

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

The Honorable Board of Franklin County Commissioners met on the above date. Present for the meeting were Rick Miller, Chairman; Bob Koch, Chair Pro Tem; and Brad Peck, Member; Fred Bowen, County Administrator; and Mary Withers, Clerk to the Board. Meeting convened at 9:01 am.

OFFICE BUSINESS

Secretary Patricia Shults met with the Board.

Consent Agenda

Motion - Mr. Koch: Mr. Chairman, I would move for approval of the consent agenda as presented for August 12, 2009:

1. Approval of **joint Resolution 2009-342** in the matter of execution of a Professional Services amendment, number PSA-NAMI-2008/09-01, between the National Alliance for the Mentally Ill and the Benton and Franklin Counties' Department of Human Services for the provision of a NAMI supported training program, extending the agreement by six months through December 31, 2009, amending Franklin County Resolution 2008-467, and authorizing the Chairman to sign said amendment on behalf of the Board. (Exhibit 1: Information sheet.)

(Clerk's Note: Item 2 was removed from the consent agenda.)

2. Approval of **Resolution 2009-__** re-appointing Larry Rogers to the Franklin County Water Conservancy Board to serve a six-year term, with said term expiring August 1, 2015.
3. Approval of ***Out-of-State Travel Request*** for Josh Buntin to attend the Covert Operations Training Conference, August 16-21, 2009, in Las Vegas, Nevada, for an estimated cost of \$380. (Exhibit 2)

Second by Mr. Peck.

Mr. Peck said he has no doubt that Mr. Rogers has served in good standing and has been an exemplary member and is qualified to continue but it does beg the question what about other people in the community who may be similarly qualified who may be interested in serving. Is this the correct process and the one you want to use? Mr. Miller said if I was a person interested in serving on that board, I would contact somebody and then that name would be forwarded to the commission. If they're interested, they're going to be paying attention. If they're not, then they're probably not that interested.

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

Mr. Peck said I think that's a legitimate point. He said a follow-up question is should we have done anything to make members of the community aware that such an opportunity existed?

Tri-City Herald Reporter Dalina Castellanos joined the audience.

Regarding Item #2, Mr. Peck asked Mr. Bowen to obtain more information about the process of appointing members to the Water Conservancy Board. He asked the following questions be answered: What do your bylaws say with respect to filling a vacancy and have you followed those? Have you made the opportunity available to others?

Motion – Mr. Koch: I move to withdraw item #2. Second by Mr. Peck. 3:0 vote in favor.

Vote on original motion by Mr. Koch: 3:0 vote in favor.

PROSECUTOR

Chief Civil Deputy Prosecutor Ryan Verhulp met with the Board. Present in audience: Dalina Castellanos.

Executive Session at 9:17 am expected to last up to 20 minutes for potential litigation, RCW 42.30.110(1)(i) regarding the Pasco Sanitary Landfill. Ms. Castellanos left the meeting.

Open Session at 9:37 am.

Recessed at 9:37 am.

Reconvened at 9:41 am.

PLANNING AND BUILDING DEPARTMENT

Planning Director Jerrod MacPherson met with the Board. Present in audience: Dalina Castellanos.

July 2009 Building Report

The July 2009 Building Report was reviewed.

TREASURER

Treasurer Tiffany Coffland met with the Board. Present in audience: Dalina Castellanos.

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

Budget Update

Ms. Coffland said we'll need a letter from the Board to divest some funds to make sure there is a positive cash balance before Friday.

The county will probably need to have a loan before taxes are received in October. She is hopeful to wait until August 31 to do the loan if it is needed.

Ms. Coffland said the county needs to be cautious with our spending. She will keep the Board as informed as possible, possibly with weekly updates on the cash balance amount.

July 2009 tax information

The county received \$54,405.99 additional money based on the PUD Privilege Tax due to an error by the Department of Revenue regarding Nuclear Energy. Some of the taxing districts also received more money than expected.

