COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

June 22, 2005

The Columbia County Board of Commissioners met in scheduled session with Commissioner Anthony Hyde and Commissioner Rita Bernhard, together with Sarah Tyson, Assistant County Counsel and Jan Greenhalgh, Board Secretary. Commissioner Corsiglia was not present.

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

MINUTES:

Commissioner Bernhard moved and Commissioner Hyde seconded to approve the minutes of the June 14, 2005 Work Session; and June 15, 2005 Board meeting. The motion carried unanimously.

VISITOR COMMENTS:

None.

HEARING: 2005 CDBG FOR PUBLIC FACILITIES & HOUSING IMPROVEMENTS:

As scheduled, the public hearing to solicit public input on the application for a 2005 Community Development Block Grant from OECDD for public facilities and housing improvements was held.

Jim Tierney, Community Action Team, explained that the intent of this hearing is to solicit public input on this application.

The hearing was opened for public testimony.

Jim Tierney, CAT, submitted three handouts, a portion of the CDBG program guidelines, a Regional Housing Center brochure and an overview of the Northwest Regional Housing Center. This grant does not impact the cities or county's opportunity to apply for CDBG grants because this grant is through the Oregon Housing Department, not OECDD. Jim gave a brief overview of what this grant will provide in terms of services. He noted that this is a competitive grant and he would ask that the county apply for the full $70,000.

With no further testimony coming before the Board, the hearing was closed for deliberation.

After little discussion, Commissioner Bernhard moved and Commissioner Hyde seconded to approve the preparation of the 2005 CDBG grant application for public facilities and housing improvements, contingent upon County Counsel review and authorize the Chair to sign. The motion carried unanimously.

PUBLIC HEARING: (2) MORSE BROS. TEMPORARY PERMIT APPLICATIONS:

As scheduled, the public hearing, "In the Matter of the Application by Morse Bros., Inc. for a Temporary Use Permit to Site and Operate a Portable Ready Mix Concrete Batch Plant on Kallunki Road, Clatskanie, Oregon (TL #8423-020-00103) and (TL #8423-020-00500)", was held.

Sarah Tyson, suggested that both Morse Bros. Temporary Permit application hearings be heard together. On June 1, 2005, the Board took jurisdiction over both of these permits. As for exparte contact, Commissioner Hyde spoke with Brian Gray to try to find alternative sites for the batch plant, but nothing specific. The Board has no conflicts of interest. Sarah then read the pre-hearing statement as required by ORS 197.763. She entered both County Counsel's hearing packets into the record, marked Exhibit "1" and noted all contents.

Glen Higgins, Chief Planner, came before the Board to give the staff report. The applicant will be providing concrete for the construction of the PGE power plant at Port Westward. A project of this size requires a concrete batch plant on site for optimal concrete delivery. PGE has informed Morse Bros. that locating the portable batch plant on the PGE site is not possible due to their non-union hiring practices. Therefore, Morse Bros. has applied for siting the temporary batch plant at two different local sites, both along Kallunki Road leading to the construction site. Only one Temporary Permit for a ready mix concrete batch plant will be allowed and only good for one year, however the permit can be renewed. Glen reviewed the applicable criteria and staff findings. After review, Planning staff recommends approval of one Temporary Permit on either TP 05-15 or TP 05-16, with the 7 noted conditions in the staff report dated June 15, 2005, which Glen read into the record. Glen received a fax from the Clatskanie CPAC who feels that either site would be appropriate.

The hearing was opened for public testimony.

PROPONENTS:

Brian Gray, Morse Bros. Inc.: Brian feels Glen did a good job summarizing the applications. MBI has a purchase order to supply about 12 thousand yards of concrete to James Kelly, who is the customer. They have a sub-contract with Black & Beech, who is a general contractor for PGE building the power plant. MBI began delivering materials from their Deer Island facility, but because of the nature and size of the larger pours and the requirements of being close to the project, and eliminating more truck loads of material going out there, MBI felt they needed to find a site that is closer to the property, but off the project site. They have identified two potential sites and are currently in negotiations with both parties. MBI would like to have approval on both applications and, hopefully by the end of this week, they will decide on which property they will use. Then they would close the other site and terminate the other permit. For clarification, they only need one site. Time is of the essence because they are currently supplying concrete and have some larger pours scheduled fairly soon. As staff mentioned, the Summit Power site is closer to the project and has a little better access. So the preference would be to use

that one. However, because there are multiple decision makers with that piece of property and only one property owner on the other site, MBI is asking that both permits be approved at this time.

OPPONENTS:

Thelma Bonar, 56734 Way Lane, Warren: Thelma approached the Board and presented a letter from Tammy Maygra who asked that it be read into the record. Thelma then read the letter into the record. Tammy is opposed to the approval of both permits.

Thelma, for the record, agrees with the comments in Tammy's letter. She heard Glen say that the Temporary Permit is good for one year. In looking at the Surface Mining rules, she thinks they should only have 60 days. There are other regulations that would apply here too.

Commissioner Hyde stated this is a land use issue, not a surface mining issue. They will not be mining the site.

Thelma feels there is a conflict of interest on Commissioner Hyde's part because of the campaign contributions he got from Morse Bros.

