

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

MINUTES

October 28, 2015

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

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

MINUTES:

Commissioner Hyde moved and Commissioner Fisher seconded to approve the minutes of the October 21, 2015 Board meeting and October 21, 2015 Staff meeting. The motion carried unanimously.

VISITOR COMMENTS:

None.

DELIBERATIONS: WEYERHAEUSER PROPERTY LINE ADJUSTMENTS IN PF-80:

This is the time set for deliberations, "In the Matter of the Application Submitted by Weyerhaeuser NR for (21) Property Line Adjustments in the Primary Forest (PF-80) Zone". Robin entered the following documents into the record: Letter from Paul Nys as **Exhibit "5"**; Letter from Paulette Lichatowich as **Exhibit "6"**; Letter from Don Wallace as **Exhibit "7"**; Staff Communication as **Exhibit "8"**; and final argument from Kim O'Dea as **Exhibit "9"**. Commissioner Heimuller stated that he walked around the site and had contact with a neighbor Percy Smith about water concerns regarding the aquifer but he did not raise any issue that wasn't already in the record. Commissioner Hyde drove up to the property but no contacts were made.

Under deliberations, Commissioner Fisher stated that, on the face of this application, he cannot see any rule or law that forbids the lot line adjustments. In fact there seems to be case law that specifically allows it. The State and County have not adopted any rules or criteria for regulating the use of PLA's for parcel reconfiguration that would prohibit this request. If there is no rule to forbid the reconfiguration, then why are we here and why was this application denied by the Planning Commission. It is clear to him that the Planning Commission erred in denying this application based on the LUBA case, so now staff and members of the Planning Commission believe the Board needs to look beyond the stated facts of the case and address the potential impact of the adjusted lot lines and consider the intent of the various goals of State land use laws.

The applicants have openly declared plans to sell off the newly configured lots for building houses, thus creating a subdivision, but they have not filed any application to do so. So what State goals or county planning policies should they look at in this case and what impact might result from the approval of this application. Staff asserts that the application fails to provide evidence of an approved water source before any development can be allowed in this PF-80 zone. Staff also asserts that no steps have been taken to deal with the big game habitat requirements. However, the stated policies apply to development inside the PF-80 zone, yet the applicant has not asked to develop the lots in question. The effect of allowing the reconfiguration would most likely result in the lots being sold as individual building sites, only to be told by the Planning Commission that they can't build on the property without some special exception, which could be very upsetting to the buyers. Commissioner Fisher asked himself what his role as Commissioner is in this procedure. It is his understanding that he is responsible to act in several roles; administrative, judicial and legislative. When acting in a judicial role, he does not believe he has, nor should he have, the responsibility or duty to insert his own bias feelings about the correctness of State statute or rules. His role today is to judge if the applicant has acted according the requirements and limitations of State statutes, administrative rules, as well as county ordinances as they pertain to this application. If the applicant was applying for development permits, they would be denied because there are rules and regulations that are clear. It would not allow the permits, no matter how positive such development would appear to some. On the reverse, no matter how he might feel for the application, if the rules are complied with, he needs to support the application, look at the facts as they are presented and found to be accurate. Not what he'd like them to be or what they could lead to. In a judicial role, he also needs to look at the intent as to properly apply the rule of law. In this case, there are LUBA rulings that help us understand the law as written and allows for PLA's. What is not clear is what if any number of PLA's is too many or is the resulting adjustment should not be allowed because it "might" over time lead to some other situation. These questions are fundamental and significant enough that those questions need to be answered by LUBA and the legislature and are outside of the rightful judicial scope of his office. That said, he is supportive of the applicant.

Commissioner Hyde agreed with Fisher on a judicial level, however he also believes it is the job of the Commissioners to represent their constituents. What is before the Board is an application for a multitude of lot line adjustments. When he hears from the applicant that the Board should not pay attention to the road issues, the forestry issues, the water issues, etc., only pay attention to the very narrow constraints of a lot line adjustment itself, it's upsetting. If it looks like a duck, smells like a duck, it's a duck! This is a loophole in the law that is big enough to drive a subdivision through and it needs to change. That has been information coming from LUBA staff that has been flawed and it's a bit disturbing. He believes that on a judicial basis, the lines are pretty clear however, he also believes that this case needs to go to LUBA. In summary, he is in favor of sending this case to LUBA with a denial.

Commissioner Heimuller commented that there is nothing cut and dry with this application. We all want to see economic development and growth, but we also want to see our land use laws protect our forest and agricultural lands well into the future. This is a time when the Board of Commissioners hold a judicial role in land use decisions. They have to weight all things, the needs and concerns of our neighbors, the safety of our roads, protections of our watersheds, forest lands, etc. In this case where it clearly requests a multitude of property line adjustments, what is the outcome. Weyerhaeuser has been up front and open that this is will turn into a subdivision. His concerns with this is that in the County's Comprehensive Plan, it's not allowed to grant the extension of utilities into a forest land so that means of the 26 lots produced, there would have to be 26 septic systems and 26 wells. What happens when you drill 26 wells into an aquifer that feed McNulty Water and the surrounding neighbors? Understanding that the Board is deliberating on a request for property line adjustments, he considered if there is value to condensing those properties to a corner of the larger parcel. This could be because it leaves the bulk of the property open for logging activities and the natural habitat. He has been very conflicted in his consideration of this application. As Commissioner Fisher stated, the law is black and white and the simply answer is to follow the law and approve this application. However, he also agrees with Commissioner Hyde that this needs to be carried forward to LUBA for an actual case law opinion because in the stack of documents now before him, there is at least 3 different documents where LUBA staff is conflicted in their decision making. He feels that he is obligated to dig his heels in a bit to make sure that the neighborhood aspects of this are addressed. He is inclined to deny this application.

