



**MINUTES OF THE REGULAR SESSION OF THE
LINN COUNTY BOARD OF COMMISSIONERS
TUESDAY AND WEDNESDAY MEETING
LINN COUNTY COURTHOUSE – ROOM 200
JANUARY 22 AND 23, 2019**

The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, January 22, 2019.

Those present at various times for the matters as indicated below were: Fred Abousleman, Executive Director, Oregon Cascades West Council of Governments; Darrin Lane, Linn County Roadmaster; Lisa Walker, President/Steward SEIU Local 390; Nate Tisdell, Vice-President/Steward SEIU Local 390; Robert Wheeldon, Linn County Planning and Building Director; Alyssa Boles, Senior Planner, Linn County Planning and Building Department; Jeff Blaine, City of Albany Community Development Director; Peter Troedsson, City of Albany City Manager; Sean Kidd, Attorney for City of Albany; Rich Kellum; Alan Kwan; Stephanie Newton; Monty Ellison; Linda Ellison, Dale Kraus and other audience members.

1, 2, 3. At 9:30 a.m. Chairman Nyquist called the meeting to order. The flag salute and roll call followed. Commissioners Roger Nyquist, Chairman; John K. Lindsey, Vice-Chairman and Will Tucker were present, as well as, Ralph Wyatt, Linn County Administrative Officer and Heather Gravelle, Recorder for the Board of Commissioners.

4. Approval of Agenda.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve the agenda. The vote was called. The motion passed unanimously.

5. Approval of the January 15 and 16, 2019 Commissioners' Meeting Minutes.

Commissioner Nyquist stated that since he did not attend the January 15 and 16, 2019 Board meetings he would not be voting on the matter.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve the January 15 and 16, 2019 Commissioners’ Meeting Minutes. The vote was called. The motion passed.

6. Reports of Staff and Committees: There were no reports of Staff and Committees.

7. COG Update – Fred Abousleman, Executive Director, Oregon Cascades West Council of Governments.

Mr. Abousleman provided a COG Update before the Board. A copy of his report is on file in the Linn County Clerk’s Office in the Commissioners Staff File.

Mr. Abouselman explained that many people have been concerned over the government shut down and what that meant as far as the services that COG would be providing. He stated that benefits, such as the Supplemental Nutrition Assistance Program (SNAP), would continue through February, 2019; if the government did not re-open, those benefits would end. Next, he stated that Governor Brown had written a letter to President Trump and Congress regarding the Temporary Assistance for Needy Families (TANF) Program that had expired in December, 2018 that explained their concern that they would run out of reserves. Brief discussion followed. The Board thanked Mr. Abouselman for his work and for report.

8. Road Department – Darrin Lane, Linn County Roadmaster.

A. Resolution & Order 2019-019 accepting and recording certain real property granted to Linn County for road purposes (County Road Number 3816, Morrison Drive).

Mr. Lane provided the Board with an overview of Resolution & Order 2019-019.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-019. The vote was called. The motion passed unanimously.

9. SEIU Step 4 Grievance – Lisa Walker, President/Steward SEIU.

Ms. Walker presented the Board with SEIU Step 4 Grievances regarding Holiday Pay. The grievances are on file in the Linn County Clerk’s Office in the Commissioners’ Staff File.

Nate Tisdell, Vice-President/Steward SEIU Local 390, explained that they were before the Board today to discuss the National Day of Mourning and Federal Holiday that President Trump had declared on Wednesday, December 5, 2018 in regard to the death of President George H.W. Bush.

Commissioner Tucker stated that he was confused because there have been many other National Days of Mourning declared and asked why this one should have been considered a holiday - where did they hear that the President had declared that he was adding a new day to the National Holiday Calendar. Ms. Walker responded that this matter was brought forward by SEIU Members and that the employees felt that it should have been a legal holiday per the SEIU Contract and they should have had the day off. She stated that they were not asking to add the day to the National Holiday List because they were not consistent every year; next year on December 5th there would not be a day of memorial with a federal day off and Christmas Eve was decided per the President and was announced prior to that day.

Next, Commissioner Tucker referred to the documents that were submitted to the Board by SEIU and asked Ms. Walker for clarification. Ms. Walker reviewed the documents and stated that the first was the grievance for Wednesday, December 5, 2018, in regard to the National Day of Mourning for President Bush; the second was a grievance they had just submitted into the process and didn't realize they would be discussing today but explained that it was regarding Monday, December 24, 2018, President Trump had declared Christmas Eve a Federal Holiday and employees believed that per the contract they should have had the day off.

