

MINUTES

WASHINGTON COUNTY BOARD OF COMMISSIONERS

SEPTEMBER 1, 2009

CONVENED: 10:15 a.m.

BOARD OF COMMISSIONERS:

Chairman Tom Brian
Vice Chair Andy Duyck
Commissioner Dick Schouten
Commissioner Desari Strader

Commissioner Roy Rogers was out of the country today.

STAFF:

Robert Davis, County Administrator
Dan Olsen, County Counsel
Mark Brown, Interim Assistant Director, LUT
Brent Curtis, Planning Division Manager, LUT
Joanne Rice, Principal Planner, LUT
Andy Back, Principal Planner, LUT
Steve Kelley, Senior Planner, LUT
Linda Schroeder, Assistant Planner, LUT
Greg Miller, County Engineer, LUT
Bill Gaffi, General Manager, CWS
Margot Barnett, CPO Coordinator
Patt Opdyke, CPO Coordinator
Jeff Thiessen, Audiovisual Technician
Barbara Hejtmanek, Recording Secretary

PRESS:

Jill Smith, *The Oregonian*

APPROVAL OF MINUTES:

August 18, 2009

1. CONSENT AGENDA

It was moved to adopt the Consent Agenda.

Motion – Schouten

2nd – Strader

Vote – 4-0

CLEAN WATER SERVICES

1.a.

CWS RO 09-27

Acquire Easements for Water Quality Preservation and Storm and Surface Water Drainage and Storm Sewer (Approved Under Consent Agenda)

SUPPORT SERVICES

1.b.

MO 09-238

Grant Waiver/Authorize a Contract with Election Systems and Software, Inc. (Approved Under Consent Agenda)

2. ORAL COMMUNICATION (2 MINUTE OPPORTUNITY)

Erik Mace, 9432 SW Westhaven Drive, Portland, Oregon, appeared with Elizabeth Bowers, 20 NW 87th Avenue, Portland, Oregon. (Submittal may be found in the Meeting File.) Both identified themselves with CPO 1. Mr. Mace thanked Kathy Lehtola and her staff for working with them over the past year. He wished to speak today about the work of the Joint CPO Tree Code Group.

Mr. Mace said that the group's interest is to have a comprehensive Urban Forest Management Policy and supporting code for the unincorporated urban areas within Washington County. He stated that the group consists of citizens from urban unincorporated CPOs spanning from Cedar Mill and Raleigh Hills to King City and Forest Grove. Mr. Mace reported that since November of 2007, the group has been researching best practices, policies and codes of nearby cities and counties, as well as across the country. He told the Board that, in addition to its research, the group has heard from:

- Clackamas County citizen group called "Urban Green"
- Nadine Smith, acting manager of Current Planning
- Geoffrey Donovan, forestry economist with the U.S. Forest Service Pacific Northwest region
- Margot Barnett in her role as serving on the Portland Urban Forestry Commission

The group also:

- Attended the Oregon Department of Forestry Sustainability Conference in the Spring of 2008
- Contacted the Sacramento Tree Foundation, city and county arborists from other jurisdictions, USDA American Forests and the Arbor Day Foundation

Mr. Mace stated that the group also reached out to the development community in order to understand their interests. He reported that only one person responded to multiple requests, however. Mr. Mace recalled that last winter, the group presented to the active urban CPOs and received letters of support. He reiterated that over the past year, the group has met with and communicated frequently with Kathy Lehtola; he looked forward to continuing to work with her staff. Mr. Mace said that the group has identified key principles that should be incorporated into an Urban Forest Management policy. He added that the group has identified 11 elements that would shape a code to implement that policy. Mr. Mace said that these principles and elements—as well as the science behind the group’s recommendations—are detailed in the full document submitted earlier this year.

Mr. Mace asked the Board for the following:

1. Request to present the group’s recommendations for an Urban Forest Management policy and supporting tree code at a Board worksession in November.
2. Request a county Urban Forest Management policy and supporting tree code as a Tier 1 item on the 2010 DLUT work program.

Mr. Mace thanked the Board for supporting the CPO program and for listening today.