Ms. Coffland reviewed some sales tax trends. The sales tax is still at 18% to 19% lower than last year. The data is available two months after the actual month. For example, the May figures are shown in the July report. Ms. Coffland answered Mr. Miller's questions about sales tax revenue trends.

Treasurer's Checks

Ms. Coffland said Treasurer's checks are written on our general account for tax refunds or other matters in our office. By law, we have to cancel these checks when they are one year old. The money goes back in our general fund. If the checks are ever cashed, we do honor them. We do try to notify the taxpayers to let them know they have the refund available.

Motion – Mr. Peck: I would move that we approve a letter from the Board of Commissioners to the Franklin County Treasurer authorizing cancellation of six checks as listed being they are more than a year old. Second by Mr. Koch. 3:0 vote in favor.
(Exhibit 3)

Foreclosure and Distraint

Ms. Coffland gave an update on the foreclosure and distraint parcels.

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

COUNTY ADMINISTRATOR

County Administrator Fred Bowen met with the Board. Present in audience:
Dalina Castellanos.

Dispatch

Dispatch Superintendent Ed Bush met with the Board.

Request for approval to hire a temporary position using grant funds

Mr. Bush requested approval to hire in a temporary position using grant funds. There is \$279,952 in the 911 fund. We were awarded three law enforcement technical program grants. The amounts were about \$79,000, about \$91,000, and \$72,500. We have expended one of those grants to date and purchased most of our equipment. Now we're starting as of this date to construct the project for our radio upgrade. When we have completed that, we will have invested about \$523,000 in our public safety radio system.

Mr. Bush would like to hire a temporary person on an hourly rate in Grade 7, Range 18, at \$33.29 per hour. If we went through a vendor, it would cost more than \$80 per hour. The radio engineer is about \$150 per hour. The radio engineer has recommended this process to help reduce some of those costs. Mr. Bush hopes the person would fill the position for no more than 90 days. No medical or retirement benefits would be required. He said he says it with caution because so much of the work we've done in radio has had roadblocks thrown at us, but he hopes to have it completed within 30 to 45 days at the most but he is requesting approval for no more than 90 days. If it is longer than 90 days, he would come back to the Board for approval.

Mr. Peck asked what is the potential for unemployment costs when this person leaves? Mr. Bush said there would not be any because the person already has a full-time job. The county work would be as a part-time temporary hire, less than half time, hopefully for no more than 90 days. We hope to be able to turn the system on right after Labor Day. It will be a microwave system. The particular individual has the skill set and certification for microwave.

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

In response to Mr. Peck's questions, Mr. Bush said the grant funding stream comes from the Department of Homeland Security grant that is given from the Federal government to Washington State, and then divvied up by regions. Mr. Koch agrees with Mr. Bush that the money sources would not be a problem for hiring the particular employee. Mr. Bush said all of the funds for paying the person will come out of grant money.

Mr. Peck asked what would we do with this grant money if we don't use it for this? Mr. Bush said we have to use it. He does not believe there will be any money left over. The funds are already dedicated to this project. We had to identify where and how it would be spent. The law enforcement community had a voice and concurred.

Motion – Mr. Koch: I move for approval of the Change of Status. Second by Mr. Peck. 3:0 vote in favor. (Exhibit 4)

Civil Service Secretary

The Chief Examiner for Civil Service resigned in December. We have been unsuccessful in our search for a new examiner. The rules have not been upgraded since 1990. Betty Boston and Dave Engelhard would like to continue as Civil Service Board members. Jack Shugart does not want to continue. The laws were changed in July 2009 requiring appointment of five people instead of three to the board in order to have at least a three-member quorum available to do business.

The budget has not changed in a number of years. Mr. Bush has submitted a preliminary budget to Mr. Bowen. We need to update the rules, getting models from MRSC and counties of similar size. The Civil Service job is to do the hiring. My job is to assist them. We've looked at bringing in maybe a part-time employee who would do extra work rather than a contract employee. Most of the testing is done on weekends. The work is basically contract work with no benefits and no retirement, but just Social Security so they don't have to pay from a contract standpoint with regard to taxes.