Ms. Walker further explained that per the contract, if the President or the Governor declared a holiday then SEIU Members should have that day off. Commissioner Lindsey commented that others in the future would pass away and holidays would be declared for them; he added that he foresees scheduling issues and you can't just randomly close the County every time that occurs. Ms. Walker responded that the Members had brought the matter forward and stated that the County did not have to shut down for SEIU Members to have the day off.

Commissioner Lindsey stated that it was a budgetary problem. Commissioner Tucker commented that after reading the President's Executive Order, it does not say "holiday" it says "out of respect, all Executive Departments and Agencies of the Federal Government shall be closed." It doesn't say he has declared a new, National Holiday, it doesn't say he has declared a temporary, one-time holiday; he is saying that he is ordering those Federal Departments to shut down out of respect.

Ms. Walker agreed that the President did not declare it a new National Holiday, but that it was a legal holiday per the arbitration language - National Memorials were considered legal holidays. Commissioner Lindsey noted that the President did not declare it a National Holiday, the media did and he felt that it was their interpretation. Ms. Walker replied that per arbitration language, it was stated very clearly that a National Day of Mourning was considered a legal holiday.

Commissioner Nyquist commented that it was a fair point and reasonable people can have different interpretations. He added that he had several concerns: first, we serve the public and in the event that we have another 9-11 or another Oklahoma bombing and have a block of time or week of mourning, the public would need us here and not at home. Second, we would have a number of employees getting paid to stay at home while other employees would have to be here working and as a team that created a problem.

Commissioner Nyquist expressed that his biggest concern was that this organization lives and dies by the passage of a law enforcement levy and should the Board interpret this in your favor today it would be in stark contrast to what happens in the private sector and those are the folks who pay the bills and would look upon it negatively. He added that, in the end, it was a budget issue but above and beyond that it was problematic in a number of ways and the precedence that it would set. Commissioner Nyquist stated that moving forward, the contract language needed to be clearer so that there was no ambiguity regarding the matter.

Ms. Walker responded that they would be going into bargaining soon and that would be a good time to have that discussion. She stated that they had been assured by SEIU that this issue would go forward to arbitration and she didn't want to do that and hoped that they could come to some kind of agreement. Commissioner Nyquist questioned why that would happen and said in the time that he has worked here he had never seen that occur and they have always had a great relationship with the union. Ms. Walker replied that it was a battle that the members have asked them to do and as a steward it was their job; the contract has been read and interpreted. She added that they could sit down and try to come to a compromise but that it was what the membership has brought forward.

Mr. Karandy stated that the heart of this grievance was contract interpretation and if the contract language included legal holidays declared by the President. He then distributed a copy of Federal Law, U.S. Code 6103 and 6104 to the Board and it is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Mr. Karandy explained that it makes a distinction in the language; 6103 (a) declares what the public holidays were and 6103 (b) indicates that the President can declare legal holidays as well by Executive Order. However, in 6104, subsection 1, 2 and 3 a distinction is made between an occurrence of legal holidays declared by Executive Order. Subsection 1 talks about closure of agencies by Executive Order, and, as the Board had pointed out in their questioning, that was precisely what the President did. Commissioner Lindsey agreed and stated that it was specific to Federal Agencies. Mr. Karandy added that because the Collective Bargaining Agreement language specifically talks about legal holidays, it doesn't apply here because the President did not declare it a legal holiday.

Mr. Karandy stated that he had requested an extension through January 31, 2019 so the Board did not have to make a decision today if they needed time to consider it. Once the Board comes to a consensus, staff will draft an opinion and the Board can adopt it at the next Board meeting. Commissioner Tucker asked Mr. Karandy if they were voting on both the December 5, 2018 and the December 24, 2018 grievances and Mr. Karandy responded no, they would just be considering the December 5, 2018 grievance today as the December 24, 2018 grievance had just been submitted and still needed to go through the process.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to deny the December 5, 2018 Holiday Pay Grievance at Step 4. The vote was called. The motion passed unanimously.

10. Public Hearing – PD18-0236 – An appeal by the City of Albany of the Linn County Planning and Building Department Director's decision approving a partition, variance, access review and two conditional use permits – Alyssa Boles, Senior Planner, Linn County Planning and Building Department.

Commissioner Nyquist stated that he would not be participating in the Public Hearing. He explained that he owned property adjacent to the applicant and has known them for 50 years. He added that although he has no known financial or conflict of interest, as an abundance of caution, he was going to recuse himself from attending the hearing.

Commissioner Nyquist left the Board Room at 10:00 a.m.

Commissioner Lindsey read, into the record, the process for the Public Hearing and then called upon Alyssa Boles to provide the Board with further information on the matter.