REBUTTAL:

Brian Gray, responded to the comments made. As far as the issue mentioned, Morse Brothers is a non-union company and has been for 57 years. We've clearly made that statement to PGE, Black & Beech, James Kelly and all parties involved in the project knew in writing that Morse Brothers is a non-union supplier. They went out and looked for union concrete producers and they were not able to find any union concrete manufacturers and producers. They went to California, Nevada, and all of Oregon. So they were left with the decision to use Morse Bros and they gave us a purchase order that clearly said that they would make a site available to Morse Bros. and that they would be non- union. We met with PGE staff, with Black & Beech staff and with James Kelly staff on site and they showed us where to set the batch plant up, knowing that we are a non-union supplier. We set the batch plant up with our labor, and we did get a stop order from PGE that there was some potential labor issues and that's where we stand now. Those are trying to be resolved through Black & Beech, James Kelly and PGE, but it does not seem likely that that's going to happen. So we're able to supply that project from an offsite batch plant. We're currently doing that and have been doing that for a month and a half from the Deer Island site. There are no union issues if we supply the concrete from an offsite batch plant. That's why we have the permits in front of you. As far as the traffic impact, where we're at now on PGE's property or being adjacent, there would be the same amount of materials hauled to the existing batch plant site or to the new permitted sites. So the traffic impact would be exactly the same and if we don't get one of these two permits, the owner's have asked us to batch the concrete out of Deer Island, which would be about double the truck counts going out. They're made to haul 10 yards of concrete instead of 30 tons of rock, which would be about two times the amount of trucks. So this would actually have less of an impact on the county roads.

MBI has already started the project and the reason why they can't finish the project from the existing site is that it's about a 65 minute haul and 90 minutes to place the concrete, and on any large pours, you'd have to have multiple trucks on the road. It's a 3 hour turn around, so you'd get about 3 yards per hour and they need to pour much faster than that on large pours. So there is a requirement to have an on-site batch site or a very close batch plant. Both these properties would act in the capacity of an on-site batch plant.

MBI has been a non-union company for 50 plus years. PGE looked and could not find a union producer and left with the decision to use MBI. Because of the union issues, MBI has looked for alternative sites for the batch plant. That is the reason for the temporary permit applications. As for traffic impacts, it would double the trucks coming out of the Deer Island plant if they do not get a TP for the other site. It would actually decrease the amount of truck traffic. Brian noted that concrete has to be poured within 90 minutes.

When asked by the Board, Sarah would probably suggest that as a condition of approval, MBI would need to obtain an operating permit if required by the Surface Mining Ordinance. However, she will have to look into this first.

With no further testimony coming before the Board, the hearing was closed for deliberations. Commissioner Hyde first wanted to respond to Thelma Bonar's comment insinuating that he should declare a conflict of interest and he is trying not to be incensed. He has a standard disclaimer when campaigning that when someone hands him a check, whether it be $5 or $500, that the money is not going to buy them a decision and if that's what they think, they need to take the money back. He has made that disclaimer every time he is given money. Further, he found against Morse Bros. on a very significant issue, that went all the way to the courts. Thelma's comment is ridiculous and absurd, it questions his integrity and he doesn't like it.

Commissioner Bernhard finds it difficult to get in the middle of something that is already in progress and it sounds like everyone has been notified about the fact that MBI is non-union. She feels it is reasonable to ask for a batch plant closer to the work site and agrees that it would help decrease truck traffic. The Board has always encouraged union work when possible, but this is something that is already being dealt with. Commissioner Hyde stated that this is a project that is worth hundreds of millions of dollars in capital construction and it needs to move along. The concept of having concrete trucks on the road ten at a time is not acceptable because of the impact to the roads. The applications before the Board seem to be the best solution available. After discussion, Commissioner Bernhard moved and Commissioner Hyde seconded to approve TP 05-15 for Tax Lot 8423-020-00500, contingent upon approval of the property owner, Westward Energy LLC and subject to the conditions of approval set forth in the Staff Report and adding a condition that applicant comply with road standards as determined by the Road Master and requiring an operating permit if required by the Surface Mining Ordinance. The motion carried unanimously.

Secondly, Commissioner Bernhard moved and Commissioner Hyde seconded to approve TP -05-16 for Tax Lot 8423-020-00103 contingent upon approval of the property owner, withdrawal/ cancellation of TP 05-15, subject to the conditions of the approval set out in the Staff Report and

adding a condition of approval requiring them to comply with the Road Standards as determined by the Road Master and requiring that they obtain an operating permit if required by the Surface Mining Ordinance. The motion carried unanimously.

HEARING: MEASURE 37 CLAIM FILED BY RAINIER ROD & GUN CLUB:

As scheduled, the public hearing, "In the Matter of a Measure 37 Claim Filed by the Rainier Rod & Gun Club for Compensation Under Measure 37", was held.

Sarah Tyson stated that this is the time set for the Rainier Rod and Gun Club Measure 37 Claim hearing CL 05-06 and pursuant to the County's order which set out the procedure for Measure 37 Claim, the Planning Department sent notice to adjacent property owners notifying them of the claim and the request was received for a hearing. Notice was sent to the neighboring property owners of the date and time of the hearing however there is no real required procedure. This is not a land use hearing, so we don't need to go through the pre-hearing statement like we normally would. She would suggest that the Board hear the staff report, open the hearing for testimony from the claimant, the Rainier Rod and Gun Club, then take testimony from the neighboring property owners as to why the claimant does not qualify for a Measure 37 Claim. The Board needs to determine whether or not they qualify for a Measure 37 Claim, and not whether or not they have been subject to enforcement actions in the past or any other land use matters that have come up. Sarah entered County Counsel's hearing file into the record, labeled Exhibit "1" and noted all contents.

