

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, July 29, 2020
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Colm Willis, Commissioner Sam Brentano, and Commissioner Kevin Cameron. Also present were Jan Fritz, chief administrative officer, Jane Vetto as county counsel, and Brenda Koenig as recorder.

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

PUBLIC COMMENT

None.

PRESENTATION

(Video Time 00:00:54)

COVID-19 (Novel Coronavirus) update. –Katrina Rothenberger

- Ms. Rothenberger reported the following updates for the COVID-19 pandemic as of 8:00 a.m. on Wednesday, July 29, 2020:
 - There are currently an estimated 2,495 cases within the county;
 - An estimated 2,399 individuals have tested positive;
 - An estimated 27,930 individuals have tested negative; and
 - An estimated 67 individuals have died from symptoms related to COVID-19.
- Ms. Rothenberger discussed the governor’s plan for school reopening, metrics that need to be met, and data for Marion County:
 - To move to an in-person or hybrid model, there needs to be ten or fewer per 100,000 cases over a seven day period:
 - This would equate to 33 cases per week in Marion County; and
 - The test positivity rate would be five percent or less over seven days.
 - Switching to a comprehensive or distance learning model if there are 20 or more per 100,000 cases over a seven day period:
 - This would be about 67 cases a week for Marion County; and
 - A test positivity rate of 7.5 percent.
 - Transition to a comprehensive distance learning model if there are 30 or more cases per 100,000 over a seven day period:
 - This would be about 100 cases in Marion County; and
 - A test positivity rate of 10 percent or greater over seven days.
- Data is tracked weekly over a seven day period:

G:\BOARD SESSIONS\BOARD SESSION MINUTES\2020\07-29-2020

- For the week of July 6 through 12, there were 233 new cases, and a positivity rate of 8.3 percent;
- For the week of July 13 through 19, there were 267 new cases, and a positivity rate of 7.8 percent; and
- For the week of July 20 through 26, there were 256 new cases, and a positivity rate of 9 percent.
- The department has been working with school partners, and although schools are not opening in the fall, they are maintaining a good working relationship so that when in-person school resumes they are able to provide support if needed due to an outbreak; and
- Ms. Rothenberger encouraged people to wear masks, social distance, and to acknowledge those that are currently observing these practices.

Board discussion:

- The number of new cases in a 14 day period is a good assessment on how many active cases are within a certain community;
- After ten days individuals can discontinue isolation and quarantine;
- Health screenings are helpful at businesses and work places:
 - Individuals who pass health screenings may still be asymptomatic:
 - Test positive for the disease;
 - Spread it to others; and
 - Wearing a mask is highly recommended to avoid this type of situation.
- Cohorting is important to keep the virus at bay:
 - Helpful in contact tracing and identifying outbreaks.
- Metrics should be applied to certain groups and not countywide.

CONSENT

(Video Time 00:11:40)

BOARD OF COMMISSIONERS

Approve board orders appointing Health and Human Services Department employees to the following boards, committees, and roles effective August 1, 2020:

- Appointing Ryan Matthews as the Health and Human Services Administrator for the Marion County Health and Human Services Department; as the local Public Health Administrator for the Marion County Local Public Health Authority; as the Financial Administrator with the authority to sign Oregon Health Authority Intergovernmental Agreements;
- Appointing Ryan Matthews and Katrina Rothenberger as authorizing officials for purposes of the Federal 340B Drug Pricing Program; and as authorizing agents for the EPIC Systems with Salem Health;
- Appointing Katrina Rothenberger as Marion County's representative to the Oregon Coalition of Local Health Officials; and

- Appointing Cydney Nestor as Mental Health Program Director for the Marion County Community Mental Health Program; and as Marion County's representative to the statewide Association of Oregon Community Mental Health Programs.

COMMUNITY SERVICES

Approve the request to close the public hearing to consider the Community Development Block Grant application with Business Oregon for expanding personal protective equipment production and take no further action.

