MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS’ MEETING
Wednesday, April 17, 2002
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COMMISSIONERS PRESENT: Charles J. Hurliman, Chairperson
Tim Josi, Vice Chairperson
Paul A. Hanneman, Commissioner

STAFF PRESENT: William K. Sargent, County Counsel
Paul Levesque, Management Analyst

STAFF PRESENT FOR PORTIONS OF MEETING: Aaron Suko, Public Works Director; Tom
Manning, Emergency Management Director; Nadine Smith, Planning Manager; Lisa Phipps, Coastal
Resource Planner; Karen Richards, Treasurer

GUEST: Ken O’Toole, Headlight Herald; Dale Jordan, DLCD; Harry Hewitt; Rudy Fenk, SWCD;
Chris Knutsen, ODFW; see attached guest list

CALL TO ORDER: By Chair Hurliman at 9:03 a.m. in the Commissioners’ Meeting Room.

ITEM NO. 1: WELCOME TO ELECTED OFFICIALS: None were present at the beginning of
the meeting.

ITEM NO. 2: PUBLIC COMMENT - NON-AGENDA ITEMS & REQUEST TO SIGN
GUEST LIST: There were no comments.

ITEM NO. 3: ANNOUNCEMENT OF AWARD BY NATIONAL OCEANIC &
ATMOSPHERIC AGENCY TO TILLAMOOK COUNTY WEATHER REPORTER - PETE
KOENEKE - FOR OUTSTANDING SERVICES: This item was postponed until April 24.

ITEM NO. 4: CONSIDERATION OF RESOLUTION PROCLAIMING MAY 2 & 3, 2002 AS
FARM-FEST DAYS IN TILLAMOOK COUNTY: Mr. Hewitt introduced the students from the
TOPS program. He gave a history of Farm Fest. The Board congratulated the leaders.
Commissioner Josi read portions of the resolution and moved that the Board approve it,
Commissioner Hanneman seconded.

Commissioner Hanneman reported on the Creamery’s annual meeting and comments about the
success of local farms compared to small farms throughout the rest of the country.

Motion passed with three aye votes.

The Commissioners signed Resolution #R-02-3.

Chair Hurliman recessed the meeting at 9:09 a.m. and reconvened at 9:14 a.m.

ITEM NO. 5: CONSENT CALENDAR:
Board of Commissioners’ Meeting Minutes for March 13, 18, 20, 25, and April 1, 2002; Signing of Oregon Commission on Children & Families Fiscal Signature Authorization Form: Commissioner Hanneman read the items in the calendar and moved to approve them, Commissioner Josi seconded, passed with three aye votes.

The items were signed later in the day.

ITEM NO. 6: CONSIDERATION OF ORDER INCREASING THE GENERAL FUND - ASSESSOR’S DEPARTMENT BY $16,000 DUE TO RECEIPT OF GRANT FUNDS FROM THE STATE OF OREGON, DEPARTMENT OF REVENUE: Ms. Richards said this was for a $16,000 increase in the Assessor’s ORMAP grant.

Commissioner Josi moved to sign the order, Commissioner Hanneman seconded, passed with three aye votes.

The Commissioners signed Order #02-45.

ITEM NO. 7: CONSIDERATION OF ORDER INCREASING THE GENERAL FUND - EMERGENCY MANAGEMENT DEPARTMENT BY $10,745 DUE TO RECEIPT OF GRANT FUNDS FROM FEMA FOR TERRORISM PLANNING: Ms. Richards described the nature of the grant.

Commissioner Hanneman moved to sign the order, Commissioner Josi seconded, passed with three aye votes.

The Commissioners signed Order #02-46.

ITEM NO. 8: PUBLIC HEARING: CONSIDERATION OF ADOPTING A SUPPLEMENTAL BUDGET FOR FISCAL YEAR 2001-2002 AND APPROPRIATING FUNDS: Chair Hurliman opened the hearing. Ms. Richards said this was needed to address issues that had come up over the year, which were not contemplated at the time the budget was adopted. This included audit adjustments for the Feasibility Study, the Sandlake-Galloway Road project loan; CCF; Community Corrections and other items detailed on the exhibit to the order.

