

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

August 12, 2009

The Columbia County Board of Commissioners met in scheduled session with Commissioner Rita Bernhard and Commissioner Anthony Hyde, together with Spencer Parsons, Assistant County Counsel and Jan Greenhalgh, Board Secretary. Commissioner Fisher was attending a meeting in Medford.

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

MINUTES:

Commissioner Hyde moved and Commissioner Bernhard seconded to approve the minutes of the August 5, 2009 Board meeting and August 5, 2009 Staff meeting. The motion carried unanimously.

VISITOR COMMENTS:

None.

HEARING: ANIMAL IMPOUNDMENT - EDUARDO RIBAYA:

This is the time set for the hearing requested by Eduardo Ribaya on livestock owned by Randy Holdner. Roger Kadell, Animal Control Officer, impounded two dogs owned by Eduardo Ribaya, after which his attorney requested a hearing. After the hearing, the Board will need to determine whether or not the dogs did in fact chase or harm livestock and determine any fines.

Spencer entered County Counsel's hearing file into the record, marked Exhibit "1" and listed all contents.

Roger Kadell, Animal Control Officer, came before the Board to present the complaint report, visit/patrol report and witness statements, all included in the file submitted to the Board. He went through a number of photos of the dogs, the livestock and the area where the incident took place. He then entered the heavy duty collars that were on the subject dogs at the time of impoundment, marked Exhibits "2" and "3". In summary, Roger believes that the dogs did in fact injure Mr. Holdner's

livestock

The hearing was opened for public testimony.

PROPONENTS:

Antonio Porras, Jr., AAL, 100 St. Helens Street, St. Helens: He is here representing Eduardo Ribaya who requested this hearing because he would like very much to have his dogs returned to him. Antonio has just now received copies of the photos presented by Roger but cannot tell if these are of one dog or both.

Mr. Porras wanted to note that a lot of what the Animal Control Officer just stated about his clients past history is not relevant to this case, only the harming of livestock. In looking at the photos, it is clear the calf was harmed, however, it should not have been on Mr. Ribaya's property. The dogs did not go after the calf, the calf came to the dogs and it is not clear if one or both dogs harmed the calf. He is only asking for reasonable measures to allow Mr. Ribaya to have his animals back. There are steps that can be taken to remedy the situation and he does not believe these dogs should be euthenized. The 2 dogs could be returned to Mr. Ribaya with safeguards the Board may find appropriate and which the statutes allow for. Commissioner Bernhard understand that the property owner, Mr. Holdner, has asked that no dogs are allowed on the property. Antonio stated that the Mr. Ribaya nor the dogs would be returning to Mr. Holdner's property.

OPPONENTS:

None.

With no further testimony coming before the Board, the hearing was closed for deliberation. The Board will need time to review all of the evidence and confer with staff. With that, Commissioner Hyde moved and Commissioner Bernhard seconded to close the hearing, leave the record open to written comments from Mr. Ribaya to August 26, 2009 and deliberate on September 2, 2009, at or after 10:00 a.m. The motion carried unanimously.

HEARING: SAMANTHA MILLER APPEAL OF KENNEL LICENSE DENIAL:

This is the time set for the appeal of the denial of Samantha Miller's application for a Kennel License. Todd Dugdale, LDS Director, issued a denial on 6/11/09.

The attorney for the applicant submitted an appeal request on 6/19/09. The process will be the same as the Ribaya hearing. Spencer submitted County Counsel's file into the record, marked **Exhibit "1"** along with a 2 page written list of all contents.

Todd Dugdale, LDS Director, came before the Board to give the staff report. Samantha Miller applied for a new Kennel License under the provisions of the Columbia County Kennel Ordinance, No. 2007-7 on February 25, 2009. The application was for the operation of a kennel with between 30-100 dogs over 6 months of age in conjunction with a single family dwelling on a rural residentially zoned site located at 57210 Old Mill Road in Scappoose. The kennel site was inspected by Roger Kadell on 3/2/09 who filed a report on the same date. Section 4A of the Kennel Ordinance provides *"Before a new annual kennel license may be issued under this Ordinance, the owner or operator must have an inspection and demonstrate compliance with the kennel standards established under Section 9 of this Ordinance"*. Todd reviewed the application, the Animal Control Officer's report and the files related to the site. He determined that there was substantial evidence showing that there were intermittent and on-going violations of the applicable provisions of Section 9 of the Kennel Ordinance, along with other State and local laws regarding the keeping of animals and the operation of kennel facilities on the site by Samantha Miller, including by not limited to the following:

