

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Tuesday, June 2, 2015, 9:00 a.m.
Commissioners' Conference Room
Benton County Courthouse, Prosser, WA

Present: Chairman Jerome Delvin
Commissioner Shon Small
County Administrator David Sparks
Clerk of the Board Cami McKenzie

Absent: Commissioner James Beaver (Medical Issue)

Benton County Employees Present During All or a Portion of the Meeting: Deputy Administrator Loretta Smith Kelty; Adam Fyall, Sustainable Development Manager; Planning Manager Mike Shuttleworth; DPA Ryan Brown; Clerk Josie Delvin; District Court Administrator Jacki Lahtinen; Assessor Bill Spencer; Donna Hutchinson, Planning; Nikki Morgan, Assessor's Office.

Approval of Minutes

The Minutes of May 15, 2015 and May 19, 2015 were approved.

Consent Agenda

MOTION: Commissioner Small moved to approve the consent agenda items "a" through "z", pulling "y" (Public Works - Purchase of Ford Escape). Commissioner Delvin seconded and upon vote, the Board approved the following:

Commissioners

- a. Extending Expiration Date of Grant Agreement w/Department of Archaeology & Historic Preservation
- b. Changing Location of Commissioners' Board Meetings, Rescinding Resolution 2015-005

Facilities

- c. Payment Authorization to Kone, Inc. for Elevator Corrections Per 2014 Inspection Reports
- d. Payment Authorization to Kone, Inc. for Repair to Jail Kitchen Service Elevator
- e. Payment Authorization to Schindler Elevator for Software Updates at Health District
- f. Payment to Roto Rooter Service for Emergency Services at District Court
- g. Contract w/River City Environmental, Inc. to Pump & Clean Grease Interceptor @ Jail
- h. Line Item Transfer, Fund No. 0000-101, Dept. 110

Fairgrounds

- i. Contract w/Ray Poland and Sons, Inc. for Construction of New Camping Area

Information Technologies

j. Amended Election Management System w/DFM Associates

Juvenile

k. Amended Contract w/Apollo Sheet Metal for Preventive Maintenance & Repair Services

l. Contract w/Fire Systems West, Inc. for Fire Alarm Inspection, Extinguisher Testing & Sprinkler Inspection

Office of Public Defense

m. District Court Public Defense Services Agreement w/J Andrews

n. Superior Court Public Defense Services Agreement w/E Scott

o. Termination of Superior Court Public Defense Contract w/M Dowding

p. Superior Court Public Defense Services Agreement w/M Trombley

q. Agreement w/A Sheridan for Consulting, Training & Legal Research & Writing Services

Parks

r. Line Item Transfer, Fund No. 0110-102, Dept. 000

Personnel

s. Contract w/Pacific Microrem, Inc. for X-Ray and Metal Detector Machines

t. Authorizing Payment to Pacific Microrem, Inc. for Security Screening Maintenance

u. Classification Descriptions and Salary Grades for Assessor's Office

Public Works

v. Request for Proposals Authorization for Traffic Control Services

w. Local Agency Federal Aid Project Prospectus for Prosser to Grandview Pedestrian Pathway Improvements

x. Amended Agreement w/State of WA Department of Ecology for Coordinated Prevention Grant

Sheriff

z. Agreement w/Franklin County for Mutual Use of Jail Facilities

Public Hearing - Determination on Ordinance 561 Regarding Continuation of Interim Zoning Regulations

Chairman Delvin stated this was a public hearing to hear comments on the emergency moratorium to prohibit the production of marijuana on Rural Lands 5 and they would still need to have the Planning Commission public hearings. He requested the public, if it had other issues not related to Rural Lands 5, to come to another meeting to talk about the other issues.

Mike Shuttleworth submitted the following exhibits into the record:

BCCM 1.1 through BCCM 1.6

BCCH 1.1 through BCCH 1.39

Additionally, he requested those testifying that wanted to submit documents to hand them to Donna Hutchinson so it could be entered into the record.

Testimony

Justin Schneider, Selah, said he owned property on Johnson Road and they were finishing their marijuana grow that was zoned Rural Lands 5. He said that after checking on the laws they found land that met the requirements. He said they have spent a lot of money, including purchasing land, drilling a well, and construction costs. He did not yet have an address but the only thing pending was receiving a permit to receive an address. He requested to be grandfathered in under the previous ordinance.

Louise Schneider, Selah, said she had a trust that owned the property (she was the grandmother of Justin Schneider). She indicated they had multiple stumbling blocks but at no time did they receive any notification this was being considered. She said the adjoining property was industrial and vacant land and they were just on the verge of being inspected by the liquor board and asked that it be allowed.

