



MINUTES OF THE REGULAR SESSION OF THE
LINN COUNTY BOARD OF COMMISSIONERS
TUESDAY MEETING
LINN COUNTY COURTHOUSE – ROOM 200
SEPTEMBER 17, 2019

The Linn County Board of Commissioners met for the regularly scheduled meeting on Tuesday, September 17, 2019.

Those present at various times for the matters as indicated below were: Jim Yon, Linn County Sheriff; Randy Porter, Linn County Fair and Expo Director; Robert Wheelton, Linn County Planning and Building Director; Alyssa Boles, Senior Planner, Linn County Planning and Building Department; Russ Williams, Linn County General Services and Property Management Director; Peter Troedsson, City of Albany City Manager; Sean Kidd, Attorney for City of Albany; Kelly Hart, Community Development Director, City of Lebanon; Joel Kalberer; Rich Kellum; Alan Kwan; Alex Paul, Reporter for the Democrat-Herald 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. Commissioner Nyquist noted that he was revising the agenda to add an Executive Session Pursuant to ORS 192.660 (2)(h) as Item 17 and Adjournment would be listed as Item 18.

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

5. Approval of the September 3, 2019 Commissioners' Meeting Minutes.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve the September 3, 2019 Commissioners’ Meeting Minutes. The vote was called. The motion passed unanimously.

6. Sheriff’s Office – Jim Yon, Linn County Sheriff, Linn County Sheriff’s Office.

A. Resolution & Order 2019-251 Amendment No. 3 to a Personal Services Contract between Telmate, LLC. and Linn County.

Captain Langley did not attend the meeting; Sheriff Yon provided the Board with an overview of Resolution & Order 2019-251. Brief discussion followed.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-251. The vote was called. The motion passed unanimously.

7. Reports of Staff and Committees:

A. Fair and Expo Update - Randy Porter, Linn County Fair and Expo Director.

Mr. Porter provided the Board with an update for the month of August, 2019. The update is on file in the Linn County Clerk’s Office in the Commissioners’ Staff File.

Mr. Porter shared that it had been a good start to the fiscal year and that they were down two positions. Commissioner Nyquist asked Mr. Porter what positions he had open and Mr. Porter replied that one was on the operations side and the other was an office position. He added that he did not plan on filling the office vacancy and that current staff were going to take on those duties. Next, Mr. Porter stated that they were in the slower time of the year, but they were still busy. He then asked if anyone had any questions and they did not. The Board thanked Mr. Porter for his work and report.

8. Planning Department - Robert Wheeldon, Linn County Planning and Building Department.

A. Planning Update.

Mr. Wheeldon provided the Board with a Planning Update for the month of August, 2019. The update is on file in the Linn County Clerk’s Office in the Commissioners’ Staff File.

Mr. Wheeldon shared that land use activity was up seven percent and that revenue was up due to several industrial permits that were issued. Next, he shared that the Planning Commission held a public hearing on Tuesday, September 10, 2019 regarding proposed Land Development Code Text Amendments affecting the County's Urban Growth Area (UGA) Development Code.

Next, Mr. Wheeldon explained that staff had been working on violation files over the last few months; there were severe violations and unhappy neighbors. He stated that there would need to be a County clean-up focused on Center Street in Lebanon due to immediate public health and safety concerns and the costs would be taken from the Planning and Building Departments clean-up fund. Lastly, Mr. Wheeldon shared that they had finally hired a Commercial Electrical Inspector, as well as, a Commercial Plans Examiner. The Board thanked Mr. Wheeldon for his work and update.

B. Resolution & Order 2019-127 approving applications by Ronald & Virginia Henthorne for a Plan Map Amendment and a Zoning Map Amendment affecting 108.59-acres of land.

Mr. Wheeldon provided the Board with details regarding Resolution & Order 2019-127.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-127. The vote was called. The motion passed unanimously.

C. Ordinance 2019-128 approving an Ordinance amending the Linn County Comprehensive Plan Map and Zoning Map.

Mr. Wheeldon provided the Board with an overview of Ordinance 2019-128.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Ordinance 2019-128. The vote was called. The motion passed unanimously.

