

(Approved 12/14/11)

**BOARD OF COMMISSIONERS'
REGULAR MEETING**

November 22, 2011
following HACSA
Commissioners' Conference Room

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

1. **ADJUSTMENTS TO THE AGENDA**

Stewart reported that he received a letter from the Martin Luther King Celebration requesting the County contribute \$500 to their event. He added that as Item b under Commissioners Business. He indicated that the Board had received a letter from Landwatch that he has passed onto Legal Counsel. He said it is being reviewed and there will be a report at the next board meeting

Bozievich pulled the minutes of October 5, 2011.

2. **PUBLIC COMMENTS**

None.

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

Sorenson said as a result of the follow up on the Economic Development Audit, questions were asked to be directed to Dan Olsen. Sorenson met with the Selco Credit Union's lending officials and they confirmed they are interested in putting out money in a program if Lane County's Economic Development Program wants to pursue to loan money to people, up to \$9 million to retrofit homes in Lane County. He indicated they have not heard back from Lane County as to the status of their interest in the program.

Richardson said the audit stated that Selco was willing and able to provide up to \$9 million. She said the problem is that EWEB needs to be a partner and they are not interested in participating. She added that was what the audit also stated.

Leiken concurred with Richardson. He said that Selco is interested but they need to have a dialog with EWEB. He also thought they needed to speak with SUB and the other utilities who might also have an interest. He stated that he was pleased to see that Governor Kitzhaber appointed Pat Egan as the new Chair of the Oregon Transportation Commission. He announced that he will be serving as Vice Chair of the AOC Transportation Committee.

Bozievich said with this week being Thanksgiving, he hoped everyone remembers they are celebrating private property rights and free market capitalism. He state that is what has made the country great and bountiful.

4. **EMERGENCY BUSINESS**

None.

5. **CONSENT CALENDAR**

A. Approval of Minutes

November 4, 2009, Regular Meeting, 1:30 p.m.
December 15, 2009, Regular Meeting, Following HACSA
December 15, 2009, Regular Meeting, 1:30 p.m.
August 16, 2011, Work Session, 10:00 a.m.
October 5, 2011, Regular Meeting, 1:30 p.m. (PULLED)
October 26, 2011, Regular Meeting, 1:30 p.m.

B. Health and Human Services

- 1) ORDER 11-11-22-1/In the Matter of Ratifying the County Administrator's Signing of an Amendment to an Agreement with the Health Net Health Plan of Oregon to Extend a Billing Authority Agreement
- 2) ORDER 11-11-22-2/In the Matter of Approving By-Laws Revision for the Community Health Council (LM 3.534)

C. Human Resources

- 1) ORDER 11-11-22-3/In the Matter of Approving an Amendment to the Workers' Compensation Claims Administration Contract with Tristar Risk Management for \$58,897 and Delegating Authority to the County Administrator to Execute the One Year Amendment.

MOTION: to approve the amended Consent Calendar.

Bozievich MOVED, Leiken SECONDED.

VOTE: 5-0.

6. **HUMAN RESOURCES**

- a. ORDER 11-11-22-4/In the Matter of Approving the Tentative Agreement Between Lane County and the Prosecuting Attorneys Association.

Madalyn Zike, Human Resources, reported that this was a collaborative and positive experience. She indicated that they have an agreement today and she recommends approval. She noted that it is a three year agreement to June 30, 2014. She reported that the agreement will result in reduced costs of approximately \$17,820 by the Prosecuting Attorneys moving to the two health care plans. She noted that they negotiated not to have any COLA's for the term of the contract, but they will have a market adjustment based on the market study they will do in July. She said that will assure that they are no more than two percent below the combined and equally weighted average of the salaries of Washington, Clackamas, Multnomah and Marion counties.

MOTION: to approve ORDER 11-11-22-4.

Leiken MOVED, Bozievich SECONDED.

VOTE: 5-0.

7. **COMMISSIONERS' BUSINESS**

a. WORK SESSION/County Counsel Office.

Dan Olsen, Acting County Counsel, distributed a report on his findings for the County Counsel's Office. (Copy in file).