Commissioner Schouten noticed that recently, people have begun to wrestle with the issues of urban and rural reserves and changes in the Urban Growth boundary. He asked how a tree ordinance would work if we maintain our Urban Growth Boundary lines and do a lot of infill development.

Mr. Mace responded that this is one of the group’s major concerns that they deal with in their recommendations. He stated that there are a lot of existing codes and ordinances from other jurisdictions—even within the Urban Growth Boundary. Mr. Mace supported looking at those for examples of how this might work.

Vice Chair Duyck asked Mr. Mace if the problem in his mind is that there are not enough trees being planted or that trees are removed that should not be removed. He mentioned that under current rules, there are some protections in the way that people develop and in getting the permits. Vice Chair Duyck just wanted to make sure that this is not a solution looking for a problem.

Mr. Mace replied that the group’s research shows that there are very few, if any, restrictions in a general development that is undertaken. He acknowledged that there are requirements to plant street trees along roads where there is development and there are protections along natural resource protected areas. Mr. Mace identified the problem as being on the large tracts of land that are completely clearcut with no consideration for what exists there. He wanted the planning to involve at least looking at the existing trees and for the planning process to consider saving at least some of those trees.

Chairman Brian agreed with Commissioner Schouten's remarks. He said that there is a lot of sentiment—including on the Board—to preserve farm and forest. Chairman Brian explained that one way that gets done is holding tight on the Urban Growth Boundary (UGB) and the Urban Reserves long term. He observed that it does present this conflict: if you have 1.2 to 1.6 million people moving into the region and if Washington County receives its proportional share of that, about one-third of that would come our way. Chairman Brian concluded that 400,000 to 500,000 people would be added to the existing UGB or slightly more than the UGB. He said that this would create tremendous pressure and encouragement to maximize the land performance. Chairman Brian stated that it does raise the issue of how we find room for everything we want when we do develop. He remarked that trees offer a tremendous contribution to our quality and serenity of life. Chairman Brian predicted that this would be one of the knottier problems involved in this process.

Chairman Brian congratulated the group for the time and work they put into this matter. Regarding Mr. Mace's request to come to a worksession in November, he said that we will know by the end of the year or in January the outcome of the Urban and Rural Reserves issues. Chairman Brian thought that this would provide a context for what we are talking about here. He stated that in mid 2010, Metro Council will make determinations about the Urban Growth Boundary, which will be another big signal to all of us as to the challenges regarding infill, redevelopment, etc. Chairman Brian said that this would provide an important backdrop to this discussion. He did not propose that the group wait until mid-2010 but he did feel that the conversation would be better informed even in January or February of 2010 because we will have the Urban Growth Boundary decided by then. Chairman Brian reported that we have been working very hard regionally to stay on schedule.

Mr. Mace said that the group feels that it is very important to have a tree code established as we go into this process of deciding how we are going to grow so that things are done in a thoughtful way. He stated that this is true for the existing community as well as for future generations.

Chairman Brian remarked that as we look to a new kind of policy, we don't want to spend a lot of time designing one for status quo. He said that if that is going to change a lot, then the question becomes how we are going to preserve trees in that environment. Chairman Brian noted that that is probably the more forward-looking discussion.

Commissioner Schouten said that perhaps this is a signal for the group to consider that in the course of its work and in subsequent discussions with the Board.

Commissioner Strader said she would like to see this even go a little further. She stated that as public policy makers continue to talk about water supply as a precious resource, local jurisdictions have had to go to—often too late—looking at codes that have to do with planting vegetation that is native to the region and does not require as much water. Commissioner Strader described how some in her neighborhood try to grow grass on top

of tree roots, which is usually not successful. She was aware that a lot of money and resources go into trying to do something that just is not meant to be done to the natural habitat. Commissioner Strader favored forward thinking in this regard and also relative to stormwater runoff. She said that we need to look at an overall ecosystem that is more than just trees, particularly as we enter an era of trying to preserve water.

Commissioner Schouten commented that he finds trees (canopy) and a great understory beneath that as most attractive.

