

MINUTES - TILLAMOOK COUNTY BOARD OF COMMISSIONERS' MEETING
Wednesday, December 1, 2004
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FILED
SOB
DEC 16 2004
8:45am
TASSI O'NEIL
COUNTY CLERK

1 **COMMISSIONERS PRESENT:** Paul A. Hanneman, Chairperson
2 Charles J. Hurliman, Vice Chairperson
3 Tim Josi, Commissioner
4

5 **STAFF PRESENT:** William K. Sargent, County Counsel
6 Paul Levesque, Management Analyst
7

8 **STAFF PRESENT FOR PORTIONS OF MEETING:** Bill Campbell, Community Development
9 Director; Lisa Phipps, Coastal Resource Planner; Tim Lutz, Assessor/Tax Collector; Tassi O'Neil,
10 County Clerk
11

12 **GUESTS:** Mark Labhart, County Commissioner-Elect; Ken O'Toole, Headlight Herald; Lenora
13 Lawrence; Christine I. Bolger; Don Hurd; John Gettman; Gus Meyer; John Ponce
14

15 **CALL TO ORDER:** By Chair Hanneman at 9:00 a.m. in the Commissioners' Meeting Room.
16

17 **ITEM NO. 1: WELCOME & REQUEST TO SIGN GUEST LIST:** The Chair welcomed
18 everyone to the meeting.
19

20 **ITEM NO. 2: PUBLIC COMMENTS - NON-AGENDA ITEMS:** Mr. Ponce, representing
21 Oregon Lore, presented to Commissioner Hurliman a hat he had designed relative to the Snowy
22 Plover issue and his efforts to keep the beaches open. Commissioner Hurliman noted that the
23 revised Habitat Conservation Plan still had inconsistencies relative to Goals 17 and 18. He thanked
24 Mr. Ponce for the hat.
25

26 Chair Hanneman noted that video tapes of today's meeting would be available.
27

28 **ITEM NO. 3: CONSIDERATION OF ORDER CANCELING TAX LAND INSTALLMENT**
29 **CONTRACT WITH GARY DINGES FOR NONPAYMENT:** Mr. Levesque said the County
30 rarely had to exercise this legal authority. He outlined the procedures for notice and due process for
31 Mr. Dinges.
32

33 Commissioner Hurliman moved to sign the order, Commissioner Josi seconded, passed with three
34 aye votes.
35

36 [The Commissioners signed Order #04-96 on December 6, 2004, after revisions.]
37

38 **ITEM NO. 4: CONSIDERATION OF ORDER REAPPOINTING GALE OUSELE TO THE**
39 **TILLAMOOK COUNTY PLANNING COMMISSION:** Mr. Campbell spoke of Ms. Ousele's
40 abilities and the desire to reappoint her.
41

42 Commissioner Josi moved to sign the order, Commissioner Hurliman seconded, passed with three
43 aye votes.
44

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1 The Commissioners signed Order #04-97, reappointing Ms. Ousele.
2
3

4 **ITEM NO. 7: BOARD CONCERNS - NON-AGENDA ITEMS & ANNOUNCEMENTS:**
5 Commissioner Hurliman reported on the responsiveness of DHS to its advisory committee on the
6 Ocean Shores coliform testing program. He talked about the importance of public notice and
7 education.
8

9 The Chair recessed the meeting at 9:20 a.m. and reconvened at 9:31 a.m.
10

11 **ITEM NO. 5: PUBLIC HEARING: IN THE MATTER OF PROHIBITING THE RUNNING**
12 **OF DOGS AT LARGE; PROVIDING FOR THE LICENSING, IMPOUNDMENT AND**
13 **CARE OF DOGS; PROVIDING FOR THE APPLICABILITY OF THIS ORDINANCE**
14 **WITHIN CERTAIN INCORPORATED CITIES; REPEALING PRIOR ENACTMENTS**
15 **AND ESTABLISHING PENALTIES FOR VIOLATIONS OF THIS ORDINANCE; AND**
16 **DECLARING AN EMERGENCY:** Chair Hanneman opened the public hearing. Mr. Levesque
17 outlined the background for the ordinance and reviewed its provisions. He said this was the first of
18 two public hearings, with the second one scheduled for December 15th.
19

20 Commissioner Hurliman asked for clarification of the term “running at large” relative to the 8-foot
21 leash. Mr. Levesque confirmed that a leash could be longer, as long as the dog was under the control
22 of the owner.
23