Hearing no public testimony, Chair Hurliman closed the hearing.

Commissioner Josi moved the sign the order, Commissioner Hanneman seconded, passed with three aye votes.

The Commissioners signed Order #02-47.

ITEM NO. 9: CONSIDERATION OF ORDER SETTING THE AMOUNT FOR CAPITALIZED FIXED ASSETS AT $5,000: Ms. Richards indicated this was a change from
$500 to $5000 in the value of the County’s fixed asset threshold. It was based in part on recommendations from the auditor and the five-year life expectancy of the assets.

Commissioner Hanneman moved to sign the order, Commissioner Josi seconded, passed with three aye votes.

The Commissioners signed Order #02-48.

**ITEM NO. 10: CONSIDERATION OF ORDER WITHDRAWING CERTAIN COUNTY PROPERTIES FROM THE MAY 3, 2002 PUBLIC SALE:** Mr. Levesque said that three properties needed to be withdrawn, two due to requests from non-profit agencies for use as low income housing sites, and one for a sale to the owner of record. Each of these requests would be formally addressed at upcoming meetings.

Commissioner Josi moved to sign the order, Commissioner Hanneman seconded, passed with three aye votes.

The Commissioners signed Order #02-49.

Chair Hurliman recessed the meeting at 9:25 a.m. and reconvened at 9:47 a.m.

**ITEM NO. 11: CONSIDERATION OF INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN OREGON DEPARTMENT OF FISH & WILDLIFE, TILLAMOOK COUNTY SOIL & WATER CONSERVATION DISTRICT AND TILLAMOOK COUNTY FOR WETLAND ACQUISITION PROJECT:** Mr. Levesque gave the background on the agreement. Mr. Fenk spoke about the March 28 action taken by the Soil & Water Conservation District (SWCD) regarding the District’s desire for management of the property. Mr. Knutsen said he believed that SWCD’s goals could interfere with the IGA. He and Mr. Levesque clarified the agreement provisions. Mr. Fenk said he could live with the IGA as written.

Mr. Rosenberg said he was comfortable with the County signing off on all matters on the property, but he suggested there be several more members on the Advisory Committee of the newly-formed Estuary Improvement Group and the North 101 group. He said they were willing to take over maintenance of the flood gates. Mr. Levesque said the IGA would accommodate transfer of maintenance on the flood control structures.

There was discussion regarding committee composition. Mr. Rosenberg said he was now comfortable with the composition. There was further discussion regarding the importance of protecting flood values.

Commissioner Josi moved to sign the IGA, Commissioner Hanneman seconded.

Commissioner Hanneman said that in the future the minutes would show his concerns that flood
control interests would be adequately represented. Commissioner Josi agreed but felt the IGA was a living document.

Motion passed with three aye votes.

The Commissioners signed the IGA.

**ITEM NO. 13: CONSIDERATION OF INTERGOVERNMENTAL AGREEMENT (IGA) AND DATA LICENSING AGREEMENT WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR USE OF TILLAMOOK COUNTY GEOGRAPHIC INFORMATION SYSTEM:** Ms. Gaffney presented the background information on the item and the County’s investment in this data.

Commissioner Josi moved to authorize the Chair to sign the IGA and the licensing agreement, motion passed with three aye votes.

The Chair signed the two agreements.

**ITEM NO. 14: CONSIDERATION OF GIS DATA LICENSING AGREEMENT WITH TILLAMOOK COUNTY CREAMERY ASSOCIATION:** Commissioner Josi moved to authorize the Chair to sign the licensing agreement, motion passed with three aye votes.

The Chair signed the agreement.

Chair Hurliman recessed the meeting at 10:47 a.m. and reconvened at 10:50 a.m.

This portion of the minutes RESPECTFULLY submitted

by: __________________________
Recording Secretary & Special Deputy

[The following portion of the minutes were taken by Sarah Absher.]