Linda Bauer, Kennewick, said the new grow on Clodfelter Road was literally in her front yard. She said the State said the counties have the authority and she asked them to stop worrying about the lawsuits and keep the marijuana out of this area. She expressed concern about safety and security with this farm as their neighbor and the stench from ripening marijuana; she said they hold benefits for local non-profits at their property and she asked the County to move it further out in the country and requested they enforce the ban on the RL5.

John Fisler, Kennewick, said he was opposed to marijuana, and spoke in favor of banning RL 5 permanently. He requested the County to please protect the families and that drugs hurt families.

Paul Hedgpeth, Kennewick, implored the Board to extend the moratorium and as they went through the process if they were going to allow individuals to grow marijuana in Benton County that they look at appropriate places to do it. Additionally, he requested the Board consider expanding the moratorium.

Pam Henderson, Kennewick, thanked the Board for the emergency amendment in RL5. She said she thought they made a bad decision; these folks had to find a county that would allow this because the other counties were imposing restrictions and bans. She didn't want to be the County that had people coming from across the state to grow in Benton County and asked that they continue the moratorium.

Sheryll Robinson, Prosser, said she was representing 22 signatures from her neighborhood that wanted the County to make permanent the ban in RL5. She said they also recommend that in any zoning there be a minimum setback of 1000 feet or that it would occur entirely indoors. She read into the record a statement expressing her concern about safety and crime and said the time was now to take action on behalf of all residents.

Newell Crary, Kennewick, said he was on record as supporting the moratorium and he asked that the Board make it permanent.

Rodney Lechelt, Kennewick, said he was a long-time resident and was opposed to the ban. He said there were currently farms up and running and this was changing horses in the middle of the stream. He said it was endorsed by the State and the voters and this was like selective law enforcement.

Steve Lee, Pasco, said he opposed any further restrictions other than what was already in place. He said since it was legalized, there had not been one incident for selling underage. He said he felt this would solidify the black market and there was no way one store in Prosser could support the recreational use of marijuana. He said that every time we put up a barrier, it was creating a space for the black market and this was no different from wine or hops.

Kenneth Way, Kennewick, expressed support for the moratorium and to make it permanent. He said a large majority of small properties were residential and the regulations put in place were inconsistent with a safe community. He said right across from this particular grow there were residents and a bus stop and it was unreasonable to allow this in neighborhoods and have it affect their quality of life.

James Stevens, Kennewick, said he heard a lot of concern about the quality of life being threatened and security. He said if anything was going to be robbed it would be the farm and to continue this ban was a step backward. He indicated that we voted and we said this is what we wanted and we needed to educate the youth instead of scare them. He said he felt it was old school thinking and we needed to move forward.

Frank VerMulm, Prosser, said he was in support of extending the moratorium and wanted to remind the Board that the vote numbers were 56 to 44 against in Benton County; it didn't matter what the State wanted but what the local community wanted. He said he spent a lot of money cleaning up his farm and property that had drugs and wanted to know why this other farm was not held to the same standard.

Donna Robillard, Prosser, said she was opposed to increasing marijuana production and there were plenty of marijuana farms already. She said she was not notified there was a change in her neighborhood; their covenants stated it was residential, not farming and this was an identified security issue. She indicated the other counties were not allowing it so they were coming to Benton County and it was not okay and it was not appreciated.

Jeremy Jecola, Edmonds, WA, said he was trying to grow marijuana here where it was more conducive to growing. He talked about potential benefits including tax revenue and increased jobs, and that overall crime was down in Colorado. He said his grow was already approved and moved to final inspection which was cleared and he did not want animosity from the public but wanted to grow jobs, community and taxes and partner with the City of Prosser.

James Bauer, Kennewick, said he was a neighbor on Clodfelter and in favor of the ban on RL5. He said they bought their land 10 years ago and at that time it was residential and it should stay residential and it was not consistent with other agricultural uses. He said he wanted to make the ban permanent and if it was allowed in residential areas he expected to see his property taxes lowered.

Jessica Lee, Pasco, said she was in support of allowing recreational and medical marijuana businesses at least in the industrial lands. She provided some statistics on sales and revenue in Benton County.

Rich Dorsett, Prosser, said he was in support of the action and wanted to encourage them to eliminate all marijuana activity in Benton County.

Natasha Esparza, Grandview, said she was representing the young generation and was requesting the Board release the moratorium. She talked about the concern regarding odors and referenced the odor that came from a dairy farm and said there were steps they could take to reduce the smells. She said they wanted to make it safe and secure and legal for the medical patients and users.

Richard Esparza, Grandview, said he was a landowner for 40 years and an educator and this new industry was legal. He said he owned the land and rented to the growers and with 32 security cameras there was security on the land. He discussed using the money for revenue to increase law enforcement and wanted the County to look at approval on a case by case basis.

