

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, May 31, 2017  
9:00 a.m.

Senator Hearing Room  
555 Court St NE  
Salem, OR 97301

PRESENT: Commissioner Sam Brentano, Commissioner Janet Carlson and Commissioner Kevin Cameron. Also present were Gloria Roy as county counsel and Kristy Witherell as recorder.

Commissioner Brentano called the meeting to order at 9:00 a.m.

**PUBLIC COMMENT**

*(Video Time 00:01:03)*

David Beem:

- Encouraging the commissioners to support small businesses in Marion County.

**CONSENT**

*(Video Time 00:03:16)*

TREASURER

Approve the distribution of Oregon State Forestry timber revenue as per ORS Chapter 530.

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

**ACTION**

*(Video Time 00:04:07)*

BUSINESS SERVICES

1. Consider approval of a 10-year lease of office and clinic space at 2045 Silverton Road for the Health Department to operate Alcohol and Drug Treatment and Intensive Treatment Recovery Programs. – Larry Tilford, Cary Moller

**Summary of presentation:**

- Will replace the Davcor properties that Marion County is currently leasing;
- Have looked at 14 commercial properties in the area;

- Constraints and most challenging piece of the puzzle has been that the property cannot be within 1,000 feet of a daycare center or school;
- Identified the old Oregon Department of Human Resources on Silverton Road;
- The owner and agent have been working with the county on developing some tentative improvements that will fit the program well;
- The Drug and Alcohol Services Program is a combination of outpatient intensive treatment services for adults;
- The Medication Assistance Treatment Program provides medication treatment for people struggling with opiate addiction, both heroin and prescription drug addiction;
- Part of the services and the medication to provide support is a highly controlled substance;
- Anticipate an increase of service to individuals with medication assisted treatment needs; and
- This new building is out of the floodplain.

***Board discussion:***

- Interested in integrating other services in the building;
- The current location is outside of the bus route:
  - Providing shuttle services.
- New building is right on the bus route; and
- The leased building is 17,000 square feet.

**MOTION:** Commissioner Carlson moved for approval of a 10-year lease of office and clinic space at 2045 Silverton Road for the Health Department to operate Alcohol and Drug Treatment and Intensive Treatment Recovery Programs. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

*(Video Time 00:10:38)*

HEALTH

2. Consider approval of an intergovernmental agreement with Oregon Health and Sciences University for \$128,500 to provide Title V Block Grant for public health nurse home visit program through September 30, 2017. – Judy Cleave

***Summary of presentation:***

- This is a transition year for the Oregon Center for Children and Youth with Special Healthcare Needs;
- Title V recipients for this population in Oregon;
- Receive money from the Oregon Health Authority;
- Contracted with them for many years;
- This particular agreement used to be called the CaCoon Agreement;
- There's a focus now on doing shared plans of care:
  - Bring many partners to the table and work with all partners to develop a shared plan of care; and
  - Will assist people in a better way than the past.
- Three focus areas for national goals that Oregon has chosen:

- Medical home for this population;
- Transition to adult healthcare services; and
- Culturally and linguistically appropriate services.
- Have been delivering services the entire year knowing this program was coming.

***Board discussion:***

- Very critical services for families; and
- Commissioner Brentano’s granddaughter receives these services, but it does not preclude him from voting.

**MOTION:** Commissioner Cameron moved for approval of an intergovernmental agreement with Oregon Health and Sciences University for \$128,500 to provide Title V Block Grant for public health nurse home visit program through September 30, 2017. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

*(Video Time 00:15:03)*

3. Consider approval of a contract for services with Michael Wolf, MD, doing business as Wolf Psychiatric Consulting Services, LLC for \$360,000 to provide medical director services to the Behavioral Health Programs. – Scott Richards

***Summary of presentation:***

- Typically patch together a handful of part time nurse practitioners and psychiatrists in both the adult and children’s programs;
- In addition to direct services and prescribing medication, there needs to be an individual to take a leadership role for policies and procedures; and
- Dr. Wolf has provided direct service through the Early Psychosis Program for at least 15 years.

**MOTION:** Commissioner Carlson moved for approval of a contract for services with Michael Wolf, MD, doing business as Wolf Psychiatric Consulting Services, LLC for \$360,000 to provide medical director services to the Behavioral Health Programs. Seconded by Commissioner Cameron; motion carried. A voice vote was unanimous.

*(Video Time 00:18:26)*

**PUBLIC WORKS**

4. Consider appeal of hearings officer’s decision affirming the planning director’s decision revoking the operating plan for Comprehensive Plan case #ZC/CP 09-001/Phillips Family Limited Partnership, LLC. – Joe Fennimore, Alan Haley, and Scott Norris

***Summary of presentation:***

- Under the approval, conditions required the applicant to perform certain road improvements before beginning operations;
- In lieu of immediate construction, the applicant could enter into an agreement with the county to phase the improvements over a five year period;