Commissioner Bernhard stated that she received a call from Charles Wright on Thursday, June 16th. Basically, he is a neighbor of this property and he's had on-going concerns with the gun club. His concern is that they don't seem to be abiding by any of the rules that the County has set out in the past, so he has concerns about them rebuilding and about them complying with any conditions.

Todd Dugdale, LDS Director, came before the Board to give a staff report. This is a Measure 37 Claim that we received from Rainier Rod and Gun club and it's for a 14.62 acre property on Old Rainier Road in Rainier. The property is zoned Rural Residential R5. Claimants allege a reduction in fair market value in the amount of $250,000 to $500,000 due to RR5 Zoning District regulations and related non-conforming use regulations related to their proposal to rebuild a club house that was destroyed by fire in 1990. Secondly, to use the property for Rod and Gun Club use unlimited in intensity by the non-conforming use requirements in the County Zoning Ordinance. As was mentioned, we did give 14 days notice. We received one response, that being the request for public hearing that brought us to this point today from David Nelson representing Judy Jordan, an adjacent property owner

Todd provided a brief overview in the Claim summary which is Part II of the Staff Report, and then focus in on any relevant finding that would result from that overview.

First of all, the current ownership of the property, the claimant did submit a Change of Title Report dated December 27, 2004, but it was for an adjoining property owned by the Wrights. It

did provide a deed that indicated an acquisition date by Rainier Rod and Gun Club of that property and also the subject property of 1949. However, we would need to have something should the Board act favorably on this, something verifying the current ownership of the property. We don't have reason to believe that they aren't the current owner, but we need that verification. As to the date of acquisition, there was a deed submitted and was referenced to the chain of title to the adjoining property. A Warranty Deed by which Rainier Rod and Gun Club acquired the property in 1949.

The Land Use Regulations in effect at the time of acquisition in 1949, was that the property was un-zoned. The Land Use Regulations that were applicable to subject property alleged to have reduced the fair market value were as stated in the claim the Rural Residential Zoning Regulations, in particular, Section 602 and 603 which provide for permitted uses and conditional uses in the R5 Rural Residential Zone. These were adopted in July of 1984 and also non-conforming use regulations in the Zoning Ordinance Section 1506. These regulations were enacted and we must find under Measure 37 after acquisition by the owner in 1949.

With respect to the statement as to how regulations restrict use, the claimants do allege that these regulations do prevent them from building their club house and also engaging in gun club activities at an intensity that they desire and that they believe reflects the last 70 years of activity. The evidence of reduced fair market value - the claimant did not initially submit value documentation that is of the current value of the property as is, nor did they submit value information as to show what the value of the property would be if the regulations were not applied. That is, if they were allowed to do what they proposed to do. However, they did submit last week, an estimate of the costs of rebuilding the club house. That was read into the record. The compensation matter as I mentioned was $250,000 to $500,000. So based on that overview, Staff determined that the initial eligibility for review of the regulations was in order, since those regulations were adopted and enacted after the acquisition date.

Todd focused on the two regulations that are at issue. First, under Measure 37 you must find that the regulations cited have effected restricting use. The claimants allege that the R5 Zoning Regulations and related provisions are non-conforming use provisions of 1506. The limit the rebuilding and expansion and restrict the use of their property.

The CCZO Section 1506 of the non-conforming use regulations allow non-conforming use instructions to continue after zoning - even though the uses may not be in conformity with regulations of the current zone. Staff finds that this particular section, non-conforming use section, imposes regulations by which structures destroyed by fire may be rebuilt. It further provides a process by which an owner may apply for an expansion of a non-conforming use. In fact, the criteria was applied to a designer view application filed by the claimant in 2001 to rebuild the club house. The application was approved by the Planning Commission on appeal to the Planning Director's decision. The County's decision to approve the rebuilding of the club house was appealed to LUBA (State Land Use Board of Appeals) and in applying the state law for non-conforming uses, LUBA overturned the County's approval of the rebuilding of the facility, based on the fact that it violated the provision of state law saying that it must not be a

discontinuance of rebuilding activity for more than a year and it must be initiated within a year of its burning. So, based on that, the Staff finds that our Sections 1506 - our non-conforming use provisions do allow the rebuilding of the clubhouse currently, and the claimant's assertion that the County has refused to grant the club a building permit to rebuild based on our own regulations is not correct. In fact, that refusal is based on state law. So, we find that this particular section of the zoning ordinance does allow rebuilding and does not restrict the use of the property.

Secondly, with respect to the non-conforming use regulations which also address the intensity of use. That is related to hours of shooting and such things that have been an issue with the neighbors. How often you can shoot, how late you can shoot, when you can shoot. Generally the intensity and nature of the use. Claimant alleges that Section 1506 non-conforming use regulations a limited use of the property concerning the operation of the club and using the property and the frequency and times that the property has been used for the last 70 years. This particular cited section provides that for the continuation of a non-conforming use at the levels that were existent at the time the zoning was adopted, which was 1984. The County regulations - if the existing use of the property in 1984 was equal to or greater than it exists today, then the County's regulations will allow continuation of that use. In fact, does allow continuation of the use. If the property owner seeks to expand or engage in activities more intense, than those existent in 1984, then there is a process provided in our zoning ordinance to apply for an expansion of the non-conforming use. Staff finds that the applicant has that process available to them and has yet to ask for such an expansion. Under Measure 37 we must find that enactment and/or enforcement of the regulation has caused a reduction in fair market value. In this case, the claimant would need to apply for that extension of non-conforming use and has been denied that use, in order for us to have to enforce that provision on them. So there is that availability of process.

