

MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999

Page 1

[Filed with County Clerk 2-18-99]

COMMISSIONERS PRESENT:

Sue Cameron, Chairperson
Tim Josi, Vice Chairperson
Gina Firman, Commissioner

STAFF PRESENT:

William K. Sargent, County Counsel
Paul Levesque, Management Analyst

STAFF PRESENT FOR PORTIONS OF MEETING: Jon Oshel, Public Works Director; George Plummer, Senior Planner; Vic Affolter, Community Development Director;

GUESTS: Pete Daniels, Milstead & Associates; see attached guest list

CALL TO ORDER: By Chair Firman at 9:00 a.m. in the Justice Courtroom.

ITEM NO. 1: CONSIDERATION OF ORDER APPOINTING CHAIR & VICE CHAIR FOR

1999: Commissioner Josi moved to sign the order, Commissioner Cameron seconded, passed with three aye votes.

The Commissioners signed Order #99-01, appointing Sue Cameron as Chair and Tim Josi as Vice Chair.

Chair Cameron said she wanted the Chair to sit in the middle to facilitate the paper flow. She thanked Commissioner Firman for her work as Chair and her facilitation skills. She said the County had a lot to celebrate, including Project Impact, elevation of houses, public transportation and Economic Development, Stewardship Council and the Futures Council. There was a lot more to do in three major areas: 1) engaging constituents and the community in the process; 2) get the County's "shop" together for more efficient and responsible government; and 3) continue to bring resources to the County for roads, juvenile crime prevention, economic development opportunities and the preservation of the Tillamook forest.

ITEM NO. 2: EMPLOYEE OF THE MONTH: Commissioner Firman read the press release making Steven Bower the employee of the month. Deputy Bower worked for the Sheriff's Department.

ITEM NO. 3: HOSPITAL REMODELING PROJECT UPDATE: Mr. Daniels provided an update (attached) and described the detail work being done on the new addition. He discussed the roof leak problems at the interface. The new lobby would be on line in mid-February. The Board discussed the problems associated with subcontractors who did not make timely or appropriate labor and materials payments. Mr. Daniels discussed a similar issue with the jail remodel.

ITEM NO. 4: MISCELLANEOUS PUBLIC WORKS: Mr. Oshel distributed a list of storm damage from the first three storms. He estimated there was \$150,000 in damages, with less than ½

**MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999**

Page 2

[Filed with County Clerk 2-18-99]

eligible for Federal Highway aid money. The FHA aid was only triggered with \$1 million in damages. At this point only about \$.5 million in damages have been identified.

Mr. Oshel updated the Board on the Bewley Creek Road issues regarding the bridge height. He read from the consultant's report, stating that the new bridge was an improvement over the road, but was never intended to stop flooding. As to the right-of-way personnel from ODOT, he was still doing follow up.

**SITTING AS THE BOARD OF
THE SOLID WASTE SERVICE DISTRICT**

ITEM NO. 5: MISCELLANEOUS SERVICE DISTRICT MATTERS: There was no discussion.

**SITTING AS THE
BOARD OF COMMISSIONERS**

**ITEM NO. 6: DISCUSSION CONCERNING FLOOD CONTROL & FLOODING ON
MAKINSTER ROAD:** Mr. Boge presented letters from various property owners and pictures of the old Bewley Creek bridge. The material was referred to Mr. Oshel for his review. Mr. Boge also presented photos of damage to the Drake property in 1996. Mr. Oshel said he would work with Mr. Boge on these matters.

Commissioner Firman said Senator Wyden's office was interested in working with the County on the flooding issues. Chair Cameron had also received a similar call from Senator Smith's office.

Mr. Boge also presented pictures of the previous Bewley Creek Bridge to Mr. Oshel.

Mr. Wyss presented a letter from Mari Witcher. He said nothing ever got done on Makinster Road, and he described the problems. The Board acknowledged the road was a problem.