**ITEM NO. 12: PRESENTATION OF RECOMMENDATIONS FROM TILLAMOOK COUNTY RIPARIAN ADVISORY COMMITTEE REGARDING DIRECTION OF STAFF ON DRAFTING AN ORDINANCE:** Ms Phipps presented the six options the Riparian Advisory Committee has explored for the past two years, which were:

1. Adopt Safe Harbor outright;
2. Adopt Safe Harbor to come into compliance with the Statewide Planning Goals, but pursue the inventory approach;
3. Utilize the inventory approach and apply the ESEE analysis;
4. Continue with the group's initial approach combining Safe Harbor and the inventory approach;
5. Do nothing;
6. Tweak the current ordinance.

The two options the Riparian Advisory Committee had chosen through consensus to give as recommendations to the Board of Commissioners were:

A) Adopt Safe Harbor to come into compliance with the Statewide Planning Goals, but pursue the inventory approach with a start and completion date so there is the incentive to continue forward;

B) To continue with the group's initial approach combining Safe Harbor and the inventory approach.

Ms. Phipps explained what was involved in each of the options. The Safe Harbor approach defined in OAR 660-023 is an easier approach because it is so well defined. Ms. Phipps added that there are tools available for assistance including a model ordinance plus six different types of mapping: ODF stream classification maps, ODFW fish habitat maps, FEMA maps, aerial maps, National Wetlands inventory maps, and USGS 7.5 minute quad maps.

Additionally, Ms. Phipps said that Safe Harbor allows for certain uses within riparian areas such as streets, roads, drainage facilities, water related and water dependent uses. It also allows for the replacement of a structure in its existing footprint.

Ms. Phipps stated another benefit of the Safe Harbor provision is that it allows for permanent alterations, up to 50% of a 75 foot management corridor including structures or impervious surfaces, as long as the property owner can show they are restoring the riparian area on the property.

For the inventory approach, Ms. Phipps continued all areas of water need to be examined. By definition, she explained this included any area between the banks of a lake, pond, river, perennial stream, fish bearing intermittent stream, all areas that involve fish habitat, and also includes those that meet spawning, rearing, migration, and food supply needs.

In addition, all wetlands within riparian areas will be included in this process. Regarding wetland areas adjacent to riparian areas, Ms. Phipps said that the corridor would start from the most landward leading edge of that wetland. She noted that this would only be in that localized area.

In achieving compliance with Goal 5, the ESEE analysis would be applied and a Goal 5 program would be created.

For issues of cost, Ms. Phipps used the City of Tillamook for her example. The City of Tillamook spent approximately $11,000 to hire a consultant to do an inventory of the city and their urban growth boundaries. Ms. Phipps added that the County might have to contract out for certain portions of the inventory.
Even though this would only be applied to non-farm or forest areas, all waterways need to be inventoried to establish a value of these areas. The only zones not affected would be farm and forest.

Commissioner Josi made inquiries about Tillamook County’s time line for this task.

Dale Jordan, the representative from DLCD, explained that this task is one of sixteen tasks included in the County's Periodic Review plan. This task is the tenth of the sixteen, the Riparian Area Protection Task, which requires developing a program to come into compliance with Goals 5 (natural resources), 17 (Shoreland Goal), and any applicable administrative ordinances and statutes to ensure the protection of riparian areas through education, incentives, technical assistance, and regulations. The finished product will be an adopted ordinance or ordinances and procedures that assure protection consistent with Goal 5 and Goal 7. By statute, it is required for every city and county to do a Periodic Review since they were acknowledged.

Mr. Jordan noted that this task has been extended four or five times. The current deadline is December 31, 2002.

Commissioner Josi asked what would happen if Tillamook County did not meet their deadline.

Mr. Jordan explained that DLCD would send a letter to the County notifying them that they had missed their deadline and would ask for submittal of an adopted ordinance. He added that the County could have to go before the LCDC Commission and give an explanation as to why they have not completed this task and what they would do to finish.

If the County did not show at this hearing, Mr. Jordan continued, the Commission would issue some kind of order instructing the County to take measures to come into compliance. If the County refused, Mr. Jordan said a possible reprimand for being in violation of a Commissioner order could be that the Commission could make a request to have sin tax revenues withheld from the County.