Richard J. Esparza, Grandview, said he was a sergeant in the US Army and wanted to address the security issues and a blanket moratorium that would affect his father's property. He talked about jobs and revenue from production and agreed a case by case basis was more appropriate. He said his father would work with like professionals and it would have the security needed.

Brenden Kent, Kennewick, said he was in favor of the moratorium and that dairy, mint and others crops were important for our agriculture but marijuana was not necessary. He said the requirements showed that security was an issue and it did not belong in our County. He requested they extend the moratorium and encouraged an entire ban on marijuana in Benton County.

Charlotte Schlotfeldt, Kennewick, said she supported the moratorium and would encourage a total ban on RL 5 and other zones. She said that recreational growers were required to disclose their location so there was an insurance risk due to exposure and that only 200 banks were accepting marijuana dollars so the money could not be banked, which created further risk. She asked them to be responsible and regulate it and protect the children. Ms. Schlotfeldt said she was told at the last meeting that she could talk about the industrial zone and was now being told that she could not at this meeting. Chairman Delvin apologized and said he just found out it was not appropriate to talk about anything except the RL5 at this hearing.

Jim Hopwood, Prosser, said he was in favor of the moratorium and asked them for a complete ban. He also reminded them it was not voted for in this area and that like spirits attract like spirits and it would bring more to this area.

Connie Dearing, Kennewick, said she knew the law was in place but she worked with high school students and her biggest concern was the location on Clodfelter. She asked them to compromise to get it away from the neighborhoods and also said she was concerned about property values.

Paul Rossner, Grandview, discussed employment, tax revenue, equal opportunity and the fact it was okay to have a school bus stop next to a vineyard. He said the security cameras were a benefit and he asked them to consider what it looked like before prohibition. He said that times were changing and they should get on board.

Jennifer Goulet, Pasco, said she worked in the medical marijuana industry and gave some statistics saying that since this was approved, people who say they supported it had increased and that property values in Colorado had increased, not decreased. She indicated there were several thousand medical marijuana patients and if they closed all the medical marijuana stores, people would be forced into the black market or the one store in Prosser.

Lloyd Becker, Richland, said he was against the moratorium because it was legal and if the County didn't want it, they should have immediately put in a moratorium. He discussed issues including business risk, underage sales and kids getting marijuana (they would get it anyway). He said he understood it was not voted for in this County but he supported the law and supported the guy who had the business.

Angie Schwartz, Kennewick, said she wanted to have the moratorium made permanent. She indicated she spent a lot of time trying to get the bond approved for the Kennewick School District new middle school and she was opposed to this particular grow. Additionally, if there was a break-in they would have to go directly in front of the new middle school.

Jackie Zakrajsek, Kennewick, said she opposed the moratorium and believed they should look at it on a case by case basis and that many businesses have started based on what was in place. She indicated they wanted to have a grow operation indoors and those that have put in a lot of money to get their business off the ground and done so legally are now being told this late in the game they can't do it. She said she was excited by the tax revenue and doing anything permanent against this type of revenue was not a good thing.

Jennifer Dorsett, Prosser, said she ran the Community Coalition in Prosser (for substance abuse and behavioral problems) and expressed her concern. She said that for now, based on their survey, kids' use has stayed the same but their perception of harm has changed; they are expecting to see the use go up because when risk of harm goes down, use goes up.

Michael Hansen, West Richland, said he was trying to start his 502 business and before he started he made sure he got all the permits and did it legally. He said the solution was to make sure it was zoned properly and he was not sure how this other property was allowed in a residential area. He said he had 50 cameras on his grow and felt his neighbor was more secure because of it. He requested they lift the moratorium and allow 502 growers to proceed with what they were doing.

Jennilyn Kent, Kennewick, said she was a lifelong resident and encouraged them to extend the moratorium and ban it permanently. She did not feel it was safe for their children to get off and on the bus near the grow. She said they lived on 2 ½ acres and had animals and were very opposed to this and that it would affect property values.

Paul Cordelli, Kennewick, said he supported the decision on banning in Benton County. He said they had covenants in their neighborhood they were not following and they would have to take them to Court to enforce the covenants. He said that Benton County didn't need to be the tester of the law in this area.

Kevin Cochrane, Kennewick, said he lived near the new grow and built his home 2 ½ years ago and if that were today, he would not have built his home there. He discussed concern if the area were annexed into the City and the potential problems since it was banned in the City of Kennewick. He said he worked in agriculture and they were not allowed to sell products to these farms. Additionally, grapes and hops were not finished products and they had different uses. He said he worked with many farmers and not one of them was in favor of this.

Hayley Christian, Kennewick, said the RL5 was a very big mistake and she thinks there should be acknowledgement that it was a mistake. She said she speaks as a mother and the last thing any parent wants is their school to be next to a marijuana grow. She said she was pleading that we stop this; just because it was passed as a law, doesn't mean we have to stop fighting.

