

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

August 9, 2006

The Columbia County Board of Commissioners met in scheduled session with Commissioner Joe Corsiglia and Commissioner Rita Bernhard, together with John Knight, County Counsel, Sarah Tyson, Assistant County Counsel and Jan Greenhalgh, Board Secretary. Commissioner Hyde was attending a NACo conference in Chicago.

Commissioner Corsiglia 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 2, 2006 Board meeting and August 2, 2006 Staff meeting. The motion carried unanimously.

VISITOR COMMENTS:

Joe Stevenson, Deer Island: Mr. Stevenson commented on issues relating to the past and future ABATE motorcycle events. Not much can be done about the past, however, if he were to do the things they did, he would be in jail. There was an article in the papers about the new ordinance that was passed which is all well and good, but there were several items in the article that are incorrect. It stated that there was between \$80,000 and \$100,000 brought into the community during the Run 21 event, which was based on the amount of garbage that was hauled out. He feels there is no way that much money came into the community. It also stated that no one who was intoxicated was allowed to leave the property and no traffic out of there after 10 pm. Also not true, the event went on all night, three nights in a row and nothing but a stream of traffic in and out all the time. At the July 26th Board meeting, the neighbors were told that this would not happen again and he's calling the Board on that. There was a liquor license issued for 250 people for that event, but they admitted there were over 1,100 people there. There were propane bombs that went off periodically throughout the night. If this happens again, he's going to Salem. As citizens, we are all entitled to have get-togethers, as long as we don't offend others. This event offended others.

Commissioner Corsiglia stated that the Board has been working overtime investigating what took place that weekend, and what can be done in the future to address these concerns. The Board adopted an ordinance to help protect this from happening again, however it will not deal with all events and may need to be amended in the future.

Commissioner Bernhard stated that what happened, happened and can't change that. However, she is concerned about future events and has personally worked hard to find an alternate, more appropriate location.

Lew Parshall, Butterfield Road: She too was upset with the article saying that vehicles didn't leave after 10 pm because that was not the case. They lied about that, they lied about the number of people attending, how long the music would go, etc. Lee Austin came to her house recently regarding the upcoming scheduled event, and stated that they would shut the music down at 1 pm on Friday and 2 pm on Saturday. When she said no way because they were lied to before and how does she know it won't happen again, he shook his finger in her face and said it would be happening. She told him to leave her property. She is adamantly opposed to this happening again.

Lee Austin, 12327 SE Bush, Portland, Or. 97236: Mr. Austin wanted to rebut to some of the comments just made. He did go to the Parshall's house because it is still undetermined what he can do. He did not go there to be nasty and wasn't until she called him a liar. He shook his finger at her and said he didn't appreciate being called a liar. A lot of things being said are being twisted. He has nothing to do with Run 21 - that is strictly an adult run and different from the family run. He also doesn't appreciate the news coverage this event is getting because a lot of it is bogus. He anticipates 200-300 people at the summer run but because of all this, he doesn't know what's going to happen. He appreciates the Board working with him and he has to decide what to do today because his insurance is going to be canceled and that will force him to go back to John Peterson's site, which is still an option. Lee wanted to clarify that ABATE was not kicked off the Birkenfeld site, the owner just wanted too much money.

The Board is working to find an alternative site and suggested that Lee work with John Knight to try to resolve this issue.

APPEAL DENIAL OF VARIANCE TO COUNTY NOISE ORDINANCE:

This is the time set to hear an appeal of the denial of variance to the Columbia County Noise Ordinance. Sarah Hanson reviewed Noise Ordinance 91-8. In order to go outside of the regulations for noise that are listed in the ordinance, a variance is required through the Sheriff's office. The Board hears appeals on the Sheriff's denial of a noise variance. If the Board fails to make a decision within 15 days of receiving the request, the appeal is deemed to be denied. There is no hearing required for the Board to consider the denial of the variance. The question before the Board at this time is if they wish to hold a hearing. Commissioner Bernhard stated that the Sheriff refused to sign the variance for a variety of reasons and would find it difficult to overrule that. She believes there may be alternative options available. With that, Commissioner Corsiglia moved and Commissioner Bernhard seconded to deny the appeal. The motion carried unanimously.

HEARING: BENJAMIN BRUCE CONDITIONAL USE PERMIT:

This is the time set for the public hearing, "In the Matter of the Application of Benjamin & Amber Bruce for a Conditional Use Permit to Site a Single Family Dwelling in a Forest Agriculture (FA-19) Zone".

Sarah Hanson - this is a denovo hearing on appeal from the Planning Commission's decision to grant a Conditional Use Permit to Benjamin and Amber Bruce. It was appealed by David Roush on concerns about the fire siting standards related to an easement that was granted from his property. The Board declared no ex parte contacts or conflicts of interest. Sarah then read the pre-hearing statement pursuant to ORS 197.763. She then entered County Counsel's hearing packet into the record, labeled Exhibit "1" and noted all contents. Sarah also entered a letter from Diane Pohl, dated 8/8/06, into the record labeled Exhibit "2".