So Staff finds that in fact until and unless that would happen, that there is no restriction in use. As far as the second thing, we need to find if there is a restriction in use and a reduction in fair market value. Obviously, staff found that there is not a restriction in use, therefore the question of the extent to which those restrictions reduce the fair market value is rather moot. But I will mention that we did not receive adequate documentation to determine any reduction in fair market value due to cited restrictions. We did receive some information indicating the value of the proposed club house.

One other comment, as you may be aware, Measure 37 exempts certain land use regulations, those relating to health and safety rules, regulations and any nuisance laws. Staff finds that the gun club activities in the residential area could be alleged to be a health and safety issue and could be determined to be exempt from Measure 37. Furthermore, the noise associated with the shooting of the guns may qualify as a common law nuisance issue. Based on the findings in the Staff Report, Staff does not find that the claim meets the threshold requirements proving Measure 37 Claim and would recommend denial. However, if the Board finds that the cited regulations have reduced the value of the property, the Board should authorize payment of just compensation in the amount of the reduction in fair market value demonstrated. Or in lieu of that compensation, the Board should not apply the regulations to which Measure 37 applies.

When asked by the Board about any documentation of a reduction in fair market value, Todd stated that, typically the process is to provide good documentation of the value as is and then provide good documentation of what the value of the property would be without the offending regulations, and neither of those numbers were well documented. So there is nothing to support the claim of $250,000 to $500,000. Todd stated that under the current regulations, a lot of what they are alleging they can't do, they can. In fact, the County has already approved the rebuilding of the clubhouse under County regulations. However, they would need to obtain a waiver from the state regulation.

The hearing was opened for public testimony.

PROPONENTS:

Rod Harding, 28893 Hurtzel Road, Rainier: He is a member of the Rainier Rod & Gun Club. He feels that the reason they can't rebuild the club house is because of the 1506 non-conforming use regulations and the one-year restriction associated with it. If the club was zoned properly under it's existing use and the use that it has always had for that property since 1949, then they would be able to rebuild because the one-year restriction wouldn't be there. It's because of non-conforming use that they can't rebuild the club house, it's not the state laws or anything, it's the non-conforming use of the County. Again, if the property was zoned properly, they would be able to rebuild the club house under it's own zoning. They do have a value associated with the club house of $140,000 for the structure. The value of the club has been reduced by $140,000 because if they had the structure there, their assets would be $140,000. Because of the time-frame, that documentation would be turned in at a later date.

Commissioner Hyde understands that staff is just going by what was in the application and any documentation received to date.

Rod explained that they had hired an appraiser who couldn't fulfill his obligations and they are looking for another appraiser to remedy some of Mr. Dugdale's concerns. They received a letter on June 8th from Mr. Dugdale and they have been trying to remedy those concerns, but haven't been successful at this time. As far as operating hours, the membership was allowed to operate the gun club unrestricted until 1995. A member could go over and open the club and shoot when they desired. And in 1995, there was a letter of agreement forced upon the club by the County Planning Department that limited their times of operation to Wed., Thur., Fri., and Saturday. It excludes Sun., Mon., and Tuesday. Prior to 1995 they were allowed to use the property and the club at any time. After that time, they were restricted.

Regarding the part of the Measure 37 Claim on fair market value, the county is restricting the club to those operating hours deemed in the letter of May 1995 which has diminished its value and they can't market it as a gun club. There isn't anybody that would buy it as a gun club with those restrictions. It's one of the most restricted gun clubs in the state. Nobody else has these types of shooting times restrictions on it, that he has been able to contact. Most clubs have shooting times that reflect their pre-existing use to zoning. He doesn't believe Mr. Dugdale's comments that the club hasn't been reduced in their use. If they were allowed to use it under

CCZO 1506, which says they can do now what they did before, then their shooting times would be 7 days a week and the membership could use it under those times, but they can't now, so their times have been reduced. It's really hard for him to see how the County ties the fact that they could ask for an expansion when in fact in '95, they were limited.

Commissioner Bernhard asked why the hours were reduced. Rod stated that, back in 1995, the neighbors came to the Board of Commissioners and asked for something to be done. Three neighbors in particular. At that time, there was a letter of agreement that was facilitated by Mr. Weeks, who was a county employee at the time. It was the standpoint of one of the Commissioners at the time that the club would make an agreement with the neighbors or he would impose some sort of restriction on hours on the gun club. This letter of agreement was approved by the president of the club at that time. There was very little input by the club on the shooting times. It was more of what the neighbors wanted. At one point, Mr. Higgins said that this was a letter of agreement between the neighbors and the club and the county had just facilitated it and it wasn't between the county. Later on when the club notified the neighbors that they were no longer going to honor the letter of agreement because they had appealed it to LUBA and they were prevented from rebuilding the club house, Mr. Higgins informed them that the County would be enforcing the letter of agreement. Up until that time, they felt that it was an agreement between the neighbors and the club not the county. If this were under CCZO 1506 which says we could do now what we did before and we had those times available in the by-laws of our club it says a member can go open the club and shoot whenever they want to. Those by-laws date from the start of the club.

When asked, Rod stated that there were no neighbors bordering the club when it was established. Those structures have been built since the club was moved there in 1949. The club house burned down in 1991. If the County needs more information, they would like to extend their application time in order to provide more information for the County. Therefore, Rod asked for more time to complete their application.

