

COLUMBIA COUNTY BOARD OF COMMISSIONERS  
BOARD MEETING

MINUTES

April 16, 2003

The Columbia County Board of Commissioners met in scheduled session with Commissioner Joe Corsiglia, Commissioner Rita Bernhard and Commissioner Anthony Hyde, together with John Knight, County Counsel and Jan Greenhalgh, Board Secretary.

Commissioner Corsiglia called the meeting to order and led the flag salute.

**MINUTES:**

Commissioner Hyde moved and Commissioner Bernhard seconded to approve the minutes of the April 8, 2003 Work Session; April 9, 2003 Staff meeting; and April 9, 2003 Board meeting. The motion carried unanimously.

**CONSENT AGENDA:**

Commissioner Corsiglia read the consent agenda in full. With that, Commissioner Hyde moved and Commissioner Bernhard seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for 4/15/03.
- (B) Order No. 28-2003, "In the Matter of Donating Certain Personal Property to the Clatskanie Little League".
- (C) Eliminate the position of Accountant, effective June 1, 2003.

**AGREEMENTS/CONTRACTS/AMENDMENTS:**

- (D) Ratification of Business Associate Agreements between Columbia County (Jail) and Aramark Corporation, Clatskanie Clinic, Human Resource/Information Technology, County Counsel and Finance Department.
- (E) Amendment #6 to contract between CCCCCF and Columbia Community Mental Health for "Teen and Family Transition Program".
- (F) Amendment #4 to contract between CCCCCF and the St. Helens School District for "Juvenile Crime Prevention Plan, Middle School Program".

The motion carried unanimously.

**BENNETT PROPERTY:**

Cynthia Zemaitis, Legal Assistant, came before the Board regarding the Bennett property. There are 3 parcels that have not been paid off. Two parcels with rental property and one parcel with the Bennett's primary residence. There was discussion last week about obtaining a rental agreement with the Bennett's. Cynthia has drafted a rental agreement for the primary residence but the amount needs to be determined. Regarding the additional two parcels with rentals, there is a problem with the actual prior ownership. The statutes allow the County to sell property back to the previous owner of record or contract owner. However, when the Bennett's purchased the rental property on contract, the contract was never recorded and the deeds were not conveyed.

Regarding the primary residence, the suggestion was made to charge a monthly rental amount of \$1. This will allow time for Mrs. Bennett to obtain financing to payoff the full amount owing. Commissioner Hyde questioned how much administrative work has been involved. Cynthia explained that all administrative costs are recouped by land sales price. After discussion, Commissioner Hyde moved and Commissioner Bernhard seconded to set the rental amount of \$1 per month, not to exceed 90 days. The motion carried unanimously.

As for the rental properties, Cynthia was given an additional week to work out those details.

**COMMISSIONER CORSIGLIA COMMENTS:**

Commissioner Corsiglia attended the ROCN meeting last week and their budget looks solid for the next two years. The City of St. Helens has dropped their participation of dedicating a police officer to the program.

**COMMISSIONER BERNHARD COMMENTS:**

Commissioner Bernhard attended a Community Action Team retreat last week in Seaside. She was able to present a plaque to Rocky Johnson for his 20 years of service to CAT. He was unaware that was going to happen but was very pleased.

She also attended the bench dedication at the Humane Society in honor of Phil Holshiemer.

On Saturday, she attended a town hall meeting put on by Senator Joan Dukes in Vernonia. Discussion was held on what could be done to help the Vernonia community. Good meeting.

She also attended the spring event in Yankton.

On Saturday, the Scappoose Booster Club held a salmon derby during the day and then a huge spaghetti dinner at the Fairgrounds, which she attended. She was amazed at how many people were there.

**COMMISSIONER HYDE COMMENTS:**

On Thursday, Commissioner Hyde attended a groundbreaking for the new Rainier Senior Center. This is a project that has been years in the making and it's nice to see it finally coming together.

On Friday, he attended a PERS Task Force meeting in Salem. Reported on those discussions. He also met with the Governor yesterday, who is very knowledgeable about the PERS system. PERS is the biggest issue happening in Salem right now.

**EXECUTIVE SESSION UNDER ORS 192.660(1)(h) - PENDING LITIGATION:**

The Board recessed the regular session to go into Executive Session as allowed under ORS 192.660(1)(h). Upon coming out of Executive Session, no action was taken.

**CANCEL BOARD MEETING OF APRIL 23, 2003:**

Commissioner Corsiglia announced that the Board meeting of April 23, 2003 will be cancelled.