Glen Higgins, Chief Planner, came before the Board to give the staff report. Benjamin and Amber Bruce applied for a Conditional Use Permit to site a dwelling on a 3.5 acre parcel in the FA-19 zone. The Planning Commission approved the CU Permit on June 5, 2006 with 8 conditions. On June 15, 2006, a neighboring property owner, David Roush, filed an appeal. His grounds for appeal is that the fire break easement recorded on his property, in favor of the applicant's property, does not contain a description of the size and location of the easement necessary for use by the applicant in satisfying the secondary fire break requirement required by County code. The applicant's property is only 200 feet wide and 130 foot wide fire breaks in all directions around the dwelling would not be possible without the benefit of a secondary fire break easement. Staff has determined that the fire break easement on Tax Lot 700 is not sufficiently described in order to be used to satisfy the County's requirement for a 100 foot wide secondary fire break. The County fire break requirement can be met in this case, either by recording an amended easement with a proper legal description on the appellant's property or by the applicant complying with equivalent IR1 fire protection standards for residential structures to be built. Based on the staff report, dated 8/3/06, staff recommends denial of the appeal. The applicant can meet the County's fire break standards by using IR1 equivalent standards for the structures without use of the disputed easement.

Ron Wilson, County Sanitarian: The two issues that have come up have been the adequate space for the construction of the new septic system, including the riparian area and the hand dug well. The old well has been abandoned so is no longer an issue. The easement covering the septic system from TL 700 onto TL 800, although vague, is in place. He didn't see anything that needs to be addressed at this time.

Glen stated that it is his understanding that new easements put on properties for septic systems require a metes and bounds description. Ron will need to confirm that but there are a couple of different levels in which an easement can be written. Mostly, the rules worry about the intent of the easement to protect the drain field.

The hearing was opened for public testimony.

PROPONENTS:

Benjamin Bruce, 30907 Timoney Road, Rainier: He is the applicant and feels the easement is in place and this should be cut and dry. He would like to hold his other comments until he hears exactly what Mr. Roush's issues are and will address them under rebuttal.

OPPONENTS:

David Roush, 26673 Hammond Road, Rainier: When he purchased his property in 2006, he signed an easement for purposes of a fire break. The fire break did not give any specific dimensions. They were lead to believe by the title company that the fire break was to be used only in the event of a fire. The proposal by TL 800 simply involves too much of his property and makes it totally unusable for him. He had plans to construct outbuildings in that area and understands there can't be any outbuildings in the secondary fire break so that would limit the use of his property. He understood there would be some overlap on his property but the easement should be more descriptive. He looked at the easement for TL 900 and the language is very specific in description. He is not opposed to the Bruce's building a home, he just feels 90 feet is too much of his property to take for the easement. There are other ways to accomplish this without taking so much of his property. When asked, Glen stated there is nothing that says he cannot build an outbuilding in the fire break, however, the materials must meet County and State fire suppression codes. On another issue, David asked if the solid waste line can run under existing leach lines? There is less than 100 feet from his well to the ends of Bruces' leach lines. There was a hand dug well and it was filled in with 2 loads of supposed clay soil. He wanted to know where the soil came from and if it had been tested for contaminants.

REBUTTAL:

Diane Pohl, PO Box 1022, Clatskanie: She is the consultant who assisted Benjamin and Amber Bruce with their Conditional Use permit application. Diane referred to page 2 of her written submittal (Exhibit "2") addressing Condition #7 of the final order. It requires that Mr. Bruce "provide a fire break plan and map indicating the 30 foot primary and additional 100 secondary fire break". The appellants' reason for appeal has already been established and covered in that condition. This must be done before the Bruces' can receive their building permit. The fire break easement was established in writing on the deed when Mr. Roush bought his property. The property on Mr. Roush's property is a replacement home. If he would have built a new home, he would have had to have that same easement over onto TL 800 because he doesn't have 130 feet either. Diane noted that there is an easement onto Bruces' property for Mr. Roush's for the maintenance of his septic. There is no metes and bounds for that easement either. It should also be noted that it's of mutual interest to both parties to have that fire break in place for safety reasons. As for the IR1 and IR2 standard issues, that would be very costly. The Bruce's would have factored this into the purchase of their property had they felt the easement that was already legally established wouldn't be honored. Just to install a sprinkler system would cost roughly \$10,000, plus maintenance. The Bruces' should not be penalized for, in good faith, buying property that stated there was an easement and complying with condition #7. In her six years in the business, she has never known of a fire break easement to require a legal description or a metes and bounds description. With that, she asked that the Board uphold the Planning Commission's decision to approve this Conditional Use Permit application.