- OAR 603-155-0040(5), which provides, "Waste Disposal: provision for the removal and disposal of excreta, bedding, dead animals, shall be made. Disposal facilities shall be constructed and operated in such a manner as to minimize disease hazards, offensive odors and vermin infestation". Todd concluded that Ms. Miller's ongoing issues with waste disposal, including multiple warnings and citations for violation of the Columbia County Solid Waste Ordinance, constitutes noncompliance with this requirement.
- OAR 603-015-0040(1), which provides, "Structural strength of facilities for housing pet animals shall be sound, in good repair to prevent injuries, contain the animal, and prevent the entrance of other animals". Todd concluded that Ms. Miller's longstanding DEQ wastewater violation (wastewater pipe emptying onto open ground on the property with correction for several years) constitutes noncompliance with this requirement.

- CCZO Section 1507, which requires Conditional Use/Home Occupation permits for operating kennels in the RR-5 zone. Ms. Miller applied for and was denied such a permit in 2004. Ms. Miller recently had a citation for this violation dismissed by claiming that she had 50 dogs (inconsistent with Kennel License Application) and all dogs on the property are her own personal pets and not for sale/adoption, and that any dogs sold/adopted out are kept elsewhere. However, since that dismissal, the County has obtained photo evidence of Ms. Miller loading dogs up at an "All Terrier Rescue" adoption event at a Petsmart store in Hillsboro, driving them directly to the Old Mill Road property and unloading them. Prior to claiming that all of the dogs at the Old Mill road property were her personal pets, she was cited for violation of the Conditional Use/Home Occupation permit provisions of the CCZO and lost her court challenge in 2006. Todd concludes that Ms. Miller's longstanding use of the Old Mill Road property constituted a violation of the applicable provisions of the CCZO.
- Multiple other violations of applicable law, evidence of which is before the Board.

Based on these determinations and pursuant to Sections 4A and 11 of the Columbia County Kennel Ordinance, Todd sent notice to Samantha Miller on June 11, 2009 denying her kennel license application. Further, based on the findings of intermittent and on-going violations of State and local laws by Samantha Miller, staff recommends the Board deny the kennel license application of Samantha Miller.

Roger Kadell, Animal Control Officer, presented his report. There has been on-going complaints on this situation since before his taking over as Animal Control Officer in 2004. He reviewed the number of citations issued to Ms. Miller and the enormous amount of complaints received on the applicant with regards to her dogs barking, garbage, animal waste, etc. Roger briefly went through the case file, from beginning to the present. He noted that more citations would have been issued, had this not been considered a dog rescue.

Robert Crain, Code Enforcement Officer, gave his report on the solid waste

violations on the Miller property. A citation for operating a home occupation without a permit was first issued in October, 2005, it was cited into Circuit Court and the county prevailed. The citations have continued throughout the years to the present for issues regarding solid waste, home occupation and subsurface sewage discharge. Two of the citations are pending and scheduled for September.

The hearing was opened for public testimony.

PROPONENTS:

Attorney Gordie Duckler, 5331 SW Macadam Avenue, Suite 299, Portland, OR 97239:

He is here representing the applicant Samantha Miller, who was also present. Gordie stated that he requested a hearing two months ago and asked for any and all information dealing with his client. He felt that two months was long enough for the county to supply him with this information. Just today he is now seeing a complete list of all contents in the file, some of which he has not seen. Therefore, he would ask that he be allowed time to review that information prior to the Board making any decision. Moving on, he stated that there has only been one conviction against his client for one violation. Samantha has been in animal rescue since 2004. There may have been a lot of complaints, but only one violation.

There are currently two violations set for hearing in September, however, because there has been no final determinations made on those two violations, the Board should not consider them when making a decision on this kennel license. As the record shows, as of 2/2/09, Ms. Miller received a clean report on her operation.

Then in June, her license is denied and/or revoked. Why would the County do that? This is all because of a single upset neighbor, Mr. Scott Groves, who makes a number of complaint calls, sometimes on a daily basis. Not only has Samantha been a clean operator but she is doing a community service for the county by taking these dogs in and adopting them out. Regarding the home occupation permit, she was cited on that, but it was dismissed by the circuit court.

Commissioner Bernhard questioned if this is a rescue or are these Mr. Miller's personal pets? She finds it hard to believe how a person can have 100 pets. Also, how can she be selling these dogs at Petco if they are pets? Gordie stated that she is adopting them out, not selling them. There is no evidence in the record that shows she is selling the dogs. The money she receives for the adoptions goes towards vet bills that she pays.

