

COLUMBIA COUNTY BOARD OF COMMISSIONERS
BOARD MEETING

MINUTES

March 16, 2016

The Columbia County Board of Commissioners met in scheduled session with Commissioner Anthony Hyde, Commissioner Henry Heimuller and Commissioner Earl Fisher, together with Robin McIntyre, Assistant County Counsel and Jan Greenhalgh, Board Office Administrator.

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

MINUTES:

Commissioner Fisher moved and Commissioner Heimuller seconded to approve the minutes of the March 9, Board meeting. The motion carried unanimously.

VISITOR COMMENTS:

Craig Smith, PO Box 1327, Rainier: His comments are related to the county's management of the Dibblee Point site. He supports it with the exception of one item. He was notified back in November of an access issue regarding the gate. That gate is very important to his business. He has been a State lessee of the Dibblee sand pit since 1999. For various reasons, he was not able to attend the meeting when this gate was being discussed. Under the new plan, the gate that the Board permitted had allowed him to put in must be vacated, leaving the haul road open to the public. He explained that the area behind the gate has always been open to public access by foot or horseback, just not vehicles. This has reduced theft and vandalism problems tremendously. The largest concern is that of public safety and liability. During peak construction season, as many as 150 truck and trailers have traveled that section of the road in one day. By

keeping the truck traffic to a dedicated route, all issues have been avoided. His last issue is with road maintenance. The access road is well maintained and graded regularly as needed. If the public is allowed to use this as well, it would require weekly, if not daily, grading. BCX has participated in numerous cleanups and all road repairs, grading, filling and rocking, all at their expense. They have been a good steward of this property. This gate provides protection for the property, the habitat and his personal property on site. He is here today to ask that the recent decision to remove the gate be reversed for security, maintenance and other reasons. He has no issues with foot traffic or horse traffic - it's the vehicles that do the damage and should not be allowed on this one access. The Board stated that they will look into this issue and get back with him.

VICTIMS OF CRIME ACT GRANT APPLICATION:

Janet Faltersack and Steve Atchison came before the Board to seek approval to apply for a Victims of Crime Act grant application. Janet explained the purpose of this one time grant and that it is separate from the one that is being approved on today's consent agenda. Janet reviewed what services this grant would provide. The application is for a 2 year funding cycle and is due by 3/31/16. Sarah expressed her concerns with not yet reviewing this application and would suggest the application be completed before the Board takes any action. Janet explained that this is only the application process and that the actual agreement would come later. Robin suggested that the full application be completed, reviewed by County Counsel and then added to the 3/30/16 Board agenda for consideration. With that, this matter was carried over to March 30, 2016.

HEARING: APPEAL OF DAVID WILSON MINOR PARTITION & VARIANCE:

This is the time set for the public hearing, "In the Matter of the Application Submitted by David Wilson Jr. Trust for a Minor Partition and Variance to Lot Size Standards to Divide a 14.29 Acre Parcel into (3) Parcels in the Rural Residential (RR-5) Zone".

Robin McIntyre briefed the Board on this application. The Planning Commission approved the application with conditions, that decision was appealed and it is now before

the Board for consideration. The deadline for action is 4/4/16 and, because the Board has canceled the 3/23/16 Board meeting, they will need to take action on this application today. When asked, the Board declared no ex parte contact or conflicts of interest. Robin then read the pre-hearing statement into the record. Robin entered County Counsel's hearing file into the record containing a list of exhibits as *Exhibit "1"*.

Glen Higgins, Chief Planner, came before the Board to give the staff report. The David Wilson Jr. Trust applied for a partition and minor variance to divide an approximate 14.29 acre property into three parcels of 4.76 acres each. The subject property is located at the end of Blaha Road along the ridge between Lindsey Lane, and is the last large parcel prior to the large forest zoning further west. This greater area is zoned RR-5, but has been developed along Lindsey and Blaha roads, over the last two decades, into residential lots averaging much smaller than 5 acres. The application for a variance (4.76 acres instead of 5 acres) requires findings that are based on unique conditions of the subject parcel that would create unnecessary hardship if not granted.

The Planning Commission approved these applications MP 16-01 and V 16-02 based on the unique condition that the subject parcel is surrounded on three sides by residential lots averaging 2 acres or small and the requested variance is so small, only 4.8% variance from standard, that the proposed lot sizes would be compatible with and fit into the present developed area. A neighboring property owner, Chelsea Strautman Neil appealed the Planning Commission decision based on the application showing no unique conditions and there is no hardship because the applicant can divide the property into 2 parcels without a variance.