24 Mr. Lutz asked to which Court violations would be brought. Mr. Levesque said they would be under
25 Justice Court jurisdiction.
26

27 Hearing no further public comment, the hearing was closed.
28

29 **ITEM NO. 6: CONSIDERATION OF ORDER ADOPTING A CLAIMS FORM AND FEE**
30 **SCHEDULE FOR MEASURE 37 CLAIMS:** Chair Hanneman said he had asked Mr. Campbell
31 to be as clear and concise as possible. He outlined the process for presentations at the meeting.
32

33 Mr. Campbell said the local governments had responded affirmatively to the passage of Ballot
34 Measure 37. He said a set of all land use ordinances had been assembled and were available for
35 public review. An information sheet had also been prepared. The proposed order recognized the
36 Measure 37 mandate and its December 2nd effective date. He reviewed the provisions, including the
37 \$150 filing fee and \$44/hour for research above that.
38

39 Mr. Campbell said they had received one claim sometime ago and used it to determine the fee
40 structure; it took 4.5 hours of staff time. He said the fees recognized the personal benefits of a claim.
41

42 Mr. Campbell continued to review the order. He gave an example of applicability based on the date
43 of property acquisition. He said the attorneys at the AOC Conference had agreed that the property
44 owner would have to show enforcement against them in a particular land use application. There

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1 were some ambiguous provision in the Measure which the Court or Legislature would have to
2 address. The county had 180 days to act but the claim was not reviewed for completeness. There
3 must be proof of loss of value. A decision by the County was not a land use decision.

4
5 Mr. Campbell described the exemptions, including Coastal Zone Management Act; Flood Insurance
6 Act; Wild & Scenic Rivers Act; the ESA and other Federal acts; Statewide Goal 7 (natural hazards);
7 County Health Permitting programs or building code programs; tsunami zones; road rights-of-way;
8 and DEQ subsurface rules (lack of drain field). He then described other exemptions involving
9 pornography, alcoholic beverages, etc., as set forth directly in the Measure.

10
11 Mr. Campbell provided details on how the fees would apply, using examples. If not all the fees were
12 used, the balance would be reimbursed.

13
14 Commissioner Josi felt the reimbursement of unused fees needed to be made explicit in the order.
15 Mr. Campbell said he would add that clarification.

16
17 Commissioner Josi felt the Measure's limit of two years for retrospective claims also needed to be
18 included in the order. Mr. Campbell agreed, adding that the two years also applied to the new order.
19 He also referred to an additional item he had mentioned before the meeting.

20
21 Commissioner Hanneman made it clear that there was Board consensus that these three items be
22 made.

23
24 Commissioner Hurliman said his comments at Monday's Staff Meeting had already been
25 incorporated and he thanked the staff. He asked staff to describe for the public the kinds of
26 research that might be needed.

27
28 Mr. Campbell said transportation requirements may involve work by the Public Works Department.
29 These were public safety issues.

30
31 Counsel Sargent noted that as a claim, it was not reviewable.

32
33 Mr. Campbell discussed the types of proof needed for title succession and values. The burden of
34 proof was on the claimant, but they wanted to create a user-friendly process. He reiterated the
35 justification for the fees. A claimant was not required to use the form or pay the fee; but Tillamook
36 County would process the claim and bill the claimant for the time. They would not do research to
37 prove claimants' cases, but he added that they would counsel them about advisability of filing joint
38 claims with the State. They intended to refer claims to the State. He felt the order set forth an easy
39 process to follow.

40
41 There was a discussion regarding the likely inapplicability of Measure 56 notices, as these would not
42 be land use decisions.

43
44 Responding to a question from Chair Hanneman, Mr. Campbell said the fair market value was the

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1 basis of value judgements. He said some jurisdictions were requiring appraisals, but they were
2 leaving it up to the claimants as to how they establish values and whether they decided to use
3 appraisals. He also discussed how title work by a title company might help a claimant by a certified
4 chain of title.

5
6 Mr. Lutz said that in filing a claim, the burden of proof needed to document when the value losses
7 occurred. He said the County Appraisers were not qualified to do appraisals, and it was outside the
8 scope of the A&T Grant. It would be difficult to get an appraiser to prove a claim in that it would be
9 difficult to get value data from decades ago. There might be different results from today's values or
10 value changes at the time of the regulations.

11
12 Mr. Campbell said that agricultural and forest lands in Tillamook County had been administered
13 under State rules and thus may involve State claims. He said the information sheet said that.