Leiken commented that they can't continue to be in a position with a resolution on who the County Counsel is going to be. He said where they are today and how they are doing things is not how they have to continue to do things as they move forward. He said they are trying to save things as they move forward. He said he met with Alex Gardner about the possibility of his taking over County Counsel. Leiken said that County Counsel is not in the strongest position financially on how they move forward on certain things. He wanted to think out of the box and how they can move forward. He didn't Gardner taking over County Counsel was a permanent option, but an interim permanent position. He indicated that smaller counties do this. He thought it made sense at this current time.

Olsen said he touched on this briefly in his report. He said he was skeptical of that approach. He was aware of situations where it had been less than successful because the nature of the work in County Counsel's office and the District Attorney's office is so different and because the District Attorney is busy. He met with District Attorney Gardner and discussed it with the County Administrator and others and he now thinks it is a viable option for Lane County. He thought Gardner had an appropriate and healthy skepticism about the approach. He said that Gardner asked all the right questions and he expressed concerns about the right things. Olsen had conversations about the challenges this would pose for Gardner. He said if Gardner decides to take this on that he would be committed to it and it is a viable option.

Leiken reported that Gardner would create a Civil Division. He said the infrastructure is there. He commented that if opportunities present themselves they need to jump on them.

Stewart commented that all of Olsen's suggestions were great. He was supportive of the process they need to do with the code to see them implemented.

Richardson commented that the guidelines Olsen worked on would be helpful because it is outlining what the County wants to see in all of its litigation. She recommended that the Board not move forward on anything with the Lane Manual until they decide what to do with the County Counsel position. She didn't want to bring the changes in front of the Board to adopt until the new County Counsel can review them.

Bozievich supported the litigation guidelines. He wanted to lower limits on the settlement amounts. He agreed to wait on these until they have a County Counsel.

Stewart reported that Olsen's contract is up tomorrow. He said they need to have the conversation on how they move forward with the options available to them to place someone in an acting position.

Olsen stated there are other options apart from using the District Attorney. He noted there were six candidates that have met the minimum qualifications. He indicated that process would take some time and there are cost considerations with bringing in a new County Counsel. He thought it was time for the Board to move on and get stability.

Bozievich said they are at a point where they have to move on for financial and timing reasons. He asked why they don't have the applications from the candidates and if they can get them. He wanted the Board to make their own judgments about the applicant pool.

Madalyn Zike, Human Resources, said the Board could look at the applications. She recalled the last time they met it was her understanding that the Board was going to give direction on whether the Board wanted to continue with this process or to continue in another direction. She said she could get the applications to the Board at any time.

Olsen explained that if they went with the District Attorney, they wouldn't have to go through this hiring process.

Bozievich indicated that Olsen's contract is up and they will be without an acting County Counsel unless they choose to extend Olsen's contract or they decide as the Board to move to some kind of a temporary appointment of the District Attorney or they take some other action. He added that even if they go through the hiring process, it could take them into next year before they have a successful

applicant and a negotiated contract. He thought they needed to go with the District Attorney to give them the time to determine if they want to move ahead with the hiring process. He said he hasn't seen the pool and supplemental questions have not been sent out. He didn't want to leave the department in limbo at this time. He stated that they have to make the decision today and the best decision available to them today is for County Counsel to be run by the District Attorney.

Stewart said they need to put someone in the interim position to manage County Counsel. He had reservations appointing someone interim that has applied for the position permanently. He added that if they are moving forward, he wants to focus on the hiring process. He asked Gardner if he could step in and be the interim and guide them to the permanency of what the County Counsel looks like in the future.

Gardner stated he has the confidence that he can do the work. He said it is contingent upon the authority to make the changes that Olsen has identified. He commented that the worst case scenario from his perspective is being given the responsibility for anything that falls out during the intervening three months without having any ability to influence how the work is done. He met with the attorneys in County Counsel this morning and they discussed the things Olsen believes should be done. He added that all of Olsen's recommendations make sense to him. He asked what the greatest risks were and the workload divide over the subject matter. He stated there are deficits in the office. He indicated the office is grossly understaffed. He said in order to provide competent legal representation for the County, they need to move quickly to help people do their work. He stated that he is volunteering his time and he is not asking to be paid for this.

