

COLUMBIA COUNTY BOARD OF COMMISSIONERS  
BOARD MEETING

MINUTES  
August 17, 2005

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

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

**MINUTES:**

Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve the minutes of the August 9, 2005 Work Session and August 10, 2005 Board meeting. The motion carried unanimously.

**VISITOR COMMENTS:**

***Thelma Bonar, Way Lane:*** She feels that there should be a public meeting on the public records policy. Commissioner Hyde explained that the policy has already been approved by the Board. Thelma is concerned with people on low income and cannot afford the fees. She asked if there is something that can be done to help them out. Commissioner Hyde stated that, with all permits and fees, there is an opportunity for the public to request a waiver of the fees.

On another subject, Thelma has her depletion fee increase initiative approved and ready to go out for signature. She is concerned with a comment made by Commissioner Hyde that he doesn't agree with making one industry foot the bill for road improvements. She doesn't want to waste the taxpayers time on this if the Board won't support it. She asked Commissioner Hyde if he had any suggestions. He would suggest that Thelma talk to her legislators for a statewide fee increase. If not done statewide, the industry will quash it. Thelma is not concerned with the state, only what's good for Columbia County.

***Tammy Maygra, 34319 Cannan Road, Deer Island:*** She asked if any Board member attended the LNG presentation last night. No Board member attended, however, Commissioner Hyde requested information from that meeting be sent to him. Tammy felt the Board should have attended to hear first hand from the professional speaker and is disappointed that the Board couldn't take the time to attend. Commissioner Bernhard reminded Tammy that she was out of town when the presentation was given.

Tammy wanted to publicly thank Commissioner Corsiglia for sending her the e-mail from Spiro.

**DELIBERATIONS: YARBOR/YARBOR/HICKEY ZONE CHANGE - SM TO FA-19:**

Deliberations were held "In the Matter of the Application of Jeff Yarbor, Joel Yarbor and Bud Hickey for a Comprehensive Plan Amendment and Zone Change from Surface Mining (SM) to Forest Agriculture (FA-19)".

Sarah Tyson reminded the Board that a hearing was held last week on this matter. The hearing was closed but the record was left open for the specific purpose of obtaining signatures from all owners of the property or a Power of Attorney. Her office has received the Power of Attorney and Sarah entered this into the record as Exhibit "3".

Commissioner Corsiglia again declared a conflict of interest in this matter and will not be participating in the hearing because his wife works for Ticor Title and is involved in this transaction.

Sarah has prepared a draft ordinance and noted that there is no emergency clause included because there needs to be a unanimous vote. Therefore, the first reading will be held today and the second reading in two weeks. The Ordinance would then take effect 90 days after that. She noted that this will delay the Morrison application.

With that, Commissioner Bernhard moved and Commissioner Hyde seconded to have the first reading of Ordinance No. 2005-5. Commissioner Corsiglia abstained. The motion carried. Sarah then gave the first reading of Ordinance No. 2005-5. Commissioner Bernhard moved and Commissioner Hyde seconded to hold the second reading on August 31, 2005, at or after 10:00 a.m. Commissioner Corsiglia abstained. The motion carried.

**DELIBERATION: JAMES MORRISON CONDITIONAL USE PERMIT IN FA-19:**

Deliberations were held "In the Matter of the Application of James & Willa Morrison for a Conditional Use Permit to Site a Single Family Dwelling in the Forest Agriculture (FA-19) Zone".

Sarah explained that the Board could tentatively approve this and then approve the final order in two weeks once Ordinance No. 5-2005 is approved.

With that, Commissioner Bernhard moved and Commissioner Hyde seconded to tentatively approve the application of James & Willa Morrison for a Conditional Use Permit to site a single family dwelling in the Forest Agriculture (FA-19) zone. Commissioner Corsiglia abstained. The motion carried.

**PUBLIC HEARING: MEASURE 37 CLAIM FILED BY REED BRUEGMAN:**

This is the time set for the public hearing, "In the Matter of a Measure 37 Claim Filed by Reed Carl Bruegman for Compensation Under Measure 37".