Mr. Ron Makinster provided photos showing dry fields, but with the road under water. Mr. Oshel said that siltation had raised the level of the fields over the years. Mr. Makinster said the Road Department used to raise the road periodically. If it was raised, 90% of the water would run off. He described a prior Corps of Engineers idea for a solution. He then described a different alternative, which was raising the road along a levy which would be constructed right along the river. He said it usually took an additional 24-36 hours after Highway 101 was dry for Makinster Road to clear of water. He said the County had started a 3-year project on the road but had run out of money the first year.

Richard Chelone discussed a 3-4 foot culvert at a particular corner. There was a discussion regarding the needed work for Project Impact.

**MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999**

Page 3

[Filed with County Clerk 2-18-99]

Greg Sands also addressed some of the smaller tide gates missing flapper valves.

Mr. Oshel drew a map of the road and discussed the effect of a culvert at a key location in the road. He discussed the road funding issues and added that this area was part of the new flood plain mapping. Mr. Oshel discussed the small tide gates and the maintenance needs. He would meet with Mr. Kuntz and follow up on the maintenance.

Mr. Oshel discussed the issue of raising the road and the Corps's constitutional issues preventing them from contracting with Oregon counties. Chair Cameron suggested they work with Mr. Manning, the Performance Partnership and the Corps' representatives. Mr. Oshel was asked to put these items into a document the Board could bring forward. There was discussion regarding the historic floods in the area.

ITEM NO. 7: CONSIDERATION OF IRREVOCABLE LIMITED POWER OF ATTORNEY, LOCAL GOVERNMENT INVESTMENT POOL FOR TRASK RIVER ROAD SLOPE STABILIZATION PROJECT N. X-ER-0336(058) AGMT. NO. 15330-ROW: Mr. Oshel said this would pay for for engineering on this slide repair at Mile Post 6 on the Trask River Road.

Commissioner Firman moved to authorize the Chair to sign, Commissioner Josi seconded, passed with three aye votes.

Chair Cameron signed the form.

ITEM NO. 8: EXECUTION OF ORDER IN THE MATTER OF THE TRANSFER OF CERTAIN COUNTY PROPERTY AS A RESULT OF THE SALE HELD DECEMBER 30, 1998: Commission Josi moved to sign the order, Commissioner Firman seconded, passed with three aye votes.

The Commissioners signed Order #99-02.

ITEM NO. 9: CONSIDERATION OF BIDS FOR PARCELS #29 & 30 BY JAMES GRIFFIN, ADJOINING PROPERTY OWNER: Commissioner Firman moved to accept the bids and award the purchase to James Griffin, Commissioner Josi seconded, passed with three aye votes.

Chair Cameron recessed the meeting at 10:03 a.m. and reconvened at 10:07 a.m.

ITEM NO. 10: AP-V-98-16(a): APPEAL OF PLANNING COMMISSION DECISION DENYING VARIANCE TO LAND USE ORDINANCE SECTION 3.008, SMALL FARM WOODLOT-10 (SFW-10) ZONE TO DIVIDE AN APPROXIMATELY 14.80 ACRE PARCEL INTO TWO 7.40 ACRE PARCELS. STAFF DENIED VARIANCE IN ADMINISTRATIVE DECISION; APPLICANT APPEALED TO PLANNING COMMISSION, WHICH DENIED THE APPEAL/ROY B. & WILLIAM R. SANDERSON, APPLICANTS & OWNERS, ROY B.

MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999

Page 4

[Filed with County Clerk 2-18-99]

APPLICANTS & OWNERS, ROY B. SANDERSON, APPELLANT: Chair Cameron read the jurisdictional matters into the record. The applicable standards were distributed.

Mr. Plummer, Senior Planner, submitted to the Board the additional items which were not in the packet, as well as an aerial photo. He summarized the staff report and said that staff and the Planning Commission concluded that the application did not meet the criteria required for a variance. Staff found that there were no circumstances that existed which prevented placement of a structure. He also summarized concerns by the Oregon Department of Forestry regarding the variance and the potential for conflict if additional dwellings were permitted. He said that none of the other similarly sized parcels in the immediate area had more than one dwelling. He discussed the history of zoning the area and how the SFW-10 zone was applied. In the last ten years they had only granted one variance on lot size in this zone. That variance met all the variance criteria.

