

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, October 16, 2024
9:00 a.m.

Senator Hearing Room
555 Court Street NE
Salem, OR 97301

PRESENT: Commissioner Kevin Cameron, Commissioner Danielle Bethell, and Commissioner Colm Willis. Also present were Steve Elzinga as county counsel and Brenda Koenig as recorder.

ABSENT: Jan Fritz, chief administrative officer

Commissioner Cameron called the meeting to order at 9:00 a.m.
Commissioner Willis arrived at 9:12 a.m.

(Video Time 00:03:55)

PUBLIC COMMENT

None.

(Video Time 00:04:03)

CONSENT

PUBLIC WORKS

1. Approve the Purchase Order with Northside Ford in the amount of \$307,585.62 for the purchase of four 2024 Ford heavy duty pickup trucks to replace four heavy duty vehicles that are at end of life through April 30, 2025.
2. Approve the Commercial Onsite Septic Grant Agreement with RNB Properties, LLC, in the amount of \$125,374 for the construction of commercial septic system repairs and improvements for commercial property located at 110 Lake Street E, in Detroit, Oregon, tax lot 105E01CD01300, as part of Marion Counties, American Rescue Plan Act (ARPA) funded, Commercial Septic Repair, Alteration, and Replacement Grant program through October 31, 2026.
3. Approve the Intergovernmental Agreement (IGA) with the University of Oregon in the amount of \$240,000 to provide emergency management planning services for the Marion County Underserved and Rural Community Population and Infrastructure Vulnerability Assessment project through March 14, 2025.

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TAX OFFICE

4. Approve an order advancing tax levies to certain small taxing districts as referenced in Exhibit A, in the total amount of \$305,834.80 for tax year 2024-25.

MOTION: Commissioner Bethell moved for approval of the consent agenda. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

(Video Time 00:06:32)

ACTION

None.

Commissioner Cameron recessed the meeting at 9:03 a.m.

Commissioner Cameron reconvened the meeting at 9:29 a.m.

(Video Time 00:32:20)

- Commissioner Cameron requested unanimous consent to return to the Consent agenda to allow Commissioner Willis the opportunity to vote;
- Unanimous consent was received; and
- Commissioner Willis voted yes for the Consent agenda.

(Video Time 00:32:52)

**PUBLIC HEARINGS
9:30 A.M.**

PUBLIC WORKS

A. Public hearing to consider an appeal of the hearings officer's decision denying Conditional Use (CU) Case #24-006/Joy Blackman Revocable Trust. –John Speckman

Summary of presentation:

John Speckman:

- Received document from Transportation Engineer in Bend, Oregon:
 - Supports denying the application;
 - Little Haven Lane South and Viewcrest Road South have sight-distance deficiencies;
 - Quoted Oregon Department of Transportation (ODOT) document that over a five-year period there were crashes because of excessive speed and insufficient sight distance; and
 - The transportation engineer argues that traffic conditions are not suitable for another dwelling on the land.
- There are 5.9 acres of naturally forested hill side in the rural unincorporated area of south Salem;

- Properties north, west, and south are zoned Special Agriculture (SA) and to the east are Acreage Residential (AR);
- The AR zone extends east into Salem’s Urban Growth Boundary (UGB) a half mile;
- UGB is also half a mile to the north of the parcel;
- Some SA zoned parcels have woodlots that are in use for rural residences:
 - Many are in use only for rural residences.
- Marion County Planning Department request comments from various agencies:
 - Comments can be found in the case file.
- The applicant addressed criteria including the following:
 - Conditional uses in SA zones;
 - Sighting and development requirements; and
 - Non-farm dwellings.
- Appeal’s focus is on access;
- The hearings officer and staff determined applicants met the conditions use criteria relating to a non-farm dwelling;
- Access to the parcel is an undeveloped easement utilizing three tax lots:
 - The easement has existed since at least 1971; and
 - Tax lots are 2000, 2301, and 2300.
- Tax lot 2301 was partitioned in 2005 and in 2008;
- Both parcels had homes developed and clustered together at the end of Little Haven Lane;
- Dwelling on 2301 is on the corner where the easement turns southwest on the edge of tax lot 2000;
- There are four parcels with dwellings addressed with Little Haven Lane South;
- Dwelling on tax lot 2000 has frontage on Viewrest Road South:
 - Historically dwellings with frontage on public roads have not counted towards the maximum of four served on private roads.
- Application was approved without requiring the need to provide variance;
- The decision was appealed to the hearings officer:
 - The code in question is Marion County Code 17.110.800;
 - The meeting was publicly noticed on May 2, 2024;
 - A decision, made July 30, 2024, stated that variance is required for application approval;
 - The private drive already serves four dwellings;
 - The parcel on public frontage cannot accommodate another access;
 - There needs to be an abutment that could permit another access;
 - The abutment in question cannot safely accommodate another access:
 - Per Marion County Land Development, Engineering and Permits.
 - Application could be withdrawn and reapplied for at the same time.
- Staff recommended denying the application.