Sarah noted that the 180 days is up on June 30, 2005. There is no automatic waiver so that is something the Board could talk about later, but cautioned that they may want to be hesitant about that. She stated that the applicant could withdraw their application for a Measure 37 Claim and resubmit it when they have the proper paperwork. She would not feel comfortable with holding this application past the 180 days without having it actually withdrawn. There would be a $500 application fee, but the applicant has the opportunity to request a waiver and that would need to be in writing and signed by a member who has the authority to act on behalf of the Rainier Rod and Gun Club and the articles of incorporation are currently registered with the Secretary of State's office.

Bill Everman, 74730 Larson Road, Rainier: He is the current President of the Rainier Rod & Gun Club. He was Vice President and Secretary early on in this process after the club burned down. He is also an adjacent landowner. To give the Board some history, Commissioner Bruce Hugo stood up in a meeting and said "you will agree with your neighbors or we're going to come down on you and regulate caliber, hours, you name it, we're going to regulate it". We wound up with Mr. Weeks steering us in these meetings and we got bulldozed by the County. After the

club house burned down, we were told by the Planning Department that we were grandfathered in and we could rebuild at any time. We had the foundation looked at and they said yes, with a little tinkering, you'll be able to use this existing foundation. They needed to bring the septic system up to code, which they did. They assumed that the County was telling them the whole story so they raised enough money to rebuild the club house. Then some of the neighbors hired an attorney and found out that they only had one year to rebuild. Something to consider about the value of the property - they have about 200 families and if you take away the loss of recreational opportunity and revenue, that adds up. The main thing is that they have been a gun club for a very long time - because of the non-conforming use through the county - that is why they are in the situation they are now. Mr. Charles Wright has no reason to complain. The gun club sold him his property and he understood that this was a gun club and signed an agreement. Bill is very much in favor of this gun club and wants to see the club house rebuilt. He feels that the zoning is the reason they are in this mess. He feels the property should be zoned as a conforming use.

Commissioner Hyde asked Todd if the property was zoned incorrectly, does that constitute a M37 claim.

Todd Dugdale responded. The property was not zoned at the time that they acquired it, however, what we have to look at under Measure 37 is what would be the position of the zoning rules and regulations - what effect did that have that restricted the use of the property and did those restrictions reduce it. I guess the issue has to do with do those regulations actually restrict the use of the property? The land use regulations as we said allow for the continuation of the use, according to the use that was existing at the time that regulations were imposed. Our regulations allow for the rebuilding of the structures - further it allows for the continuation of intensity of use, that is, how often do you use the facility (hours or the intensity of use existent in 1984), and there is a process to expand or extend that use; extend or exceed that level of intensity by application.

Todd addressed the agreement, which was signed in 1995. It was actually an agreement that was facilitated by the Code Enforcement Officer in LDS and it is between the County and the club. He doesn't know the history on it but understands there were complaints by the neighbors and this agreement was an attempt to resolve those complaints and to come up with a level of intensity in terms of hours and operations of the club, accommodations to the concerns of the neighbors, and presumably the interest to the club. Subsequently, the club doesn't feel that the agreement is a fair agreement in terms of what it restricts. Todd felt it was important to note that as far as the comment on how we currently treat that agreement in this whole issue of the level of non-conforming use that is lawful. In the absence of any other evidence, any other information about what level of activity we had in 1984 is a baseline level of activity, which would be a lawful level of activity to continue under our non-conforming use release. The county has referred to that agreement as the baseline level of activity because it was agreed to by the club. There is a process by which the club could apply to the County for an expansion or even an establishment of legal non-conforming use. In other words, what that activity was. If it wasn't what was reflected in the agreement, then they could provide information to establish what it was.

Then the County would make a decision on that and then if the County were to deny that decision, then that might give standing for a claim - and I say "might". But at this point, we have not enforced the regulations in such a way as to restrict use. There is an agreement, and he understands that the club may understand that agreement as our restriction of their use, but we regarded that as a baseline level of activity.

Commissioner Bernhard brought up condition #7, where it says that gun club activities, the shooting of guns, in a residential zone is a health and safety issue and therefore, exempt from Measure 37. If so, is this really a legitimate Measure 37 claim?

Todd stated that this was included in the findings and he is not sure they resolved that issue completely, but they just raised it. It may legitimately be referred to as a safety issue. More importantly is the issue of the nuisance - common law nuisance aspect of the noise, which has been the primary complaint of area neighbors. One could argue more competently that the noise resulting from gun shots is a common law nuisance. The issue here is the use, not so much how it's conducted.

Commissioner Hyde wonders about the health and safety as being something that would exempt this. Because we have gun clubs right in the middle of downtown Portland. We have gun clubs here in St. Helens with neighbors all around. So he doesn't know that it's something that's insurmountable with regards to the Measure 37.

Commissioner Bernhard feels it points out the need to actually have some kind of agreement with the neighbors, because as a resident living in an area like that, she can understand that they certainly wouldn't want to hear people shooting guns in the middle of the night. She can understand the concern on the part of the neighbors.

Todd stated that we don't have an issue with noise regulations. Clearly, noise regulations would be a nuisance. But we're not citing noise regulations, we're citing land use regulations, which sometimes does involve noise. He feels this is a side issue, but it was worth mentioning.

For clarification, Commissioner Bernhard asked if Todd is saying that he feels the claim does not actually meet the threshold requirements for proving a Measure 37 claim based on a variety of things that staff has listed.

The use that the club house could be rebuilt under our regulations that the intensity of use could be determined through a process that was established in CCZO 1506, whereby one can apply for an expansion of use. Still at issue is what that base line level of activity originally was, which is the key to non-conforming use statute. They can continue that level of activity without doing anything. If they want to increase their activity - that is the hours of shooting - they would have to apply under our ordinance for expansion.