The Board discussed with Mr. Plummer the effect of ownership issues prior to zoning. Mr. Plummer referred to a memo from Mr. Affolter outlining concerns. He concluded by saying that the Planning Commission had also denied the request.

Joel Sacks, 41000 Anderson road, described the fact that in 1977, the prior owners bought property on contract. At that time, the property could have been divided into 2-acre parcels, which could have each been built on. However, the contract seller would not let them change the zoning in case they did not pay off the contract. It took ten years to pay it off, but in 1982 the zoning laws changed. He showed a map demonstrating that in 1977 it was the intent to divide the property into two parcels. He referred to the map showing that 85% of lots on Anderson Road were less than 7 acres. If the property were divided east-west, then there would still only be one structure adjoining the forest land. Logic demanded the variance. Mr. Sacks added that Coal Creek separated the parcel from the adjoining farm land.

The Board discussed Mr. Labhart's (ODF) concerns and further land divisions.

Frank Talak, 40165 Anderson Road, discussed the land sale history in 1977 and spoke in favor. He said that everyone on Anderson Road favored the application. He addressed the precedent issues and felt the problem was not self-created because of the contract issue. He said that if this were granted, it would bring this parcel into conformance with the rest of the neighborhood.

Chair Cameron closed the public hearing and asked staff for input.

Mr. Affolter stated that Don LaFrance had not participated in this matter as a member of the Planning Commission. Mr. Affolter discussed the precedent issue and how this could cause people to use the variance process to reduce lot size, rather than rezoning. He said the Oregon State Forestry Department had strong objections, which he discussed. Mr. Affolter also described the 1982 zoning for this area, which he was involved with at the time. He discussed the possibility of Tillamook County creating a five-acre zone in the future. He discussed the precedent issues with the Board.

MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999

Page 5

[Filed with County Clerk 2-18-99]

Board. And reviewed the process for creating a five-acre zone throughout the County.

Commissioner Firman discussed her difficulties with item (c) of the standards. The Board discussed the possibility applying conditions whereby the applicant could not complain about adjacent forest practices, if the variance were granted. Mr. Affolter responded regarding case law. Counsel Sargent said that a title holder could legally prevent a rezoning.

Mr. Sacks rebutted by saying that all property owners along Anderson Road supported the change. He also reiterated the issues about lot configuration and how there would be no additional impact to ODF.

Mr. Talak also rebutted by saying that if this change was allowed, the ODF would only be dealing with one adjacent owner, rather than two owners as presently configured. The criteria also differentiates between area versus zone. He felt the variance procedure was meant to address what was fair and right.

Chair Cameron closed the testimony.

Commissioner Firman said she appreciated the time and energy of the Planning Commission and the Community Development staff. She thought criteria (a) was weak, and she did not have a problem with a 7.5 acre parcel because of the characteristics of other lots along Anderson Road. She said that standard (b) was met because of the way the lots would be divided. Under criteria (c), the 7.5 acres met open space requirements. Regarding (d), she felt there were no other reasonable alternatives, and she was leaning toward granting the variance.

Commissioner Josi said he agreed with Commissioner Firman's conclusions on the criteria, but he said that there were no current alternatives. He served for five years on the Bay City Planning Commission and in the Legislature and had profound respect for land use law. His first thought on this matter was to deny it, but on further reflection, he felt a zone change was not realistic. He was concerned about setting precedent, but that was mitigated by the fact that staff was considering a SFW-5 zone. It was a basic fairness issue, which would be addressed by granting the variance. He also discussed separation of powers issues. The ramifications of the original owners not allowing the use by the contract buyers, the existence of the creek, and the location of the one house adjacent to ODF land versus two houses and no additional conflict.

Commissioner Josi also discussed the conflict with protecting other resource lands from growth and that by allowing some growth, it alleviated that conflict to a small degree.

