

COMMISSIONERS RECORD 50  
FRANKLIN COUNTY  
Commissioners' Proceeding for August 26, 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 9:00 am. Mr. Bowen was not present at the beginning of the meeting because he was doing other county business.

**OFFICE BUSINESS**

Secretary Patricia Shults met with the Board.

Consent Agenda

**Motion** - Mr. Koch: I would move for approval of the consent agenda as proposed for August 26, 2009:

1. Approval of ***Voluntary Transfer of Annual Leave Request*** as per Resolution 2001-246 for Rosie Rumsey (Human Resources) for a total of 240 hours as follows:
  - Bridgette Scott (Commissioners Office) to transfer 24 hours.
  - Fred Bowen (Commissioners Office) to transfer 80 hours.
  - Jerrod MacPherson (Planning/Building Department) to transfer 24 hours.
  - Barbara Hart (Dispatch) to transfer 20 hours.
  - Ed Bush (Dispatch/E911) to transfer 40 hours.
  - Piper Mitchell (Assessor's Office) to transfer 16 hours.
  - Sara Duncan (Clerk's Office) to transfer 15 hours.
  - Sheri Kroodsma (Planning/Building Department) to transfer 16 hours.
  - Christian Giles (Facilities) to transfer 5 hours.
  
2. Approval of **joint Resolution 2009-360** in the matter of the request for signature from the Chairman of the Boards of Benton and Franklin County Commissioners on Agreement #09/10-PREV-JJC-00 between the Benton and Franklin Counties' Department of Human Services and Benton Franklin Counties Juvenile Justice Center to provide prevention services through the Strengthening Families Program, effective July 1, 2009, through June 30, 2010. (Exhibit 1: Information sheet.)
  
3. Approval of **joint Resolution 2009-361** in the matter of the request for signature from the Chairman of the Boards of Benton and Franklin County Commissioners for Agreement #09/10-DD-CI-00 between Columbia Industries and Benton and Franklin Counties' Department of Human Services for developmental disabilities services for clients in Benton and Franklin Counties, effective July 1, 2009, through June 30, 2010. (Exhibit 2: Information sheet.)

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4. Approval of **joint Resolution 2009-362** in the matter of the request for signature from the Chairman of the Boards of Franklin and Benton County Commissioners on the Professional Services Agreement for Jeffrey Porteous, dba Working Investigations, to provide investigative services for indigent persons charged with crimes in Benton and Franklin Counties District and Superior Courts, Contract #BFSC0911JP001I, effective September 1, 2009, through December 31, 2011.

Second by Mr. Peck. 3:0 vote in favor.

Vouchers/Warrants

**Motion** – Mr. Peck: I move approval of vouchers for August 26, 2009, in the total amount of \$18,639.47: Current Expense warrants 21528 through 21542 for \$5858.91; Auditor O&M warrants 21543 and 21544 for \$656.91; Courthouse Facilitator warrant 21548 for \$600.00; Current Expense warrants 21549 through 21560 for \$1945.48; FC Enhanced 911 warrants 21561 and 21562 for \$4989.05; and Current Expense warrants 21563 through 21574 for \$4589.12. Second by Mr. Koch. 3:0 vote in favor. (Exhibit 3)

Lauri Sherfey and Tri-City Herald Reporter Dalina Castellanos joined the audience.

Minutes

**Motion** - Mr. Koch: I move for approval of Commissioners Proceedings for August 17, August 19 and August 24, 2009. Second by Mr. Peck. 3:0 vote in favor.

**WSU EXTENSION**

WSU Extension Director Lauri Sherfey met with the Board.

Department Update

A full-time mentor has been hired to fill the Pathways position. Three raters were trained last week for the research we're doing.

Jodie and Mark Guilbeau and Mr. Gale Tuttle joined the audience.

Board of Health

Ms. Sherfey wrote a letter of support for the Benton Franklin Health District child care program which directly affects the Pathways program in Extension.

**OTHER BUSINESS**

Open Range Issue

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Mr. Peck said he is drafting an open range ordinance. He said it would require the livestock owner to take reasonable care to keep livestock in but give them some protection. Mr. Koch and Mr. Miller said they feel their concerns are being addressed.

Mr. Peck said he doesn't see why a livestock restricted area couldn't be countywide. Mr. Koch asked how can we restrict the city of Pasco? We could approach them and get their input.

**COUNTY ADMINISTRATOR**

County Administrator Fred Bowen met with the Board. Present in audience: Dalina Castellanos, Jodie and Mark Guilbeau and Gale Tuttle.