*The Board recessed the meeting at 11:00 a.m. and reconvened at 2:00 p.m. Present were Commissioner Bernhard, Commissioner Hyde and John Knight. Commissioner Corsiglia was not present.*

**LIABILITY ISSUES:**

Joe Schultz, Pieper Ramsdell Insurance, came before the Board and introduced Dunny Sorensen of J.G. Newman Company to discuss elected official liability. Sorensen stated that claims against elected officials are becoming more common, often politically motivated as opposed to monetary. Official will be named in personal capacity, as opposed to official capacity and could be forced to hire their own attorney or even pay the judgement personally. This tends to attract a lot of press. It is okay as long as it's within the course and scope of their duties, however the difficulty is there's no job description. The two areas that see a lot of claims are 1) getting too deeply involved in employment matters; and 2) speaking at public meetings as if speaking for the public body, but not personally. These types of claims can be similar to a really contentious land use case or police shooting, can be very public with lots of claims. Press often ignores the favorable result. *Gantenbien v. City of Bend* cost the insurance company \$500,000 to defend, but eventually won. Many elected officials think that because they've run on a platform and now that they're elected, they are free to pursue it and fail to consider other laws, rules and ordinances. They need to keep in mind their limits in acting in various capacities. Less restrictive - legislatively - more restrictive if acting administratively or quasi-judicially, i.e. hearing a quasi-judicial land use matter where there are limits in how personal beliefs can influence decision making. There could be personal liability of overly influenced by personal beliefs. One of the biggest areas of liability is in employment practices. It's like the difference between first aid and neurosurgery. Employment law is a very specialized area. Sorensen gave some examples. 1) an employee got due process, but claimed it was a sham due process and the

decision had already been made. It is important to follow whatever process has been established. That case was difficult because the elected official had been so vocal. 2) There was good documentation to support a dismissal. Claimed councilor had spoken with the public, which councilor had denied. Received a tort notice, but no complaint filed. Information about performance, medical or psychological condition is risky to release. 3) Original process screened out sex, race and other suspect classifications so the decision would not likely be based on impermissible reasons. 4) Problem created by sitting on original hiring committee. No real conflict of interest here, but still caused an avoidable problem.

John mentioned the issue of advisory committees being overly influenced by the Commissioner's presence. Sorensen stated that, in land use there is some confusion between conflicts of interest and bias. Bias is also prohibited and there's potential liability if decisions are influenced by bias. Even though the track record is pretty good in defending these cases (about 75% are denied without payment; 95% in police cases), they can still be embarrassing and stressful.

Commissioner Hyde feels there could be a potential problem with cell phones. To deal with that issue, Clackamas County gave a stipend for personal cell phones. Randy Franke spent \$12,000 and Bill Hansell spent \$11,000 defending cell phone complaints. Another area is lobbying. You have to register if you spend more than 24 hours a month lobbying.

Comments on exceeding authority. A councilor said a contractor was lying, but couldn't prove it. The case settled. Often can cut official off from defense, but usually just send a reservation of rights letter. Reluctant to cut people loose, but could in appropriate case. Some plaintiffs will sue, individually, and not against the County or City, just to harass the elected official.

Commissioner Bernhard said the many people think Commissioners have authority over issues that they don't have. It is difficult not to want to help, but you need to stay within the limits of authority.

Grant County had a citizens group that wanted to take jurisdiction of the State police and City police, pursuant to a County ordinance.

Advice of counsel is usually the best defense against personal liability, even if it's bad advice. A second opinion is okay as long as it's impartial. Politically motivated advice is not likely to be a defense. Sorensen stated that he would be reluctant to ignore the advice of appointed counsel. John stated that he believes his job is to point out the areas of permissible discretion. There are some things that are clearly impermissible, but often times there is room for differing conclusions from the same set of facts which are reasonable. Some conclusions are more reasonable than others, less reasonable conclusions are less likely to be upheld on appeal, but as long as they are at least arguable, not likely to support personal liability.

Joe Schultz said the land use process has been improved over the way it used to be. Much more helpful now in Land Development Services. John stated that the problem is if staff oversteps

their role and starts to become an advocate for the applicant. It is often difficult to know how not to give false hope, without being obstinate.

Hiring process. Joe Schultz feels that Civil Service gives us an extra layer of protection. Commissioner Hyde stated that some people think the HR Director should be an advocate for the employees. That isn't the role. It is difficult for the HR Director to be popular if doing the job. Hyde said that one of the difficult things for him when first elected was not seeing all of the applications. It's really in the county's best interest that the Commissioner's stay out of it, unless the position is directly under the Board.

Joe Schultz handed out photocopies of an Oregonian article dated 4/8/03 regarding alleged sex discrimination by the City of Forest Grove and its city manager.

**AMENDMENT #5 TO GRANT AGREEMENT FOR CCCCF:**

Commissioner Hyde moved and Commissioner Bernhard seconded to approve Amendment #5 to the Oregon Commission on Children & Families Grant Agreement. The motion carried unanimously.

With nothing further coming before the Board, the meeting was adjourned.

Dated at St. Helens, Oregon this 16<sup>th</sup> day of April, 2003.

NOTE: A tape of this meeting is available for purchase by the public or interested parties.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: Joe Corsiglia  
Joe Corsiglia, Chair

By: Rita Bernhard  
Rita Bernhard, Commissioner

By: Anthony Hyde  
Anthony Hyde, Commissioner

Recording Secretary:

By: Jan Greenhalgh  
Jan Greenhalgh