MINUTES
WASHINGTON COUNTY BOARD OF COMMISSIONERS
JUNE 26, 2007

CONVENEĐ: 6:34 p.m.

BOARD OF COMMISSIONERS:
Chairman Tom Brian
Vice Chair Roy Rogers
Commissioner Dick Schouten
Commissioner Desari Strader
Commissioner Andy Duyck

STAFF:
Robert Davis, County Administrator
Ellen Conley, County Administrative Office
Dan Olsen, County Counsel
Lawrence O’Dell, Assistant Director, LUT
Dave Schamp, LUT
Andy Back, LUT
Greg Leion, LUT
Joy Chang, LUT
Linda Gray, CPO Coordinator
Jeff Friend, Audiovisual Specialist
Marian Larkin, Recording Secretary

PRESS:
Kathy Gorman, The Oregonian

APPROVAL OF MINUTES:
June 5, 2007

1. CONSENT AGENDA

Chairman Brian announced the following modifications to the Consent Agenda:

- Under i.e., an award of contract for the Rock Creek Gravity Main Project to K&R Construction in the amount of $626,140.
- Under i.f., an award of contract for the Beaverton Creek South Tributary Culverts Replacement project is awarded to Thompson Brothers in the amount of $571,650.
- Under 1.g., an award of contract for the Cipole Trunk Sewer Upgrade project is awarded to C&M Construction in the amount $4,992,000.
- Item 1.i, CAO item has typographical corrections (organization unit #s). Corrected pages were provided to the clerk.
- Item 1.j. was pulled by staff for consideration at another date.
- It was requested by a member of the public to remove item 1.k. Chairman Brian stated this item was to be placed at the end of the Regular Agenda for a 5-minute presentation period.

It was moved to adopt the Consent Agenda as modified.

Motion – Rogers
2nd – Strader
Vote – 5-0

CLEAN WATER SERVICES

1.a.
CWS MO 07-57
Approve Fifth Amendment to the Master Contract for Professional Services With CH2M Hill, Inc. for the Rock Creek Wastewater Treatment Facility Secondary Clarifier 10 Services During Construction (CPO 9) (Approved Under Consent Agenda)

1.b.
CWS MO 07-58
Quitclaim A Portion of a Sanitary Sewer Easement to WC-Portland LLC (CPO 7) (Approved Under Consent Agenda)

1.c.
CWS MO 07-59
Approve Amendment to Contract for Operations and Maintenance Services for the Administration Building Complex, Field Operations and Water Quality Lab Buildings with Melvin Mark Properties LLC (CPO 2 & 9) (Approved Under Consent Agenda)

1.d.
CWS MO 07-60
Approve Amendment to Intergovernmental Agreement with the City of North Plains for Construction of Main Street Storm and Street Improvements Project No. 6181 (CPO 8) (Approved Under Consent Agenda)

1.e.
CWS MO 07-61
Award Contract for Construction of the Rock Creek Gravity Main Project (CPO 7) (Approved Under Consent Agenda)

1.f.
CWS MO 07-62
Award Contract for Construction of the Beaverton Creek South Tributary Culverts Replacement Project No. 6289 (Johnson Street, Alexander Street and Vista Street Culverts) (CPO 6) (Approved Under Consent Agenda)

1.g.
CWS MO 07-63
Award Contract for Construction of the Cipole Trunk Sewer Upgrade Project (Project No. 6030) to C&M Construction, Inc. (CPO 5) (Approved Under Consent Agenda)

LAND USE AND TRANSPORTATION

1.h.
RO 07-132
Adopt Fiscal Year 2007-2008 Budgets and Levy Assessments for Road Maintenance Local Improvement Districts (MLIDs) (CPO All) (Approved Under Consent Agenda)

COUNTY ADMINISTRATIVE OFFICE

1.i.
RO 07-133
Year-End Budget Appropriation Adjustments for Fiscal Year 2006-07 (CPO All) (Approved Under Consent Agenda)

1.j.
MO 07-252
Adopt Resolution Setting General Guidelines for County Use of Federal Timber Safety Net Funds (CPO All) (Removed from the Agenda)

COUNTY COUNSEL

1.k.
MO 07-244
Authorize Legal Action Against Ken Leahy Construction, Inc. (Moved to the end of the Regular agenda and approved)