After deliberations, Commissioner Hyde moved and Commission Heimuller seconded to deny the application by Weyerhaeuser NR for 21 property line adjustments in the PF-80 Zone. Commissioner Fisher opposed. The motion carried.

DISTINGUISHED BUDGET PRESENTATION AWARD TO FINANCE DEPARTMENT:

The Board called Jennifer Cuellar and her staff forward to recognize them as the recent recipient of the "Distinguished Budget Presentation Award" presented to the department by the Government Finance Association of Oregon for the second year in a row. Jennifer also recognized her staff and noted that her department couldn't do the budget without the help from all County departments. Kudos to Jennifer and staff.

CONSENT AGENDA:

Commissioner Heimuller read the consent agenda in full. Commissioner Fisher asked that Item (C) be pulled for discussion. With no other changes/additions, Commissioner Fisher moved and Commissioner Hyde seconded to approve the consent agenda as follows:

- (A) Ratify the Select to Pay for week of 10/26/15.
- (B) Accept offer from Point and Pay dated October 9, 2015 for EMV Liability Shift Indemnification.
- (C) Order No. 50-2015, "In the Matter of Initiating the Formation of the Columbia County Rider Transportation District". **(PULLED FOR DISCUSSION)**.
- (D) Order No. 51-2015, "In the Matter of the Approval of the Appointment of Sarah Sprowls as Deputy Tax Collector.

The motion carried unanimously.

DISCUSSION - ITEM (C):

Commissioner Fisher wanted to briefly explain to the public that Order 50-2015 is the first step in the process of forming the CC Rider Transportation District. With that, Commissioner Fisher moved and Commissioner Hyde seconded to approve Order No. 50, 2015, "In the Matter of Initiating the Formation of the Columbia County Rider Transportation District". The motion carried unanimously.

COMMISSIONER HEIMULLER COMMENTS:

Commissioner Heimuller spent a lot of time last week in Eugene for the Oregon Transit Association conference, representing rural western Oregon on the Public Transportation Advisory Committee, as well as AOC and Columbia County. It was a very informative conference and a lot of discussion on the loss of federal rural transportation funding.

He wanted to mention that, for anyone coming to the courthouse, the elevator is in the process of being upgraded and will not be back in operation until the end of November.

This Saturday is the Kiwanis Daybreakers Children's Fair at the St. Helens High School.

COMMISSIONER HYDE COMMENTS:

Commissioner Hyde noted that he is wearing a pink tie today in honor of Breast Cancer Month.

He was in Grants Pass yesterday for an O&C meeting. It was a 7 hour drive but was well worth the time and effort for the discussion held.

COMMISSIONER FISHER COMMENTS:

Commissioner Fisher attended the 5 Area Senior Luncheon on Monday. A lot of the seniors were dressed up in Halloween costumes, which was nice to see.

Because this weekend is Halloween, he reminded everyone to please be careful and watch out for the children on Saturday night - it will be dark and raining.

YANKTON CHURCH:

Evelyn Hudson, Peg Tarbell and Paul Krenz, Board members on the Old Yankton Historical Preservation Organization, 33349 Pittsburg Road, St. Helens. They found out on Monday that the Yankton Community Fellowship Church was granted a demolition permit to tear down the old Yankton church and that the preservation group will not be allowed the 120 days to fight to save the building. They have a letter signed by 300 people wanting to save this church and are working with Restore Oregon on this project. They have offered to buy the church, but the owner won't sell it to them. Evelyn is asking for the Board to allow them 120 days. Commissioner Heimuller explained that this building does not statutorily meet the criteria for any waiting periods because it is not on the County historic list.

Robin stated that she would need to look into this but typically, if the structure is not on the historic preservation list, there would be nothing the County could do to stop the demolition.

Commissioner Heimuller explained that the county issued the demolition permit because the owner, a private corporation, applied for it and is entitled to it and he doesn't believe the Board has any authority to stop the demolition. That said, County Counsel staff will look into this today and let him know if the county has any recourse.

The Board recessed the meeting at 11:00 a.m. and reconvened at 12:00 pm in the Board Conference Room for a lunch meeting with representatives of Dyno Nobel.

There was no Executive Session held.

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

Dated at St. Helens, Oregon this 28th day of October, 2015.

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: _____
Henry Heimuller, Chair

By: _____
Anthony Hyde, Commissioner

By: _____
Jan Greenhalgh
Board Office Administrator

By: _____
Earl Fisher, Commissioner