The CCZO provides that these applications submitted by Wilson Trust are both subject only to administrative review and decision by the Planning Director. The applicants were referred to the Planning Commission during the initial comment period. The appellants maintain that, based on the written application and facts of the case, the minor variance should be denied. Staff recognizes that the standards for approving a variance is very difficult to meet and the LUBA and the Court of Appeals generally deny appealed variances for not meeting the stringent criteria. However, in this case, staff believes there are both unique circumstances and an unnecessary hardship, and any appeal of the Board action would be upheld under our local code and our difference to interpretation. Based on the findings, staff and the Planning Commission recommends that the appeal be denied and that the Minor Partition application (MP 16-01) and Variance (V 16.02) be approved with conditions, as based on the findings and conclusions contained in the staff report dated March 9, 2016.

The hearing was opened for public testimony.

PROPONENTS:

Steven Liday, Miller, Nash, Graham & Dunn, 111 SW 5th, Suite 3400, Portland: He is here on behalf of the applicant. There are 2 applications before the Board however only the variance is being appealed. He talked about the surrounding properties - about 80% of the lots are below RR-5 size and average 2-3 acres. He responded to some of the concerns about Blaha road improvements, that is not relevant to the variance but will be widened event if only one additional lot is created. Some comments were made on increased traffic if three parcels are allowed. He's not sure if there would be any noticeable difference between 4.5 or 5 acre parcels. With regards to the criteria for a

variance, it was found that an unnecessary hardship does exist, i.e. the surrounding lots are also small, these would have larger lots than the existing ones. They will have to make significant road improvements, and the other homes will benefit from the widening of the road. The Wilson's have already dedicated a lot of their land to the public. He commented on *Clark vs. Jackson County* where LUBA determined that every local government has the power to interpret its own laws as long as it meets the law. He would recommend that this appeal be denied.

David Ryan Wilson, 55540 Shamrock Way, Scappoose: His family has owned this property for approximate 56 years. A lot of development has taken place on this property. His father passed way and left one lot to each of the Wilson children so they could build their own homes. This is a request for a small change and, given how it has been built up, this application should be allowed. The family wants to be treated fairly, the same as everyone else.

Dan Porter, 58446 Lindsay Lane, Warren: He is surprised this has taken 2 hearings for such a small amount of property. He supports the application for a Minor Partition and Variance.

OPPONENTS:

Chelsea Strautman Neil, 33335 Blaha Road, Warren: She is the appellant in the case and understands that this has gotten to be a pretty heated issue. Some of the actions by the planning staff and the Planning Commissioners have frankly been appalling and she

will be discussing that with the Board at a later time. She is here today speaking on behalf of herself and many of the neighbors and will be articulated all of their concerns. She noted that because other development was allowed to move forward that weren't justified, doesn't justify more similar development. The applicants attorney offered no justification for a hardship. The only hardship to the developer is financial gain, which is not a hardship. As for uniqueness, staff report finds that the BP transmission line does not meet uniqueness and staff finds nothing unique to the property. The applicant is a developer and has successfully partitioned the area into small lots and those lots were developed at a time that allowed small lots. She commented on the behavior of the Planning Commission, one was sleeping or had a medical issue and another member stated she wasn't smart enough to make a decision so approved it. She would ask that, because there is no need for this hardship and that the criteria has not been made, the Board deny this application.

Commissioner Heimuller appreciates Ms. Neil's well put together testimony. To summarize, he asked her how going from 2 to 3 lots will impact her. She explained that having the density of one more home will negatively impact her and the neighbors. She wants to protect the integrity of the property.

Steve Hammergren, 33395 Blaha Road: He submitted a map and legal description of his property when he bought it, entered as **Exhibit "2"**. He has 3.5 acres and his neighbor Semsch has 3.5 acres. To allow this application, seems like a blatant disregard for the land use laws. It seems there is a lot of leniency being give to Mr. Wilson. If this is just about making money for the county and no consideration for the neighbors, where is the fairness in that? As for Wilson's dedication of property, that was required for

development. The homes on both sides of the road will be impacted by this. He bought property up there for the privacy and this will impact that.

Dave Hill, Road Department, clarified that road improvements will be required to meet county road standards, even if developed into only 2 lots and even if the second lot accesses Lindsay Land.