Richardson noted that Gardner has looked at significant changes and without having the full authority to do it he won't be successful. She indicated they have had interim County Counsels for almost one year and the office wants someone in there permanently who they know is going to be there instead of continued change. She commented that County Counsel has a great staff. She recalled what the Board agreed to was Olsen's comments about what type of leader Lane County needs in that position. She commented that Gardner is the leader that the Board is looking for.

Stewart said he felt more comfortable if next week Gardner could give a road map that could be viewed by the public that makes sense. He said this is logical and wanted to see that road map and allow for comment before he is ready to go ahead and do it.

Sorenson thought they should extend Olsen's agreement. He wanted HR to get the applications to them in light of the need for more prompt action and interview

all six people. He indicated that Olsen will be the County Counsel during this time.

Gardner said he was happy to do whatever the Board requested. He met with the attorneys in County Counsel this morning and his only concern is to have an absolutely sharp vision of what would be the most successful plan. He indicated that he needs their involvement. He provided a general structure and highlighted some of the ways they can save money. He said there is savings in doing this.

Leiken said they can't operate by continuing resolutions by offering Olsen another short term contract. He thought they need to put someone in that position now. He clearly heard Gardner say that he would volunteer his time at this juncture. He said that Gardner has experience and infrastructure in place. He thought by providing the information, Olsen has laid the groundwork and the tools needed for the County Counsel to move forward into the future and be successful. He believed it would be a good idea to appoint Gardner in this position. He believed that time is of the essence.

MOTION: to appoint Alex Gardner as Interim County Counsel.

Leiken MOVED, Bozievich SECONDED.

Handy indicated what hasn't been discussed was one of the recommendations from Olsen that addressed the issue of the independence of County Counsel and the need for checks and balances and to have the County Counsel report to the Board of Commissioners. He said one of his concerns is that Gardner as an independent official and the accountability to the Board of Commissioners with this model. He stated that he wasn't prepared today to make this move because there are so many questions.

Gardner stated that he understands Handy's concerns. He said the District Attorney as County Counsel was a common model in Oregon for many years and he said the larger offices moved away from that model. He said having County Counsel and the District Attorney separate is ideal if they have the money to do it. He said it is more expensive to duplicate the administration. He said there are many ways to protect against Handy's concerns. He said the department would continue to be accountable to the Board with anything in the civil field. He said he doesn't have any ownership with this and he doesn't have any sense of urgency.

Richardson stated she has a sense of urgency. She said in looking at the County's budget for next year and in looking at the County Counsel, part of the reason the delineation in Olsen's recommendation for lower level staffing and three attorneys is because of what she is envisioning countywide for cuts. She added the only way the office can get a paralegal secretary is to remove the functions that are currently being done by the two staff so those positions can be replaced

by a paralegal and legal secretary. She said they can't add positions, they are going to be cutting positions out of the office next year. She commented that she couldn't see another way they are going to be able to have the office as a functioning office next year.

Bozievich asked if they needed a document to extend to the District Attorney or appoint the District Attorney as County Counsel.

Olsen stated that it is the default. He said if they decide not to choose a County Counsel, the District Attorney becomes the County Counsel. He thought to address some of the accountability issues that they should actually appoint the District Attorney as the County Counsel. He added they could withdraw that later if it doesn't work out or change direction.

(The following discussion took place in the afternoon).

Olsen said he spoke with his wife and he is scheduled to be in Montana next week. He stated that for him a renewal is not an option.

Stewart reported the Board received packets of information to review.

Bozievich wanted to amend his motion to establish a timeline after they finish their discussion. He asked how much time Gardner needed to enact and what the timeline would look like it. He thought the position should be specific to Alex Gardner as he offered to take on the position on a voluntary basis and the District Attorney's office has not. He thought it was a personal commitment, not an office commitment. He thought the maximum assignment would be the term of office the District Attorney is currently in. He thought that would give them six months of the budget year for stability.