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

ACTION

(Video Time 00:13:40)

BUSINESS SERVICES

1. Consider approval of the Marion County Leasing Policy #810 and Procedure #810-A.
–Colleen Coons-Chaffins

Summary of presentation:

- This item was discussed at a Management Update meeting:
 - Two red-lined versions of the document were presented; and
 - The General Policy statement was changed so that the policy and procedure aligned.
- Commissioner Willis read the General Policy statement:
 - There was concern that religious organizations that provided a service to the public would be prohibited from leasing property from the county:
 - An example given was the Union Gospel Mission providing services to the homeless population would be prohibited whereas another non-profit organization providing the same service, but with no religious affiliation, would not.
- After further discussion it was decided to bring this item back before the board at a later date.

MOTION: Commissioner Brentano moved to remove Marion County Leasing Policy #810 and Procedure #810-A for consideration and bring it back at a later time. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:22:48)

FINANCE

2. Consider approval of the Purchase Order (P.O.) with Professional Credit Services in the amount of \$220,000 to provide collection services for the Marion County Justice Court through June 30, 2021. –Jeff White

G:\BOARD SESSIONS\BOARD SESSION MINUTES\2020\07-29-2020

Summary of presentation:

- Annual purchase order for the collection of fines through the Justice Court;
- The company charges a 23 percent collection fee:
 - The P.O. is to cover those fees.
- As revenue is sent to the county, the agency bills the county for the fee portion, and then it is paid through the P.O.:
 - It is a way to keep track of collection costs.
- A second P.O. has also been set up which covers the collection costs for the rest of the county:
 - It is for a much smaller amount.
- Last year the county paid \$195,000 for Justice Court collections, and \$13,000 for the rest of the county.

Board discussion:

- The amount collected in fees for the county was approximately \$600,000.

MOTION: Commissioner Cameron moved to approve the Purchase Order with Professional Credit Services in the amount of \$220,000 to provide collection services for the Marion County Justice Court through June 30, 2021. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

(Video Time 00:25:53)

HEALTH AND HUMAN SERVICES

3. Consider approval of a Memorandum of Agreement with the Marion County Sheriff's Office in the amount of \$550,000 for COVID-19 security at the Super 8 Woodburn through March 31, 2021. –Ryan Matthews and Undersheriff Jeff Wood

Summary of presentation:

Ryan Matthews:

- The agreement is between Health and Human Services (HHS) and the Sheriff's Office (SO) to provide security at the Super 8 hotel in Woodburn;
- The need came about when operation at the hotel began and different supports were needed, such as:
 - Food delivery;
 - Personal laundry services;
 - Deep cleaning and sanitation services; and
 - Security services.
- HHS works with the SO on several other programs:
 - This was a natural fit because of the similar values and priorities of the two departments.
- The SO is able to provide staffing in shifts for on-site, around the clock security;
- The ability to have security at the hotel helps to reinforce the rules, and keeps hotel, county staff, and community members safe from the spread of COVID-19; and

- The agreement allows the SO to be reimbursed for the cost to provide staff for these services.

Undersheriff Jeff Wood:

- The collaborative effort came about due to concerns with individuals staying at the hotel, as well as those being released from quarantined institutions into the community;
- The numbers have been exceedingly low;
- No one that has been released from the Department of Corrections (DOC) and placed under community supervision from the SO has been lodged in the hotel;
- There were five potential individuals and zero placements;
- Circumstances can change, and there were alternative locations to place individuals;
- A steady presence is at the facility; and
- If there is a need to make a placement of released individuals in the future, this will allow the ability for the SO to enforce certain rules and conditions for those that are released from the DOC.

Board discussion:

- There is around the clock staffing at the hotel in case someone needs to be placed there;
- Funding is provided from the state for these services;
- Other contracted security services are provided for in the contract in case a deputy cannot be utilized; and
- This is a requirement from the governor to reopen the county.