9. General Services - Russ Williams, Linn County General Services and Property Management Director.

A. Resolution & Order 2019-284 approving a Quitclaim Deed to Maryanne F. Meredith, Trustee to The Danny A. Meredith Oregon QTIP Trust, for certain property located in Linn County, Oregon.

Mr. Williams provided the Board with an overview of Resolution & Order 2019-284.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-284. The vote was called. The motion passed unanimously.

B. Resolution & Order 2019-291 approving the sale of tax foreclosed property.

Mr. Williams provided the Board with details regarding Resolution & Order 2019-291.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-291. The vote was called. The motion passed unanimously.

C. Resolution & Order 2019-312 authorizing the publication and distribution of the Invitation to Bid for the Washington Street Building Re-Roof Project.

Mr. Williams provided the Board with background information regarding Resolution & Order 2019-312.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-312. The vote was called. The motion passed unanimously.

D. Resolution & Order 2019-318 in the matter of certain real property that remains unsold after Sheriff's sale.

Mr. Williams provided the Board with an overview of Resolution & Order 2019-318.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-318. The vote was called. The motion passed unanimously.

E. Resolution & Order 2019-330 approving a Construction Services Contract between McDonald & Wetle, Inc. and Linn County.

Mr. Williams provided the Board with details regarding Resolution & Order 2019-330.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-330. The vote was called. The motion passed unanimously.

F. Discussion of a Sealed Bid Account No. 299426 (*Continued from Tuesday, July 9, 2019*).

Mr. Williams reminded the Board that the property for Account No. 299426 was 2.16-acres off of Crawfordsville Road in Sweet Home and that at the Tuesday, July 9, 2019 Board meeting, they had received a bid from Lynn Merrill in the amount of \$2,500, but that the Board had tabled the item because there was an open land use issue. Mr. Williams explained that at the Tuesday, August 6, 2019 Board meeting the land use issue was resolved and they were now bringing the matter back for a decision. Brief discussion followed.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to accept the bid for \$2,500 for Account No. 299426 and approved to sell the property to Lynn Merrill. The vote was called. The motion passed unanimously.

10. Public Hearing – BC19-0003: A Code Text Amendment Application by Linn County for Legislative Amendments to Linn County Code (LCC) 920.100(B) (Definitions) and LCC Chapters 927 (Zoning District Establishment Code), 930 (Urban Growth Area Zone Code), 932 (Specific Conditional Uses Code), and 934 (Development Standards Code). Legislative Code Text Amendment criteria are contained in LCC 921.824 - Alyssa Boles, Linn County Senior Planner, Linn County Planning and Building Department.

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

Ms. Boles provided the Board with background information and referred to the Staff Report she submitted to the Board which is on file in the Linn County Clerk's Office in the Commissioners' Staff File. Ms. Boles then read the proposed code changes by section reference into the record. She explained that notice had been sent to all cities in Linn County, as well as, to the Department of Land Conservation and Development (DLCD).

Ms. Boles added that they had not received any comments or concerns from anyone; however, they had received requests from the City of Harrisburg and the City of Lebanon to continue the Public Hearing in order for staff to have more time to review the proposed amendments.

Commissioner Nyquist asked what the possible affects the changes would have on local jurisdictions and Ms. Boles replied that the only thing that may affect individual property owners was the addition of a zoning district where certain uses didn't exist prior and some additional uses were added, such as home occupation.

Commissioner Nyquist asked if there were any foreseeable adverse effects and Ms. Boles stated again that they had not received any comments expressing concerns on the amendments and she felt that they had made the code clearer and it would help staff process applications; they were simply cleaning it up, reformatting and making it easier to use and to implement. Commissioner Nyquist thanked Ms. Boles and asked the Board if they had any other questions for staff and they did not.

Next, Commissioner Nyquist declared that he owned property inside the Urban Growth Boundary (UGB); he doesn't know if he was directly impacted or if he had a financial gain or loss but wanted to express that for the record. He added that he did not have any exparte communication on the matter. Commissioners Lindsey and Tucker both indicated that they did not have any exparte communication or conflict of interest.

Commissioner Nyquist opened the Public Hearing and noted, for the record, that the Public Hearing had been dutifully advertised and stated that one person had signed up to testify on the sign-in sheet. He then called upon Peter Troedsson, City of Albany City Manager.