14
15 Mr. Campbell said they would fix the typographical error on the Exhibit A claim form, which he
16 reviewed. The issue of transferability would probably be tested. He gave an example of a dwelling
17 in a farm zone, and added that waivers were personal to the claimant. He read all the portions of the
18 claim for requiring initials by the claimant.

19
20 Ms. O'Neil said the Clerk's Office would no do title searches but would assist people to research
21 deed records. She was also concerned that the order says fees would be charged, but that the County
22 would also not require the fee to process a claim. Mr. Campbell said the mandatory fee language
23 would allow them to track time and send a bill.

24
25 There was a discussion regarding Court fees relative to the County's fees. Counsel Sargent said that
26 if an applicant did not provide the information, the Board would have to deny the Claim . He felt
27 the fees were dirt cheap, and he would have preferred a fixed fee.

28
29 Mr. Hurd said it was the County's ordinances and not the State's regulations that related to the loss
30 of value. He was concerned about the provision in the form regarding whether the person had
31 exhausted all land use options (variance, conditional use, etc.). He felt that all he had to prove was
32 that he had title and owned the property.

33
34 Mr. Hurd also raised the issue regarding continuing damages if the County did not purchase the
35 property. He was also concerned about the lack of time for review of the order and its effective date.
36 Commissioner Josi thought the County had done everything possible to make this user-friendly. Mr.
37 Hurd agreed that Tillamook County was showing better good faith than other jurisdictions. Chair
38 Hanneman confirmed that amendments to the form made after today would be made available to
39 claimants if they came in with the old form.

40
41 Mr. Gettman said there was nothing in the order about Urban Grow Boundaries (UGBs). Mr.
42 Campbell said it would depend on when the date the relevant ordinance in question was adopted.
43 Mr. Gettman said Bay City's attorney recommended an intergovernmental agreement (IGA) for UGB
44 claims. Mr. Campbell said he would defer to legal counsel.

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1 Mr. Gettman recommended #6 of the order also include reference to forwarding UGB claims to the
2 cities. Counsel Sargent agreed that could be done.

3
4 Ms. Phipps said that, according to the Measure, if a city imposed the regulation, the City was
5 responsible. However, if the property in questions was now in the UGB but had been in County
6 jurisdiction prior to the regulation, it became more tricky. She clarified that this was an order not
7 an ordinance.

8
9 Counsel Sargent recanted regarding adding the language suggested by Mr. Gettman.

10
11 The Chair closed the hearing.

12
13 Commissioner Josi moved to adopt the order as amended to include suggestions noted in the
14 meeting, Commissioner Hurliman seconded, passed with three aye votes.

15
16 Mr. Campbell said they would re-type the order and bring it back to the Board for signing. The
17 Board thanked the staff for their work.

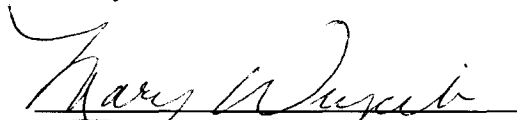
18
19 **ITEM NO. 7: BOARD CONCERNS - NON-AGENDA ITEMS & ANNOUNCEMENTS:** There
20 were none.

21
22 **ITEM NO. 8: PUBLIC COMMENTS:** There were none.

23
24 Chair Hanneman adjourned the meeting at 11:30 a.m.

25
26 **RESPECTFULLY** submitted this 15 day of December, 2004.

27
28 County Clerk: Tassi O'Neil

29
30 
31 Mary Wujcik, Recording Secretary
32 & Special Deputy
33
34

35 **APPROVED BY:**

36
37 
38 Paula Hanneman Chairperson
39
40 
41 Charlie S. Hurliman Vice Chairperson

Commissioner



CALL TO ORDER: Wednesday, December 1, 2004

BOARD OF COMMISSIONERS

1. **9:00 a.m.** Welcome & Request to Sign Guest List
2. Public Comment - Non-Agenda Items

LEGISLATIVE - ADMINISTRATIVE

3. Consideration of Order Canceling Tax Land Installment Contract with Gary Dinges for Nonpayment/Paul Levesque
4. Consideration of Order Reappointing Gail Ousele to the Tillamook County Planning Commission/ Bill Campbell
5. **9:30 a.m.** **Public Hearing:** In the Matter of Prohibiting the Running of Dogs at Large: Providing for the Licensing, Impoundment and Care of Dogs; Providing for the Applicability of this Ordinance within Certain Incorporated Cities; Repealing Prior Enactments and Establishing Penalties for Violations of this Ordinance; and Declaring an Emergency/Paul Levesque
6. Consideration of Order Adopting a Claims Form and Fee Schedule for Measure 37 Claims/Bill Campbell
7. Board Concerns - Non-Agenda Items & Announcements
8. Public Comments

ADJOURNMENT

The Tillamook County Courthouse will be **closed** on **Friday, December 24**, for the Christmas holiday and on **Friday, December 31**, for the New Year's Day holiday. Oregon State Circuit Courts will also be closed.

