

POLK COUNTY BOARD OF COMMISSIONERS
MINUTES January 26, 2011

1. CALL TO ORDER AND NOTE OF ATTENDANCE

At 9:00 a.m., Chairman Propes declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Pope and Commissioner Ainsworth were present. A CD of the proceedings in on file in the Board of Commissioners Office.

Staff present: Greg Hansen, Administrative Officer
 Dave Doyle, County Counsel
 Todd Whitaker, Public Works Director

2. ANNOUNCEMENTS

Chairman Propes announced that regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. The Tuesday meeting is held in the Board of Commissioners' Office Conference Room, 850 Main Street, Dallas, Oregon. The Wednesday meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda.

Chairman Propes announced that Department Head/staff meetings with the Board of Commissioners are held on Monday, Thursday, and Friday. The meetings are held in the Board of Commissioners' Office Conference Room. The principal subjects anticipated to be considered are on-going, upcoming, and new matters bearing on County operations. Pursuant to ORS 192.640, the Board of Commissioners may consider and take action on subjects not listed within this announcement.

Chairman Propes announced that the Board of Commissioners will conduct a public hearing regarding Plan Amendment 10-05 and Zone Change ZC 10-06 (Eola Hills Wine Cellars, Inc.), Wednesday, February 2, 2011 at 9:00 a.m. in the Courthouse conference room.

Chairman Propes announced that the Board of Commissioners will conduct a hearing to consider a Board Order for issuance of Certificates of Participation (revenue bonds) for facilities, Wednesday, February 2, 2011 at 9:00 a.m. in the Courthouse conference room.

Chairman Propes announced that the Board of Commissioners will attend a meeting of the Local Public Safety Coordinating Council, Monday, February 7, 2011 at noon in the Courthouse conference room.

Chairman Propes announced that the Board of Commissioners will conduct a public hearing regarding the proposed downgrade of status of E. A. Shirley Road, Anderson Road, Hadley Road, and Haener Road, Wednesday, February 9, 2011 at 9:00 a.m. in the Courthouse conference room.

Chairman Propes announced that the Board of Commissioners will attend the annual work session of the Polk County Fair Board at the Fairgrounds, 520 S. Pacific Highway W, Rickreall, Oregon, Saturday, February 12, 2011 from 10:00 a.m. to 2:00 p.m.

3. COMMENTS (for items not on this agenda)

Dave Doyle, County Counsel said that in the minutes from January 5, 2011, the dates for the all of the processes for the public hearing in terms of the record and Board deliberations were off and have been corrected.

Chairman Propes said that the Board was set to make the decision on people interviewed for the Fair Board at this meeting but that has been rescheduled for next Tuesday's meeting because County Counsel is checking to see if it is possible to do a temporary appointment to replace someone who is off on sabbatical.

4. APPROVAL OF AGENDA

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER AINSWORTH SECONDED, TO APPROVE THE AGENDA.

MOTION PASSED UNANIMOUSLY.

5. APPROVAL OF CONSENT CALENDAR

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER AINSWORTH SECONDED, TO APPROVE THE CONSENT CALENDAR.

MOTION PASSED UNANIMOUSLY.

6. APPROVAL OF MINUTES OF January 19, 2011

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER AINSWORTH SECONDED, TO APPROVE THE MINUTES OF JANUARY 19, 2011.

MOTION PASSED UNANIMOUSLY.

7. ILLEGAL DRIVEWAY LOCATED ON ORCHARD HEIGHTS ROAD

Todd Whitaker, Public Works Director said that this driveway is located along Orchard Heights Road, approximately 600-feet from Best Road and it does not meet County standards for specified site distance. Public Works has asked the property owner to remove the driveway on a couple of occasions and that has not been accomplished. He provided a photo of the subject driveway and the surrounding area.

Chairman Propes asked if the driveway is gated and used primarily for a shop, not a residence.

Whitaker said that appears to be correct and the primary access to the residence is off Best Road. He said that the problem with the driveway is that it is near the crest of the hill and it is a fairly broad crest rather than a sharp crest. He said that there needs to be 325-feet of visibility and, because of the long hill at this location, he is not able to get that. Public Works' Engineering Technician measured the site distance there and it was 220-feet, and we need 325-feet. He said that he is not sure if that is on one or both sides of the driveway.