With no further testimony coming before the Board, the hearing was closed for deliberation. Commissioner Bernhard feels that, after hearing testimony, she is inclined to support the Planning Commission's decision. With the conditions that have been addressed, it appears to

address the fire break concerns. There may be other specific issues, but those would be dealt with during the building permit process. She is not sure those issues should be addressed at this level. Sarah stated that it does not look as though the Planning Commission informed the applicant that they needed to agree as to the location of the fire break. Without that, we do not know if they can meet that firebreak. We don't know how many feet onto the property the easement goes. An easement document that does not specifically locate or identify the easement is called a blanket easement. While the grantee of that easement probably does have the right to an easement that is reasonably necessary for a use, the County doesn't have the ability to determine what that is. Both parties either need to agree what that is, or they get a court to determine what that is. She would recommend that the Board ask the parties to come to an agreement as to the location of the easement and document it. If they can't do that, then she would recommend that the Board require the equivalent be met to comply with the criteria. Commissioner Corsiglia feels the Board should uphold the Planning Commission's decision because the applicant has made the effort to follow what they've been told to do throughout the process. He doesn't feel the Board can dictate an agreement, only hope that it can be achieved, but it's a civil matter. An agreement would only benefit both parties in the future.

Mr. Roush stated that he is willing to work with the Bruces'.

After discussion, Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve the Conditional Use Permit application, subject to conditions of approval and direct staff to prepare the final order for Board consideration. The motion carried unanimously.

HEARING: AMENDING PLANNING COMMISSION ORDINANCE:

This is the time set for the public hearing on proposed Ordinance No. 2006-7, "In the Matter of Amending the Columbia County Planning Commission Ordinance".

Sarah Hanson explained that this is basically a housekeeping matter to correct scrivener's errors.

The hearing was opened for public testimony.

With no testimony coming before the Board, the hearing was closed for deliberation. Sarah gave the first and second reading of Ordinance No. 2006-7, by title only. With that, Commissioner Bernhard moved and Commissioner Corsiglia seconded to adopt Ordinance No. 2006-7, "In the Matter of Amending the Columbia County Planning Commission Ordinance", which includes an emergency clause. The motion carried unanimously.

CONSENT AGENDA:

Commissioner Corsiglia read the consent agenda in full. Items (E) was pulled for discussion and Item (F) was pulled and held over one week. With that, Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for 8/8/06.

- (B) Order No. 62-2006, "In the Matter of Authorizing Columbia 911 Communications District to Construct a Gate in the Right-of-Way of Lookout County Road".
- (C) Order No. 63-2006, "In the Matter of Claim No. CL 05-30B for Compensation under Measure 37 submitted by Francis D. Martin.
- (D) Order No. 64-2006, "In the Matter of the Approval of Appointment of Kimberly Silverman as Deputy District Attorney".

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (E) Amendment #1 to the Modernization Program Agreement #22876 with ODOT for West Lane Road project. (***PULLED FOR DISCUSSION***).
- (F) Amendment #36 to the 2005-2007 Intergovernmental Agreement #113022 with DHS. (***PULLED AND HELD OVER ONE WEEK***)

The motion carried unanimously.

ITEM (E) - AGREEMENT WITH ODOT:

Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve Amendment #1 to the Modernization Program Agreement #22876 with ODOT for the West Lane Road project, **subject to County Counsel review**. The motion carried unanimously.

COMMISSIONER CORSIGLIA COMMENTS:

The County received a letter from the Oregon Cultural Trust stating that, upon their receipt of the Cultural Participation Grant Agreement, they will release \$6,922 to the Columbia County Cultural Coalition.

He had a great time in Vernonia for their 50th Jamboree Days.

This morning, he had the rare opportunity to meet one-on-one with Senator Smith. They discussed economic development and the need for re-authorization of PL 106-393 - there are a number of counties that will not be able to survive without that funding.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard was in Clatskanie on Friday for their Blues festival. There were wall to wall motor homes and a lot of participation.

On Saturday, she was in Vernonia for the Jamboree Days. It was very well attended and had a great car show.

On Saturday evening, she attended the Blue Jean and Black Tie event which was very well attended.

COMMISSIONER HYDE COMMENTS:

Not present.

EXECUTIVE SESSION UNDER ORS 192.660(1)(h):

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, Commissioner Bernhard moved and Commissioner Corsiglia seconded to approve the partial fee waiver for the Dahl's for the variance fee. The motion carried unanimously.

Further, Commissioner Bernhard moved and Commissioner Corsiglia seconded to take original jurisdiction over any further variance applications filed by the Dahl's. The motion carried unanimously.

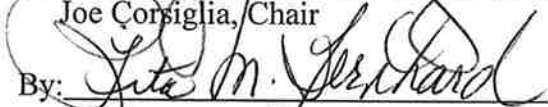
With nothing further coming before the Board, the meeting was adjourned.

Dated at St. Helens, Oregon this 9th day of August, 2006.

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, Chair

By: 
Rita Bernhard, Commissioner

Recording Secretary:

By: 
Jan Greenhalgh

By: Not Present
Anthony Hyde, Commissioner