HEALTH AND HUMAN SERVICES

1.l.
MO 07-245
Approve Amendments to the 2006-2007 Contracts for the Provision of Alcohol, Drug and Gambling Treatment Services (Approved Under Consent Agenda)

1.m.
MO 07-246
Approve Contracts with Community Agencies to Provide Specialized Mental Health Services (Approved Under Consent Agenda)
1.n.
MO 07-247
Approve Amendment to the Intergovernmental Agreement with the State of Oregon for Drinking Water Program Services (Approved Under Consent Agenda)

SUPPORT SERVICES

1.o.
MO 07-248
Approve Agreement with Portland Habilitation for Custodial Services (Approved Under Consent Agenda)

1.p.
MO 07-249
Accept Bid/Award Contract for Guard Rail Materials (Approved Under Consent Agenda)

1.q.
MO 07-250
Authorize Purchase Orders for Purchase and Printing of Optical Scan Ballots and Envelopes (Approved Under Consent Agenda)

1.r.
MO 07-251
Authorize Agreement for Campus Security Services – Facilities & Parks Services Division (Approved Under Consent Agenda)

1.s.
RO 07-135
Adopt Resolution and Order Levying the 2007-08 Annual Assessments for the Metzger Park Local Improvement District (Approved Under Consent Agenda)

2. ORAL COMMUNICATION

Ellen Saunders, 47950 NW Dingheiser Rd., PO Box 5035, Manning provided copies of a letter and press release outlining the LUBA appeal and final order regarding Apple Valley Airport. Ms. Saunders requested legal ruling from County Counsel on the apparent commercial use in conflict with the LUBA ruling and order. She reported this upheld Dale Hermann’s decision of the proposed expansion. The LUBA ruling determined the County can enforce its Building Code laws. She reported that Mike Applebee is in violation on both the barn and the house. Ms. Saunders asked for the County’s legal standing to do a full on-site inspection of the airport. She stated the airport is to have restroom facilities, parking facilities and a full-length fire road if it is to
be used commercially. She also requested for information on legal avenues the County has to assess the property for commercial use. She also asked if there are any business permits on file with the County on the “personal use” airport. According to LUBA, the existing usage cannot be morphed into new uses with expansion of the airport. Citations and prosecution of code violations can take place under the LUBA ruling. Chairman Brian stated the speaker’s time was up and noted that she asked for answers to her questions.

Renee Mills, 18200 Oakridge Place, Manning congratulated Chairman Brian on the S. Stewart State Park opening. Ms. Mills talked about being part of the group, Neighbors against Apple Valley Expansion, (NAVE) that has raised $60K in funds to protect the livability of their community. She expressed that the success of the new state park also relies on the tranquil and peaceful setting. Ms. Mills asked for help with enforcing code violations of Apple Valley Airport violations as requested.

David Bratton, 22440 NW Ardebeth Lane, Banks provided correspondence between Mr. Bratton and Kathy Lehtola. He hoped for legal understanding and clarification through the official channels. Two weeks have lapsed without any response. He mentioned the agricultural building as a hanger is a public safety issue. He asked what would the trigger would be to set in motion the protection of health and safety issues.

Chairman Brian stated these things would be looked into and feedback would be provided.

3. **BOARDS AND COMMISSIONS**

3.a.
MO 07-242
Appointments to the Planning Commission (CPO All)

Chairman Brian announced there are four vacancies and that two would be made this evening. Veta Holscher (District 4) and Rick Lesniak (District 3) were submitted as appointments to the Planning Commission. The terms of the new positions will expire on June 30, 2011.

Motion – Rogers
2nd – Duyck
Vote – 5-0

4. **PUBLIC HEARING – LAND USE AND TRANSPORTATION**

4.a.
ADOPTED
Proposed Ordinance No. 682 – an Ordinance Amending a Portion of the Community Development Code to Clarify Traffic Safety Standards that are Applicable to New Development Located Outside of the Urban Growth Boundary (All Rural CPOs)

There was a motion to read the ordinance by title only.

Motion – Duyck
2nd – Rogers
Vote – 5-0

Dan Olson read the ordinance by title only. The public hearing was opened.