The current budget is about \$11,300 but needs to be raised. It has not been raised in several years. For several years, Public Safety Testing has done the testing under contract with the county which is working much better than prior to their work. He

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

briefly explained the testing process. The Civil Service test is required for law enforcement, Corrections and Dispatch.

Mr. Bowen said we have found a person who is willing to come in on a minimal basis with no benefits other than Social Security. The person will come in for a certain number of hours as needed. It would be a change from a private contract to an employee on a part-time, long-term basis. The Human Resources Department has no issues with the change.

Mr. Peck asked does it cost us money or save us money? Mr. Bush said it will cost us money. The current total budget is \$11,730. He expects there may be additional costs of \$8000 this year. He expects the total budget in 2010 will be about \$23,000. Benton County's budget for Civil Service work is about \$80,000.

Ryan Verhulp joined the audience.

Mr. Peck asked if we can share services. Mr. Bush said for the Civil Service exam, yes. We are required by RCW to have a chief examiner and a Civil Service Commission. Mr. Bush is not aware of any counties or cities that share.

Mr. Bush asked Mr. Verhulp to review the RCW. Mr. Verhulp said he needs to review the specific RCW. He said RCW 39.34 does allow government entities to contract or share services to another government entity if it's logistically possible. He gave some examples of services we provide. He will find out if it is possible to share the Civil Service work with Benton County.

The Board members feel we need to be insightful and aware and apply some critical thinking and look for ways that we may be able to combine some activities and reduce costs.

Rattlesnake Mountain

Mr. Bush gave a general update on the Rattlesnake Mountain facility construction project.

Recessed at 10:34 am.

Reconvened at 10:40 am.

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

COUNTY ADMINISTRATOR (continuing)

Present in audience: Dalina Castellanos and Ryan Verhulp.

Divest Funds within Current Expense

Motion – Mr. Peck: I move approval of letter from Franklin County Board of Commissioners to Franklin County Treasurer giving authorization to divest and invest Current Expense Reserve funds. Second by Mr. Koch. 3:0 vote in favor. (Exhibit 5)

Executive Session at 10:41 am regarding contract negotiations based on RCW 42.30.140(4) expected to last 15 minutes.

Executive Session continued at 11:00 am expected to last 15 minutes. (Those waiting outside were notified.)

Executive Session continued at 11:15 am expected to last 15 minutes. (Those waiting outside were notified.)

Open Session at 11:31 am.

Dalina Castellanos rejoined the audience. Mr. Bowen left the meeting.

OTHER BUSINESS

Chief Civil Deputy Prosecutor Ryan Verhulp met with the Board.

Herd Law/Open Range Discussion

Mr. Miller said the Cattlemen's Association has talked to the Board and requested changes. He said even though the term "open range" came out, nobody wants cattle to roam around openly without a fence. There are different terms that could be used. Mr. Miller's suggestion is to use "herd law." The reason we want to do this is because we want to have consistency with the open range areas. What we have now is not consistent, with areas scattered throughout the county. He thinks that could be liability to the county itself.

Mr. Miller asked for Mr. Verhulp's input. He asked should we even be opening this up? Mr. Verhulp said he cannot provide greater input than what the Board has heard but he can provide the same explanation, maybe sounding a different way. Stock-restricted areas are just that -- in those areas, livestock cannot run at large -- as opposed

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

to range areas where livestock can run at large, but you can put some restriction on the type of livestock that run at large in range areas.

Mr. Peck asked are you using the terms "range area" and "open range" synonymously? Mr. Verhulp said I am not. The RCWs just use the term "range area." It is the only term I can really comment on as to what it means.

Mr. Miller said we can title it what we want and make provisions to it. Mr. Verhulp said true, you could title it stock restricted area or herd law or herd district. The idea of titling it as one of those is the idea that you're putting restrictions on livestock in a certain area.