Chairman Brian again thanked the group for all the work it has done to date.

3. BOARDS AND COMMISSIONS

3.a.

MO 09-232

Appoint Members to the Washington County Parks and Recreation Advisory Board (All CPOs)

There was a motion to reappoint Dr. George Vennes, Mary Slocum and Todd McLeod to three-year terms ending June 30, 2012.

Motion – Duyck

2nd – Strader

Vote – 4-0

3.b.

MO 09-233

Appoint Members to the Metzger Parks Advisory Board (CPO 4M)

It was moved to reappoint Andy Anderson, Margaret Carr, Bradley Hoskins and to appoint new members Wayne Mitchell, Mischa Herman and Trudy Knowles to the terms listed.

Motion – Schouten

2nd – Strader

Vote – 4-0

4. PUBLIC HEARINGS – LAND USE AND TRANSPORTATION

4.a.

RO 09-73

Transfer Jurisdiction of a Portion of NW 264th Avenue to the City of Hillsboro (CPO 9)

Mark Brown stated that this is a request on behalf of the City of Hillsboro to transfer NW 264th Avenue to the City of Hillsboro. He identified the road as just inside the city and as

just northeast of the Hillsboro Airport. Mr. Brown reviewed that on August 4, 2009, the Board set today as the time and place for the public hearing to consider transfer of jurisdiction. He was not aware of any comments or objections to this action.

County Engineer Greg Miller was present to respond to any questions about the details of this matter.

The public hearing was opened.

No public testimony was offered.

The public hearing was closed.

It was moved to transfer jurisdiction to the City of Hillsboro (CR NO. 3265 T/J).

Motion – Duyck
2nd – Schouten
Vote – 4-0

Commissioner Schouten noted that this road is clearly not one of countywide significance. He said that it is exactly the type of local road that a city such as Hillsboro should appropriately be taking control of.

4.b.

MO 09-234

Consider a Transportation System Development Charge for the North Bethany Subarea (CPO 7)

Chairman Brian stated that the System Development Charge for the Bethany Subarea is in play and will happen in some form. He reported that the amount has not been finalized yet. Chairman Brian said that the Board proposes to continue this matter to September 22, 2009.

Brent Curtis informed the Board that items 4.b., 4.c. and 5.a. are considered together and are moving forward together each week. He recommended that, following today's public hearing, the Board continue all three matters to September 22, 2009.

The public hearing was opened.

No public testimony was provided and the Board left the hearing open and moved on to the next item in the series.

4.c.

MO 09-235

Proposed Ordinance No. 712 – an Ordinance Adopting the North Bethany Subarea Plan by Amending the Washington County Comprehensive Plan (CPO 7)

There was a motion to read Proposed Ordinance No. 712 by title only.

Motion – Duyck

2nd – Schouten

Vote – 4-0

Dan Olsen read the proposed ordinance by title.

Brent Curtis reviewed that the Board has held three previous hearings on this ordinance. He recalled that at one of the first hearings, it was suggested that staff provide an order for testimony in regard to these items. Mr. Curtis said that last week, there was a suggestion to focus the testimony on Title XI planning requirements and threshold land use planning issues. He stated that the expectation was that this week, the Board would hear items associated with growth management and the connections that need to be made between the land use plan and the finance plan. Mr. Curtis observed that people continue to provide testimony as they see fit regarding both the land use and finance matter. He said that staff has previously provided an analysis and recommendation to the Board and anticipates that the Board will conduct the hearing today and then provide direction at the September 8, 2009 Extended Worksession to staff in regard to items the Board would like to see in an engrossed ordinance. Mr. Curtis intended for staff to use the subsequent two weeks to make those changes and bring them back to the Board on September 22, 2009, at which time the Board will evaluate the extent to which the Board's direction has been adequately carried out. He said that if it has, the Board will order engrossment of the ordinance and there will be two subsequent hearings on the third and fourth Tuesdays of October.

The public hearing was opened.