Greg Leion and Andy Back, LUT provided the staff report. The Planning Commission conducted a public hearing on June 6, 2007. They voted unanimously to approve the policy which expands the traffic safety requirements in rural areas. The shift would change the responsibility of a traffic analysis requirement from the County to the applicants of larger developments outside the urban growth boundary (where there are more than 500 trips). The ordinance also expands existing code.

No public testimony was provided. The public hearing was closed.

Commissioner Duyck moved for adoption of Ordinance No. 682.

Motion – Duyck
2nd – Strader
Vote – All aye

9.a.
RO 07-130
Adopt Findings for Ordinance No. 682 (All Rural CPOs)

A motion was made to adopt the proposed findings for Ordinance No. 682.

Motion – Duyck
2nd – Rogers
Vote – 5-0

4.b.
MO 07-243
Proposed Ordinance No. 683 – an Ordinance Relating to Housekeeping and General Update Changes to the Comprehensive Framework Plan for the Urban Area, the 2020 Transportation Plan, the Aloha-Reedville-Cooper Mountain Community Plan, the Raleigh Hills-Garden Home Community Plan, and the Community Development Code Elements of the Comprehensive Plan (CPO All)

A motion was made to read the ordinance by title only.
Motion – Schouten
2nd – Duyck
Vote: 5-0

Dan Olsen read the ordinance by title only. The public hearing was opened.

Joy Chang, Associate Planner provided the staff report. She reported that Ordinance 683 proposes to amend the Comprehensive Plan elements related to housekeeping and general update amendments. The Planning Commission conducted a public hearing on June 6, 2007 and unanimously approved a motion for the Board to engross the ordinance to be consistent with the revision in proposed Exhibits 9, 10 and 11. One individual testified in support of the amendments suggested by the Planning Commission. No public testimony was provided.

A motion was made to direct engrossment of the ordinance to include the changes described in the staff report and continue the hearing to July 24, 2007 and August 7, 2007. Staff is also to prepare and mail notice of the amendments consistent with the requirements of Chapter X of the Charter.

Motion – Rogers
2nd – Schouten
Vote – 5-0

5. PUBLIC HEARING – COUNTY ADMINISTRATIVE OFFICE

5.a.
RO 07-129
Adopt the 2007-08 Fiscal Year Budget, Make Appropriations and Levy Taxes for Washington County (CPO All)

The public hearing was opened. Ellen Conley, Budget Officer, provided a staff report. The 2007-08 fiscal year Budget was submitted by the County Administrator. She announced the Budget Committee approved the budget at their hearing on May 17, 2007. Minor adjustments to the proposed budget were made and the committee unanimously approved the $637 Million Budget for the 2007-08 fiscal year. The Budget Committee also approved the levying of County permanent rate taxes, the Public Safety Local Option Levy taxes, the Library Local Option Levy and an amount for bonded indebtedness. Staff is recommending additional adjustments that are summarized in Exhibit A in the Resolution and Order. These address encumbrances; the carry forward of appropriations from the current year, cost of living adjustments and other minor changes based on updated information. The total increase from these adjustments is approximately $12.9 million (2% of the approved budget). These are all within the limits prescribed by state budget law. Ms. Conley stated that the total with these adjustments is $650,576,652. Of this amount 56% is allocated to the Operating portion of the Budget,
20% to Capital and 24% to Non-Operating. Ms. Conley requested the Board conduct a public hearing on the 2007-08 Approved Budget, approve the Resolution and Order adopting the budget, making appropriations and levying taxes.

No public testimony was provided. The public hearing was closed. A motion was made to approve the Resolution and Order adopting the budget, making appropriations and levying taxes.

Motion – Schouten
2nd – Duyck
Vote – 5-0

6. PUBLIC HEARING – SERVICE DISTRICT FOR LIGHTING NO. 1

6.a.
SDL RO 07-25
Adopt the 2007-08 Fiscal Year Budget, Make Appropriations for the Service District for Lighting No. 1 (SDL-1) (CPO All)

The public hearing was opened.