Sarah Tyson stated that notices were sent out to neighboring property owners regarding this claim and a hearing was requested. The Board can hear testimony and then carry over deliberations if necessary. Sarah entered County Counsel's hearing file into the record, marked Exhibit "1" and noted all contents. Sarah stated that if anyone believes that there are documents that she did not list that should be in the record of the decision, they must present those

documents to the Board during the hearing today, or they will not be considered part of the record.

Todd Dugdale, LDS Director, came before the Board to give the staff report. A Measure 37 claim was received from Mr. Bruegman for a 16.16 acre parcel on Holaday Road near Scappoose. The property is zoned PF-76. The claimant is claiming a reduction in fair market value in the amount of \$685,000 due to land use regulations which restrict his proposed development of five residential lots. As a bit of background on this property, an application was filed with the County back in 1979 to partition the subject property into five separate parcels. That partition was approved in 1979, but the actual partition was not recorded until 1993. At that time, there was not a "use it or lose it" time frame in the ordinance. Subsequent to 1993 when the partitions were recorded, creating five parcels on the subject property, the claimant's daughter acquired the property and applied for a conditional use permit to site a dwelling on one of the parcels. That particular application was approved by the county with a condition that is mandated by state law that in case of approval of forest dwellings, that any contiguous properties that are owned by the applicant, are to be combined into one parcel. The intent, of course, under state law, is to preserve a forest tract. So, in 1997, the applicant complied with that provision by filing a re-plat to re-combine the five properties. In 2000, the claimant Reed Bruegman acquired the property back. The basic findings necessary for a Measure 37 claim, we need to determine that, based on documents submitted, Reed Bruegman is the current owner of simple titles and that he acquired, most recently re-acquired, his interest in the property on April 14, 2000. We further found, based on a chain of titles submitted with the claim, that the property was originally acquired by Reed Bruegman and his wife in 1973, then the property was acquired by first his daughter and son-in-law, and then later, in 1999, exclusively by his daughter. Then, Reed re-acquired the property from his daughter in the year 2000. At the time of the original acquisition in 1973 by Mr. Bruegman and his wife, the property was not zoned. On April 14, 2000, when the claimant re-acquired the property from his daughter, the property was zoned primary forest PF-76. The primary forest regulations - the minimum lot size is what's cited as the regulation restricting use, i.e. restricting the division of the property into the five parcels currently the subject of the claim. Those regulations were enacted in 1984 with the County's Comprehensive Plan and Zoning Ordinance. This was before the claimant acquired the property on April 14, 2000. Again, the County regulation alleged to have reduced the fair market value of the property is Section 506.1, which is the minimum lot size provision in the PF-76 zone. In order to make a favorable finding on the claim under Measure 37, a finding must be made that the cited provision both restricts use and has the effect of reducing the fair market value of the property. With respect to the restriction of use, the claimant has cited the minimum lot size provisions. Staff found that this does in fact restrict the use - restricts the use of the division of the property as indicated. The desire is to divide the parcel back into the five original parcels that were applied for in 1979 and April of '93. As indicated, we did receive comparative market analysis, prepared by Michael Sykes, indicating the value of the property as is, as well as the value of the property if it were allowed to be divided. This was based on a listing of various properties, variously sized residential properties. Staff finds in review of that material, that there wasn't a clear explanation of how the comparative properties were used in coming up with the value of both the "as is" and the "developed" as proposed property value. We found that in fact, the restriction may have

resulted in reduction of fair market value. To summarize, staff finds that the claimant has demonstrated the family's succession of eligibility for compensation under Measure 37 based on the family's acquisition of the property in 1973. Unbroken. The property was in the family through to the present. However, due to the fact that the claimant did not re-acquire the property until 2000, which is the acquisition date that is used as a basis for determination of whether or not the offending regulation may be waived. Because the regulation of minimum lots says regulations were adopted in 1984, prior to the claimant's re-acquisition of the property in 2000, we find that he would not be eligible for a waiver. It is unfortunate, however, that is the way the measure is written. The fact is that the claimant and his wife acquired the property in 1973 and then, through a series of property transactions, passing out and back into ownership, it locks in a 2000 acquisition date, which under the provisions of the waiver, renders them ineligible for waiver.