Michael Robinson, Attorney, 1120 NW Couch Street, Portland, Oregon, appeared on behalf of West Hills Development Company. He submitted a document containing the Planning Commission's recommendations and the red line changes to the ordinances to comport with the Commission's recommendations. (Document may be found in the Meeting File.) Mr. Robinson intended to take it out of that format this afternoon and send to staff and the Board's secretary a complete red line (or lack of red line, as the case may be) version of all of the ordinances submitted by staff. He summarized that at the end of today, the Board will have: 1) a streamlined version showing how the ordinance comports with the Planning Commission recommendation and 2) the entire thing in a word document with red lines so the Board may read it from cover to end. Mr.

Robinson indicated that the latter will be longer and will not necessarily have changes because in some of the instances, the Planning Commission recommendation did not include changes.

Chairman Brian asked if Mr. Robinson is saying that at the end of the day, the Board will have his proposed version of an actual ordinance, where it is all integrated together in ordinance form.

Mr. Robinson responded that if that is helpful to the Board, then that is what he will do.

Chairman Brian asked that it be red lined so that the Board can distinguish the additions and deletions.

Mr. Robinson clarified that the version that the Board has contains the pieces that the Planning Commission recommended changes to in red line format. He said that people are free to play around with it and make whatever changes they think are necessary. Mr. Robinson said that he will give the Board the entire ordinance as he got it and will have it all red lined. He pointed out that there will be big chunks where it is not red lined because the Planning Commission did not make any changes to those portions.

Chairman Brian said that this would be helpful because the Board—as a starting point—wanted to integrate the Planning Commission recommendations.

Carol Chesarek, 13300 NW Germantown Road, Portland, Oregon, submitted three letters from farmers and property owners with direct experience with the conflicts that occur when there are not adequate buffers, setbacks and fencing between urban and rural areas. She also submitted three photographs, showing homes built along the current Bethany UGB and Multnomah/Washington County line so that the Board can see how these edges have been handled in the past. (Submittal may be found in the Meeting File and includes letters from Greg Malinowski, Fred and Cori Bacher, and Alan Schaaf.) Ms. Chesarek stated that the letters document problems ranging from families holding picnics in fields with cattle, urban homeowners blocking a farmer's equipment as he attempted to harvest a crop, and urban neighbors who insisted that it was their right to walk their dogs on adjacent rural property. She said that the Forest Park Neighborhood Association has previously submitted letters requesting additional buffers, setbacks and fencing around the edges of North Bethany to eliminate these conflicts in the future and to help comply with the Metro ordinance that brought North Bethany into the UGB.

John Junkin, Lawyer, 121 SW Morrison, Portland, Oregon, appeared on behalf of client K & R Holdings—one of the owners and developers within the Bethany area. He reviewed that he previously provided a letter dated August 13, 2009, wherein he set out the Planning Commission recommendations and then a proposal for implementation of those recommendations. Mr. Junkin felt that we should step back for a moment and look at the context of this matter. He noted that the Planning Commission was presented with