Board discussion:

- The easement is currently a path and would require development;
- The subject parcel is land locked with no access; and
- The easement was on survey maps in 1971.

Michael Paluska:

- Attorney for the applicant;
- Application and criteria were approved by Marion County and the Hearing's Officer:
 - The only exception is Marion County Code 17.110.800.
- Past similar situations always had the code interpreted the same way:
 - He would like it to continue to be done in the same way.
- The property is located by Sprague High School;
- The property was purchased by his client 50 years ago:
 - Planned for their children to build homes on the property; and
 - The client's granddaughter wants to build a home on the property.
- In March a conditional use application was applied for because of zoning;
- The easement has been in place since, at least, 1971:
 - There is only one access.
- When the property was bought there were no other houses on the property.

Board discussion:

- The applicant purchased the property in 1972; and
- The easement was on survey maps in 1971 prior to the applicant purchasing the property:
 - It was filed with the county.

Michael Paluska:

- Tax lot 2000 abuts a public road;
- Previously Marion County Planning interpreted that properties abutting public road do not count as one of four properties:
 - It abuts Viewcrest Road; and
 - The hearings officer disagreed.
- Hearings officer stated that easement is used to get access; and
- Mr. Paluska argues it abuts, and it could have access.

Board discussion:

- Marion County Code 17.110.800 states there can be four dwellings on private roads unless, with Marion County approval and meeting state standards, there were parcels established prior to May 1, 1977:
 - Parcel was established before 1977 and should be an exception in accordance with the code.
- The code was not investigated further when initially approved:

- Total dwellings were counted and those abutting a public road were subtracted; and
- This allowed for an additional dwelling.
- The parcel had a partition December 12, 1978:
 - May have been sold by deed and not property line adjusted.
- Previously could be done by selling by deed:
 - Owners in 1978 were not always aware; and
 - We were told that it needs to be partitioned to be legitimate.
- In 1972 the property owners purchased 5.97 acres through sale by deed:
 - This was a legitimate sale at the time.

Testimony:

Support:

Sherry Blackman:

- Ms. Blackman is the daughter of Jim Blackman, who purchased the property;
- There were not many homes in the area and over the years the area was developed;
- Another property was purchased to build a family home nearby:
 - It was confirmed that there was an easement and property access; and
 - There is no other way to get to the property.
- The goal is to access property that was purchased by her father; and
- Ms. Blackman is representing her mother in this situation.

Ashlee Blackman:

- Ms. Blackman is the granddaughter of Jim Blackman;
- She began the process about a year ago as they wanted to build a home on the property:
 - This was always a family dream.
- Disheartening to not be able to have access to property that has been in the family for over 50 years.

Testimony:

Opposition:

Ted Raszka:

- Mr. Raszka expressed the following:
 - He and his wife have lived on 3238 Little Haven Lane South since 2016;
 - Little Haven Lane is very narrow;
 - The entrance of Little Haven Lane is on an S Curve with limited lines of site:
 - There have been multiple accidents in the area every year.
 - Little Haven Lane has ingress, egress and utilities;
 - The lane serves four dwellings;

- The hearings officer stated that dwellings must be situated on a lot having direct access to the abutting public street;
- The easement in question is undeveloped;
- Accessing the Blackman property would require cutting across the hill which is a geohazard rating of about nine;
- He previously spoke to Marion County Planning Department about a potential dwelling being built:
 - We were informed this would not happen based on the code.
- There are safety and property investment concerns.

Board discussion:

- Little Haven Lane seems to run on the easement and would not exist without it;
- Mr. Raszka is not a zoning or planning expert when purchasing the property, they looked at the plain language of the code:
 - It stated no more than four dwellings on private roads.
- Mr. Raszka is unsure if the title company referenced the date of the Blackman's property establishment;
- Mr. Raszka was aware of the easement's existence;
- Mr. Raszka is not in the land industry and does not have the same through process as those who are;
- Mr. Raszka believes that they did more due diligence than the average citizen before purchasing their home and yet they are still in a bad situation; and
- The issue is the level of work the easement needs for it to be thirty feet wide.