Peter Troedsson, City of Albany City Manager, 333 Broadalbin Street SW, Albany, Oregon 97321 – Neutral.

Mr. Troedsson provided the Board with written testimony and it is on file in the Linn County Clerk's Office in the Commissioners' Staff File. Mr. Troedsson explained that he could appreciate the need to periodically update the code. He stated that the City's comments were limited to those as they see impacting the City of Albany residents both now and in the future.

Mr. Troedsson explained that he was requesting that the County retain the current language in code sections LCC 920.100(b); 930.600; 930.700; 930.710; 930.720 and 930.730. He shared that, over the last several months, he and County and City respective staff had met with Ralph Wyatt, County Administrator, to work on updating their processes for managing growth in the urban fringe. At their last meeting in August, 2019, they had reviewed the proposals and he thought they had been making significant progress and that the recommendations had merit.

Mr. Troedsson further explained that the Urban Growth Management Agreement (UGMA) between the City of Albany and Linn County was over 30 years old; these agreements were envisioned to be reviewed and updated as necessary, every eight to ten years through the State's periodic review process, which had not happened. He added that, based on past land use decisions, they already know that the City and the County interpreted some sections of the UGMA differently.

Mr. Troedsson stated that many of the proposed code amendments directed the decision making to the UGMA. With the age of the agreement, the fear was it would be inadequate and lead to further disagreements with property owners stuck in the middle. He explained that the City's request was for the Board to allow himself and Mr. Wyatt to work with their respective staff to develop a proposal for Board consideration. They would change their approach and center it on updating the UGMA; once they knew what that looked like, a discussion on code amendments could occur that were consistent with the UGMA and that both agencies could support.

Commissioner Nyquist asked Mr. Troedsson if it was his position that the County was not able to update their code without the City of Albany's approval. Mr. Troedsson replied, no. Commissioner Lindsey commented that there were not any regulatory substantive changes in the proposed code amendments and he was unclear what the issue was.

Commissioner Tucker thanked Mr. Troedsson for attending the Board meeting and asked him if he wanted the UGMA to be in response to the best representation of the code versus creating a new agreement and then changing the code. Mr. Troedsson replied that the code refers to the UGMA which was 30 years old and referring issues back to something that was from the 1980's was likely less adequate.

Commissioner Nyquist stated that there was no one else signed in on the sign in sheet and asked if anyone else wished to speak on the matter and there were.

Kelly Hart, Community Development Director, City of Lebanon, 586 Groves Street, Lebanon Oregon, 97355. (Did not sign the sign-in sheet and did not specify position.)

Ms. Hart stated that she had a simple, common courtesy request: the City of Lebanon had recently gone through changes in management and the notice regarding the Public Hearing got "lost in the mail" and she was requesting a two week continuance to provide them the opportunity to review the proposed code amendments.

Next, Ms. Boles explained to the Board that the City of Tangent had apparently tried to send her an email expressing their concerns and had asked for a continuance but that the spam filter had prevented it from being delivered to her and she did not receive it. She added that the City of Harrisburg had also submitted an email asking for a continuation in order to have time to review the proposed changes.

Sean Kidd, Attorney, City of Albany, 260 Ferry Street SW, Suite 202, Albany, Oregon 97321. (Did not sign the sign-in sheet and did not specify position.)

Mr. Kidd mentioned that he was copied on the City of Tangent email and that it had outlined their concerns. He then commented that there were some issues with the proposed changes to the UGA/UGM Zone and that he knew the Board was familiar with those issues because they (the City and the County) have had some disagreements in the past 1 ½ years regarding that language. Specifically, some of the review criteria had been completely removed from the code in regard to the UGA/UGM Zone. He stated that when definitions were changed in code, it also changed the meanings in the UGMA.

Commissioner Tucker commented that we should change the code first so that the agreement reflected the most current code. Mr. Kidd responded that if the code wasn't steering folks to the agreement that was 30 years old, then that would make sense. Commissioner Tucker replied that he hoped that they could write agreements that would last fifty years and would, in fact, be stable through time.