Commissioner Hyde asked that Gordie provide the Board with something that shows the dogs have been adopted out but that she stills pays for all food, vet bills, etc. on these dogs two years later. Gordie stated that if a dog is adopted out, she can assert her legal rights, under the adoption agreement, to take legal action to get it back. However, he will supply the requested information to the Board.

Commissioner Bernhard asked how many dogs Samantha has had to take back from adopters. Samantha stated that she has taken thousands back. On a personal note, Commissioner Bernhard asked Gordie how he would feel about living next door to 100 barking dogs? Gordie agrees this would be very disturbing, however Samantha doesn't have 100 barking dogs and has never been cited or convicted of any noise or nuisance violations. Gordie feels that the character of the property has to be taken into consideration, noting that the Miller property is rural and not in a dense neighborhood.

Samantha Miller, 57210 Old Mill Road, Scappoose: She stated that there are just as many neighbors that don't complain about the dogs. And why are there no audio tapes of her dogs barking.

Loren Davis, 12500 Jackson Quarry Road, Hillsboro: He has volunteered for Samantha's rescue operation for about 5 years now. She provides a very valuable service to the community that the county cannot provide. He can personally testify to a dog that was adopted out two years ago and had to be taken back and it now being fostered. He knows of a number of adoptions that have been revoked for various reasons. The money received from these adoptions goes towards the care of the animals, not for profit.

Jerry Miller, 18325 SW Division St., Aloha, 97007: There have been several occasions that Roger Kadell has been out to the property. On the day of an inspection, Roger stated that barking has never been an issue, only a complaint from one neighbor. Dogs that are habitual barkers are either de-barked, wear bark collars, or are crated. Samantha has gone to great lengths to comply with whatever the county has asked. She should have her license reinstated. Jerry noted that Samantha is her daughter and that Jerry previously had a business for dog skin care, but is no longer operating that business.

Bettina Davis, 6423 NW Shelsam Terrace, Portland, OR 97229: She has known Samantha since 2002 and has helped her with the dogs. She has adopted 5 of her dogs, and paid a lot of money to help take care of the dogs. If the Board has ever seen the show Dog Whisperer, this is how Sam is with her dogs. She has so much control over the dogs. Commissioner Bernhard stated that her treatment of animals is not in question. Bettina feels that what Sam does is a benefit to the community and wished there were more like her in the county. She works very hard at what she does and does a good job.

OPPONENTS:

Phil Warner, 29681 Scappoose-Vernonia Hwy, Scappoose: He wanted to say something about the comments made today that this is a vendetta by one neighbor, Scott Groves.

He wanted to add his name to this. He has reached his breaking point of listening to these barking dogs. He has been before the Board a number of times, contacted the District Attorney, Roger Kadell and others. This is a serious problem and done everything he can to get some relief. First he hears this is a rescue operation, then personal pets, then a kennel - he's confused. He doesn't see anything getting any better here and with the hot weather we've had lately and with the number of dogs there, the smell is terrible. He pleaded with the Board to not let this operation continue.

Scott Groves, 57218 Old Mill Road, Scappoose: Scott wanted to state that this is not a personal vendetta. The fact that he has gotten four of the neighboring homeowners to sign a letter to the Board asking for some type of relief from the problem, shows it is not just him, but other neighbors are being negatively affected. One neighbor, the Downey's were disappointed they couldn't be here. He has medical issues and the wife just suffered a stroke. Jim Downey has called Scott twice in the past week about the barking dogs and asked what can he do. Scott questioned why he would need to make an audio recording of dogs barking.

Why in the hell would we need to do that, isn't his word good enough. Isn't it enough that there have been 75 lodged complaints in the past 5 years. The reason she doesn't have any convictions is because there is no county support. Also, the District Attorney doesn't feel that 75 complaints is enough to take it to court. Samantha has no regard for the neighbors with the garbage, stink and barking

dogs. He has never met a more irresponsible dog owner. He pleaded with the Board to uphold the denial of this kennel license.

Mike Chapell, 57221 Old Mill Road, Scappoose: He is a direct neighbor and he doesn't care who says what, but this is simply a puppy mill. Most of the people giving support here today don't even live in this county. What he sees going on is incredible. The neighbors have submitted information to the county and cannot get any cooperation from the county. The neighbors want something done about this.