a whole bunch of material at the last minute and some material was actually presented during the course of deliberations, such as Article VIII. Mr. Junkin believed that Planning Commission Chair San Soucie did a great job: he listened to questions and issues presented by the public—including his client—and responded to those. Mr. Junkin's understanding was that when the Planning Commission presented the recommendations, members went through issues/questions raised during the course of those hearings and gave a response. He observed that some of those responses were very specific, some were more general and some did not have unanimous consent by all members. Mr. Junkin summarized that we have a mish mash of recommendations to a certain extent although we do have specificity to a great extent. He explained that his client would like the Board to do what has been awaited for two years, namely, to adopt amendments to the Comprehensive Plan, the Community Plan, the Transportation Plan and to the extent there is a need to amend the Code *this season*—by November 1, 2009. Mr. Junkin remarked that this is doable. He acknowledged the funding issue and was prepared to continue to work on that. Mr. Junkin did want to “put some meat on the bones” as far as having a community plan adopted—not merely a concept plan—for this area. He referenced a letter submitted and dated today from K & R Holdings' planner, Matt Wellner, which may be found in the Meeting File. Mr. Junkin recalled that the letter of August 13th was ten pages and said that today's letter is five pages—indicating some progress is being made. He agreed with what Mr. Robinson has done and what West Hills has proposed as far as the changes to implement the Planning Commission recommendations. Although Mr. Junkin agreed with those, he said that if the Board wants to go a little further and to address this issue specifically as to Article VIII (whether there ought to be an Article VIII or not), he is prepared to present the Board with a modified Article VIII consistent with the Planning Commission recommendations. He stated that on page 2 of the letter are listed the six Planning Commission recommendations that could be incorporated within an Article VIII—which is a new article. Mr. Junkin said that the submittal then identifies all of the Article VIII provisions that had been proposed to the Planning Commission that K & R Holdings believes should be eliminated because they are redundant. He specified that these are already addressed in Article III or IV and said that this is what the Planning Commission meant when it said that we do not need an Article 8. Mr. Junkin stated that we do not need new standards for submission of applications and review, for example, because that is done in Article IV. He explained that redundancy will create confusion and more cost to everybody. Mr. Junkin called attention to the 24 items listed in the submittal that K & R Holdings and the Planning Commission believe should not be included in Article VIII. He then highlighted eight issues in the submittal that were raised by the Planning Commission to which K & R Holdings concedes that there was not specificity to incorporate them at this time. Mr. Junkin recommended that these are issues that should be discussed during the winter hiatus. He said that he has discussed the other planning documents within this submittal as far as the changes to the Comprehensive Plan, the Transportation Plan and the Bethany Community Plan. Mr. Junkin stated that K & R Holdings, for the most part, agrees with West Hills on those changes.

Mr. Junkin told the Board that this submittal presents a road map of how to get to as much of a community plan, consistent with the Planning Commission recommendations, as possible. He was prepared to present this as a red lined and final document at next week's Extended Worksession. Mr. Junkin said that hopefully this goes in the right direction and added that if the Board agrees with that approach, he will continue on.

Chairman Brian commented that it is helpful to get that final form—not that the Board will adopt it in total. He said that it is easier to work from and would help the Board's consideration of all of the issues.

John Junkin said that the road map gives the Board some idea of where his client is going. He said he would be happy to talk with staff over the next few days if they have any questions or concerns and work those out.

Commissioner Schouten asked if this is what will be discussed with County Counsel.

John Junkin's understanding was that the discussion with County Counsel subsequent to this meeting will deal mainly with the funding issues. He planned to meet with senior planning staff over the next week, if it would be helpful.

Chairman Brian stated that the farther that discussions can be advanced and resolution found, that would be much appreciated by the board so that it can focus on things on which there is not a consensus.

Mr. Junkin was willing to sit down with staff between now and next Tuesday to go through his submittal. He said that if staff has some issues with those sections that he thinks were clearly identified that should be eliminated from Article VIII, for example, that can be discussed. Mr. Junkin stated that he can talk with staff, too, about those sections that he would include within an Article VIII.

Tim Ramis, Attorney, 2 Centerpoint, Lake Oswego, Oregon, appeared on behalf of Roy Kim and Central Bethany Development, who have built Bethany Village for the community. He said that he testified previously and offered amendments; today, he wished to re-draw the Board's attention to those amendments. Mr. Ramis intended to give the Board a small notebook today that organizes those amendments into four policy questions. He said that if the Board should decide to take the policy direction that he advocates, then the necessary implementing amendments are included in each section.

Mr. Ramis stated that the first issue is the fundamental question of whether development standards and the allowable uses in the zoning code (commercial parts of the zoning code) should be modified to clearly require the vision to be carried out. He noted that the narrative in the notebook says that the commercial areas are going to be focused on implementing Metro's Main Streets Program. Mr. Ramis said that the notebook also contains a rendering, which has been provided by consultants. He indicated that the Board will not see driveways separating commercial buildings to allow drive-throughs,

gas stations or parking lots between the street and the buildings on this rendering. Mr. Ramis clarified that, instead, the Board will see a design that truly reflects a more urban character and reflects Metro's requirements. He said that, unfortunately, the code as currently written would allow the typical suburban types of commercial development. Mr. Ramis raised the point that if you are really presenting to the public a vision of an urban place that is really a quality place, you have to make the zoning code in synch with that vision. He maintained that that is not the case now. With respect to gas stations, Mr. Ramis noted that Planning Commissioner Mary Manseau has offered a compromise. He said that his client had suggested simply eliminating 'gas station' from the uses. Mr. Ramis reported that Ms. Manseau suggests locating the gas station further to the west at 185th and Springville. He felt that that probably helps ameliorate some of the issues we are concerned about and asked the Board to consider that compromise.

