

**BOARD OF COMMISSIONERS'
REGULAR MEETING**

July 6, 2011

9:00 a.m.

Harris Hall Main Floor

Commissioner Faye Stewart presided with Commissioners Jay Bozievich, Rob Handy, Sid Leiken and Pete Sorenson present. County Administrator Liane Richardson, County Counsel Stephen Vorhes and Recording Secretary Melissa Zimmer were also present.

1. **ADJUSTMENTS TO THE AGENDA**

Handy pulled item 5 E2 from the Consent Calendar.

2. **PUBLIC COMMENTS**

Bill Ledford, Coburg, recalled in March 2011 Commissioner Stewart and Matt Laird, Manager, Land Management Division, hired Joseph Leahy to investigate the activity of Kent Howe and Gary Darnielle and how a land use application was processed by Land Management Division and how land use compatibility statements were provided to the Water Resource Department. He noted on July 1, 2011, Leahy rendered his final decision on the matter but did not address his concerns: Is it common practice for the Director to let the applicant of the land use decision write the Director's decision. He said this applicant was the city of Coburg and Gary Darnielle was acting as the agent for the city of Coburg and two months later he filed by e-mail a complete director's decision and every one of the findings of fact were false. He asked if a decision has to be made on fact. He said it violates Lane Code 14.100(3), when the Director learned at a land use compatibility statement that was issued to the Water Resource Department with false information by the city of Coburg. He asked why the director did not do something to correct the misinformation. He asked how the Director could issue a land use compatibility statement to the Water Resource Department stating that the land use had been approved. He noted in the appeal Lane Code 16.212 is Exclusive Farm Use Land and it was used as an authority when there is no public record of the land use application involving this land use compatibility statement. He asked if it was proper for a hearings officer to ignore the facts when they are obvious. He asked if a hearings official can clear the Director for violating Lane Code. He asked if it was proper for the Director to sign a blank land use compatibility statement and let it out of his control. He hoped the investigation was impartial and unbiased. He thought Laird and Stewart knew the report would be favorable to them and hoped he would go away. He stated that was not the case. He said it straightens his resolve to bring questionable processes by Lane County Land Management Division to the forefront and correct them. He stated that he is seeking penalties for everyone involved in this matter. He thinks everyone involved is in a cover-up that borders on corruption of Lane County government. He indicated that he will provide the Board with the documents and he will testify under oath to help clear up the mess in Lane County. He wanted to look at this in a work session to bring to a conclusion.

Sarah Smith, Eugene, said she represents Mind Freedom International. She stated she and her son and daughter are consumers of Mental Health services. She indicated when her family had a mental health crisis she became involved in a grassroots movement consisting of consumers of mental health care and people who have identified having survived the psychiatric system. She stated there are abuses within the psychiatric system where human rights and civil rights are violated. She said the number one goal of the mental health care system should getting people off of dependence of the government program and giving people the skills and services they need to be fully adjusted citizens. She commented that other countries are doing better with that than the United States.

3. **COMMISSIONERS' RESPONSE TO PUBLIC COMMENTS AND/OR OTHER ISSUES AND REMONSTRANCE**

Stewart recalled that Ledford had contacted him with serious allegations and concerns of activities in Land Management that he questioned. He sent the request to Laird and stated that it was serious and he expected it to be reviewed. Stewart indicated that Laird got back to him and he had conferred with Legal Counsel and that they would hire an outside attorney to review the allegations. Laird made it clear that he had absolutely no input as to who was chosen. Laird said he left that up to Legal Counsel. Stewart added the only thing he did throughout the process was when Ledford was concerned about the timeliness of the report, he made inquiry phone calls as to when the report would be out. He said that was the extent of his involvement. He received a briefing on the document that Mr. Leahy prepared. He had just received that document right before the meeting. He will make sure each commissioner will get a copy. He believed that Leahy addressed all of Ledford's questions. He added it might not have been to Ledford's satisfaction. He thanked Smith for talking about Mental Health.

Leiken asked if the letter was a peer review from Leahy.

Vorhes was not sure what a peer review is. He said he looked at what had been presented and the information available through the public record and as part of the process. He indicated that Leahy also asked for staff responses to some of the questions being raised. He thought from a legal perspective, they stayed out of it and only when it was brought to their attention did they contact Matt Laird. Vorhes indicated Laird made the decision who to go to for the review. He also just received a letter from Leahy.