Pope asked, "Had this been permitted, is there someplace in there that this driveway may have worked?"

Whitaker said that they probably would have worked to see if that could happen but he does not know if it could on the crest. He said that without looking at survey data, he does not know if that condition exists here but the Engineering Technician does not believe it does. He said that he believes the driveway was built to access the shop and the driveway that existed for the construction of the house can be seen in the dirt just about parallel with the west end of the house. That driveway was a problem during construction and he believes Public Works removed that driveway at one time. He said that he believes at that time it was the original property owner and the current issue is a new property owner.

Doyle said that the way the process works is the Roadmaster has certain emergency powers but because this has been going on for quite some time, the process calls instead for the Board, through both ORS and County Ordinance, to hold a hearing and give the property owner an opportunity to respond to anything that staff is saying and typically, in an emergency setting, these types of issues would be dealt with at the staff level.

Renato Labate, 1895 Best Road, Salem said that he purchased this property and hired a contractor to build the shop. The contractor asked for a permit for a temporary driveway because there was no access and when the shop was almost complete, the inspector came and said that the driveway had to be removed. He said that they had some problems with the builder, who took off from the job and left him to finish the job himself. He asked the inspector if he could have the access on Orchard Heights at least to finish the shop and then assess the situation. He said that he believes that when the original property owner built the house there were some problems because they wanted to put the driveway close to Orchard Heights. He said that they have their propane tank inside the gate at this driveway and once or twice a year they need access for the truck to deliver the propane. He said that the gate is closed all the time because the access for the house is on Best Road. He said that if there is any way to keep this driveway with access to Orchard Heights Road for only a few times a year, he would appreciate that.

Labate said that he understands the risks but the property directly across the street has access on Orchard Heights Road and that is the access to the house in which they live. He said that he realizes that is an old driveway, but if it is dangerous it is dangerous for everybody not just one person.

Whitaker said that the access on the opposite side of the road was in place in the early 1970s prior to the Polk County Road Standards and it was "grandfathered in," and if the property owner were to ask for that driveway to go in today, we would have the same issue. He said that he does not believe there has been any temporary access permit granted for the subject driveway or any application for that driveway.

Pope asked Labate if he was interested in working with Public Works to establish a permit for a legal access on this road.

Labate answered that he is.

Pope asked if Public Works has presented Mr. Labate with an opportunity to do this legally. He said that this is an illegal driveway and we are looking to make it a legal driveway. He asked, "Have you had a conversation with Public Works that would make this a legal process?"

Labate said that Public Works has not offered him any options other than removing the driveway.

Whitaker said that he has not heard any reports on conversations about an alternate location. He said that he is not privy to all the conversations that have taken place but in looking through the correspondence they have had, in February 2010, we did indicate that the County has a process in which we monitor all work that is done. That implicitly would explain that there is a process for doing this, the property owner just has not complied with the process. He said that he cannot find any documentation where the County has specifically said, "Come in and work with us and we'll find another place for it."

Pope said that the Board cannot approve an illegal access to a roadway. He said that there is a site distance issue here and if the County signed off on that and the propane truck driver pulled out in front of someone because he/she couldn't see them coming, the County could be liable. He said, "But what we can do is allow our Public Works people an opportunity to look at your property for an alternative location for that driveway and see if there is a place that a driveway can be placed. But under today's rules, regardless of the driveway across the road, today's rules are now we cannot approve that; we have no jurisdiction or position to be able to allow it that doesn't put the County in jeopardy in the future in the event of an accident."

Commissioner Ainsworth asked if the site is better as you come up to the top of the crest.

Whitaker said that there is a possibility there is but he has not looked at this with the eye of finding a better place to move this driveway. He said that he looked to see if there was a better place to the west and he could not see a good option and to the east you start getting close to the intersection if you go too far.

Pope asked whether service vehicles could get to the shop utilizing the driveway on Best Road. He said, "I'm looking for hardship here and if you tell me there is no way that you can service the needs of the shop or the propane tank from Best Road, that's one issue, but if they can access everything from your current driveway on Best Road, then I'm looking for what's the need. Why would this Board make an exception to our rules or look for any kind of variance – it's not our job to do that today – but why would we look for an exception to give you access to Orchard Heights if you have adequate access from Best Road?"