Mr. Ramis turned to a second policy issue. He asked why you would leave the door open to variances from provisions if you believe that in order to achieve the vision, those development standards are important (i.e., FAR, setback, lot coverage). Mr. Ramis suggested that if you really want to be disciplined about carrying out the vision, then you need to limit the use of variances. He indicated that this is what his language does.

Mr. Ramis reviewed that another tool that the Board has used previously on the Peterkort property is to say that if there is to be a departure from the vision, it cannot be initiated by the property owner; it can only be initiated by the County. He said that this is another tool the Board has used previously and he wanted to see the Board do something to tighten those opportunities for departure from the vision.

Mr. Ramis said that another fundamental policy question has to do with allowing commercial uses that are likely to detract from the town center in Central Bethany. He stated that the question there fundamentally focuses on the size of the grocery that is permitted. Mr. Ramis remarked that the County has a code that would allow a 25,000 square foot grocery; he suggests a lesser square footage cap makes more sense. He said that the information he will provide will focus on specialty grocery. Mr. Ramis added that this is what the consultant said was the objective in this area. He said he would provide the Board with a table that shows that uses like Trader Joe's, New Seasons, City Market in northwest, Belmont Market in southeast, John's in Multnomah range from 6,000 square feet to 14,000 square feet. Mr. Ramis stated that if the Board allows a 25,000 square foot store, this will clearly undermine the 36,000 square foot store in Bethany, which is designed to expand when the densities increase.

Commissioner Schouten asked Mr. Ramis to summarize areas of disagreement, if any, between his client and the previous two attorneys who spoke today.

Mr. Ramis was not aware of conflicts. He said that all share the idea of a successful commercial center that does not undermine the town center. Mr. Ramis stated that this is everybody's goal and that the question is how to get it right and how to make the code match the vision.

Chairman Brian noted that Mr. Ramis' work is focused on commercial while the others are focused on residential.

No further testimony was offered on this agenda item.

Motions for items 4.b. and 4.c.

4.b.

It was moved to continue the public hearing on the proposed North Bethany Transportation System Development Charge to September 22, 2009.

Motion – Strader

2nd – Duyck

Vote – 4-0

4.c.

It was moved to continue the public hearing on Ordinance No. 712 to September 22, 2009.

Motion – Schouten

2nd – Strader

Vote – 4-0

5. LAND USE AND TRANSPORTATION

5.a.

MO 09-236

Consider a Funding Strategy for the North Bethany Subarea (CPO 7)

There was a motion to continue consideration of the proposed North Bethany Funding Strategy to September 22, 2009.

Motion – Duyck

2nd – Strader

Vote – 4-0

Chairman Brian thanked everyone for not only being here but for trying to help the Board get to a set of decisions it is comfortable with and feels are responsible and beneficial.

5.b.

MO 09-237

Authorize County Counsel to Draft and File Ordinance to Implement Transportation Development Tax (TDT) Temporary Discount (All CPOs)

It was moved to authorize County Counsel to draft and file an ordinance amending the TDT as described in the agenda item.

Motion – Duyck

2nd – Schouten

Vote – 4-0

6. ORAL COMMUNICATION (5 MINUTE OPPORTUNITY)

None.

7. BOARD ANNOUNCEMENTS

None.

8. ADJOURNMENT: 11:00 a.m.

Motion – Schouten

2nd – Strader

Vote – 4-0

MINUTES APPROVED THIS ____ DAY _____ 2009

RECORDING SECRETARY

CHAIRMAN