Leiken stated the he has worked closely with Leahy for the past 12 years and he is an award winning attorney and understands municipal government. Leiken stated he knew nothing about this issue. He thought Leahy was very qualified.

Bozievich recalled that this week they celebrated the Nation's Independence. He read from the Declaration of Independence and the Constitution. He commented that whether they are working as regulators or enforcing the law, all the powers they derive are from the people and they need to protect those rights at all times including property rights,

personal rights and choice of health care. He said these were important documents and they should be remembered this week.

4. **EMERGENCY BUSINESS**

None.

5. **CONSENT CALENDAR**

A. Approval of Minutes

April 27, 2011, Reg Meet, 9:00 a.m.
May 4, 2011, Reg Meet, 1:30 p.m.
June 15, 2011, Reg Meet, 9:00 a.m.
June 21, 2011, Goal Setting, 8:00 a.m.
June 22, 2011, Reg Meet, 9:00 a.m.
June 22, 2011, Reg Meet, 1:30 p.m.

B. Assessment and Taxation

1) ORDER 11-7-6-1/In the Matter of a Refund to Chamber Dev Corp, in the Amount of \$22,412.40.

C. County Administration

1) ORDER 11-7-6-2/In the Matter of Approving Projects Submitted under Title III of the Secure Rural Schools and Community Self-Determination Program, P.L. 110-343 for Fiscal Year 11-12.

D. Health and Human Services

1) ORDER 11-7-6-3/In the Matter of Appointing Two Members to the Community Health Council.

E. Human Resources

1) ORDER 11-7-6-4/In the Matter of Establishing the Physician Assistant Classification and Salary Range.

2) ORDER 11-7-6-5/In the Matter of Amending Order No. 11-6-15-1 to Reflect the Correct Base Salary of the County Administrator.

3) ORDER 11-7-6-6/In the Matter of Establishing the Information Services Project Manager and Senior Information Services Project Manager Classifications and Salary Ranges.

F. Public Works

- 1) ORDER 11-7-6-7/In the Matter of Awarding Waste Diversion Opportunity Grants, Releasing Funds from Waste Diversion Opportunity Program and Authorizing the County Administrator to Sign the Contracts.

MOTION: to approve the balance of the Consent Calendar.

Leiken MOVED, Bozievich SECONDED.

VOTE: 5-0.

5.E.2.

MOTION: to approve ORDER 11-7-6-5.

Bozievich MOVED, Leiken SECONDED.

Stewart explained that this was just correcting a scrivener's error in the previous board order for the salary of the County Administrator.

VOTE: 3-2 (Handy, Sorenson dissenting).

6. **HUMAN RESOURCES**

- a. DISCUSSION AND POSSIBLE ACTION/Direction on Filling County Counsel Position.

Madilyn Zike, Human Resources, asked for direction for the filling of the County Counsel position. She recalled the position has been filled on an interim basis for the past eight months. She asked the Board if they want to do an internal recruitment or an external one. She asked the Board if they want HR to do the recruitment or to hire an executive search firm. She also wanted to know the scope of the recruitment. She indicated it will take about two to three months to complete the recruitment process even if they hire an executive firm. With regard to costs, she indicated there is a range of options. She stated there will be costs associated with staff time on the HR side.

Sorenson thought they should have a search opened to internal and external candidates. He thought HR should handle it and not go to an external company. He also wanted the posting advertised on their website, list services and in newspapers in Oregon. He recommended using the job description from when the job was open within the last few years.

Leiken thought staff should look at this instead of an outside search firm. He wanted to make sure it was advertised in the League of Oregon Cities and Association of Oregon Counties and through the Bar Association. He wanted Stephen Vorhes to apply for this.

Bozievich asked if there was the staff availability to do this type of search internally.

Zike indicated they do have staff and her staff was enthusiastic about the possibility.

Bozievich agreed it needed to be internal and external and they could run it from HR instead of an outside firm.

Richardson said direction from the Board was good enough. She recalled in the past six months commissioners were asking how much it would cost if they sent some or all of this work to an outside firm. She asked the Board if they want to have parallel processes going on: one where there is an RFP process about providing some or all of the work and the recruitment process. She said there was a suggestion to have someone who has managed different types of firms or a County Counsel office somewhere else to come and make suggestions.