Rescind Resolution 2009-355 regarding 2163 Homeless Housing Fund

Mr. Bowen explained that Resolution 2009-355 does not match an existing contract so it needs to be rescinded. Mr. Koch explained the process that needs to take place. He said the resolution was adopted prematurely.

**Motion** – Mr. Peck: I would move approval of rescinding Franklin County Resolution 2009-355. Second by Mr. Koch. 3:0 vote in favor. This is Resolution 2009-363.

**PLANNING AND BUILDING DEPARTMENT**

Planning Director Jerrod MacPherson and Assistant Director Greg Wendt met with the Board.

Public Meeting: To review the Planning Commission recommendation for CUP 2009-05 – a Conditional Use Permit application request by Josef and Fabrica Christ. The applicant is requesting to locate an accessory building in the designated front yard of a single family home. The land is zoned Residential Suburban 20,000 (RS-20). The site address for the property is 2011 Road 52.

Public Meeting convened at 9:30 am. Present: Commissioners Miller, Koch and Peck; County Administrator Fred Bowen; Planning Director Jerrod MacPherson; Assistant Director Greg Wendt; and Clerk to the Board Mary Withers., Present in audience: Dalina Castellanos, Mark and Jodie Guilbeau and Gale Tuttle.

Mr. Wendt reviewed the information on the Action Summary (Exhibit 4).

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Mr. MacPherson showed a copy of the 2007 aerial photograph with parcel overlay and another aerial photograph. He showed photos of the existing structure. It was built in the 1930s by the Boy Scouts. The owners want to keep it for its historic value.

Mr. Wendt reviewed the findings and conditions of approval.

Mr. Peck asked if the nature of the use of the building is known. Mr. MacPherson said the owners have talked about using it for storage or a craft room, but nothing on a commercial basis. Mr. Peck asked is there anything in the approval that delineates what the building can or can't be used for? Mr. MacPherson said its uses would be delineated in the county's zoning code for residential accessory buildings. Mr. Wendt said in the past when building permits have been issued, we've stated something like "the building shall not be used for commercial purposes," so if they come in for a building permit, we can also attach some language at that time.

Mr. Peck asked if the building is on the Historical Society's listing for stone structures. Mr. MacPherson said it is not on the Historical Register. Mr. Peck said there is a local list prepared by City of Pasco Historical Committee. Mr. Wendt said the only people in attendance were the contractor and the two landowners. There was nobody in opposition.

Mr. Peck asked about the placement of the second home. Mr. MacPherson said the landowners went through a platting process. They wanted to maintain the 2-1/2 acres and strategically placed their home on it so it couldn't be further divided and have the home centrally located. Mr. Peck asked are they aware that the placement precludes them from short platting? Mr. MacPherson said yes. Mr. Wendt said we encouraged them to do otherwise but it's their property.

**Motion** – Mr. Koch: I would move for approval of Conditional Use Permit application 2009-05 subject to the six findings of fact and eight conditions. Second by Mr. Peck. 3:0 vote in favor. This is Resolution 2009-364.

**Recessed** at 9:39 am.

**Reconvened** at 9:41 am.

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Request for Deviation: Discuss the request for deviation from standard for construction of a private lane for a new home (Short Plat 2008-24)

Present in audience: Mark and Jodie Guilbeau, Gale Tuttle and Dalina Castellanos.

Mr. MacPherson showed an aerial photograph of the site on the screen. He pointed out the legal access to the property which was part of the short plat process. As part of the short plat, legal access to the property was from the county road Greenar Lane and a 20-foot access easement to the property. There is a condition on the plat that states no building permits shall be issued for Lot #2 until such time that a fire apparatus road meeting International Fire Code standards is constructed. That standard is if it provides access to two or more lots, it will be 20' feet wide with 4" thick gravel, which is a private access road. If it provides access to only one home or lot, then it is a private access lane which is 12' wide with 4" thick gravel. We consider this a private access lane since Lot #1 has access to a county road. This easement would only serve one lot.

The applicants applied for a building permit. The condition on the plat stated it shall be constructed prior to building permit issuance. They requested a temporary waiver to build the home. County Fire Code official Jim Cherry reviewed the existing dirt road, lane, or trail, and felt it would work on a temporary basis in order for them to construct their home with the condition that prior to final occupancy of the home, the private access lane has to be in place. There is also a provision in the Public Works Road and Bridge Construction Standards that details what a private access road is, talking about width, depth, etc. There is also a deviation process that says with the approval of the county fire marshal or the local fire chief, the deviation request can be presented to the Board of County Commissioners to review and approve or deny the deviation request.