MOTION: Commissioner Brentano moved to approve a Memorandum of Agreement with the Marion County Sheriff's Office in the amount of \$550,000 for COVID-19 security at the Super 8 Woodburn through March 31, 2021. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:34:05)

INFORMATION TECHNOLOGY

4. Consider approval of the Purchase Order with Dell Marketing, Inc. in the amount of \$216,026.25 for Dell rugged laptop equipment and accessories for the Records Management and Jail Management Capital Improvement Project. –Scott Emry and Commander Jeff Stutrud

Summary of presentation:

- The Sheriff's Office Enforcement Division needs to replace 80 rugged mobile computers used in patrol cars for tasks such as:
 - Checking the identity and other credentials of individuals;
 - Capturing information related to arrests; and
 - Completing reports in the field.
- The current fleet is significantly past its useful life:
 - It has served the county for six years.
- Replacement parts are expensive and often unavailable;

- The replacement of the laptop will be compatible with the new Capital Improvement Project Records and Jail Management System;
- The purchase will be made through Dell Marketing, Inc. using a national purchasing contract with pre-negotiated pricing;
- The total amount of the contract is \$216,026.25;
- These are critical devices for officers to efficiently perform their jobs in the field;
- The current laptops will not be compatible with the new records system; and
- These devices will be individually assigned to deputies.

MOTION: Commissioner Cameron moved to approve the Purchase Order with Dell Marketing, Inc. in the amount of \$216,026.25 for Dell rugged laptop equipment and accessories for the Records Management and Jail Management Capital Improvement Project. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

(Video Time 00:36:58)

PUBLIC WORKS

5. Receive and consider an appeal of the Marion County Hearings Officer's decision denying Administrative Review (AR) Case #20-010/Schaber. –Joe Fennimore

Summary of presentation:

- This is an appeal to the hearings officer's decision denying the replacement of a dwelling that was destroyed by fire in 1967 on a 3.35 acre parcel in an Exclusive Farm Use (EFU) zone located at Allison Road NE, Hubbard;
- The Planning Director originally denied the request and it was appealed to the hearings officer;
- The hearings officer held a public hearing on June 3, 2020;
- The record was left open until June 17, 2020;
- On June 29, 2020, the hearings officer issued a decision denying the request;
- The decision was appealed to the board of commissioners on July 14, 2020;
- In the denial the hearings officer determined that the subject property was created by deed at a time when a partition approval was required, and therefore was not considered a lawfully created parcel;
- Under the provisions of the Marion County Code, no permit for a structure or use can be approved or issued if the property was divided in violation of the code;
- The hearings officer concluded that a replacement dwelling could not be authorized on the unlawfully created parcel;
- The hearings officer also reviewed the application for the replacement dwelling criteria and ORS 215.291, as amended by House Bill (HB) 3024, and concluded that the applicant did not prove that the criteria had been met:
 - The home was destroyed prior to 1973;
 - Was not an attractive nuisance; and
 - Was not on the tax rolls in the previous five years.

- In the appeal, the applicant argues that staff and the hearings officer are misinterpreting HB 3024, referring to tax lots and not legal lots of records, and that the hearings officer did not take into account the introductory language of the HB;
- They further stated that the dwelling fire was in 1967:
 - The dwelling was not totally destroyed at the time; and
 - Some plumbing and foundation supports existed, and remained for some undetermined amount of time after the fire.
- The board has the following options:
 - Accept the appeal and remand the matter back to the hearings officer;
 - Accept the appeal and schedule a public hearing for August 19, 2020, or later; or
 - Deny the appeal and uphold the hearings officer's decision denying the request.
- Staff recommends that the board deny the appeal and uphold the hearings officer's decision.

Board discussion:

- The current code allows a homeowner to rebuild within one year;
- The law was originally passed in 2013, and amended in 2019 to allow replacement dwellings in certain limited situations, as described in HB 3024:
 - A lawfully established dwelling may be altered, restored or replaced if the dwelling had intact walls, a roof, interior wiring, and a heating system.
- Occupancy is not a listed criteria;
- HB 3024 could allow for the replacement of the dwelling, but the hearings officer found that the dwelling was not on a lawfully created lot:
 - A 1998 land use decision affecting the property previously concluded that the creation of land in 1978 did not comply with partition requirements at that time, and therefore it was not a lawfully created unit of land; and
 - The hearings officer concluded that property where the dwelling is located was improperly divided by deed, when there was a requirement to divide the property by partition, and therefore denied the application.
- The situation may be able to be corrected:
 - Permits will not be issued for either parcel until that time; and
 - One resolution would be for all owners of the improperly created parcel to come in for a partition to resolve the issue.
- The hearings officer also reviewed all remaining criteria and determined that the applicant did not meet the requirements for the replacement dwelling, even if there was a lawfully created unit of land;
- Applicant's argue that the fire destroyed much of the dwelling in 1967, but some of the destruction took place after 1973; and
- The denial of this application does not prohibit the applicant from reapplying for future applications.