Testimony:

Opposition:

Pamela Vidra:

- Ms. Vidra expressed the following:
 - The slope by the road is very steep;
 - Walking the road is dangerous;
 - They have owned their home for 11 years;
 - They were aware of the easement's existence;
 - Their home is the original house that sits on 10-acres;
 - Their property is closest to the edge of the slope;
 - There is concern of the slope coming down on their property; and
 - Heavy equipment would have access to the road.

Joe Vidra:

- Mr. Vidra expressed the following:
 - Little Haven Lane abuts to the Blackman's property;
 - The easement has not been accessed for 10 years;

- It is referred to as a utility easement;
- The document was recorded stating that the easement is only used in emergencies:
 - All four property owners agree with this document.
- They feel the Blackmans have abandoned the easement;
- Easement is on a grassy and narrow road; and
- In his opinion installing a road would impact the stability of the home.

Board discussion:

- Commissioner Willis stated there is a permitting process for the road and that is a separate process;
- Commissioner Cameron clarified the hearing is for the access and easement issues;
- They need to stick to the specific questions and facts of the case; and
- There needs to be an easement for three of the four properties to be accessed:
 - They are benefiting from the existing easement.

Testimony:

Opposition:

Mary Judith Upright:

- Ms. Upright expressed the following:
 - She purchased her property in 1973 and built her home in 1978;
 - The only access to her home is driving on Little Haven Lane;
 - Her home is the first to be served by Little Haven Lane;
 - In 1989 someone attempted to subdivide the neighboring property:
 - She learned of the code during this ordeal.
 - In 2006 her neighbors attempted to subdivide their property to allow three new homes:
 - The county let her know that the code does not allow this.
 - In 2008 she offered property to family to build a home, but the county did not allow it:
 - They informed her that the private road already served the maximum of four homes.
 - In 2008 she was approved to build two additional homes, through Measure 49:
 - The county told her to get a variance to exceed the four-home rule.
 - In 2012 she looked into subdividing her 7.09 acres and the county said no because of the four home rules; and
 - Over the years the county told her she could not add additional homes, and she followed the rules.

Board discussion:

- The parcel Ms. Upright discussed to be created through subdivision would have been created after 1977:

- The parcel discussed existed before 1977; and
- The code gives an exception for parcels existing before 1977.
- Ms. Upright tried to purchase the Blackman parcel in 1973 But was told she could not;
- Jim Blackman, as she recalls, purchased the property in 1979; and
- Commissioner Cameron explained the process of hearing and appeals to Ms. Upright:
 - Informing her she can take the issue to a hearings officer and further than that if needed; and
 - This is a right for Marion County residents.

Testimony:

Opposition:

Isabel Joslen:

- Ms. Joslen expressed the following:
 - In 2024 Ms. Upright asked for options for her grandson to live close;
 - Suggested subdivision through Measure 49 or a temporary home under the hardship dwelling process;
 - Ms. Upright wanted to pursue the subdivision first;
 - Ms. Joslen called Marion County Planning in January 2024;
 - Planning stated she could subdivide under Measure 49:
 - Parcels need to be a minimum of two acres.
 - On January 23, 2024, she asked for an exception on the two-acre rule as Little Haven Lane runs through her property:
 - Planning stated no and that the property could be divided into two parcels.
 - On February 5, 2024, she requested an application and asked about the hardship dwelling process;
 - On March 27, 2024, she asked if the subdivision and the hardship dwelling could be applied for at the same time and she was told yes;
 - Staff noticed there were already four homes using the private road:
 - She can subdivide but not build a home.
 - Staff stated that in the hardship dwelling process neighbors are notified but cannot object as it is for medical reasons;
 - Ms. Upright decided not to pursue either option;
 - Staff are in violation of the code;
 - Ms. Joslen has called the county several times and was told an additional dwelling is not allowed;
 - She visited in person and a record was printed showing the record of four homes; and
 - Every decision Ms. Upright made was based on expert guidance from Marion County planning staff.