Leiken thought the next phase was going through the candidates that they have. He added if the Board thinks that these candidates are not what they are looking for, the suggestion would be to ask Zike to continue to go out to post for more. He thought there needed to be a time certain. He thought it was imperative they have someone in the position immediately to carry out the legal duties.

Gardner said his suggestion was to be a yearlong appointment with an opportunity for feedback at six months from the commissioners and the department directors. He stated that he has approached this with sensitivity knowing the lawyers in the office have more expertise in their areas of specialization than he does. He said he is being asked to supervise people who have greater expertise than he does. He indicated the objective is to deliver the service at a lower cost. He said with Olsen and Richardson's help, he tried to brainstorm how they might add capacity while not outspending the budget. He stated the only way that will work is if he doesn't get paid a salary the County Counsel is getting paid. He said the money would go to the line service and not administration. He said he will do the best

within the existing budget to implement the strategy that Olsen has described. He commented that they can't do everything but the office needs a computer system and more paralegal support and legal expertise they don't have. He said if the Board approves this, he proposes to hire that talent with input from the County Administrator and Zike and ask how they are doing at six months. He said they can firm things up after six months if everyone is in agreement. He said there are things that need to be done right away.

Stewart stated Olsen is not an option and he believes that they should appoint Gardner for a year and have a six month review. He indicated that if this is not working, the Board could change it at any time.

Olsen understood that the Board would appoint Alex Gardner who is the District Attorney for Lane County. He indicated that the appointment is personal to this person who is serving as the District Attorney. He added that they don't have a separate contract with him and he is not being paid for the service. He thought the idea for a year was okay. He added that it then indicates that they are not going forward with the applications that were received and the interview process. He thought the idea of a six month review was a good idea.

Sorenson commented that he thought they were doing the right thing by having an interim County Counsel and putting it out for review and getting applications. He was not comfortable to stop the process and do something different. He said they need to follow a process. He noted that two of the candidates are internal and they may be willing to continue doing their job with additional compensation if this is really a money issue. He thought they were better sticking with the system used by most counties. He said he would be voting no.

Bozievich said they don't have the option of extending Olsen's contract and they are at the end of having a County Counsel. He said they haven't sent out supplemental questions or set up interviews with the candidates. He said they are weeks from that process. He thought the only good option was to accept the generous offer of the District Attorney to serve as Legal Counsel. He indicated that they are going to be starting the budget process and there needs to be stability for how they budget that department next year. He was supportive of the motion because it gives them the stability in the short term if they were to continue with the hiring process and it gives them the stability through the budgeting processes. He said in six months they could call the people who applied and asked if they were still interested and then interview them at that time. He said they need to provide stability in that department and if they were to promote someone from within they would still have to backfill the position. He said it was not a complete cost savings. He commented that what they are getting is a manager without the cost of a manager and he thought it was a bonus for the taxpayers. He supported the motion and thinks they should move forward in the direction they are taking.

Leiken wanted to see how they move forward in filing the position on a permanent basis. He supported appointing Gardner today. He said from his perspective it makes sense.

Stewart reiterated the motion was to appoint Alex Gardner as Interim County Counsel for a year with a review after six months.

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

b. Martin Luther King Celebration Request

Stewart said that he received a letter from Linda Hamilton regarding the Martin Luther King Celebration Committee requesting that the Board of Commissioners contribute \$500 towards the celebration. He indicated that since he has been on the Board, the Board of Commissioners had honored this request and they have used their Commissioners' Discretionary Fund to do that.

MOTION: to move to come back with a board order for \$500 for the Martin Luther King Celebration.

Sorenson MOVED, Handy SECONDED.

Bozievich said he would be more comfortable with writing a personal check for \$100 a piece than using County funds.

VOTE: 4-1 (Bozievich dissenting).

8. **COUNTY ADMINISTRATION**

a. Announcements

None.

9. **COUNTY COUNTY**

a. Announcements

None.

10. **EXECUTIVE SESSION as per ORS 192.660**
(Commissioners' Conference Room)

Per ORS 192.660 (2)(h) for pending litigation.

11. **OTHER BUSINESS**

None.

There being no further business, Commissioner Stewart recessed the meeting at 12:10 p.m.

Melissa Zimmer
Recording Secretary