MOTION: Commissioner Brentano moved to deny the appeal and uphold the hearing officer's decision denying the request for Administrative Review (AR) Case #20-010/Schaber. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:50:28)

**PUBLIC HEARINGS
9:30 A.M.**

PUBLIC WORKS

A. Public hearing to consider the appeal of the planning commission's decision denying Subdivision /Adjustment (SUB/ADJ) Case #20-001/Progressive Design Builders, Inc.

–Joe Fennimore

Summary of presentation:

Joe Fennimore:

- This application is for a conceptual detail approval to subdivide a 21,700 square foot parcel into seven lots, with an adjustment to reduce the minimum lot width;
- The property is within the Salem Urban Growth Boundary and is zoned Multi-Family Residential (RM);
- The applicant is currently constructing seven town house dwellings on the property, and is requesting to subdivide the property so at least one dwelling can be on its own lot;
- The City of Salem Code contains provisions specific to town house lots and allows for a minimum lot width of 20 feet;
- Current county code requires a minimum lot width of 40 feet;
- The planning commission held a public hearing on June 16, 2020;
- The applicant, at the hearing, argued that since the proposal met all the development standards in the city code, it satisfied the criteria for the requested adjustment to the lot;
- The planning commission discovered that two unattached buildings on separate lots are only five feet apart:
 - Marion County Code requires a ten-foot separation; and
 - The City of Salem requires a five-foot setback from the property line.
- The planning commission considered an additional adjustment to this standard and determined the adjustment criteria were not met, therefore they denied the request;
- The applicant appealed the decision to the board of commissioners on July 6, 2020;
- On July 15, 2020, the board accepted the appeal and scheduled the hearing for this date;
- In the appeal, the applicant argues the following:
 - The proposed development is for needed housing and must be processed as a limited land use decision; and
 - Only clear and objective standards can be applied to the development.
- The applicant has submitted additional information addressing the adjustment criteria to reduce the required ten-foot separation between the buildings to five feet; and
- The board has the following options:

- Continue the public hearing;
- Close the hearing and leave the record open;
- Close the hearing and approve, modify, or deny the request; or
- Remand the matter back to the hearings officer.
- After reviewing the additional information submitted, staff recommends that the board approve the request, subject to conditions, which include:
 - Survey and platting requirements;
 - The completion of frontage and stormwater improvements that are required for the development of town house construction; and
 - Easements must be shown on the plat.

Alan Sorem, Attorney for applicant:

- The property is about a half-acre in size:
 - It is located on Lancaster Drive, west of Satter Drive, and east of Chemeketa Community College;
 - It is zoned RM; and
 - It is currently under development for seven multi-family housing units consisting of two buildings:
 - One with three units; and
 - One with four units.
- The townhouses building permit approval plans were reviewed and approved by Marion County:
 - Everything is in compliance with fire codes and Marion County building standards.
- This process did not follow the typical fact pattern for subdivisions:
 - Normally you would have detached, single family houses;
 - The first step would be to divided the land, get the lots; and
 - Then you would engage in contracts with the builder to build the homes for the consumer.
- In this instance, the town homes are under construction because it is already zoned RM and they are allowed;
- The plan is to sell the town homes, not rent them out, and to give people the ability to step into homeownership at an affordable price point without seeking subsidization;
- The application was prepared for the tentative plat approval to subdivide the properties;
- The normal development standards for lot size and dimensions need an adjustment:
 - The lots are a little smaller and narrow to conform to the town house unit.
- Town houses are being built according to Oregon Fire Code:
 - Walls are adjacent, or nearly adjacent, one inch apart; and
 - Health and safety concerns are addressed by using building materials that are measured in the burn rate.
- Mr. Sorem believes there was a bit of confusion with the planning commission on what was being requested:

- It might not have been clear in the original notice what was the scope of adjustment; and
- There may have been a differing opinion for criterion for the administrative adjustment.
- In the original appeal letter, the applicant went into great detail regarding state laws that apply to a needed housing project that puts barriers in place on how one can interpret the local code and the procedural matters;
- Since the appeal was accepted, the clearest path forward is to look at the four criteria for the administrative adjustment:
 - Development standards can be flexible and need not be strictly applied in all situations.
- The criteria for adjustment, which allows deviation from the development standard, is a four pronged test:
 - Will there be a significant impact on adjacent users;
 - Is there any adverse health and safety impacts;
 - Is this the minimum amount of adjustment needed to fulfill the proposed use; and
 - Is the intent and purpose clearly applicable under these circumstances.
- There will not be a significant impact on the surrounding neighborhood:
 - The area is all developed under RM housing.
- There will not be an adverse impact on health and safety:
 - As mentioned above, the build is according to Oregon Fire Code.
- This is the minimum adjustment necessary;
- They are applying the intent and purpose of zone;
- Taking a use that is currently allowed, as evidenced by the fact that the county has already reviewed and approved the construction of the dwellings, and doing a land division project that will allow individuals to own the specific units;
- Based on additional evidence, necessary adjustments can be approved as identified by Marion County staff;
- This is a very narrow appeal;
- There are just a couple of development standards that were at issue; and
- Planning staff stated in their report that all other criteria have been met.

Steven Smith, Progressive Design Builders:

- Mr. Smith acquired the property from his friend:
 - It had the potential to be built with 12 apartment units; and
 - He is a home builder and did not know if he would be able to sell the units.
- The property has seven individual units:
 - A three-plex and a four-plex;
 - They are 1,600 square feet;
 - Three bedrooms;
 - Contain a single-car garage;
 - Landscaping;

- Granite countertops; and
- Nice fixtures.
- He went into the project with the intent of splitting the property:
 - Obtain the permits;
 - Apply for the land division; and
 - Both would occur simultaneously.
- The initial staff decision is what he believed the outcome would be:
 - A shared common space maintenance agreement;
 - Head of Household (HOA) agreement for the building;
 - A final plat; and
 - A survey, all standard.
- Mr. Smith did not think this was going to be an issue, and that is why he did not appear at the last hearing;
- He was told that the definition of a town house was no less than two units and no more than four:
 - That is why there is a separation between the two buildings.
- He replied to Commissioner Willis' question that it has been an easy experience working with the Public Works Department:
 - He has been working in Washington and it is very different;
 - They are either shut down or on furlough;
 - It is the same with the Secretary of State's office; and
 - He has received good information.
- He only has limited funding;
- The units he built are similar to ones that DR Horton built on Sunset and Davis by the elementary school;
- He believes it would be a good housing option for students or staff by the college; and
- Neighboring property owners are also considering building similar units.

Board discussion:

- Commissioner Brentano stated that the code should be changed for future applications, and he is in favor of approving this request;
- He also wanted to know how construction could proceed with a pending land use application;
- Mr. Fennimore replied that the property is RM and can be developed for this type of housing:
 - The applicant applied for building permits for a three-plex and a four-plex on a single lot;
 - They met all the criteria for the development of the lots; and
 - The applicant came in after construction began to divide the lots.
- Commissioner Willis stated the use for the zone is reasonable, it is not currently provided for in the code, and an adjustment should be made; and
- It is important to incentive home ownership.

MOTION: Commissioner Cameron moved to close the public hearing and approve the request for Subdivision /Adjustment (SUB/ADJ) Case #20-001/Progressive Design Builders, Inc., subject to conditions. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

Commissioner Willis read the calendar.
Commissioner Willis adjourned the meeting at 10:16 a.m.



CHAIR



COMMISSIONER



COMMISSIONER

Board Sessions can be viewed on-line at

<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>