So if this claim were denied, they still could move forward then in an attempt to accomplish what they are wanting to accomplish?

Todd stated that there are two things that are implied in staff's recommendations. One is that they would need to seek relief if they want to achieve their intent from state law. Commissioner Hyde stated that, under that supposition would be a real Measure 37 claim only with the state and not the County.

Correct, and the second issue has to do with the intensity of use, which would be things like shooting hours and operations. That would be an action that would need to be initiated with us through an application for expansion or establishment of legal non-conforming use.

Commissioner Hyde asked about the statement that this is all because the property was incorrectly zoned to begin with. Todd stated that CCZO 1506 allows for the continuation of the use, and allows rebuilding of the use of a structure that's destroyed by fire with limitation of time. However, there is a limitation of time in state law. Again, this was an issue that was not extremely clear at the time we were going through this process. The LUBA decision pretty much identified that state law requires that when they initiated rebuilding activities, they could not abandon that for more than a year and retain their legal right to do so under state law.

Measure 37 is all new ground for all of us. Commissioner Hyde asked if this application was done differently with better documentation that this might be a Measure 37 claim?

As noted in the staff report, the deficiencies in the claim for determining status, the key one is that - is it a restriction of use? Basically, that's a threshold-type of criteria. That there was no restriction of use then, but they have not in fact enacted a regulation that restricts or enforced a regulation that restricts. Then you don't go any farther under Measure 37.

Commissioner Hyde asked if the agreement is binding. Sarah stated that the agreement was signed by Robert Weeks who was the Code Enforcement Officer at the time and the Rainier Rod and Gun Club. It agrees to hours of operation. Under the non-conforming statute, not counting regulations under the state statutes, it says that if a non-conforming use has occurred for more than 20 years - 2005, we could look back to 1985 and during that 20 years, we could rely on them to prove what the extent of the use was when it was zoned in 1984. If it's past 20 years then we have the burden of proving what their level of use was in 1984. What we would do is look at that letter of agreement as evidence of what they thought their use was. Now they could present additional evidence to rebut that, but she wouldn't necessarily say that it is binding. She wouldn't say it isn't, because she hasn't looked into the legality of what Robert Weeks' authority was when he did sign that. Whether he did have the authority from the Board of Commissioners to enter into that agreement on behalf of the County, she doesn't know, we would need to look. She wouldn't rule it out necessarily just because Robert Weeks signed it.

Todd stated that the agreement is the only evidence we have with acknowledgment of the club at the time. Obviously, there's a difference of opinion now as to whether that was a fair agreement, but that was all we have to base our determination of the level of activity that is allowed under non-conforming use. There is a process by which we could review that. That is an application for expansion of non-conforming use. We could revisit that as Sarah indicates. With or without the consideration of the agreement as evidence of that point in time.

Commissioner Hyde stated that there are two things here. One is the time frame in which they're allowed to have their use of the gun club and actively shoot. Those restrictions exist with a lot of the other gun clubs that are in urban settings. The more overreaching one is it seems to him that the gun club is still out to build a club house - as they've always been. And we've made it perfectly clear at least with today's Measure 37 claim that we don't intend to compensate since we don't have the revenue to do so. So really the issue is around how far are they going to get with regard to being able to build their club house by a Measure 37 claim with the County? The County has already approved the club house. It seems to him that the real Measure 37 claim, if they're after the ability to build that club house, would be with the State, not the County.

Todd agreed, essentially the state claim process would be appropriate as a way to resolve that. Staff found ultimately, that the actions they took including the installation of that septic facility, as far as they were concerned, was an initiation of construction (in 1996).

Commissioner Hyde asked if the gun club withdrew this application, and did it again with all the documentation, will this help the gun club get to their ultimate end goal which is to re-build?

The easy answer would be no, with respect to rebuilding the club house because the County has no voice in the matter. We cannot violate a state law and grant a building permit for that club house. LUBA has already ruled on it. Filing a new claim would not help.

Commissioner Bernhard feels then that it would make more sense if they withdrew their Measure 37 claim against the County and basically filed it with the State. Would that be a more reasonable direction for them to go so they could accomplish what they want?

Todd stated that the Board would need to act based on the record, and I think the record suggests denial of the claim with respect to County regulations restrictive use. State regulation restricting use with respect to rebuilding the club house. There is still the other piece which is the intensity of use which would be determined through a process that they would initiate with the County. That would be the second thing following staff's signed recommendation that they would apply for determinations of the expansion of non-conforming use. In effect it would be going back to the issue of okay, what is an acceptable level of use? Then go through a process and the Board determine that.

Commissioner Hyde feels that the still unanswered question that they can ask for expansion of use but we really don't know if the current restrictive use is a binding restriction or not, which is an issue. Because if it was a binding restriction, then they may have some standing here.

Sarah stated that this is not a land use regulation. If that agreement were binding, that would be a contract, which is not a land use regulation as defined under Measure 37.

Commissioner Hyde understands that there is no land use regulation that restricts the use with regards to time and hours.

Sarah stated that the Board could always rescind the agreement. Her understanding is that we're not currently enforcing it actively anyway. We could continue not to enforce it. There has been some discussion that adjacent property owners continue to complain about it not being enforced.

Todd stated that staff has communicated with the club concerning that agreement saying that when the absence of anything else establishing base line activities, the club at one point agreed to that as a base line, and we're going to accept it as a base line, therefore, any additional activity beyond - more intense shooting hours or what have you - would constitute an expansion of use.