Mr. Jordan noted that this was not something that could be appealed directly to LUBA because of the jurisdiction.

Commissioner Josi wanted to know how many cities and counties in Oregon have adopted Safe Harbor.

Mr. Jordan gave a range of 20 to 30 cities in Oregon that have adopted Safe Harbor. So far, one county has adopted Safe Harbor.

Commissioner Josi inquired about the status of the other counties in Oregon.

Mr. Jordan explained that Tillamook County is the second county to have to come into compliance
with Goal 5. He explained that this task is not a part of the Periodic Review for some areas, but eventually every county will have to comply because it will become a part of their Periodic Review.

Mr. Jordan reiterated the number of resources available to the County to use as aides in drafting this ordinance. He brought with him for planning staff a copy of the rural lands data base compact disc and the publication House Plans for Narrow or Small Lots for small footprints in riparian areas so a property owner can retain the use of the property.

Commissioner Josi wanted to know how long another extension of time would be if they requested it and asked if there was a definitive amount of time for a subsequent extension.

Mr. Jordan explained that during the last legislative session, Senate Bill 543 changed the Periodic Review process. Tillamook County amended its work program under Senate Bill 543 and that is where these extended dates came from. Tillamook County chose these dates.

Continuing, Mr. Jordan added that Senate Bill 417 changed Senate Bill 543 in that under Senate Bill 417 a one-year extension of time can be requested but is predicated on progress being made. If Tillamook County were interested in asking for this one-year extension, the efforts involved in trying to come into compliance would need to be indicated.

Commissioner Josi felt that the problem with the second option was cost and time and that on the surface it did not look like a viable option. He wanted to know if they could apply for an additional one-year extension in December 31, 2003.

Because this was set by Statute, Mr. Jordan stated that an additional one-year extension could not be asked for.

Chair Hurliman asked for Mr. Hooley's remarks.

Loten Hooley, chairman of the Tillamook County Landowners Association, stated that they have watched a group for two years struggle with this issue, come to the decision that the State has been right all along, then form the solution to adopt Safe Harbor and give up.

Mr. Hooley told the Board of Commissioners that he has no doubt Safe Harbor would be permanent and that the setbacks would be more restraining with the next Periodic Review.

Being the "land of many waters", Mr. Hooley feels that Tillamook County is an exception to the rule. With the proposed setbacks possibly being 50-75 feet, Mr. Hooley said this could be extremely painful for Tillamook County and added that what is most quantifiable is the setbacks the smaller streams could incur, where they would be doubled or more and measured from the top of bank. The environmental impact is one of the four components of the ESEE analysis, he explained, but the social and economic impacts that this Rule would enforce are immeasurable.
Mr. Hooley said this ordinance is an extreme hardship to Tillamook County. He argued that there is no mention of where the numbers for these Safe Harbor proposed setbacks came from in the ordinance.

In order to come into compliance, Mr. Hooley proposed to the Board of Commissioners that they take the current ordinance and do some minor adjustments to make it workable.

Mr. Hooley added that he was offended that the State would come in and drop off a list of house plans to justify their taking of property.

He acknowledged that Commissioner Josi has felt some of the repercussions of this issue and noted that he knows of two other Commissioners who also felt those repercussions that were not seen this day. He guaranteed that if Safe Harbor were adopted, things would get ugly again. Mr. Hooley stated that he is not making threats, but that people in Tillamook County are upset and are willing to do anything to prevent this from happening. He concluded by saying that if Tillamook County is on the leading edge of this issue, it is better to fight the fight now.

Rob Trost, member of the Riparian Advisory Committee and Chair of the Ordinance Subcommittee, thanked the Board of Commissioners for letting him speak so that he could "get on with life".

Mr. Trost began by explaining that he has missed two meetings in the last two years, the second being last week when the committee "gave the farm away". He felt that there was more of a consensus in the committee than what was articulated by the limited choices that were heard on this day. He thought that it was important to think outside of the box and noted that the committee has felt constrained by this process. He felt that the answers could be found here locally and said he does not believe that the State has all of the answers. The end goal, in his view, is to develop and implement a process that continues to honor the riparian resources they have been given and provide good stewardship. He felt that could be done in the context with amending the existing ordinance and the incorporation of an educational incentive component. He also felt this was something that could be completed by the December deadline.