- That agreement was signed in August 2011 and required the improvements to be completed in five years;
- On November 10, 2016, the planning director issued a letter revoking the operating plan for failure of the applicant satisfying roadway improvement conditions;
- That revocation was appealed to the hearings officer who conducted a public hearing on February 22, 2017 and March 8, 2017;
- The hearings officer issued a decision affirming the planning director's decision;
- That decision was appealed to the board by the applicant on May 10, 2017;
- In the appeal, the appellant argues that the road improvement conditions were based on an anticipated production of 130 truck and trailer loads of gravel per day, while actual production average was six trucks per day;
- Based on the low production numbers, a complete review of the transportation conditions of approval is warranted;
- The appellant proposes that the revocation proceedings be placed on hold to allow them to file a new application for modification of the transportation conditions of approval;
- If the revocation is stayed and the quarry is allowed to operate while the new application is being considered, they propose to deposit \$200,000 into an escrow account to be used towards the cost of transportation improvements;
- Will agree to a daily cap trip on the number of trucks per day;
- The appellant states that they believe the quarry should be allowed to resume operations while a new application is being considered because it will generate information that could be used for the modified application;
- The appellant also identifies four technical issues they believe need to be addressed in the appeal:
  - The appellant believes there is a lack of clarity in whether the revocation applies to just the operating permit or also to the listing as a significant site;
  - The hearings officer erred in shifting the burden of proof from the county to the appellant;
  - The volume of traffic is de minimis because under Goal 12, a site that generates less than 400 truck trips per day is considered to comply with Oregon Transportation Rule and Oregon Highway plan; and
  - There is a lack of evidence in the record because a pavement report that was prepared by Multi/Tech Engineering was not provided to the hearings officer and is not part of the record.
- The appellant feels that the conditions were onerous based on the actual amount of traffic generated;
- Since this revocation process cannot be used to modify conditions, a separate application is needed and the revocation should be stayed and the quarry be allowed to operate while the application is being processed;
- The board has the following options:
  1. Accept the appeal and schedule a public hearing with a suggested hearing date of June 28, 2017;
  2. Accept the appeal and remand the matter back to the hearings officer;
  3. Accept the appeal and take no action while a new conditional use application is being processed and allow the quarry to operate in the interim by not taking enforcement action;

4. Accept the appeal and take no action while a new conditional use application is being processed and do not allow the quarry to operate in the interim;
  5. Deny the appeal and accept the hearings officer's decision affirming the revocation; or
  6. Take no action at this time.
- Since this is a revocation action, the conditions cannot be modified unless a separate application is filed;
  - Under options 1, 2 and 6 the final decision will be delayed and the matter will be returned to the board at a later date;
  - If the board chooses options 3, 4 or 5 the applicant will need to file a conditional use application to either request a modification of the existing conditions or obtain a brand new conditional use permit:
    - With option 3, the quarry will be allowed to operate while the conditional use application is being processed.
  - Staff recommends option 3, accept the appeal and take no action while a new conditional use application is being processed and allow the quarry to operate in the interim by not taking enforcement action.

***Board discussion:***

- The commissioners are fully aware that the nature of today's discussion is to determine whether or not the appeal will be accepted;
- When Mr. Fennimore put "among other things" in the letter dated for November 29, 2016, "among other things" included:
  - The applicant is not protecting the current integrity of the adjacent county roadway ditch or other public facilities from any further damage;
  - Transportation System Development charges have not been assessed;
  - Outdoor lighting specifications have not been confirmed;
  - Access roads have not been gated and locked;
  - The front end loader specific operating hours have not been confirmed;
  - A dust mitigation plan has not been submitted;
  - Mining operations have not been confirmed;
  - Mining operation blasting reports have not been submitted;
  - The applicant has not obtained all necessary state or federal air or quality permits to operate in continual compliance; and
  - The blasting company hired by the mining operator has not designed the layout and sequencing of charges to meet 98 decibels slow response for noise levels.
- There is a list in addition to the roadway issues that were not completed as part of the conditions of approval that the board made when this case was originally cited and allowed to operate;
- If the commissioners approve option 3, the previous conditions will still stand unless the applicant has specifically identified them in the appeal;
- It makes the commissioners leery to follow a recommendation stating the applicant can continue to operate when there is nothing in place on the conditions;
- The applicant stated that the family partnership was coerced into agreeing to the conditions demanded by the county because the amount of time and money that had already been expended when the county required agreement to those conditions:

- The commissioners feel like the applicant didn't really take the conditions seriously; and
- Perceives that the applicant isn't anticipating having to follow the conditions agreed upon.
- The commissioners do not want to approve anything that removes the previous conditions placed;
- If the business ever goes back into operation, the conditions have to be met first;
- The applicant will need to file a new application for an operating plan and make the argument at that time;
- Option 5 allows the board to deny the appeal, accept the hearings officer's decision affirming the revocation;
- The appellant in this case could at a future date file for a new conditional use permit, making their arguments at that time for the conditions they deem reasonable;
- The previously agreed conditions will not change;
- The applicant had been notified several times about being out of compliance;
- Public Works is not aware of any traffic study performed on the conditional use:
  - The applicant provided the information for the maximum number of trucks allowed.
- If the applicant submits a new conditional use application, the planning director will send it straight to the hearings officer for the initial public hearing;
- In option 2, the hearings officer cannot modify or expand the conditions that were imposed in the original case:
  - Only a new application can modify the existing conditions.
- If the new application is filed, staff would still recommend previous approved conditions to be met before application is approved;
- This case is one that has spurred the planning and development efforts to actually put the date recording on all future cases:
  - Public Works will track each condition put on any applicant for a land use case.
- If the appellant submits a new application, Public Works will notice the same people noticed in the original application.

**MOTION:** Commissioner Cameron moved to deny the appeal accept the hearings officer's decision affirming the revocation. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

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

None.

Commissioner Brentano read the calendar.

Commissioner Brentano adjourned the meeting at 9:56 a.m.



CHAIR



COMMISSIONER



COMMISSIONER

Board Sessions can be viewed on-line at <http://www.youtube.com/watch?v=VYF8Y6U7178>.