Commissioner Nyquist commented that Mr. Kidd had referenced disagreements over the 1 ½ years regarding the 30-year agreement and asked if he knew of any issues that occurred before that. Mr. Kidd replied that no, not that he knew of. Commissioner Nyquist stated that he thought the number of disagreements was zero and asked Mr. Kidd what had changed. Mr. Kidd responded that he believed that, since the agreement was written in 1988, there had been changes in the way that variances in the UGB were treated and had been changed about six times.

Commissioner Nyquist stated that, it was his understanding that State Land Use Laws created an UGB so there would be compatible uses and cities would have room to grow outside their city limits. He added that the City of Albany has absolutely no plan for the UGB's in Linn County, as he understands it, and have taken a position where they were going to object to things thus freezing property owners from their rights. If you are going to do that, at least tell people that and that you have a plan where they can utilize their asset.

Mr. Kidd referenced the Ellison case and stated that the City, at that time, didn't object to Mr. Ellison building a house on his property; it was the fact that they were attempting to subdivide the property. He added that the City came back and said they were going to allow him to do it and they (Mr. Ellison) said no and took the matter to the Land Use Board of Appeals (LUBA).

Commissioner Nyquist responded that the record was not consistent with those statements and that he had not seen those documents. Mr. Kidd responded that Commissioner Nyquist would need to talk to Mr. Ellison's attorney regarding that and Commissioner Nyquist indicated that his attorney happened to be in the room today. Discussion followed.

Commissioner Nyquist then called upon Joel Kalberer to speak.

**Joel Kalberer, Attorney, Weatherford Thompson, 130 SE 1st Ave, Albany, OR 97321.
(Did not sign the sign-in sheet and did not specify position.)**

Mr. Kalberer commented that he was the attorney for Mr. Ellison, however, he was not present at the Board meeting today representing anyone and was just interested in the matter. He explained that he has been practicing law in Albany since 2002 on land use matters and, in that time, the County Code, the City Code and the UGMA had worked just fine until about two years ago. Mr. Kalberer stated that the only thing that had changed was the City's interpretation of the code; now, there seems to be a moratorium on anything that happens in the UGB. The purpose of the UGB Zone was to allow for the orderly transition to urban uses and there have been several applications before the City and the County and the City has decided, under their new interpretation of the code, that nothing would get built or developed.

Mr. Kalberer further explained that the City had the right to interpret their code and they had the right to change their interpretation, but they also have an obligation to inform people how they would approve uses in the UGB Zone and they have not done that. He stated that he had asked the former City of Albany Planner for guidance and specifically asked "if you are changing the code, or your interpretation, tell us how we can move forward" and he was told that he would get a "fair shake with your application." Dr. Ellison was one of his clients and he had submitted an application not to subdivide his property, but merely to divide a 16-acre parcel into two parcels and to put a house on each. It's one of the most benign, easy applications that you would see and it received a denial from the City.

Mr. Kalberer stated that Mr. Kidd had testified that the City was going to approve Mr. Ellison's application; however, the condition was that they would only approve the plan if the City and the County would sign an Intergovernmental Agreement (IGA) with the changes that the City wanted. He added that the City used Mr. Ellison's application as a tool to leverage an IGA with the County and he found that insulting and it was not a "fair shake."

Mr. Kalberer commented that he applauded the County for attempting to lay out their side of the agreement and specify how to allow for the orderly transition of urban uses in the UGB. He added that he was asking, again, for the City to do the same on their side of the code; because as of now, they have not done anything.

Commissioner Nyquist then called upon Mr. Boles to speak.

Ms. Boles stated that there was a comment made that the proposed code amendments would not be consistent with the City's Comprehensive Plan. County Code Text Amendments were required to be consistent with the County's Comprehensive Plan; specific conditional uses that were reviewed in Urban Growth Zones were required to be consistent with the City's Plan. She added that there were also comments made regarding the existing UGBA's; most of those agreements between the County and the Cities were old. The proposed language would allow for future modifications to those agreements where the language would continue to be consistent. Ms. Boles continued explaining the proposed revisions.

Commissioner Nyquist recognized Ms. Hart to speak.

Ms. Hart reiterated her simple request for a two week continuance was to have the opportunity to review the proposed code amendments. She added that the City of Harrisburg and the City of Tangent were also asking for more time for review. Brief discussion followed.