Steve continued that he believes there is a lot of consideration being given to David Wilson because of his status in the county.

Ryan Neil, 33335 Blaha Road, Warren: This has become a continuous issue. He doesn't want stop Mr. Wilson from developing his property, but the application must meet the criteria. The county's RR-5 standards are there to preserve the nature. He explained what happened with the entrance to his property, the logging of trees and what he was told by Mr. Wilson. What could he do?

Commissioner Heimuller asked about the Neil's home business and asked if he had a home occupation permit? Ryan stated that he operates a small potted tree business and has a Type I Home Occupation. He was later informed he needed a Type II permit and is working on that. He noted that the fire department has signed off on that.

Norm Anderson, 33370 Blaha Road, Warren: He has lived at his home on Blaha since 1980 and it was the smallest piece of property up there. He has five acres of timber land. Although it has been said the property is surrounded by small parcels, in actuality, these properties are surrounded by major 2nd generation timberlands. He has concerns with water and if there is enough to protect the homes and forest land. The nearest fire

hydrant is at the Crown Point development and not sufficient to get water to the upper properties on Blaha. He tried to contact Jay Tappen with Columbia River Fire & Rescue, but he never returned his call. They approved this without review of the National fire code. He read his prepared statement and submitted it into the record marked **Exhibit "3"**.

Shawn Semsch, Blaha Road: More houses means more traffic and he believes that will diminish his property value and take away from the rural character of the area. He has a small daughter and has concerns with the additional traffic. He is on a well and additional homes has the potential to drain his well. Regarding road development, how much of his property will be part of the widening and how will the construction effect his family. He also has concerns with water and if there will be enough for fire safety. His last issue is with the way the Planning Commission handled themselves, specifically the one member who slept through the hearing. He can understand someone wanting to maximize the value of their property but this will effect the neighbors lifestyle.

Judy May, 33398 Blaha Road: There has been a lot of confusion between the Planning Commission hearing and this hearing on Blaha Road regarding access, where it ends, it is a public road. This makes a different on if it needs to be paved or not. There just seems to be a lot of unanswered questions here. These additional lots will impact the neighborhood and she is opposed to it.

REBUTTAL:

Doug Wilson stated that he has been a builder and development for the past 20 years and, as such, has always followed the rules and requirements of the county. As far as the

downed trees, Mr. Neil came to him to have them taken down because he wanted the view. He also explained the road dedication issue raised by Ryan Neil and disputes that there was any coercion.

Steve Liday responded to comments made that he cannot provide case law which is not true, he does have that information. As he referenced the *Salem Golf Club vs the City of Salem* to point out that Oregon does not have a law that says it has to be extreme or directly related to the property, it's whatever the County rule says and that should be the focus. In that case, the variance was approved because of the changes in the neighborhood. The same with *Regan vs Oregon* and *Dole vs Coos County*. The statement was made that he was urging for no standard, that's also is not true he just wants the standard to be applying as it is written in the code, which is that the hardship needs to be unnecessary. The Planning Commission and staff has found that there is a hardship here due to the history of the land, the fact that it's surrounded by 80% smaller properties, the double penalty for dedicating land in the past and the cost of road improvements. He heard several times that financial considerations should not be considered in the variance but in reality the opposite is true. In the case of *Dolan vs City of Tigard* where anytime you are requiring someone to build something in order to development their land, you have to consider financial considerations. If not, it can actually be a constitutional taking. The opponents seem to be upset with development in this area and he doesn't know why it's so much different than 2 lots. No one can articulate how they are going to be impacted between 4.7 acres and 5 acres. As a last comment, he felt that the Planning Commission did a good job and were only getting exasperated when they were getting yelled at by the audience. In closing, he believes this application has met the standards and should be approved.

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

Commissioner Fisher stated his issues and concerns and clarified that there is no favoritism on the part of this Board towards Mr. Wilson or anyone else, as was mentioned, and he takes personal offense to those remarks. He sees a conflict here between common sense and reason and the detailed rule of law. This is where the Board has to make a judgement call. When listening to the testimony he heard a lot about the road improvements, however that will happen anyway if there are only 2 lots developed. As far as he can tell, there isn't any density issues, safety issues or impacts on lifestyles. For him, it's come down to the interpretation of the rules by this Board and what he sees here is the argument over 10,000 square feet of property. He doesn't believe there is enough impact to hurt this area.