At this time, the hearing was opened for public testimony.

**PROPONENTS:**

***Reed Bruegman, 30878 Holaday Road, Scappoose:*** Mr. Bruegman previously submitted his written testimony into the record and reviewed it at this time. In Measure 37 11c it states: The owner of the property, OR ANY INTEREST THEREIN. He has had ownership or interest in this property since 1973. It does not have to be a recorded deed to show ownership (he referred to Attachment 1 - Test of Measure).

Commissioner Hyde asked about the "interest" issue. Reed stated that if he was paying the mortgage payments, utilities, etc., that gives him an interest in the property and therefore he has part ownership. That's his attorney's interpretation.

Reed is appealing the state approved claim recommendation because he disagrees with the April 14, 2000 ownership time line, which is in error. An interest in this property was never transferred as per state regulations (see attachment #6), showing that ownership included interest in this property. Affidavits from Richard Niemi (attachment #2) and Jackie Sykes (#3) show payments were made by himself while the house was in the name of Richard and Tammy Niemi and the verbal agreement between himself and Richard.

In his submittal to the Board, he has listed proof of his interest in this property since 1973. The date of 2000 is false and under statute of fraud, not applicable. In July, 1973, he purchased approximately 22.5 acres through a VA loan. In 1976, he divided the house and 2.7 acres from the 2.5, leaving 18+ acres in another parcel. In July, 1979, he got approval to divide the property into 6 parcels. In October, 1993, it was again approved by the County and filed. In January, 1996, Reed deeded a 2 acre parcel to Tammy and Rick Niemi (daughter and son-in-law) so they could build a home close to his house to help out with his ill wife. The lot was given to Tammy and Rick so they could qualify for the home loan. The other lots were not to be included in that gift. In October, 1997, he was told by Glen Higgins, County Planner, that the property had to be combined in order to get a permit to build the home. So, based on that decision, Reed deeded the

property to Tammy and Rick so they could build their home, giving up no interest in the home or land. He did this under duress as listed on the county records. At this time, he was told by Glen Higgins that he could not appeal this decision. Reed has since found out that this was not correct or to the letter of the law. At this time, he and his wife were being sued by Mervin Arnold for \$20 million along with Tammy and Rick. This was time consuming and made his wife even more ill. Since time was of the essence and his wife getting even more ill, they proceeded with the construction project. At the end of construction, Tammy and Rick started divorce proceedings. This left him with worries about the completion and how to pay the bills. He helped out with the payments until he was forced to repurchase the house due to foreclosure on Tammy's part. At all times, he was using the property and the storage barn across the road and next to the new house. If someone had no interest in the property, then why were they able to use that property. His recommendation is to have the county either pay his claim of \$685,000 (which would be the value of said property) or return to the 1973 date of purchase and waive all land use laws or regulations since he had ownership/interest in the said parcel from then to present.

**OPPONENTS:**

***John Verbarendse & Hollis Verbarendse, 30869 Holaday Road, Scappoose:*** John stated that they bought Reed Bruegman's old existing property, 5.3 acres. First, he wanted to acknowledge that ideally, we would like to keep the property set up the way it is. We were attracted to the area, knowing that no one could build around us, other than maybe some agricultural buildings on the 16 acres that surrounds them. Some concerns they have are road maintenance; the road is not really maintained. It's a steep gravel road, just an asphalt chip road. As you come up the hill, speeding is a constant issue. But our biggest concerns again, are quality of life and the quality of their well. Can someone assure them that the quality and quantity of their water would not decrease. We have other reasons that have already been presented to you why we feel that the claim should be denied to Mr. Bruegman. According to the deed, he gave the property over to Tammy and Richard Niemi for no dollar value whatsoever.