Commissioner Bernhard stated that the basis of the agreement is not going to change or go away. If there are neighbors out there who are going to continually complain about the noise, that's not going to change. Short of people moving away, or evacuating the homes that are out there. No matter which direction we go, we're still going to have that ongoing issue that somehow needs to be resolved.

Todd stated that even if the club were to apply for an expansion, the same issues would exist with the neighbors and the club. We would still have to deal with the question: what is a fair compromise as far as the intensity of activity? As soon as we establish whatever that level is determined to be, then, there's an issue of whether or not we would be restricting use. At that point, we would be restricting use, at the point which we enforce a certain level of intensity.

Todd felt that because there was a question about an attorney not getting notice, perhaps the Board should continue this matter. Sarah disagreed. We are up against a 180-day deadline that we need to deal with and we still need time to draft an order. Unless the claim is actually withdrawn today, then she would suggest that we make a decision.

Scott Nordie, Club member, feels that Mr. Dugdale paints a pretty rosy picture of 1506, and life under 1506. He says all we have to do is make an application for 1506 which only affords a one-time expansion for 40% but we're not looking for an expansion. What we're looking for is the letter of restriction. A contract constitutes that both parties get something. If we give up something, then we should be compensated for that. We gave up shooting for three Sundays a month, all Mondays and all Tuesdays, and night shooting must be a sanctioned shoot. Prior to that, we were allowed to shoot 24/7. In fact, we did not - the club's use has not changed. We still shoot on two Saturdays a month on an organized shoot. We used to be able to shoot on Monday nights after a business meeting and they cannot do that now. That is something that was taken away in 1995. It was a hostile letter of agreement done by the Land Development Department. The club would not have signed that agreement if it had not felt that it's existence would have been terminated by the County - by the threats - it was under duress. Mr. Dugdale's reference to the club house and trying to pass it off as a state problem is not right. The issue is that it comes back to being under non-conforming use of the County, which then allows LUBA to tie it to the non-conforming use of the state law. If we were a conforming use, and not restricted by County, they could not tie us to the non-conforming use in the one year restriction in the state law. So, if we had relief of the 1506 non-conforming use and we were in conforming use, we would be able to replace the gun club under the County rules. If the property was properly zoned, LUBA would not have the option to apply the state non-conforming use, which

has the one-year restriction. Therefore, it starts with 1506, which is the problem. If we were conforming, then we could talk about hours of operation. The normal operating hours of gun clubs in the state is 8:00 to 10:00. There's a gun club in Vancouver right in a residential area and it's hours of operation are 10:00 am to 10:00 pm, 7 days a week. As for the safety issue - that's a pretty broad approach. We're not pointed at any neighbors. We're burmed properly on our rifle range. So it's a stretch to say there is a safety issue. As for the noise issue - there's no restriction in the RR-5 zone against firing a gun. Those neighbors can go out and shoot off their back porch 24/7 and there's no restriction on them. It's a pretty big stretch to say we're unsafe because we're operating safely. All the gun clubs that I belong to operate safely.

Commissioner Bernhard did not say that anyone's operating unsafely, she was simply referring to a clause in the findings that related to safety issues. It says that the shooting of guns may qualify as a common law nuisance, also excluded under Measure 37, as well as activities involving the shooting of guns which could be a health and safety issue. If that criteria applies, then it very well might not even be a Measure 37 claim.

Scott stated that may be, but this is not a no-shooting zone. His point is that Mr. Wright, the neighbor, can shoot off his back porch and that's not a violation. Any one of those neighbors can do the same thing the gun club is doing. If it was a non-shooting zone, than I'd say yes there was an argument there, but it's not a non-shooting zone. We're adjacent to the school district and they're fine with the gun club. There's talk of trying to get a shooting club started near the high school. We're one of the few facilities from Portland to Astoria that the public can utilize. We're not asking for an expansion, just the flexibility of time before 1995, then the membership could shoot and use the range 7 days a week. Currently, it's reduced to Wed., Thur., Fri., Sat., and one Sun. a month.

Commissioner Hyde understands that the end goal is to be able to build the club house.

Scott - That is correct and to return to the flexibility of hours under our utilization. We're not utilizing the property any more than we have to. We would like to return to the flexibility of pre-1995.

Commissioner Hyde asked if Scott understood that if the Board were to find in favor this Measure 37 claim, that it would get them no closer to being able to build a club house, because they still have to go through the state. Scott understands that LUBA can't preempt a Measure 37 change.

Commissioner Bernhard stated that if the Board were to go ahead and waive this claim and let you go forward from here, you still would have to comply with land use laws and so on. There would be processes you'd have to go through. So, us going along and saying, yeah, we're going to waive this, doesn't give you carte' blanch to go and do what you want to do. Period. You would still have to go through land use laws, you would still have to probably address the hours. Particularly since currently there are residences around there. Again, we're getting back to the issue that if there's folks out there who have concerns and who are going to continue to have concerns, they're going to probably insist that those concerns are addressed.

Scott agreed, but this is step one. Again, Mr. Dugdale's painting a pretty rosy picture of life under 1506 but all the gun club's problems occur because of non-conforming use. If we were zoned properly, which we should have been in 1984, then a lot of our problems would be solved in the land use. Measure 37 gives us a chance to try to fix the problem. We're not asking for money, we're not asking for a change of use, we're just asking for the zoning to conform to our use. We don't need an expansion, if that letter of agreement was not there, our shooting times would be a non-issue. It's just that Mr. Wright calls up and complains and an enforcement officer comes down and says you shot on Sunday and if you do that again, we're going to fine you $500. That's not the way I read non-conforming use. Non-conforming use is the level, and we have not changed our level of activities and we don't need an expansion. What we need is either zoning. If we were zoned properly, which I think Measure 37 claim would do, then change our zoning to conform to our use, that would solve most of our problems.