**BOARD OF COMMISSIONERS'
MEETING**

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PLEASE PRINT CLEARLY

Name	Mailing Address	Item of Interest
Mark Lobbart		all
Gus Meyer		General
JOHN GETTMAN		all
Bill Campbell	TOED	# 4 & 6
Ken Wood		# 37
CHRISTINE I. BOLGER		Loose dogs
KEN O'TOOLE		
Tim Lutz		M 37
Lisa Phipps		# 6
TASSI O'NEIL		Dogs / M 37
Lenora Lawrence		M 37

**TILLAMOOK COUNTY
MEASURE 37
INFORMATION SHEET**

Although there are no prerequisites for filing a claim, if any of the following information is missing or incomplete, your claim may be denied due to insufficient information, or the time to process the claim may be extended due to increased research by county staff.

- 1. Fee:** The established fee is to help Tillamook County recover the administrative costs of processing claims.
- 2. Contact Information:** The contact person is the designated individual who county staff will notify regarding any claim procedures or decisions.
- 3. Proof of Current Ownership/Acquisition Date:** Proof, acceptable to the County, that the property is in the exclusive fee simple ownership of the owner(s). The proof of ownership must show the date of ownership for all owners by attaching a deed of title or certified chain of title.
- 4. Proof of Family Ownership/Acquisition Date:** This is required for a compensation claim only. Proof, acceptable to the County, that the property was in the exclusive fee simple ownership of a family member of the current owner(s). The proof of ownership must show the date of ownership for all owners by attaching a deed of title or certified deed of title.
- 5. Proof of Familial Relationship:** This is required for a compensation claim only. The owner shall provide a narrative and any necessary corroborating evidence describing the familial relationship between the current owner and the family member(s) whose ownership is the basis for the compensation claim. Acceptable evidence of familial relationships include birth records, marriage records, adoption records, business ownership records and any other documentation that shows the claimant can be defined as a family member,
- 6. Title Report:** A certified chain of title report issued within the last 30 days, including the title history, a statement of the date the owner acquired ownership of the property, and the ownership interests of all owners. The title report must also specify any restrictions on use of the property unrelated to the land use regulation including, but not limited to, covenants, conditions and restrictions (CC&Rs), easements, contracts or other public or private regulations.
- 7. Citation of the Regulations:** A citation of the land use regulation(s) (if any) in existence, and applicable to the property, when the current owner, and family member (if the claim is for compensation only), became the owner of the property and a citation of the land use regulation that was enacted, enforced or applied to the property that the owner claims restricts the use of the property and, the owner claims, caused a reduction in fair market value.
- 8. Appraisals:** A copy of a written appraisal or appraisals by an appraiser, licensed as such in the State of Oregon, indicating the amount of the alleged reduction in the fair market value of the property by showing the difference in the fair market value of the property before and after enactment, enforcement or application of the land use regulation described in the claim and explaining the rationale and factors leading to that conclusion.

Measure 37 Definitions:

(A) "Family Member" shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the forgoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

(B) "Land use regulation" shall include:

- (i) Any statute regulating the use of land or any interest therein;
- (ii) Administrative rules and goals of the Land Conservation and Development Commission;
- (iii) Local government comprehensive plans, zoning ordinances, land division ordinances;
- (iv) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- (v) Statutes and administrative rules regulating farming and forest practices.

(C) "Owner" is the present owner of the property, or any interest therein.

(D) "Public entity" shall include the state, a metropolitan service district, a city, or a county.

Regulations Not Subject to a Measure 37 Claim:

(A) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law.

(B) Restricting or prohibiting activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid waste, hazardous waste and pollution control regulations;

(C) To the extent the land use regulation is required to comply with federal law;

(D) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing. Nothing in this subsection, however, is intended to affect or alter rights provided by the Oregon or United States Constitution;

(E) Enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.