Hollis feels that the part that was mentioned by the Staff was that the agreement when the house was built for Mr. Bruegman's daughter was that the 16 acres that remained were to stay whole and not to be separated. I believe that was also mentioned in his records, that they were not to be subdivided out. We clearly see that as breaking the agreement. Now he wants to subdivide the land out to two three-parcel acres of land surrounding us with homes.

John stated that if Mr. Bruegman didn't agree with that, he should not have signed the agreement to re-combining the properties. As far as I'm concerned, if he feels he qualifies for these 5-parcel acres, I think he basically should have to collapse his well, remove the building and restore the property to its existing condition. Then maybe he qualifies for the Measure 37 claim. He's basing it all on an agreement that he had these five parcels and he agreed to re-combine the parcels, under duress, or whatever. If it was under duress, he should not have followed through with it. By that action, he's acknowledged the agreement. He should have to stick with that.

Hollis stated that their property is up in Longview Fibre land and they are surrounded by timber.

Their closest neighbor, other than Mr. Bruegman across the street to the right, is probably 1 to 2 miles away. There are other neighbors here today that were not notified about the hearing. They went out to all the neighbors and handed them the information about the land being divided and also about the meeting today. We did some footwork by letting our neighbors know what was going on. The 1,000 Friends of Oregon has informed them that Mr. Bruegman has also filed a claim with the State. We are concerned about our quality of life up there. They purchased their property because of the PF-76 and they want to keep it the way it is. We bought the existing house built in the 1940's. It's beautiful property and it would just ruin it by putting a housing development so close.

**Bob Stanton, 30311 Holaday Road, Scappoose:** He has lived in the area since the early 1970s and on Holaday Road since 1982, on about three acres. He just wants to register his opposition to the proposal this morning. This will change the character of the area up there, suburbs creeping out from Scappoose. It's forest land and the quality of life there is what keeps us up there. On the compensation issue, maybe for the record it should be noted - that the property value work up was done by Michael Sykes who could be a relation to the Bruegman family. He just wanted to mention that in terms of evaluation, it could affect our value up there.

**Nita Greene, 30415 Holaday Road, Scappoose:** If not for the Longview Fibre land that divides them, she would have been notified about this hearing. She has a lot of concerns. The first major one is about water. Wells are not, to her knowledge, very strong up there, and I'm not sure what will happen if you put another three or four houses up there. The second concern is with fire. The more people, the more chance of fire and that is a big concern. The roads are in very bad shape and the County obviously doesn't have a lot of money for maintaining roads right now; adding more people and more traffic up there would not help the situation.

Her property is on a 2.5 acre parcel. It is her understanding, from her husband who was quite knowledgeable in this area, that these homes would not have been allowed to be built today. The only reason they exist is because they were built before the land use laws came into effect. It's one thing to have an existing home, but quite different than adding new homes.

As for Mr. Bruegman's house not selling after two years may be because \$400,000 is a lot for a home and property you can't build on. That's her feeling anyway. So she is not sure that the valuation is a valid amount.

In 1999, she inherited an 8-acre parcel of land in Yamhill County from her mother. It's been in the family over 60 years, but she has no right under that law because there was the change of ownership when her mother died. She doesn't see any difference here. Mr. Bruegman deeded the property away and just because he used some of the property for storage, that doesn't show an interest in the property. If the Board goes ahead with this, she would hope they look very carefully into the law as to what that word "interest" means.

Commissioner Hyde stated that unfortunately, we have no law because the legislature couldn't seem to pull one together. So we've got a measure that's yet to be articulated. No kind of

mandate that really allows us across the board (across all 36 counties) to be consistent. Every county is dealing with this in a different manner. Yamhill County is an example for the law - it doesn't mean that we're not going to look at that, but I know that every county is doing it differently and that the State's doing it differently from that. It's very confusing and very frustrating for all the counties with regards to having some sort of continuity around the Measure 37 claims. It's all going to play out in the courts, as it would anyway. Until this gets to the courts and gets articulated in State Statute, it really means little or nothing. It's unfortunate that we're going through all the process and, even if the claimants are successful in their application, they're really not going to have much until this gets to the courts.