Mr. Peck asked are the private access road and private access lane different from or the same as the emergency vehicle access roads? Mr. MacPherson said they are the same.

Mr. Koch said the legal side of the matter is the fact that it's been stated two or three times on record that the access comes off of Greenar. He said the local fire chief

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Chet Bauermeister wrote a letter saying emergency vehicles would come off of Davis Road or Lane, but that is a Bureau of Reclamation road and Mr. Bauermeister can't give authorization to access a Bureau road.

Mr. MacPherson said the house construction is close to final. The owners want a final inspection or occupancy authorization and they are requesting a permanent deviation so they are not required to put gravel on the road. Mr. Koch said the fire official should not have given temporary access to start with.

Mr. Guilbeau answered the Board's questions about the distance.

Gale Tuttle said he owns the rest of the unit. Jodie Guilbeau is my daughter. We have a couple of problems but this requires some common sense. Six months out of the year, the circle is full of cattle. From here (indicated) to here (indicated), there are problems with flooding in the spring. It's a serious problem for me to build and maintain a road there. I don't really have the ability to do that, not just monetarily. In perspective, a couple neighbors within a mile of the project are using a Bureau road for access. I know it's not strictly legal but it happens all the time.

Mark Guilbeau said he is a Fire District 4 volunteer and also works for South Columbia Basin Irrigation District (SCBID) and is familiar with road access issues to Bureau land. He said the common sense approach in the event of an emergency, whether it's ambulance, fire or police, is there would be a much quicker response to come down Davis Lane and up the Bureau road, in an emergency only. I'm not saying legal access. As a volunteer fireman you go the shortest, most direct way to get to the emergency.

Mr. Guilbeau said the other point I'd like to make is when you drive to the end of Greenar Lane, it's like a two-mile dirt road. When you get to the end of it, unless you know exactly where you're looking, you can't even see the house. If I called an ambulance or called the fire department, I would expedite response by saying go to the end of Davis Lane, come up the ditch rider road and you'll see our house. He can see it being a disaster to try to describe to Emergency Dispatch how to use the legal access road to reach the house.

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Mr. Miller asked about Davis Lane. Mr. Guilbeau said there is a Bureau Operations and Maintenance (O&M) road on this side and this side (indicated). It is remotely possible that an access lane could be temporarily blocked but there are other ways to get here. He pointed out some other O&M roads. Mr. Miller said my point was in the winter sometimes they're dredging out the ditch rider roads.

Mr. Guilbeau said the farmers and everybody coming up that road come up it all the time. He said he is willing to throw some gravel on it when there's a dust pocket.

Mr. Koch said I'm having a hard time understanding why we're at this point. He said when it was discussed when the Short Plat was approved, you were fine with that other lane. When it was discussed at the building permit time, you were fine with the road.

Mr. Guilbeau said he didn't sign anything. Are you going to hold me to the standard that the Board of Commissioners passed or to the standard that's common around the county? He said another neighbor has a legal access and there's not any gravel on it. It would be impossible to get to that particular manufactured home in the wintertime. He said I'm saying we'll maintain it for our legal access but why should I spend thousands and thousands of dollars for a road that would be difficult to maintain.

Mrs. Guilbeau said during the short plat process, we challenged it. We were told we had to have a legal access, which we have done; we just don't want to put the gravel on it. We have accessed the property throughout construction. The property is accessible. There are ways to reach the property without spreading gravel on almost a mile.

Mr. Miller said I would like to help you with this but when it comes to the legal part, I'm concerned. I understand there are other accesses and the quickest way is probably what they're going to use anyway. Mr. Guilbeau asked what is your legal liability? Mr. Miller said if the house should burn down or there is some death involved, there could be some attempt for some lawsuit. That happens. We see it happens often in other states. I think that would be our concern.

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Mrs. Guilbeau said we'll sign a waiver. Mr. Miller asked would a waiver work? Mr. MacPherson said we've asked that of our legal counsel in the past and they did not approve it.

Mrs. Guilbeau asked so if we throw gravel on that road, are they going to guarantee they're going to respond to my home in time to prevent it from burning down? They cannot guarantee that. Mr. Miller said that's right.

Chief Civil Attorney Ryan Verhulp joined the audience.

Mr. Guilbeau pointed out two neighboring properties that only have access on Bureau property.

Mr. Koch said I don't know how we can legally give a certificate of occupancy without going by the state and county laws. We'll need to have the prosecutor's office review it to make sure.

Mr. Guilbeau answered Mr. Peck's questions about other possible access areas.