Ellen Conley provided the staff report for the Service District for Lighting No. 1 (SDL-1) Budget adoption. She reported the Budget Committee conducted a public hearing on May 17, 2007 and unanimously approved the proposed budget of $2,679,519 for the 2007-08 fiscal year. Staff had no other changes. Ms. Conley requested the Board conduct a public hearing on the 2007-08 Approved Budget, approve the Resolution and Order adopting the budget and making appropriations.

No public testimony was provided. The public hearing was closed. A motion was made to approve the 2007-08 Approved Budget, approve the Resolution and Order adopting the budget and making appropriations.

Motion – Rogers
2nd – Strader
Vote – 5-0

6.b.
SDL RO 07-26
Approve Changes and Establish New Maximum Annual Assessments for Fiscal Year 2007-2008 (CPO All)

Dave Schamp provided a staff report on the 1200 assessment areas for the Service District for Lighting No. 1 (SDL-1). These include partial annexations and lot consolidations, changes in equipment and errors. There are 38 changes listed in Exhibit
A-2. These changes need to be adopted by July 1 and certified to be placed on the tax rolls. Notification was made and no objections were noted. Staff recommended approval of the R&O and adopting the changes outlined in Exhibit A-2. No public testimony was provided. The public hearing was closed. A motion was made to adopt the attached Resolution and Order, to adopt the changes and establish a new maximum annual assessment for Fiscal Year 2007-2008 (as outlined in Exhibit A-2) as the maximum assessments for the Service District for Lighting, and levy assessments for Fiscal Year 2007-2008.

Motion – Schouten
2nd – Strader
Vote – 5-0

7. PUBLIC HEARING – ENHANCED SHERIFF PATROL DISTRICT

7.a.
ESP D RO 07-01
Adopt the 2007-08 Fiscal Year Budget, Make Appropriations and Levy Taxes for the Enhanced Sheriff Patrol District (CPO All)

The public hearing was opened. Ellen Conley provided a staff report. The Budget Committee at its public hearing on May 17, 2007 unanimously approved the budget of $22,279,927 for the 2007-08 fiscal year. The Budget Committee also approved levying the ESPD permanent rate and the Local Option Levy for the ESPD. No further staff changes were requested. No public testimony was provided. The public hearing was closed.

A motion was made to approve the 2007-08 Approved Budget, approve the Resolution and Order adopting the budget, making appropriations and levying taxes.

Motion – Rogers
2nd – Duyck
Vote – 5-0

8. PUBLIC HEARING – URBAN ROAD MAINTENANCE DISTRICT

8.a.
URMD RO 07-01
Adopt the 2007-08 Fiscal Year Budget, Make Appropriations and Levy Taxes for the Urban Road Maintenance District (CPO All)

The public hearing was opened. Ellen Conley reported the Budget Committee reviewed and unanimously approved the $6,145,134 fiscal year 2007-08 budget at their May 17, 2007 meeting. The Committee also approved the levying of the URMD permanent rate.
No other changes were recommended by staff. Ms. Conley requested the Board conduct a public hearing on the 2007-08 Approved Budget, approve the Resolution and Order adopting the budget, making appropriations and levying taxes for the Urban Road Maintenance District.

No public testimony was provided. The public hearing was closed. A motion was made to approve the recommended action to approve the Resolution and Order adopting the budget, making appropriations and levying taxes for the Urban Road Maintenance District.

Motion – Schouten
2nd – Strader
Vote – 5-0

9. LAND USE AND TRANSPORTATION

9.b.
RO 07-131
Adopt Annual Road Maintenance Work Program for Fiscal Year 2007-2008 (CPO All)

Dave Schamp, LUT staff provided a staff report. Mr. Schamp reported that the Work Program is directed by the Transportation Plan. It is put together by the Prioritization Matrix. It represents about 2/3 of the LUT Operations budget. The remaining 1/3 is for anticipating needs and unidentified or challenges presented in the coming year. The work plan also includes 7-1/2 miles of overlay work, 30 miles of chip seal (including upgrades). URMD work program includes 15 miles of overlay work and 50 miles of slurry seals. Modifications may be made next Spring. Mr. Schamp stated the work program is available online also.

Commissioner Duyck asked if the recent LIDs were included. Dave Schamp confirmed that the Jacktown, McDaniel and Pumpkin Ridge Roads were included. An additional funding amount comes from these LIDs.