Ms. Boles provided the Board with background information and referred to the Staff Report she had submitted to the Board which is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Commissioner Lindsey opened the Public Hearing and asked the Board if they had any ex parte communication or had any conflict of interest regarding this matter and both Commissioner Lindsey and Tucker indicated that they did not have any ex parte communication or conflict of interest.

Next, Commissioner Lindsey noted, for the record, that the Public Hearing had been dutifully advertised. Commissioner Lindsey stated that there was no one signed up on the sign in sheet and called upon the Applicant to speak.

Monty Ellison, 37323 Scrael Hill Road NE Albany, Oregon 97321 – Applicant.

Mr. Ellison explained that he and his wife have owned the property since 1980 and when he purchased the 102-acre parcel it was zoned as Farm Forest. There was a lot of clean up to do as it was extremely overgrown and squatters had been living there. He shared that he and his wife built a home there and raised three children. Mr. Ellison stated that over the years, they had created an incredible, natural paradise that they were very proud of. He explained that in 1981 the top 16.7-acres of the property was included in the City of Albany Urban Growth Area (UGA) Boundary extension and has been in that designated zoning ever since.

Mr. Ellison stated that in 2009 they had applied to Linn County to divide the 102.7-acre parcel into two pieces, one would be 86-acres and one would be 16.7-acres. He further shared that their goal was to divide the 16.7-acres into several parcels in order to sell them to individuals who might want to build homes there. Mr. Ellison stated that after land use legal consultation they realized the difficulties there would be due to the fact that the 16.7-acres was within the City of Albany UGA they decided to try and divide it into two pieces: one 11.7-acres and one 5-acres as they thought it would be the least objectionable to the City of Albany and likely conform to their requirements.

Mr. Ellison explained that they initiated the process last spring and obtained the septic permits and paid all the necessary fees and legal expenses and had obtained Linn County approval but the City of Albany appealed that decision. He stated that he was asking for fairness and that the City of Albany continues to change their mind about what should be done to the property and to the best of his knowledge no one from the City had ever been out to the property to look at it; the decisions have been made using maps.

Mr. Ellison added that for 37 years the property has been in City escrow but that he had been paying the taxes, maintaining the property and the forest on it and that he had spent his life contributing to the fabric of the community. He stated that there must be some way to work out an arrangement so that it does not in any way impede the progress or future goals of the City of Albany.

Commissioner Tucker thanked Mr. Ellison for his testimony and stated that he appreciated his service to the community. He noted that he had received the email correspondence, including maps and pictures of the property that Mr. Ellison had sent to the Board dated Wednesday, January 16, 2019 and Monday, January 21, 2019. The email correspondence is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Commissioner Lindsey asked if there was anyone else wishing to speak in favor of the application and the Applicant's Attorney, Joel Kalberer, indicated that he did.

Joel Kalberer, Weatherford Thompson, 130 SE 1st Ave, Albany, OR 97321 – Applicant's Attorney.

Mr. Kalberer explained that the heart of the issue was that the City of Albany wanted to preserve land in the UGB for urban development. He stated that he and Mr. Ellison had met with City staff on the matter several times trying to figure out a way to assure the City that the division of a 5-acre parcel from a 16-acre parcel would still allow the City to develop the property into urban levels should they ever do an annexation. They were only asking for fairness from the City when evaluating the property and that they understood that the property would not be used for anything other than single-family dwellings or residential use.

Commissioner Lindsey asked if there was anyone else wishing to speak in favor of the application and there was not. He then called upon those in opposition to speak.

Jeff Blaine, Public Works and Community Development Director, City of Albany, 333 Broadalbin Street SW, Albany, Oregon 97321 – Oppose.

Mr. Blaine stated that he had submitted written testimony for the record and that it was included in the Staff Report the Board had received. He then distributed a copy of the testimony to the Board and stated that it was an exact copy of what was included in the Staff Report and it is on file in the Linn County Clerk's Office in the Commissioners' Staff File.

Mr. Blaine explained that the subject property was located in the Albany Urban Fringe – which is between the current City of Albany limits and the Urban Growth Boundary. Urban Fringe properties will eventually annex into the City of Albany which was why the State requires the City and the County to coordinate on all development activities in these locations. He stated that premature development, including partitioning, in the Urban Fringe could have long-term, negative impacts on urbanization and provision of services.

Mr. Blaine further shared that the negative impacts created problems that end up being the City of Albany's to solve. He stated that when this land was zoned, a decision was made that the many other potential zones that would allow the requested action were not appropriate for the location and instead it was assigned a UGA/UGM 20 designation. Throughout the application material, it was evident that there were significant differences of opinion, such as what was and what was not compatible with the City's Comprehensive Plan and what was or was not necessary to preserve and protect the land for future urban development.