Alta Lynch, 32961 SV Hwy, Scappoose: As a member of the community, she is confused about the status of this operation. Is it a rescue or what? Is there any documentation that these dogs are rescued? It seems Ms. Miller is renting out the animals - can't she just give the dogs away to good families instead of charging a fee? At least this would help alleviate her vet and food bills.

At this time, Commissioner Hyde moved and Commissioner Bernhard seconded to recess this hearing and continue it on Thursday, August 13, 2009 at or after 9:00 a.m. The Board then recessed the meeting at 12:10 p.m.

The Board reconvened the meeting on Thursday, August 13, 2009 at 9:00 a.m. Present were Commissioner Bernhard and Commissioner Hyde, Spencer Parsons and Jan Greenhalgh.

Commissioner Bernhard called the meeting back to order.

The public hearing on the appeal of Samantha Miller's Kennel License continued.

Testimony has been taken from both the proponents and opponents and the hearing was carried over for rebuttal. Spencer entered the following into the record: Copy of the Kennel Notice sent out by Todd Dugdale dated 8/4/09, marked **Exhibit "2"**; letter to Liana Viken denying her kennel application, marked **Exhibit "3"**; a copy of the Solid Waste Ordinance citation received from Robert Crain, entered at **Exhibit "4"**; copies of photos presented by Todd Dugdale, marked **Exhibit "5"**; a letter received this morning from Gordie Duckler dated 8/13/09, marked **Exhibit "6"**.

REBUTTAL:

Gordie Duckler, attorney for the applicant, focused on the actual issue of the

kennel license being denied. He presented a letter to the Board, which was just entered into the record. From what was presented by the county and presented by the neighbors in opposition, he didn't see any actual violations of local laws.

The Board had addressed their concerns about whether the dogs are for sale or adoption. Ms. Miller is not in the business of selling dogs. There was a question about her non-profit status. She is currently registered as a domestic non-profit organization with the State of Oregon and he can provide the certificate if necessary. Although already in the record, he has re-submitted the report from DEQ, dated 4/26/09, indicating that her animal facility received an absolutely sparkling clean bill of health as to any possible or alleged environmental health quality issues. He researched the court records for Samantha Jo Miller in Columbia County and the only single entry is in March 2005 for a citation for barking dogs, which Judge Reed found her not guilty.

Spencer entered the following into the record: letter from Roena Boehm, dated 8/12/09, marked **Exhibit "7"**; letter from Steve Kloepping, dated 8/11/09, marked **Exhibit "8"**; letter from John Trout, dated 8/12/09, marked **Exhibit "9"**; letter from Jerri Miller, dated 8/13/09, marked **Exhibit "10"**.

Jerri Miller read her written testimony into the record (Exhibit "10") in response to testimony in opposition to this application.

Samantha Miller stated that, after the hearing yesterday, she went to about 10 of the neighbors and was informed that they have repeatedly told Mr. Groves that they don't have any issues with the dogs, they enjoy them and don't want to get involved. Scott Groves stated the Mr. Downey had problems with the dogs. When she spoke with Mr. Downey yesterday, he stated that was not true. Some of the neighbors wrote letters stating that they have seen Scott repeatedly walking up and down her fence line purposely intimidating the dogs. He has been caught spraying the dogs with water and shooting guns at her dogs to make them bark. The dogs are very well behaved. She has been a dog behaviorist for 15 years and the dogs mind her.

Commissioner Hyde (Q) who provides vet care (A) Tigard vet hospital; (Q) anyone who pays an adoption fee gets a dog or is there an evaluation process (A) She doesn't do the actual adoptions, Jerri and Tina do that and there is a screening process; (Q) how many volunteers (A) about 30 and no compensation involved; (Q)

asked what a domestic non-profit is (A) she would have to look it up; (Q) is this her only means of support (A) she receives no money for this. Her income comes from training dogs outside of Columbia County; (Q) stated that she has taken back thousands of dogs, since when (A) since 1989 when the rescue was established in Washington County; (Q) where do those dogs go (A) it depends on what is going on with the dog. Unless they have some type of physical, medical or behavior problem, go to foster care; (Q) where do the dogs come from originally (A) they come from all over; (Q) testimony is that she is reducing euthanizing in Columbia County by 17%, is she taking dogs out of Animal Control; (A) she used to take dogs from Animal Control, but no longer because of Mr. Groves; (Q) on several occasions she has stated that these dogs are all personal dogs, which is it - a rescue or are these pets (A) she has a lot of dogs as personal pets. She does not adopt any dogs out from her property and never has; (Q) she stated in court that she have 52 pets, how many now (A) still has 52 dogs and they are all her pets.