Bozievich thought they could have a parallel process going on at the same time. He wanted to see where they fit and to talk with other counties and their Legal Counsel. He thought there was advantage to having an internal Legal Counsel but there is also an advantage in utilizing outside legal experts.

Handy thought they should update the job description. He thought it should also take place with the other steps.

Stewart wasn't opposed to running a search for the position, but he wanted to have someone come in and do an outside look at their workload. He thought in some areas that they would want to specialize and to seek outside counsel. He said they want to make sure they are looking at this correctly. He thought if they were to go to a complete outside firm to manage their needs, that it will be cost prohibitive. He commented that it was a good opportunity for them now that they are down three positions in County Counsel to look at case loads. He wanted to get a better understanding of what they are dealing with and what some of the options are.

Zike indicated they could have someone come in to look at their organizational structure. She added they could do comparisons of organizational structures in counties of similar size and common service delivery. She said they could do some of that work to keep the costs down.

Leiken wanted to look at an outside firm to see how much it would cost.

Richardson indicated all five commissioners were interested in moving forward with the search. She added there is a majority who are also interested in having some type of evaluation process done and an RFI process to get the information. She thought Zike, Vorhes and she should get together and report a plan at the next Board meeting on getting a recruitment process started for the County Counsel position.

Handy wanted to also look at the job description.

Zike indicated that she received the direction she needed.

7. **PUBLIC WORKS**

- a. ORDER 11-7-6-8/In the Matter of Approving a Renewal Application for Lane County's National Pollutant Discharge Elimination System Permit (NPDES) Phase II Stormwater Discharge Permit and Authorizing the County Administrator to Certify the Application.

Dan Hurley, Public Works, explained that this is the renewal application for a stormwater discharge permit. He indicated that they are required to develop a stormwater program to address six minimum control measures including public education and outreach, public involvement and participation, illicit discharge elimination, construction site stormwater control, post construction stormwater management and pollution prevention and municipal operations. He added that the County received its first NPDES in January 2007 and that permit is due to expire at the end of the calendar year. He noted that a renewal application is required 188 days prior to the expiration of the permit, but due to the short time frame from receiving DEQ guidance on May 13 and the required submittal date of July 4, they have not had the opportunity to bring this before the Board for comment. He indicated they have submitted a permit application to DEQ and any modifications the Board directs will be following.

Hurley reported the renewal required and the evaluation of their current Stormwater Management Plan and implementation for the next permit cycle is five years. He said a TMDL and benchmark development relate to progress made toward achieving wasteload allocations for the Willamette TMDL. He said that Lane County's current Stormwater Management Plan was developed in 2004 and the document before the Board represents a significant updating to the Stormwater Management Plan including best management practices to reduce the pollutants to stormwater within the regulated permit area. He noted that the County has IGA's with Eugene and Springfield to utilize stormwater programs. He noted Eugene's IGA will expire on November 30 and they will be back to the Board to discuss it. He said that after the DEQ receives the completed permit application, it will take several months to review the document and negotiate the permit. He expected the final permit by the end of the calendar year.

Handy asked what the major changes are in the IGA's.

Hurley said there are proposed changes for when they start to negotiate with the city. He said it will be given to the Board for their comment. He said one is to transfer the responding to illicit discharge spills to the city. He indicated that the city is better staffed to respond to those quickly. He said the city is willing to take that on the County's behalf and they would reimburse them for actions taken in the County area.

MOTION: to approve ORDER 11-7-6-8.

Handy MOVED, Leiken SECONDED.

VOTE: 5-0.

b. DISCUSSION/Proposed Trail Realignment in the Howard Buford Recreation Area (HBRA).

Howard Schussler, Public Works, indicated this is a discussion item for trail realignment in the Howard Buford Recreation area. He said this has the potential for public interest as people love the trails and trail system at Mt. Pisgah. He added the Parks Advisory Committee wanted the Board to know about this. He recalled they received a proposal last year from the Friends of Buford Park. He indicated staff reviewed the proposal and realized the potential for concerns and conflicts. He reported that they set up extensive public comment opportunity for the Parks Advisory Committee where they made connections with all of the stakeholders they could find to post notice of the meeting and opportunity for public comment. He said in May 2011, they had the largest turnout in eight years to get input. He noted in the Board's packet are written comments from people in favor and people who were not in favor.