Mr. Blaine added that he hoped the Board would consider the written and verbal testimony received by the City before making the decision. He stated that the City does not believe the requested actions were consistent with both agencies Comprehensive Plans and implementing Ordinances and for the reasons identified in the written testimony, the City does not believe the variance criteria or other approval criteria have been met and he requested that the Commissioners' deny the subject application.

Commissioner Tucker stated that he thought the City's Comprehensive Plan did allow some construction of homes on property located in the Urban Growth Area on greater than 5-acre parcels and asked what the City of Albany Code stated on the matter. Mr. Blaine responded that the City of Albany Development Code does not speak to development criteria on land outside of the City limits. Within the City limits, they do have a threshold of a 5-acre minimum that could be established in the City.

Commissioner Tucker asked Mr. Blaine what his thoughts were as to when the property in question may be developed and when the City of Albany planned to extend out their services. Mr. Blaine responded that was a good question and that it was not likely that the City would be annexing that location within the next three to five years but that it was hard to say when. Commissioner Tucker replied that it sounded like in the far, distant future in a galaxy far away. He asked if the City had a moratorium on all construction in the Urban Growth Area.

Mr. Blaine stated that he was not making any declarations of anything and it was not his position to be able to even if he wanted to. He explained that it was a good discussion for the City and the County to have and at this point it was not related to any of the review criteria that they were holding the Public Hearing on. Commissioner Tucker asked what else the City of Albany Planning Staff would do with the property besides build a house on it. Mr. Blaine replied that that analysis had not taken place so he could not answer that question. Commissioner Tucker commented that it was part of Chapter 8 of the Linn County Code where it refers to the joint management with the County and the City; where the City relies on the County to look at the potential uses of the property.

Mr. Blaine stated that there were a number of references throughout the code that speak to the coordination and cooperation of the two agencies and he pointed out the Linn County's Comprehensive Plan and background statements where it references the potential consequences of creating additional lots with additional owners; it's not just the location of a house creating a conflict, it was the pure nature of chopping something up prematurely and having separate owners and it needed to be a consideration. Commissioner Lindsey asked Mr. Blaine if he knew of any purpose, other than a government purpose, for there to be an approved variance to the minimum lot size of that parcel. Mr. Blaine responded that he would not recommend a variance to that lot size. He added that he does not believe that the City would oppose constructing a home on an existing lot of record. Discussion followed.

Commissioner Tucker commented that earlier Mr. Blaine had stated that the County was the experts of their code and you (the City) are appealing our interpretation of our code; what have you done to work with our staff to understand our intention and interpretation of the code. Mr. Blaine responded that the City had met with County staff to discuss how the properties in those areas were handled.

Commissioner Lindsey asked if there was anyone else wishing to speak in opposition; there was and he called upon them to speak.

Sean Kidd, Attorney, City of Albany, 260 Ferry Street SW, Suite 202, Albany, Oregon 97321 – Oppose.

Mr. Kidd clarified for the record that if Dr. Ellison (applicant) were to come in with an application to build a home on the 16.7-acres the City would not object to that.

Commissioner Lindsey asked if there was anyone else wishing to speak in opposition; there was and he called upon them to speak.

Dale Kraus, 34763 Knox Butte Road, Albany, Oregon 97321 – Oppose.

Ms. Kraus provided written testimony to the Board and it is on file in the Linn County Clerk's Office in the Commissioners' Staff File. Ms. Kraus stated that she owns the property directly downhill from the applicant and that she purchased it in 1972 and moved into her new home in 1975. She explained that she had concerns over the well water because her well had steadily been losing water over the years and was now producing only 1 gallon per minute. Ms. Kraus stated that she had a water reservoir put on her property but that it had been regularly vandalized and it was currently not in use. She added that above ground water used to flow naturally downhill every winter but that has stopped even when it rains.

Ms. Kraus explained that water was scarce and the logging that Mr. Ellison had done over the years produced a lot of downhill debris and had not been cleaned up completely. Commissioner Lindsey asked if she had well reports for the area and Ms. Kraus responded no. Commissioner Lindsey asked when the last time her well was cleaned out and Ms. Kraus stated it was cleaned out five years ago. Commissioner Tucker asked Ms. Kraus if she was opposed to building any homes on that property. Ms. Kraus stated she thought that they had to abide by what it was zoned for and Commissioner Lindsey explained that variances were part of the zoning process. The Board thanked Ms. Kraus for her testimony.

Commissioner Lindsey called upon the applicant to speak in rebuttal.