Commissioner Josi stated his surprise that Mr. Trost was not at the last meeting when the consensus was adopted.

Mr. Trost thought the consensus was that they were going to take Safe Harbor and augment it with either exception.

Commissioner Josi clarified that, based on what Mr. Trost had said, the committee would not have reached consensus on these options if he had been at this meeting.

Mr. Trost felt that if the constraints of this process had been taken away from the discussion, there would have been more of a consensus on the committee than apparent. He explained that there are certain people who feel constrained by State regulation and that when the process is superimposed, the consensus breaks down.
Commissioner Hanneman expressed his appreciation for all of the time the Riparian Advisory Committee has put in the last two years.

Don Hurd stated his concerns about the County not being economically viable in the next twenty years due to impacts of a riparian ordinance. He explained that the ordinance would limit new ownership and therefore the County would not receive additional taxes. He feels that Tillamook County is unique and the "one size fits all" is not applicable. He told the Commissioners that they have a responsibility to the citizens and landowners of Tillamook County to do what they want. He urged the Commissioners to stand up to the State for economical and social reasons.

Dick Stanfill commended the Planning Department staff. By not having seen a report of any kind in the last two years of work to show the need or to justify the need for change, he questioned the necessity of a riparian ordinance. He said that when citizens like himself have been working closely with the Planning staff on riparian areas and have accomplished all goals, he questions their return on investment. He suggested Tillamook County take its time and measure up any change or modifications to the existing ordinance. In working with the Planning staff, he does not feel the County needs the State's assistance.

Commissioner Josi referred to the letter to the editor Mr. Stanfill had submitted to the Headlight Herald where Mr. Stanfill had suggested he had something to do with the closing of the hatcheries.

After a brief discussion of their differences of opinions on this matter, the meeting was called back to order.

Leslie Pitman submitted three letters to the Board of Commissioners. One letter was from her. Another letter was from Mr. Greg Sands. The third letter was from Aileen Allen. She noted that Mr. Sands and Mrs. Allen could not be at the meeting that day.

Mrs. Pitman made reference to the documentation Mr. Jordan had mentioned that committed Tillamook County to the Periodic Review process. She told the Commissioners that she has repeatedly requested this information and has been unsuccessful in obtaining a copy. She noted that Dick Blum has also been unable to receive a copy. Without reviewing this information, she does not feel that Tillamook County should move ahead with this process.

Mrs. Pitman also recalled a meeting the Board of Commissioners held regarding this issue at the Tillamook High School auditorium. She stated that at that meeting Greg Hathaway, Tillamook County's legal Land Use attorney said that Tillamook County had met the requirements of the Periodic Review process.

There was no one else who wished to comment from the public.

Ms. Phipps told the Commissioners that it was important to take into account what everyone had said, that there were many valid concerns. She acknowledged her obligation to Community Development to help bring Tillamook County into compliance with the Statewide Planning Goals.
She made reference to Mr. Trost's comment about the "farm being sold". She noted that the consensus the committee came to on March 20th, 2002 was still part of the recommendations submitted before the Board on this day.

Doug Rosenberg, former member of the Riparian Advisory Committee, stated that they had repeatedly asked different resource departments to furnish lists of areas with specific riparian problems. He expressed his sincerity about the Tillamook County Landowner's Association helping individuals come into good standing that owned property in riparian areas in the County. He felt that this would take the pressure of the County. He said they have never received anything specific from those agencies.

Chris Knutsen, ODFW, told the Board that he and Bruce Apple were asked to put together a tour of good and degraded pieces of riparian areas. He noted that only about one half of the Riparian Advisory Committee was in attendance for that tour.

Commissioner Hanneman wanted to know if the degraded riparian areas were due to construction, dwellings, the harvesting of natural resources, or if they were naturally created without human involvement.

Mr. Knutsen explained that the tour focused on primarily rural residential degraded riparian areas. He gave a list of examples including bank failure and yards that went to the streams.

