until wine is produced, MCC 17.136.060(D)(1), will be satisfied.
- In the appeal the applicant submitted additional evidence and argument in support of the request and I will them present that to you; and
- Options of continuing the public hearings, close the hearing and leave the record open, close the hearing and approve or deny the application or remand the matter back to the hearings officer.

***Testimony***

- Michael Gelardi:
  - Laws on farm use in Oregon Revised Statute (ORS) Chapter 215;
  - Property is in a special agricultural zone:
    - Designed to promote specialty agricultural businesses;

- Subject to exclusive farm use rules:
    - Two pathways to permit a winery on farmland;
    - Either a permitted use winery; or
    - A conditional use permit.
- Commercial activity in conjunction with farm use;
- Conditional use determined by case law:
  - Case regarding winery with no on-site vineyard;
  - Supreme Court ruled that winery qualified under commercial activity in conjunction with farm use because it promoted viticulture;
  - Must enhance local agricultural businesses related to the use; and
  - Winery provides a market outlet for those crops.
- Not required for commercial and farm use activity to occur on the same property, or even properties in close vicinity; and
- Income requirement for on-site retail sales, not wholesale wine or crop sales:
  - 75 percent of on-site retail sales must come from wine; and
  - Other 25 percent or incidental sales include food, souvenirs, etc.
- 70 wineries in Yamhill County that have been permitted under this process;
- Asking to be a commercial activity in conjunction with farm use;
- Have been farming organically for 30 years;
- Close connection to local agriculture;
- Hoping to expand and incorporate more wine making on the property in the future;
- Additional evidence being presented regarding hearings officer decisions being appealed:
  - Winery permit versus conditional use;
  - Adequate services;
  - Significant adverse impact;
  - Noise; and
  - Roadway access.
- Access plan was provided during hearing;
- Change to access plan regarding residence was not relevant;
- Waste water was not identified as an issue in the process:
  - Criteria was not identified or discussed in the hearing; and
  - Property owners have a septic permit.
- Traffic issue was not addressed at the hearing:
  - Small facility; and
  - Low impact.
- Noise:
  - River Road is directly adjacent to property;
  - Rail line also adjacent to property; and
  - Winery unlikely to generate more noise in the area.
- List of conditions provided by planning staff:
  - County standard winery conditions are for permitted use wineries and the county code is outdated based on statute updated in 2013;
  - Asking for sales and marketing privileges;
  - Concerns with food service condition; and



- Planning staff have presented updated conditions.
- Chancy Croft:
  - Application to engage further in an organic wine process;
  - Purchased property in Polk County in the 1980's;
  - Never had a winery in a sense of crushing the grapes;
  - Did have a grower's permit previously;
  - Have sold to wineries that have designated the wine produced from their grapes with Croft Vineyards;
  - Currently selling to 12 different wineries:
    - List as organically grown grapes;
    - Recognition for quality and organically grown grapes.
  - Requesting a wine tasting room for wines made with organically grown grapes;
  - Have been certified with Oregon Tilth for over ten years for growing grapes organically;
  - Reduced consumer resistance to organic products;
  - Opportunity to expand Oregon viticulture and wineries by having an organic wine tasting room;
  - Property is about 18 acres:
    - Six unusable because of location between highway and railroad;
    - 12 acres already in orchard;
    - Two houses on the property;
    - Historic property; and
    - Originally a fruit stand 100 years ago.
  - Discussion regarding winery designation.
- Lee Croft:
  - Found property in 2012:
    - Approached Marion County prior to purchase;
    - Asked if feasible to locate a winery and tasting room on the property; and
    - Were told it was feasible.
  - Purchased property in 2013;
  - Diverse history of the property;
  - Building to be remodeled is derelict:
    - Unused for approximately 15 year; and
    - Revitalizing a piece of local history.
  - Talked to neighbors and no opposition;
  - No impact to commercial properties in the area;
  - Designed the building as a full service winery; and
  - Building to grow business into full service winery.

### ***Board Discussion***

- Wrap up at a continued hearing;
- Have evidence around the technical issues;
- Testimony from applicants;
- No opposition;
- Opportunity to speak to the conditions; and
- Mr. Fennimore will contact Yamhill County.

**MOTION:** Commissioner Brentano moved to continue the public hearing until 9:30 a.m. on December 23<sup>rd</sup>. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Carlson read the calendar.

Commissioner Carlson adjourned the meeting at 10:53 a.m.

  
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CHAIR

  
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COMMISSIONER

  
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COMMISSIONER

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