Labate said that from Best Road, he has access to go to the house but he cannot drive all the way to the shop; it is just a walkway from the house to the shop.

Pope asked, "So, you're telling us your contractor built this shop with the intent of only accessing the shop with vehicles from Orchard Heights Road?"

Labate answered, "That's correct."

Pope asked, "Do you acknowledge that your builder, your contractor, did not have an appropriate permit for this access on Orchard Heights Road?"

Labate answered the he did not know that until the inspector came out and told him that he could not have the driveway. He said that he went to the builder and asked why he did that and he said that he did not have any choice because they needed that access to do the work. He said that if he would have known that before the work was done he might have done something different but he did not know until the work was complete.

Whitaker said that, based on what he's heard, he would agree that there was a verbal conversation between Public Works and the builder where the builder was notified that was only a temporary access for the purpose of construction and that was the only time it would be allowed.

Ainsworth asked, "If the builder realized this was the only access at a specific time to build this and then this was going to go away, how did he expect the homeowner to access it?"

Propes said that he believes the best thing to do at this time is remand this back to staff to see if they can find a safe way to put a driveway in there and, if not, that driveway will have to be removed. He said that the only alternative he can see is to hook the existing driveway to the house around to the shop.

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER AINSWORTH SECONDED, TO DIRECT A 35-DAY EXTENSION (UNTIL MARCH 2, 2011) OF THIS ORDER SO THAT PUBLIC WORKS CAN HAVE AN OPPORTUNITY TO REVIEW THE PROPERTY AND THE ACCESS AND HAVE CONVERSATION WITH THE LAND OWNER.

MOTION PASSED UNANIMOUSLY.

Doyle said that if this was a high volume access, this would have been handled as an emergency and Public Works would have gone out and torn out the driveway approach and sent the property owner a bill. The fact that this is a very nominally used access is why it has not gone through that emergency process. While the Board "feels your pain that your builder may have led you to believe that you had access, when in fact all he had was a temporary construction access, something needs to be done because that access, even if it's only used three times a year, if an accident happens one of those three times, these gentlemen are getting sued..." He said that Public Works will certainly work with Mr. Labate over the next 35-days, however, they are not going to select a site, because that is not their job. He said that if a site is identified, Public Works would be able to sign off on it if it meets the requirements they are obligated to enforce. The other option, like Chairman Propes pointed out, might be to figure out a way to get vehicle access through the property back to the shop. "So you understand that the Board is basically putting this on hold

for 35-days to let you two try to work something out and if you do great and if you don't we'll be back here in 35-days and, in all likelihood, at that point the Board doesn't have any options."

At 9:32 a.m., Chairman Propes asked if there was any need for Executive Session. Staff responded that there was not and the meeting was adjourned.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

(a) JUVENILE – CONTRACT NO. 11-06

Recognized contract #11-06, amendment #1 to contract #09-91 between Polk County and the State of Oregon acting by and through the Office of the Governor and the Oregon Youth Authority. This amendment reduces funding for JCP Basic and Diversion services in the amount of \$13,545.

(b) MENTAL HEALTH – CONTRACT NO. 11-07

Approved contract #11-07, between Polk County and Bradley Houck, MSW, LCSW, to provide mental health counseling / treatment to referred individuals.

(c) YOUTH PROGRAMS – CONTRACT NO. 11-08

Approved contract #11-08, between Polk County and James Kerne, to provide contracted foster parent services to two Mentor Program youths.

(d) CLERK'S FISCAL REPORT

Accepted the Clerk's Biannual Fiscal Report under ORS 294.085.

(e) SHERIFF'S OFFICE FISCAL REPORT

Accepted the Sheriff's Biannual Fiscal Report under ORS 294.085.

(f) TREASURER'S FISCAL REPORT

Accepted the Treasurer's Biannual Fiscal Report under ORS 294.085.

POLK COUNTY BOARD OF COMMISSIONERS

Mike Propes, Chair

Craig Pope, Commissioner

Mike Ainsworth, Commissioner

Minutes: Jennifer Wheeler
Approved: February 2, 2011