Commissioner Bernhard state that, even if this claim were approved today, that doesn't mean that Mr. Bruegman can go forward tomorrow and do whatever he wants out there. There is still the land use process that he would have to go through.

Again, Nita feels that "interest" is the important word here and the Board should research that.

**Nellie Arnold, 544B S. 12<sup>th</sup>, St. Helens:** She has known Mr. Bruegman for about 30 years and were neighbors for over 25 years. She was surprised that Bruegman finally found a land use law that he likes. Commissioner Hyde cautioned her to keep those types of comments to herself. Nellie stated that Mr. Bruegman has impuned her reputation and should be able to respond. What he said today effects how the Board takes her presentation. He said that we sued him for \$20 million. In fact, we filed a declaratory judgment over a totally unrelated issue with no money involved. She first wanted to make a complaint on the record that as an adjacent property owner, she was not notified of this hearing. She understands that the land is in John Mirandus' name and he has had title to it since 1982. That's another issue for another day, however, it is common knowledge around this courthouse, and particularly the Planning Department, Mr. Bruegman and Glenn Higgins that I contest the claims of John Mirandus. She understands from County Counsel that there are two letters in the record from John Mirandus that I was unaware of, regarding this hearing here today and would like to read them before finishing her testimony. Nellie read the letters. She would caution the Board about going over the 180 day deadline so that he automatically gets approval. That's how he got the second house. As for the relationship with Mike Sykes, Mr. Bruegman's daughter Tammy and Gerry Sykes have a daughter together.

Sarah informed the Board that this is not a land use issue subject to the 180 day rule and that approval is not automatic.

Nellie feels that if the Board decides to allow him compensation, you need to look into the changes of use of this particular property. It's been changed several times and Reed has received benefits from these changes. He's been in forestry, although he doesn't have very many trees to support that. Complaints to the Assessor's office and to the Forestry Dept. over the years get tossed back and forth and nothing was ever done. She lives on \$500 a month, and when she was doing research on this matter, she was advised by the Assessor's office that she would have to pay a \$30/hour search fee by the staff. The two main problems she has with this application is: 1) she does not believe that when he purchased this property that it wasn't zoned, although she

can not substantiate this. Commissioner Hyde stated that the County didn't have a Comp Plan until the 1980's, so it would be hard for the property to be zoned in 1973. Nellie disagreed.

She has lived in Scappoose for about 40 years and that area has always been zoned PF-76. She doesn't know who provided information that the property wasn't zoned in 1973. Her main concern here today is that Mr. Bruegman should be compliant with the land use laws. She wants it on record that she has a specific interest in this as an adjacent property owner. She has owned her property since 1974 and she wants that on the record. She has not abandoned her property or its rights. She also wanted to mention that the road is in bad shape and she should know because she lived up there for 30 years. With all that said, she would just ask that the Board seriously consider not granting this waiver.

**REBUTTAL:**

Reed Bruegman read an affidavit from Richard Neimi into the record. He then responded to comments made. He never once sued Mr. & Mrs. Arnold, in fact, they continually sued him. As for comments made by John and Hollis Verbarendse, they had asked him about purchasing the property along side him. He told them at that time, until the law changed, he couldn't sell them any of that property. Regarding Nita Greene's comments about water, there is plenty of water if they drill in the right place and do a geological study. Hollis and John gave a lot of water, about 18 gallons per minutes. He understands that the 180 days doesn't mean anything in this case, only for filing a claim. He just wants to have the right to appeal the decision if it doesn't go his way.

Sarah entered the deeds submitted by the John Verbarendse into the record marked Exhibit "2".

With no further testimony, Commissioner Bernhard moved and Commissioner Corsiglia seconded to close the hearing and hold deliberations on August 24, 2005, at or after 10:00 a.m.. The motion carried unanimously.