Carrie Richter:

- Ms. Richter is a land use attorney representing Mary Judith Upright;
- Many of the things discussed or brought up were not related to the question at hand:
 - If appealed to the Land Use Board the question will be is the county's interpretation plausible given the plain language of the standard.
- Access can be obtained if there is direct access by abutting upon a public street:
 - Tax lot 2000 abuts but does not have direct access; and
 - Its only access is using the private driveway.
- Ms. Upright uses Little Haven Lane as it is the only access to her home;
- The county decided that more than four dwellings on a private drive create potential safety and hazard concerns;
- Exempting historic access points could cause many homes to use private roads as access;
- The only expert traffic analysis states that Viewcrest Drive does not have adequate vision clearance;
- Marion County Code 17.110.770 requires all driveways maintain minimum vision clearance of 10 feet along the driveway and 50 feet along the street;
- Interpreting Ms. Upright has direct access by abutting a public street must also include that the access has adequate vision and clearance:
 - It does not have adequate vision and clearance.
- Additional clause of Marion County Code 17.110.800 states unless parcels were established with Marion County in accordance with state law and Marion County ordinances:
 - There are no records to establish when the parcels were created;
 - Ms. Richter has not seen the 1971 survey mentioned on record; and
 - Document in record states that parcel was created in its current form in 1978.
- She urged the board to delay deciding in order to establish when the parcel was created;
- Aware that the easement was in place for many years to provide access;
- Subdivision of lots took up easement capacity:
 - The Blackman family likely received notice of the partitioning; and
 - Capacity of Little Haven Lane was taken at this moment in time.
- The Blackman's can get a variance to build property on their property:
 - A separate process that needs to show that it is safe to do so; and
 - It is not safe to do so.

Commissioner Cameron recessed the meeting at 11:06 a.m.

Commissioner Cameron reconvened the meeting at 11:08 a.m.

Board discussion:

- The easement is 30 feet wide, and the abutment is 65 feet wide;
- Any agreement between the four property owners is a private agreement among the four property owners;

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- Possibility to do further historic deed research:
 - Previously it did not go past 1978.
- Commissioner Cameron expressed the following:
 - Planning interprets that property abuts to Viewcrest Drive:
 - The property can be subtracted as one of the four and a fourth property can be added:
 - This is the original decision; and
 - The evidence is true.
 - This was done in the past and is ok with upholding the decision; and
 - Could it be pursued if the property was filed before 1977.
- Commissioner Willis expressed the following:
 - The board has the ability to make a decision;
 - The evidence that he received in the hearing was that a survey was done and filed with the county prior to 1977:
 - This is evidence that can be relied on to determine if more than four dwellings can use the road; and
 - He is comfortable with relying on this based on the plain reading of the code.
- Mr. Speckman expressed the following:
 - Properties are only created by plat or deed and not surveys:
 - Deed descriptions that resulted from the survey would create the property;
 - This requires further research;
 - It appears the property was sold in 1976;
 - Because of the time period and not needing to do a Partition until 1977, there are some details that are missing;
 - The plan came together in 1971 which shows the 5.9 acres; and
 - Staff does not know where the original deed is that describes the parcel prior to 1977.
- Commissioner Bethell expressed the following:
 - She does not want to make a decision that will cost a lot of money to get appealed to the Land Use Board of Appeals (LUBA); and
 - She would like to know where the deed is and what it states.
- The record can be left open and still be within the timeline;
- A decision from the board is needed by December 10, 2024;
- Marion County Planning will search for the deed;
- Mr. Speckman expressed the following:
 - Fully enacting Measure 49 to create two parcels would require a variance:
 - It would be adding two parcels not just one parcel; and
 - This will likely come up again either under the current ownership or in the future.
- Commissioner Willis expressed the following:

- He recognizes the potential burden to the existing dwelling owners for someone else to have the legal right to put a road across their property; and
- A notice issue matters to him:
 - When properties were purchased, did buyers have notice that the easement and the parcel existed:
 - Based on the record before him it appears property owners did.
 - The fairest thing to do is to allow everyone to use their property rights to utilize the easement to access their property; and
 - The board will make a decision based on the facts before them.

MOTION: Commissioner Willis moved to close the public hearing and leave the record open until October 30, 2024. Seconded by Commissioner Bethell; motion carried. A voice vote was unanimous.

Commissioner Cameron adjourned the meeting at 11:24 a.m.

CHAIR

COMMISSIONER

COMMISSIONER

Board Sessions can be viewed on-line at

<https://www.youtube.com/playlist?list=PLSUQ1gg6M78UsBE3q6w4rdf59Z5rXkEi5>