Schussler reported the Parks Advisory Committee indicated their support for the realignment with the one condition: they wanted staff and the Friends of Buford Park who will be doing the work to make sure they are engaging the people who have concerns with the particular plan so they can resolve the issues. He recalled there was a site visit last month to further refine the plan to adjust those issues and he has not heard any negative comment since then. He said the reason they want to make the change is because the trail is suffering from erosion because of where it is situated. He noted they could redo the trail as it is, but the County has no resources to do it and the Friends of Buford Park have offered to find most of the materials and labor to do the work. He indicated that Trail 3 is adopted by Friends of Buford Park and Trail 4 is maintained by the Sheriff's Posse but it has not been in the past few years. He said staff is supportive of the work, but they wanted to make sure the Board is aware of the potential for controversy once they start closing down a trail.

Leiken asked if Willamalane could be looked at with a partnership.

Schussler responded that they have spoken with Willamalane with connectivity issues. He didn't know why Willamalane would want to work on trails at Mt. Pisgah when it is not their park. He thought if there was a trail system coming out of Springfield that it might be feasible to engage in that conversation.

Handy asked if the bargaining units were comfortable with the arrangements.

Schussler stated the unions were okay with what they have done so far. He added that they have not sent them formal notice yet for this particular project but that is an obligation under their contract. He said that will be a next step. He noted it is not taking work away from the unions; it is being done by volunteer labor.

Bozievich recommended Schussler contact the city of Eugene to see how successful they were when they changed their trail system on the west side of Spencer Butte last year. He didn't see a negative comment about it. He thought that whatever plans they have to build, to include and guarantee decommissioning and restoration work as part of the plan and they don't move forward until they know that it can be done.

- c. **SIXTH READING AND DELIBERATIONS/Ordinance No. PA 1274/In The Matter Of Amending The Eugene-Springfield Metropolitan Area General Plan (Metro Plan) To Adopt The Springfield 2030 Refinement Plan Residential Land and Housing Element And To Establish A Separate Springfield Urban Growth Boundary (UGB) Pursuant To ORS 197.304 And Adopting Savings And Severability Clauses. (Applicant: City of Springfield; File No. PA 09-6018) (NBA & PM 3/16/11, 4/4/11, 4/27/11, 5/16/11, 5/20/11).**

Stewart recalled the city of Springfield took action on June 20 to establish the UGB and the inventory provisions. He said they set the reading for today because there was a question on whether there were substantive changes. He indicated there was no new material.

Mark Rust, Land Management, reported the record has been closed and they had this reading as a precautionary measure.

MOTION: to adopt Ordinance No. PA 1274.

Leiken MOVED, Bozievich SECONDED.

ROLL CALL VOTE: 5-0.

- d. **DISCUSSION/BRIEFING on Oregon Freight Plan.**

Mike Bufalino, Freight Mobility Unity Manager, ODOT, gave a Power Point presentation. (Copy in file).

8. **COUNTY ADMINISTRATION**

a. Announcements

Richardson reported they were notified by the contractor hired by the University of Oregon on Thursday that they intended to shut down all four lanes of Martin Luther King Boulevard as of yesterday. She indicated it gave them one day notice of the shutdown of lanes. She contacted the University and the city and the University held off on moving any construction equipment onto the road until they could discuss it. She said the County Departments there agree they could live with a full closure. She indicated that Leo Harris Parkway will be made the alternate route and they will have to have people drive through the DYS parking lot if they want to get to Lane County Mental Health or Family Law because there will be no access. She added that LTD will be putting in bus stops as close as possible to those two locations.

9. **COUNTY COUNSEL**

a. Announcements

Vorhes distributed a board order they discussed in Executive Session to take formal action.

ORDER 11-7-6-9/Settling the Pending Employment-Related Claims of Bill Mahn.

MOTION: to approve ORDER 11-7-6-9.

Vorhes MOVED, Bozievich SECONDED.

VOTE: 5-0.

10. **COMMISSIONERS' ANNOUNCEMENTS**

None.

11. **EXECUTIVE SESSION as per ORS 192.660**

Per ORS 192.660 (2)(e) and (2)(i) for negotiation of real property transaction and employment performance of the Chief Executive Officer.

12. **OTHER BUSINESS**

There being no further business, Commissioner Stewart recessed the meeting at 12:05 p.m.

Melissa Zimmer
Recording Secretary