A motion was made to adopt the attached Resolution and Order, and the prioritized annual work program for road maintenance.

Motion – Duyck
2nd – Strader
Vote – 5-0

10. ORAL COMMUNICATION (5 MINUTE OPPORTUNITY

None.
Authorize Legal Action Against Ken Leahy Construction, Inc. (Moved to the end of the Regular agenda for approval)

Ken Leahy, 34175 SW Peaks View Drive, Hillsboro came before the Board to discuss the pending lawsuit with the County.

Mr. Leahy felt that many issues have not been addressed or have been ignored. He asked if the Board had the report from the Annapolis consultant. He asked if it was understood by the Board. Mr. Leahy stated that upon release of the GeoDesign report on the high levels of methane, County staff went out for a recommendation and opinion on the methane levels. Mr. Leahy felt this was ignored and he has spent $100K to find out from URS and the County’s consultant what was wanted. He stated they found out the same thing that the high level of methane was a skewed report. He asserted that three consultants stated the same thing and he felt this was being ignored. He asked why the County would go through fixing the problem for two years, and is now asking Mr. Leahy to be part of the solution. Mr. Leahy stated that had he known he’d been part of the problem to begin with, he would have stopped to address the situation then. He suggested a simple passive methane collection system could have been used in lieu of what the County chose. He stated there was no comparison. He cited the three consultants with the same report have a total of 80 years in environmental consulting. The Bridgeport consultant, GeoDesign, had a total of 17 years in geo-technical and environmental experience. He confirmed that his contract stated that his company would indemnify the County for his work and procedures. He asked how he could indemnify the County on a third party the County hired. He hoped that the Board would think long and hard before going forward with this process. He stated that there would be a “train wreck.” He asked how the County could take a consultant’s remark – “GeoDesign’s testing methods yielded unrealistic elevated levels of methane” – the overstatement of the levels of methane within the fill resulted in a remedy that was more elaborate and redundant than was warranted. Mr. Leahy expressed it was like someone going to a doctor to find out you had cancer. After two years of chemotherapy and upon seeing another few doctors, it was determined it could have been taken care of with an aspirin. He felt the whole thing was ridiculous. He asked that the Board talk to the consultants and asked the County ask the Annapolis consultant what he thought it should have cost. Mr. Leahy concluded that then he will listen to the County.

Chairman Brian asked whether County Counsel had any comments. Dan Olsen stated that under state law he would not be able to communicate to Mr. Leahy since he was represented by an attorney in the matter. He advised the Board to not engage in discussion during the Board meeting, but to contact Mr. Leahy’s counsel. Mr. Olsen further stated that the things suggested were looked into and County Counsel’s recommendation had not changed.

Commissioner Rogers asked about the outside lawyer’s advice. County Counsel suggested a statement could be obtained summarizing the advice of outside counsel.
Commissioner Rogers clarified the request for a recommendation. Dan Olsen stated that recommendation to the Board was to proceed with the lawsuit as there is a good opportunity for recovery.

Chairman Brian stated this recommendation is covered in the agenda item (item i.k., page 109) that is public record.

Commissioner Rogers stated his question on the recommendation was for the public viewing audience. Dan Olsen proceeded to summarize the recommendation found in the agenda item.

Chairman Brian asked about proceeding with item i.k. and the affect and timing. Dan Olsen stated that this filing would happen within a week. However, if County Counsel was contacted by Mr. Leahy’s attorney or if new information was provided, it could be held off pending further discussion.

Commissioner Rogers confirmed it was not appropriate for the Board to discuss the matter further publicly.

A motion was made to authorize counsel to initiate legal action as described in 1.k. and authorize counsel to negotiate and sign an agreement for representation in this action by the Davis Wright Tremaine law firm.

Motion – Schouten  
2nd – Duyck  
Vote – 5-0

11. BOARD ANNOUNCEMENTS

Commissioner Rogers announced that Commissioner Strader would be celebrating her birthday this week.

12. ADJOURNMENT: 7:20 p.m.

Motion – Schouten  
2nd – Duyck  
Vote – 5-0

MINUTES APPROVED THIS ____ DAY _________________________ 2007

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RECORDING SECRETARY                      CHAIRMAN