Scott feels that the argument is that the state's law is the reason that they can't rebuild a club house. The state tied it to their non-conforming use because it's a non-conforming use of the County. So if the County lifted that regulation, then it would not be a non-conforming use threat. If the zoning was lifted, the non-conforming use would go away.

Commissioner Hyde explained that the way it works is that the County is allowed to be more restrictive than state statute, but not less restrictive than state or federal law. The County cannot waive state statutes but can waive our ordinances that are more restrictive than the state statute.

Bill Everman stated that the issue of noise keeps coming up. He was at the meeting where the County Noise ordinance was passed and discussed. They managed to get animal husbandry, forestry practices, agriculture, informal target shooting and gun clubs exempted from the noise ordinance. Yet every time he comes before the Board , this business of noise comes up. Well the truth of the matter is, where the gun club is at, the loudest thing around is the high school when they have the football games or when they have outdoor band practice. Those are much louder than the gun club. He lives about a mile away from both the school and the gun club and its very, very easy to hear the guy on the PA system when something is going on at the high school, yet he can barely hear noise from the gun club. All the noise is pointed away from the residences. The residences, with one exception, were built after the gun club was in existence, with full knowledge that it was a gun club. The gun club is beat over the head with these County ordinances and he feels feel like it's a shell game. We have a problem with the County and they say it's a problem with State, back and forth and they don't get answers from anybody. The gun club has been in the same location since 1949.

OPPONENTS:

None.

REBUTTAL:

Rod Harding - responded to Todd Dugdale's comments on CCZO 1506 and restrictions. The club reduced many hours of shooting. If this property was zoned correctly and this was a

conforming use, then they could rebuild. The State currently allows one year to rebuild if a non-conforming use. Therefore, it comes back to the zoning. If the property was zoned correctly then it wouldn't be a state issue.

With no further testimony coming before the Board, the hearing was closed for deliberation. The Board felt they needed some time to review the testimony given today. With that, deliberations were held over.

CONSENT AGENDA:

Commissioner Hyde read the consent agenda in full. With the addition of Item (K), Commissioner Bernhard moved and Commissioner Hyde seconded to approve the consent agenda as follows:

(A) Ratify Select-to-Pay for 6/21/05.

(B) Order No. 29-2005, "In the Matter of Claim #05-05, Submitted by Raymond and Stephen Barrett for Compensation under Measure 37".

(C) Order No. 33-2005, "In the Matter of Conveying an Easement to Columbia City, Oregon, for the Use of a Portion of Certain County-Owned Real Property Known as Tax Account No. 5128-042-00900.

(D) Order No. 34-2005, "In the Matter of Conveying a Temporary Construction Easement to Columbia City, Oregon, for the Use of a Portion of Certain County-Owned Real Property Known as Tax Account No. 5128-042-00900.

(E) Appoint Rick Berman to the Local Public Safety Coordinating Council. Term to expire on December 31, 2008.

(F) Appoint Carol Jauron to the Northwest Oregon Housing Authority Board. Term to expire December 31, 2007.

(G) Approve a partial fee waiver for multiple Measure 37 claims for Gwenolyn Asburry, $500 for the first parcel and $50 for the additional 2 parcels for a total modified fee of $600.

AGREEMENTS/CONTRACTS/AMENDMENTS:

(H) Amendment No. 5 with Metro West, extending contract to July 29, 2005.

(I) Amendment No. 6 with Scappoose Senior Citizens, Inc., extending contract to July 29, 2005.

(J) Ratify Sublicense Agreement with LMG, LLC.

(K) Personal Services Contract with Gillespie Graphics for logo and design work on transit vehicles.

The motion carried unanimously.

RENEWAL OF INSURANCE POLICIES:

Joe Schultz, Pieper Ramsdell, came before the Board to review insurance policies. Joe met with the Board individually to discuss the insurance policies. Since that time, Joe went over two changes to the prior information given to the Board. After discussion, Commissioner Bernhard moved and Commissioner Hyde seconded to approve the renewal of the existing insurance policies, CCIS for property and liability insurance, 3 flood policies and dock and piers policy and authorize the Chair to sign. The motion carried unanimously.

COMMISSIONER HYDE COMMENTS:

Commissioner Hyde commented on the State budget he has been working on with AOC which includes Forest Trust Land issues.

Yesterday, he met with the National Parks Service who is a funder for the expansion of the Linear Trail.

COMMISSIONER CORSIGLIA COMMENTS:

Not present.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard spent most of the weekend at River City Days. It seemed to be very well attended and feels the nice weather helped.

She is still working on the Transportation proposals received and the Transit Committee will be making a recommendation to the Board very soon.

She attended the AAA meeting this week. There are a lot of changes taking place in this program which is run through Community Action Team.

She had a discussion with a St. Helens City Council member who is requesting that the flag pole be removed from the Plaza and put in the city park, then put something else in the plaza area. She suggested that the city submit a formal letter of request to the county.

There was no Executive Session held.

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

Dated at St. Helens, Oregon this 22nd day of June, 2005.

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:_____
Anthony Hyde, Chair

By: Not Present
Joe Corsiglia Commissioner

By:_____
Rita Bernhard, Commissioner

Recording Secretary:

By:_____
Jan Greenhalgh