Mr. Miller asked Mr. Verhulp so you have no input on what we can and can't do? Mr. Verhulp said he reviewed case law in terms of the RCW and did not find any instances where counties were particularly exposed to liability in terms of acting one way or another way in terms of establishing a range area or stock-restricted area. It's really at your discretion. As long as the signs are posted that a particular area is a range area, I don't see it being a liability issue for the county in terms of a decision being made.

I also looked at all the sample ordinances that were collected from other jurisdictions. Those didn't provide me any other input than what the RCW does. A lot of them mirror what the RCW allows and specify the boundaries in their county where either stock restriction applies or range area applies, nothing more than that.

Mr. Peck said he has suggested perhaps we ought to establish a herd law or herd ordinance county-wide, exclusive of any incorporated areas. It would avoid having people needing to know where multiple jurisdictions and boundaries are. Second, we already have city limit signs so it gives us an existing place to post a sign. Lastly, with the herd approach as opposed to open range it would require that stock owners have a state-approved or state-qualifying fence to keep livestock from endangering the public on highways but simultaneously gives them some protection for acts of God or acts beyond their control. It provides some protection and oversight for them. Unlike open range, it doesn't require a neighboring owner to protect thousands of acres of wheat by fencing it to protect the wheat from cattle. Are there obvious flaws in that at first blush?

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

Mr. Verhulp said I think all of that is feasible and could be part of the ordinance essentially.

Mr. Verhulp asked are you saying all of the unincorporated areas of Franklin County would be stock-restricted? Mr. Peck said I don't know what term we would put but it would be something other than what we have commonly come to acknowledge as range or open range. This is something that requires the animal owner to take reasonable measures to keep their livestock from creating a public hazard, whatever type that livestock is, but at the same time doesn't hold them accountable if their animals get out for reasons beyond their control.

Mr. Miller said we need to recognize that our county is a right-to-farm county. Some similar analogies include an airplane pilot spraying fields and dust control efforts. We need to let people know that it is a right-to-farm county, that they may have to watch out for slow-moving equipment and other farm uses such as cattle. He said he doesn't like the term "stock restriction" because it implies that stock cannot run around here. It might give the wrong perception to people. But we can come up with a term that might work such as Herd Law, something simple. That might be a little more basic.

Mr. Peck said we can toss around some terms. There may even be some things that haven't been done before in terms of right-to-farm county so beware of livestock. What matters in terms of terminology is what's in the ordinance. The signage needs to warn people of the potential for livestock hazard.

Mr. Verhulp said by RCW, the only posting requirements on the roads are for range areas, so if you're going to post in the county for what is entirely a stock-restricted area, that would be at your own discretion. Mr. Peck said so there wouldn't be any necessity for that. Mr. Verhulp said yes.

Mr. Miller asked if the actual open range land we have now can stay as open range. Mr. Verhulp said at your discretion, yes, but you're required to post that.

Mr. Miller said they are posted now.

Mr. Peck said my suggestion was to make the entire county a herd area which would turn those open range areas into herd areas or stock-restricted areas. Mr. Koch

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

said it would eliminate the current open range areas. Mr. Peck said it seems like a reasonable way to balance public safety and help the livestock owners avoid being held accountable for things beyond their reasonable control.

Mr. Miller said or we could decide to leave the areas designated open range now just as it is with the signage.

Mr. Verhulp said in open range areas, essentially the livestock and their owners have more right to have livestock on roadways, on right-of-ways, but in stock-restricted areas if livestock is found on roadways, there's an automatic presumption of negligence on the landowner. Again, it's a presumption and then it goes back to Commissioner Peck's point that there are circumstances, acts of God, where that presumption is negated because something outside of the landowner's control caused that animal to be on the road in an area that it wouldn't otherwise be legally allowed to.

Mr. Koch said I think we'll have a roomful of people, even cattlemen, against that open range thought. He said when you consider the fence RCW, what qualifies as a fence to protect the farmer is a long ways from the single piece of hot wire they put up to move cattle around occasionally in the fall to clean up a cornfield or something.