Mr. Jordan from DLCD wanted to clarify for the record that the State did not tell Tillamook County what option they had to follow and have still not told the County which option to follow. He told the Board that they needed to choose what would work best for Tillamook County. He pledged DLCD's time and effort to act as a resource and provide all of the information they have available.

Chair Hurliman felt their first priority should be to "tweak" the existing ordinance and work with Mr. Jordan to find common ground in that area. If an agreement cannot be reached in that area, he felt that the County should then explore different alternatives.

Commissioner Hanneman said he would like to see an ordinance developed with the maximum amount of flexibility with the least amount of impact or damage to the economy or the dairy industry. He added that he does watch the Riparian Advisory Committee meetings on Channel 18 and has paid attention to what the Riparian Advisory Committee has been doing. He felt that the committee has great educational value to the County.

Commissioner Josi wanted more information from DLCD in terms of past history and also wanted to check into the information regarding Mr. Hathaway's statement Mrs. Pitman had brought up. He was not prepared to give a decision, but offered his thoughts.

Commissioner Josi felt that the County was in a "legal box", with the sideboards being Goal 5.

He said the County was faced with two options. The first option would be to choose one of the two directions recommended by the Riparian Advisory Committee. The second option would be to hold
Chair Hurliman made a motion to direct Staff to work with Mr. Jordan from DLCD to "tweak" the existing ordinance to protect water and the economic needs of Tillamook County.

Commissioner Hanneman seconded the motion for purposes of discussion. He clarified that the motion was to work within the framework of the existing ordinance and make minor modifications that may or may not meet DLCD's direction.

Chair Hurliman said that was correct.

Commissioner Hanneman asked what the specific time period would be for making these modifications as well as the time used by DLCD for an informal reply.

Chair Hurliman said the members from the Riparian Advisory Committee would be the main focus from where these ideas would come from.

Ms. Phipps added that Staff would utilize the Riparian Advisory Committee and that the meetings are open to the public. She said the committee offers a forum for people to give their suggestions.

Time frame wise, Ms. Phipps said that Safe Harbor could probably be done by August or September and then go through the process which entails presenting the proposal to the Tillamook County Planning Commission and then to the Board of Commissioners for approval. If the Board of Commissioners approved the proposal, she explained, DLCD would then have thirty days to give their response. "Tweaking" the current ordinance could be done within two months.

Ms. Phipps also made note that if this option was not feasible by DLCD's standards, the County could have then lost one, two, or three months in this process.

Chair Hurliman asked Mr. Hooley if the Tillamook County Landowner's Association were prepared to give Ms. Phipps recommendations.

Mr. Hooley said they could have something together in a month. Commissioner Josi noted that the County could also apply for a one-year extension if needed.

The Board took a vote. The motion carried unanimously.

**ITEM NO. 15: CONSIDERATION OF PERMIT NO. DACA67-9-02-166 WITH THE DEPARTMENT OF THE ARMY FOR AIR FORCE SEASHORE SURVIVAL TRAINING AT BAYOCEAN PENINSULA AND KINCHELOE POINT:** Commissioner Josi moved to authorize the Chair to sign the permit, Commissioner Hanneman seconded, passed with three aye votes.
The Chair signed the permit.

**ITEM NO. 16: BOARD CONCERNS - NON-AGENDA ITEMS: Discussion Concerning North Jetty Repair Work:** Commissioner Hanneman felt that this was a tremendous cost saver and moved to add an additional $1000 to complete the project. Commissioner Josi seconded the motion, passed with three aye votes.

Chair Hurliman asked to not be in attendance of the Monday morning staff meeting in order to a conference. Both Commissioners Josi and Commissioner Hanneman were okay with his absence.

**ITEM NO. 17: PUBLIC COMMENT:** There was none.

Chair Hurliman adjourned the meeting 12:51 p.m.

This portion of the minutes RESPECTFULLY submitted this ___ day of ________, 2002.

Sarah Absher, Recording Secretary

APPROVED BY:

________________________  __________________________  __________________________
Chairperson             Vice Chairperson             Commissioner