Mr. Ellison commented that he was upset that Ms. Kraus was upset and that he felt like he had cleaned up all the logging debris, and, as far as he knew, there was no debris left and none on Ms. Kraus's property. Mr. Ellison stated that in regard to the water concerns she had, that he had replanted after he had logged and he thought that would have added to the natural drainage.

Mr. Kalberer commented that the City of Albany had never been out to the property and that they had never evaluated it to determine what it would be if it was annexed into the City. He explained that when they did meet with the City they had discussed future use options and they had narrowed it down to single-family residence or residential reserve. Mr. Kalberer stated that they were asking that the City come back to the table and to interpret the code consistent with the County.

Commissioner Lindsey closed the Public Hearing.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to accept the Staff Report dated Tuesday, January 22, 2019 and email correspondence from Monty Ellison dated Wednesday, January 16, 2019 and Monday, January 21, 2019 into the record. The vote was called. The motion passed.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve the application and that the decision criteria was found in Linn County Code (LCC) Section 924.200 and 210, 933.260, 935.150, 938.300 (b)(c) and 938.940. The conditions of approval and the code requirements are listed in the Staff Report pages 29 through 32.

Commissioner Tucker commented that Ms. Boles had done an excellent job on the Staff Report and that he appreciated her work interpreting the code and that he believed that the County was the expert on the County Code.

The vote was called. The motion passed.

Ms. Boles indicated that staff would have the necessary documents ready for the Board to sign by the Tuesday, February 12, 2019 Board meeting.

11. Correspondence: There was no correspondence to come before the Board.

12. Special Orders:

A. Personnel Action Forms were read into the record for: Christie Harris (Developmental Disabilities); Amanda McMasters (Juvenile Detention); Sheri Boyd, Desiree Colonica and Maria Orr (Mental Health); Lonny Wunder (Parks and Recreation); Stephen Wills (Planning and Building) and Jeremy Carrier (Road Department).

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to accept the Personnel Action Forms as read into the record. The vote was called. The motion passed unanimously.

B. Resolution 2019-021 appointing a member to the Linn County Budget Committee.

Commissioner Tucker provided an overview of Resolution 2019-021.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution 2019-021. The vote was called. The motion passed unanimously.

C. Resolution 2019-022 reappointing members to the Linn Local Advisory Committee.

Commissioner Lindsey provided an overview of Resolution 2019-022.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution 2019-022. The vote was called. The motion passed unanimously.

13. Unfinished Business and General Orders:

A. Calendar Update: Commissioners updated their calendars and Commissioner Nyquist noted that the Board would be attending the Investiture of Rachel Kittson-MaQatish and Michael B. Wynhausen as Circuit Court Judges on Friday, January 25, 2019 at 3:00 p.m. in Courtroom 1.

14. New Business: There was no new business to come before the Board.

15. Announcements: There were no announcements.

16. Business from the Public (3 minute limit per speaker): There was no one present from the public wishing to use this forum.

17. Adjournment: There being no other business to come before the Board; by unanimous consent, the Board of Commissioners meeting was adjourned at 11:05 a.m. to Wednesday, January 23, 2019.

Minutes of the Linn County Board of Commissioners adjourned meeting, January 22, 2019 continued to January 23, 2019:

Those present at various times for the matters as indicated below were: Gene Karandy, County Attorney for Linn County; Tom D'Amore, D'Amore Law Group attended via phone and Alex Paul, Reporter for the Democrat-Herald.

18, 19. At 10:30 a.m. Chairman Nyquist called the meeting to order. The flag salute and roll call followed. Commissioner Roger Nyquist, Chairman was present, as well as, Ralph Wyatt, Linn County Administrative Officer and Heather Gravelle, Recorder for the Board of Commissioners. John K. Lindsey, Vice-Chairman attended via phone. Commissioner Tucker was out of the office.

20. Flag Salute – No flag salute was conducted.

21. Executive Session pursuant to ORS 192.660(2) (e) and (h).

By unanimous consent, the Board closed the Executive Session.

Commissioner Nyquist stated that no final decision was made or action taken or voted on in the Executive Session.

22. Adjournment: There being no other business to come before the Board; the Board of Commissioners meeting was adjourned at 11:00 a.m. by unanimous consent.

The next regular public meeting of the Board of Commissioners is scheduled for Tuesday, January 29, 2019.


Recorder
For Board of Commissioners
Heather Gravelle

LINN COUNTY BOARD OF COMMISSIONERS



Roger Nyquist, Chairman



John K. Lindsey, Commissioner



William C. Tucker, Commissioner

Date February 5th, 2019