Mr. Miller said it is a problem to describe what kind of fence needs to be put up. There are so many different fences. You can put the best hot wire fence up to keep them off Highway 17. We can have all different types of fences. That's why I don't know if we should be telling them what kind of fences to put on. I do think as long as it says they need to be fenced and they're liable if they do get out of that fence except for acts of God, it gives those guys some protection.

Mr. Verhulp said that could be part of an ordinance. Mr. Miller said it would be the same idea if they put cattle in a circle field of grass and the cattle get out in somebody else's field, it's still their duty to fence.

Mr. Verhulp said it appears the first significant issue is whether you want a change to the existing boundaries. Do you want to make it entirely stock-restricted or a portion range area?

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

Mr. Miller asked what else is there now except for open range? Mr. Verhulp said he does not have a map. Mr. Miller told him there is a map available. Mr. Peck said open range is portions of the unincorporated area of the county, predominantly in the east and northeast and in the north central part of the county. The south central parts are ill-defined at best. He said the request came from local farmers and ranchers. It is not a commissioners' initiative.

Mr. Peck recommended replying to the Cattlemen's Association who requested we take up this topic and ask them for their preference and in the process suggest a form of herd law countywide might be an option they would want to consider and let them bring us their request. He said the Franklin County Cattlemen's Association has asked for open range countywide and I am not prepared to go there but I would certainly entertain something more in the way of a herd law that helps to protect them and at the same time ensure public safety. Mr. Koch said those are my thoughts also. Mr. Miller agreed.

Mr. Peck suggested a letter of reply be written to the Cattlemen's Association that would suggest we are not inclined to do open range countywide since it appears that all three commissioners feel that open range countywide is not appropriate. Mr. Koch said it is too broad. Mr. Peck said we can suggest that the Cattlemen's Association come back with an alternative proposal, perhaps a herd law or restricted livestock area in all unincorporated areas, and then they could provide suggestions on how they were going to define what that means. The notion of true open range countywide doesn't appear to find favor with any of the commissioners.

Mr. Miller said Jesse Fletcher who sent the letter from the Cattlemen's Association told him open range meant they would be required to put fencing up but that is Mr. Fletcher's term. Mr. Miller said we are not going to use the term "open range" meaning livestock gets to wander all over.

VOUCHERS/WARRANTS

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

Motion – Mr. Koch: Mr. Chairman, I move for approval of payment of vouchers for fund expenditures for Current Expense warrants 20845 through 20879 in the amount of \$215,262.52. Second by Mr. Peck. 3:0 vote in favor. (Exhibit 6)

Motion – Mr. Koch: Mr. Chairman, I would move for approval of Salary Clearing payroll in the amount of \$525,743.54 and on this cover sheet there is also Emergency Management payroll of \$13,532.45 and Irrigation payroll of \$9759.85.

Salary Clearing payroll warrants 49004 through 49079 for \$158,618.82; warrants 49080 through 49084 for \$64,580.73; and Direct Deposit for \$302,543.99;

Emergency Management payroll warrants 20689 through 20695 for \$3442.02; warrants 20696 through 20699 for \$1569.70; and Direct Deposit for \$8520.73; and

Irrigation payroll warrants 20700 through 20713 for \$8425.12; and warrants 20714 through 20717 for \$1334.73.

Second by Mr. Peck. 3:0 vote in favor. (Exhibit 7)

Adjourned at 11:54 am.

COMMISSIONERS RECORD 50
FRANKLIN COUNTY
Commissioners' Proceeding for August 12, 2009

There being no further business, the Franklin County Board of Commissioners meeting was adjourned until August 17, 2009.

BOARD OF COUNTY COMMISSIONERS
FRANKLIN COUNTY, WASHINGTON

Chairman

Chairman Pro Tem

Member

Attest:

Clerk to the Board

Approved and signed August 26, 2009.