Commissioner Bernhard feels the rules keep changing. First it's a rescue, then a shelter, then personal dogs. Samantha stated that she has 40 dogs that are pets and another 10 that fluctuate because they are only there for evaluation, training and sent to foster care. She chips every dog that comes to her property.

If the dog is not able to be rehabilitated, then it stays with her. If adoptable, she changes the chip to All Terrier Rescue and turns the dog over to them.

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

After discussion, Commissioner Hyde moved and Commissioner Bernhard seconded to close the hearing, leave the written record open to the applicant to 8/27/09 and deliberate on 9/9/09 at or after 10:00 a.m. The motion carried unanimously.

CONSENT AGENDA:

With no changes/additions, Commissioner Hyde moved and Commissioner Bernhard seconded to approve the consent agenda as follows:

(E) Ratify the Select-to-Pay for 8/11/09.

(F) Reappoint Ernie Carmen and Larry Cole to the Columbia County Cultural

Coalition Committee for a three year term.

- (G) Authorize Janet Wright to hire one temporary part-time accounting position for Columbia County Rider.
- (H) Deny the request by Ben Finnell for a partial waiver of the Building Permit and Investigative Fee for code violation (building without permits).
- (I) Order No. 51-2009, [Initiating/Finalizing Vacation Proceedings] "In the Matter of the Proposed Vacation of a Portion of Columbia [Washington] Way in Rainier, Oregon [Dan and Josephine Lego]".
- (J) Approval to submit the Columbia County Special Public Works Emergency Hazard Mitigation Application to the Oregon Economic & Community Development Department authorization for the Chair to sign.
- (K) Ratify approval of the purchase of a 43 Passenger bus for Columbia County Rider and authorize the Chair to sign the Purchase Order #20099087.
- (L) Approve a Restrictive Covenant for use of the Transit Facility located at 1155 Deer Island Road, St. Helens, Oregon, 97051, authorize the Chair to sign, and authorize recording with out cost."
- (M) Public Road Event Permit for the Hood-to-Coast Relay, August 28-29, 2009.
- (N) Ratify the request for reimbursement of fund through the Hazard Mitigation Grant Program - FEMA 1733-DR-OR.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (O) Hold Harmless Agreement with St. Helens Community Bible Church for use of Hudson-Parcher Park on August 14 - 16, 2009.
- (P) Amendment #1 to the 2009-2011 Intergovernmental Agreement #127291 with DHS and authorize the Chair to sign.
- (Q) Memorandum of Understanding between Columbia County, Columbia County Commission on Children & Families and the Columbia County Juvenile Department.
- (R) Construction Contract with TAFT Construction, Inc., for the Scappoose-Vernonia Road Overlay project.

- (S) State of Oregon Department of Administrative Services (DAS) Intergovernmental Agreement for Document Publishing, Processing and Delivery #131-09.
- (T) Amendment #1 to the Oregon Commission on Children & Families 2009-2011 County Intergovernmental Agreement COL0911 and authorize the Chair to sign.

The motion carried unanimously.

COMMISSIONER BERNHARD COMMENTS:

Commissioner Bernhard has been continuing to work on housing issues with NOHA for people who have lost their vouchers. NOHA has depleted their reserves and cannot pay for another months rent. However, they have applied to HUD for emergency funding. The hope is to get these people back on the program by the first of January.

Yesterday she attended a public hearing on the hospital project and testified in favor. She has been involved with this project since it began in 2001. She felt the comments from Legacy staff, although said they were personal comments and not representing Legacy, were a conflict of interest and inappropriate. She was very disappointed with their lack of support for this project.

She spent part of this week in Corvallis attending the AOC Summer Summit.

COMMISSIONER HYDE COMMENTS:

Commissioner Hyde spent time last week in Grants Pass attending an O&C Board meeting. A major topic of discussion was the re-authorization of

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timber funding.

He also attended the AOC conference in Corvallis. A lot of good discussions on various issues.

He commented on Vernonia Jamboree and logging show held last weekend.

He continues to work with the Oregon Solutions group on the Vernonia School project.

COMMISSIONER FISHER COMMENTS:

Not present.

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

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Dated at St. Helens, Oregon this 12th day of August, 2009.

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: _____

Rita Bernhard, Chair

By: _____

Anthony Hyde, Commissioner

Recording Secretary:

By: _____ Not Present

By: _____

Earl Fisher, Commissioner

Jan Greenhalgh, Board Secretary