**JE DUNN CONTRACT & SPWF AMENDMENT:**

Todd Dugdale, LDS Director, came before the Board along with Jeff Dalton of JE Dunn. Todd stated that there are two approvals necessary for the Transfer Station/HHW project financing. These items will set the final construction contract costs and final borrowing limit for the project. The first is Amendment #3 to the contract with JE Dunn. The amendment is \$641,262 resulting in a total CM/GC contract amount of \$4,360,907. This final GMP includes all construction costs for the project except off site improvements and costs of the at-grade railroad crossing at the entrance to the project to be done by PWR. Commissioner Corsiglia suggested that the off-site improvements be discussed at the next work session.

After discussion, Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve Amendment #3 to the JE Dunn contract to include GMP #3, subject to County Counsel review and approval. The motion carried unanimously.



Further, Commissioner Bernhard moved and Commissioner Corsiglia seconded to authorize staff to submit Amendment #2 to the SPWF loan for the Transfer Station project in the amount of \$4,434,867. The motion carried unanimously.

**CONSENT AGENDA:**

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

- (A) Ratify Select-to-Pay for 8/16/05.
- (B) Ratify Partition Plat for Prescott Heights.
- (C) Authorize Ruth Baker to fill one Property Tax Clerk position.
- (D) Approve Public Event Permit for Hood-to-Coast August 26-27, 2005.

**AGREEMENTS/CONTRACTS/AMENDMENTS:**

- (E) Ratify Walt Pesterfield's signature on the Law Enforcement Data System (LEDS) User Agreement with the Oregon Department of State Police.
- (F) Amendment #45 to the 2003-2005 County Financial Assistance Contract #05-001 with State Mental Health.
- (G) Amendment #4 to the Special Public Works Fund Agreement with OECDD for West Dike Road Improvement B00003.
- (H) Grant Agreement #22718 with ODOT for Special Transportation Fund Formula Program.
- (I) Amendment #4 to the Personal Services Contract with URS.

The motion carried unanimously.

**COMMISSIONER HYDE COMMENTS:**

No comments.

**COMMISSIONER CORSIGLIA COMMENTS:**

Commissioner Corsiglia played music at the Walk for Life last weekend. They raised over \$66,000.

Commissioner Corsiglia shared that the Oregon Cultural Trust approved \$415,646 to the Trust's Cultural Participation Grants. This is \$4,000 more than last year. This will help us continue with our projects.

**COMMISSIONER BERNHARD COMMENTS:**

Commissioner Bernhard attended the Rockfest last week. The mosh pit was a very interesting experience to watch. There was a lot of law enforcement activity but so far, minimal problems for the County. The community definitely benefits from these concerts, as does the Fair.

She attended the Rose Valley Assisted Living open house for their cottages that just opened. The cottages are very nice and there is a real need for these types of services in this county.

**COMMENTS BY BOB SHORT:**

Bob Short, Glacier NW, wanted to comment on remarks made today about gravel tax. He and his company do not agree with, or feel it is right, to tax one industry. That said, he has talked with people in Salem about a statewide tax. He cannot come out in support of it at this time, but is willing to help develop a package that the industry can support that will benefit county roads.

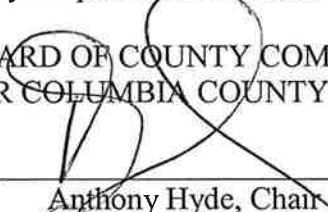
There was no Executive Session held.

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


Dated at St. Helens, Oregon this 17<sup>th</sup> day of August, 2005.

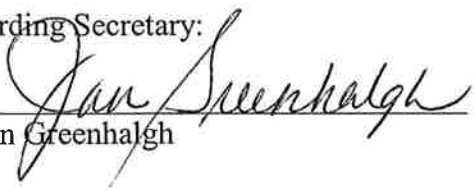
NOTE: A tape of this meeting is available for purchase by the public or interested parties.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By:   
Anthony Hyde, Chair

By:   
Joe Corsiglia Commissioner

By:   
Rita Bernhard, Commissioner

Recording Secretary:  
By:   
Jan Greenhalgh