Commissioner Nyquist asked if there was anyone else wishing to speak on this matter and there was not.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to close the Public Hearing. The vote was called. The motion passed unanimously.

Commissioner Nyquist noted that the Cities of Tangent, Harrisburg and Lebanon have asked for a two week continuance in order to have time to review the proposed amendments and he didn't see an issue with that.

He stated that it was a regrettable situation they were in with the City of Albany, and, to the extent that they were all lumped together as local government, there were a couple issues that collectively they were not doing so well on; one of those was UGB's.

Commissioner Nyquist stated that the design of Oregon's Land Use System was rigid and that the availability of buildable lands for homes to meet demand was largely in the UGB. It would appear that the City of Albany has no plan and can make no communication with either investors who would like to move a property into the City or to land owners that were caught out there in "never-never land." He stated that he hoped, at least from the City of Albany's perspective, that this was a genuine request and not an exercise to just stuff the record and once again take the matter to LUBA. Discussion followed on how long to continue the Public Hearing and to accept written comments.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to continue the Public Hearing to Tuesday, October 1, 2019 at 9:30 a.m. and to leave the record open for written comments until Tuesday, October 1, 2019 at 9:00 a.m. The vote was called. The motion passed unanimously.

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

12. Special Orders:

A. Personnel Action Forms.

Commissioner Lindsey recommended that Commissioner Nyquist accept the list of Personnel Action Forms as an exhibit without reading them into the record and Commissioner Nyquist agreed.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to accept the Personnel Action Forms into the record as Exhibit 1. The vote was called. The motion passed unanimously.

B. Resolution & Order 2019-315 approving a First-Time Youth Wage Grant Agreement between Linn County and Boshart Trucking, Inc.

Action Taken Below.

C. Resolution & Order 2019-316 approving a First-Time Youth Wage Grant Agreement between Linn County and Dairy Queen of Albany.

Action Taken Below.

D. Resolution & Order 2019-319 approving a First-Time Youth Wage Grant Agreement between Linn County and Berkey's Blueberries, LLC.

Action Taken Below.

E. Resolution & Order 2019-320 approving a First-Time Youth Wage Grant Agreement between Linn County and Lebanon Aquatic District.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Orders 2019-315, 316, 319 and 320. The vote was called. The motion passed unanimously.

F. Resolution & Order 2019-329 adopting a Collective Bargaining Agreement between Linn County Juvenile Detention Association and Linn County Juvenile Department and Linn County.

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Order 2019-329. The vote was called. The motion passed unanimously.

G. Resolution & Order 2019-325 adopting a new classification for Developmental Disabilities Quality Assurance Manager (Management/Exempt – Range 16).

Action Taken Below.

H. Resolution & Order 2019-326 amending a classification for DD Case Management Supervisor and changing the salary range from 14 to 16 (Management/Exempt).

Action – Commissioner Tucker moved and Commissioner Lindsey seconded the motion to approve Resolution & Orders 2019-325 and 326. The vote was called. The motion passed unanimously.

13. Unfinished Business and General Orders:

A. Calendar Update: Commissioner Nyquist noted that he would be traveling to an Oregon Transportation Commission (OTC) meeting in The Dalles directly after the Board meeting today, Tuesday, September 17, 2019.

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.

Commissioner Nyquist recessed the regular Board meeting at 10:45 a.m.

17. Executive Session - Pursuant to ORS 192.660 (2)(h).

By unanimous consent, the Board closed the Executive Session.

Commissioner Nyquist reconvened the regular Board meeting at 11:09 a.m.

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

18. Adjournment. There being no other business to come before the Board; the Board of Commissioners meeting was adjourned at 11:10 a.m. by unanimous consent.

The next regular public meeting of the Board of Commissioners is scheduled for Tuesday, September 24, 2019.

[Redacted]

Recorder

For Board of Commissioners

Heather Gravelle

LINN COUNTY BOARD OF COMMISSIONERS

[Redacted]

Roger Nyquist, Chairman

[Redacted]

John K. Lindsey, Commissioner

[Redacted]

William C. Tucker, Commissioner

Date 10-1-2019