Mr. Tuttle asked if it would be possible to grant a deviance on the dirt lane portion of the approved access which goes across the face of a feedlot. He said the road is already graveled to that point. Mr. Miller said he thinks there is plenty of access with the existing gravel and that the additional gravel will get wet in the winter.

Mr. Guilbeau said one other minor thing is the topography from there to here (indicated) is gently down.

Mr. Koch said before I could vote on it, I'd have to have some discussion with our prosecuting attorney. Mr. MacPherson said this is the first access lane deviation request that has ever gone this far. There is no set process within the Bridge and Road Construction Standards as far as how the deviation is to be processed. It just talks about being reviewed and approved or denied by the Board of County Commissioners. We could ask legal counsel whether it is to be approved or denied by resolution or motion.

Mr. Koch said my only concern at this point is the legal side.

Mr. Miller asked if the commissioners have any support for the deviation. Mr. Koch said I just stated my side. I'm not going to commit yea or nay. Mrs. Guilbeau asked about signing a waiver relieving the county of liability in the event of an

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emergency, injury, death, fire or whatever. Mr. Koch said that could be an option but I'm not an attorney.

Mr. Miller said we can talk to the deputy prosecutor. He thinks he knows what the answer will be, simply because we're on the safe side. I can see the exceptions of the situation. If you put the road in, it's going to be under water anyway, so they're going to go the shortest way. There are people out there using it anyway.

Mr. Peck said we ought to be honest with the situation. We all know what the legal answer is. The county doesn't waive liability. The minute you say we'll accept a letter, then someone else will want the same consideration. Pretty soon there's no point in having a code. I don't think we're going to find a legal avenue to allow the landowners to sign a document saying we won't hold you liable. My preference is to always lean in favor of the landowner and try and make possible whatever you want to do. It's your land and we ought to do everything we can to minimize restrictions and limitations. At the same time we have to ensure a certain level of public safety. That's what the codes exist for. It isn't necessarily just your family; it may be people visiting there as well. I don't know enough about the specifics of that short plat to know whether or not there is another way to get this done without having to gravel three-quarters of a mile of road that has seasonal problems with water.

Mr. Guilbeau responded to Mr. Peck's questions about the lack of available easement from other directions.

Mark Guilbeau said I realize you're in a difficult position but to me it's totally unfair that there are roads all around that do not have 4" of gravel. There never has been and never will be. You have a standard or you don't and you uphold it evenly. That standard is not upheld.

Mr. Peck said I think you have every right to expect the county would enforce standards equally everywhere and that you would be treated no differently than the other roads in the area in terms of non-gravel. If I felt you were being held to a different standard and were measuring your gravel, I would ask when was the last time you did this

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on the neighboring roads? If they weren't doing that on the neighboring roads, then they wouldn't be doing it with yours. That would be my position.

Mr. Miller said it's unfortunate. I know that road. It is worthless in the winter. The access is going to be the other way anyway. But at this point I don't think there is support. We can take this to our deputy prosecutor for review and see what we can do.

Mrs. Guilbeau asked about the time frame. Mr. Miller thinks about two weeks.

**Recessed** at 10:17 am.

**Reconvened** at 10:23 am.

**PROSECUTOR**

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

**Executive Session** at 10:23 am based on RCW 42.30.110(1)(i) regarding potential litigation expected to last up to 30 minutes. Ms. Castellanos left the meeting.

**Open Session** at 10:54 am.

CRP 593

Mr. Verhulp asked for approval of a resolution authorizing a last and final offer to purchase portions of property related to County Road Project 593 and authorizing the chairman to sign.

**Motion** – Mr. Peck: Mr. Chairman, I move approval of resolution authorizing a last and best written offer to purchase portions of property related to CRP No. 593 and further authorizing the chairperson to sign said authorization. Second by Mr. Koch. 3:0 vote in favor. This is Resolution 2009-365.

**HUMAN RESOURCES (HR)**

HR Director Rosie H. Rumsey met with the Board.

Risk Management Training Report

Ms. Rumsey gave a report on a Washington Counties Risk Pool (WSRP) workshop she attended titled "Reductions in Force -- Reducing the Legal Risks.

**Adjourned** at 11:14 am.

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There being no further business, the Franklin County Board of Commissioners meeting was adjourned until August 31, 2009.

BOARD OF COUNTY COMMISSIONERS  
FRANKLIN COUNTY, WASHINGTON

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Chairman

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Chairman Pro Tem

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Member

Attest:

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Clerk to the Board

Approved and signed September 9, 2009.