Chair Cameron said she supported land use laws and initially was not going to vote for the variance. However, on criteria #1, there was a catch-22 because the contract buyers were denied a right. She was concerned with incompatibility of land use and ODF's concerns, which Mr. Labhart was not

**MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999**

Page 6

[Filed with County Clerk 2-18-99]

present to discuss. She did not feel it was a strong enough argument in this case because of the adjacent residential uses. She would have preferred a 5-acre zoning in this case. She would have to grant the appeal because of the unique circumstances of the case.

Commissioner Firman moved to grant the appeal and allow the variance, Commissioner Josi seconded, passed with three aye votes.

ITEM NO. 11: CONSIDERATION OF REQUEST FROM HEADLIGHT HERALD FOR RELEASE OF SETTLEMENT RECORDS OF HUDGEON & HENDERSON V. TILLAMOOK COUNTY: Chair Cameron said she had invited Ms. Shaffer from the Headlight Herald to discuss how the County can improve communications process. Commissioner Firman said the Board had discussed these issues with the paper over the years and she related the chronology on this issue. She asked Mr. Sargent to address the matter.

Counsel Sargent had felt there was a privacy issue in connection with the paper's request to obtain the settlement agreement on the Hudgeon & Henderson v. Tillamook County lawsuit, which was why he had denied the request. The District Attorney, however, had now indicated that information must be released. By that action, he has insulated the County from a privacy claim by the opposing parties. Commissioner Josi said Counsel Sargent had made a political decision, and he was not hired to do that; he should only address the letter of the law. Chair Cameron said that as Chair, she would commit to ensuring the public had good access to information.

Ms. Shaffer described the issues around the paper's ability to get information from the County. The Board discussed a particular instance. Commissioner Firman state that this was why the County needed a Public Information Officer or ombudsman. Commissioner Josi said it was his New Year's resolution to open the doors of government.

The Board told Ms. Shaffer that if she could not get the information she needed, her second phone call needed to be to the Board. Commissioner Josi said they needed continual feedback. Ms. Neal said she had no access to the police reports here, as she had in Seaside. Counsel Sargent was asked to look into this.

Ms. Shaffer discussed the book "Oregon Access" and gave a copy to the Board. Chair Cameron wanted to get copies to employees. Commissioner Josi asked the paper to report back in thirty days and suggested that the Board hold a workshop with the department heads and elected officials on the matter. Mr. Smith, Bay City Examiner, said he was happy to see this occur.

UNSCHEDULED: Discussion Concerning Meadowlake Dam: Mr. Boge provided the Board with copies of his research on the dame and the causes of potential flooding from the Trask Dam.

UNSCHEDULED: Consideration of Order Appointing Members to the Tillamook County Futures Council: Commissioner Firman moved to sign the order, Commissioner Josi seconded,

**MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, January 6, 1999**

Page 7

[Filed with County Clerk 2-18-99]

passed with three aye votes.

The Board signed Order #99-03, appointing Eugene Norris and Don Gonzalez.

UNSCHEDULED: Various Matters: Mr. Levesque updated the Board on the need to do an additional resolution on the land exchange.

Mr. Affolter said that Craig Wakefield, Building Inspector, would be going to training for a week and discussed the need to make a decision on the applications for current building inspector position. He asked for Board approval of hiring at Step 3; there was money in his budget.

There was a consensus to approve this.

Mr. Hurliman said he wanted the Family Resource Center issue to go to a vote of the people. The Board said the matter would be scheduled for further discussion at a future meeting. Counsel Sargent was asked to prepare a legal opinion as to whether this could be put to a vote. There was discussion regarding misinformation on this issue.

Chair Cameron adjourned the meeting at 11:57 a.m.

RESPECTFULLY submitted this ____ day of _____, 199__ .

County Clerk: Josephine Veltri

Mary Wujcik, Recording Secretary
& Special Deputy

APPROVED BY:

Chairperson

Vice Chairperson

Commissioner