Commissioner Heimuller responded to a comment about the Board receiving all of the information. This Board doesn't take any of these land issues lightly and reviews all documentation submitted. He also takes personal acceptance that the Board is in the pocket of the Wilson's. Each case is taken on its own merits. He heard testimony that there are no standards here which is simply not the truth or it would have been approved some time ago. He knows that area up on Blaha Road and it's beautiful and obviously rural residential but RR-5 doesn't mean 5 acres. If the Wilson's had wanted to put a subdivision and make the 14 acres into 2 acre lots, it would have been a clear denial. This is a minor revision to create 3 lots instead of 2. Further, one of the homes will be able to access another road so that would take away from the traffic impact.

Commissioner Hyde agreed with Commissioner Fisher and Heimuller on their points. He understands that this will clearly effect some of the homeowners, but we have to consider that this is a “minor” partition and allowed by State Law. He heard a comment that one additional home site would have a significant impact on the road that it would be intolerable. The appellant has a home business and in fact going to be hiring 4 additional persons - that will also impact the traffic, so that argument doesn’t wash. As for the issue of “hardship”, based on the case law of Jackson County, it is up to the Board to interpret if a hardship exists or not. As with 80% of land use issues, financial hardship is a real thing and needs to be considered. That said, he supports this application.

After deliberations, Commissioner Fisher moved and Commissioner Heimuller seconded to tentatively approve the application, “In the Matter of the Application Submitted by David Wilson Jr. Trust for a Minor Partition and Variance to Lot Size Standards to Divide a 14.29 Acre Parcel into (3) Parcels in the Rural Residential (RR-5) Zone”. The motion carried unanimously.

CONSENT AGENDA:

Commissioner Hyde read the consent agenda in full. With no changes, Commissioner Heimuller moved and Commissioner Fisher seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for week of 3/14/16.
- (B) Cancel the March 23, 2016 Board and Staff meetings.
- (C) Reappoint Dave Carpenter; Jeff Dickerson; Rosemary Lohrke; Terry Moss; Ray Scholl; Doug Greisen; and Audrey Webster to the Traffic Safety Committee for a

(3) year term, and appoint Luther Schwartz to complete the term of Tim Schwartz, term to expire 12/31/2017.

- (D) Authorize the District Attorney to fill one Deputy District Attorney position to replace Dale Anderson.
- (E) Approve Liquor License Renewals for: Deer Island Store; Alston Pub & Grub; Yankton Store and Restaurant; St. Helens Golf Course; The Birk; Alston Country Store & Video; and the Moose Lodge #591 St. Helens.

AGREEMENTS/CONTRACTS/AMENDMENTS:

- (F) 2015-2017 VOCA and CFA Non-Competitive Grant Agreement and Authorize the Chair to Sign.
- (G) Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements for 2015-2017 VOCA and CFA Non-Competitive Grant and authorize the Chair to sign.
- (H) Standard Assurances for 2015-2017 VOCA and CFA Non-Competitive Grant Agreement and authorize the Chair to sign.
- (I) Victims of Crime Act Special Conditions for 2015-2017 VOCA and CFA Non-Competitive Grant Agreement and authorize the Chair to sign.
- (J) Employment Contract with Phil Edwards for Temporary Enforcement Administrative Sergeant.

The motion carried unanimously.

COMMISSIONER HYDE COMMENTS:

Commissioner Hyde attended the COLPAC annual meeting last week in Tillamook.

He attended the Rightline expansion event. They are now our largest manufacturing employer in Columbia County.

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He also attended a Chapman Landing meeting last Friday to discuss the final construction at the end of the CZ Trail, which they hope to open this summer.

Attended the Senator Merkley town hall last Saturday in Rainier.

Yesterday was the annual Columbia County Economic Team meeting. Discussion was held on the AMRI facility and PCC campus coming to Scappoose.

COMMISSIONER HEIMULLER COMMENTS:

No comments.

COMMISSIONER FISHER COMMENTS:

No comments.

There was no Executive Session held.

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

Dated at St. Helens, Oregon this 16th of March, 2016.

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NOTE: An audio CD of this meeting is available for purchase by the public or interested parties. A video of the meeting is also posted on our website at www.co.columbia.or.us

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: _____

Anthony Hyde, Chair

By: _____

Henry Heimuller, Commissioner

By: _____

Jan Greenhalgh

By: _____

Board Office Administrator

Earl Fisher, Commissioner