Kristen Gourley, Kennewick, said she has children that will be attending the new middle school on Clodfelter and disagreed with this being there and didn't feel it was safe. She said the best we can do is educate our children.

Careina Brooks, Kennewick, said she used to work at Kennewick High and was in support of a moratorium in RL5. She said there was concern about where the revenue goes and it goes to the State. Additionally, if the County put in a ban, it wouldn't have to worry about regulating.

Paul Hanson, Kennewick, said he supported the ban and felt the perception for children was now that it was legal that use was increasing in the schools. He said our children were worth more than any revenue that could be brought into the State.

Chairman Delvin stated that Representative Brad Klippert called and said he was in support of the ban.

There being no further testimony, public testimony was concluded.

Mike Shuttleworth said it was their recommendation to keep the public hearing open and have a commissioner work with the Planning staff to prepare an ordinance that incorporated the findings of fact developed by the Board.

MOTION: Commissioner Small moved to continue the immediate emergency interim zoning regulations to prohibit the production of marijuana in the Rural Lands Five District (RL5) and have Planning staff work with Commissioners to prepare an ordinance that incorporates findings of fact of the Board and continue the public hearing until June 16, 2015 at which time the Board will consider the ordinance. Chairman Delvin seconded.

Discussion

Mr. Shuttleworth clarified that Planning staff wanted to have one commissioner on point. Chairman Delvin volunteered to be the point commissioner.

Commissioner Small said the commissioners were on record they did not vote in favor the initiative. Additionally, they attended meetings where they were told by prosecutors across the State, including their own, there was nothing they could do. He said that Colorado had it right where it was allowed to be banned. He apologized but said they wanted to wait and see what happened so they didn't get sued and have to pay money to the entrepreneurs.

Chairman Delvin said that spending time in the legislature he understood the initiative process was a very sacred process and that our county tended to be more conservative. He stated that Snohomish County was also doing a moratorium on RL 5 (even though it passed in that county). He said they tried to respect the initiative and when asked if they did the right thing, he would say probably not; maybe it was not the right way to go. However, one person decided to do something and didn't consider their neighbors, which brought the issue to light and he was glad they all responded. However, they still had a process to go through with the Planning Commission and he encouraged folks to work with the Planning Commission. He said it was never about money for the County and they would respond to what the citizens wanted. He said it was changing and other states were passing it and they needed to adapt.

Mr. Sparks added that Commissioner Beaver emailed him to say he was in favor of continuing the ban.

Upon vote, motion carried.

Mr. Shuttleworth said the next step was to develop an ordinance for the Board to sign that implemented their decision today. They will look at a permanent ordinance and the Planning Commission process will take 4-6 months and the public could send in comments regarding a permanent ban.

Chairman Delvin said the State responded to the letter the Board sent and said they would not issue any further licenses until they made a decision.

Benton City Economic Development Council Quarterly Update

This item was rescheduled to another date.

Unscheduled Visitors

Nikki Morgan asked about an item on the agenda for reclassifying positions in the Assessor's office and whether it had already been approved.

It was determined it was approved on the consent agenda.

Ms. Morgan said she wanted to go on record to request that the union be given the 15 days' advance notice and the full information since they were just notified on Wednesday and were not given all the information needed to make the reclassification.

Mr. Sparks said it was put in by the Assessor and so he recommended she work with him. He said all they did was approve a classification and there was not anything budgetary approved.

Jennifer Dorsett, Prosser Community Coalition, said she wanted to invite the Commissioners to the annual key leader luncheon recognizing local youth and gave them an invitation.

Other Business

Chairman Delvin discussed a letter from Allan Korvola requesting the County advertise the agenda in the newspaper. It was suggested the Commissioners' office get a quote regarding the cost for that.

Chairman Delvin said he received an email from the City of Richland's attorney regarding the MATRICS issue and requested Mr. Brown to review it and get back to the Board.

Claim for Damages

CC 2015-06: Received May 27, 2015 from Ean Holdings, LLC

Vouchers

Check Date: 05/22/2015

Warrant #: 121971-122141
Total all funds: \$1,928,793.91

Transfers #: 5221501-5221509
Total all funds: \$73,079.93

Warrants #: 122142-122351
Total all funds: \$6,112.35

Check Date: 05/29/2015

Warrant #: 122563-122714
Total all funds: \$49,500.65

Transfers #: 05291501-05291506
Total all funds: \$177,886.66

Warrant #: 122715-122814
Total all funds: \$442,318.21

Total amounts approved by fund can be reviewed in the Benton County Auditor's Office.

Resolutions

- 2015-384: Extending Expiration Date of Grant Agreement w/Department of Archaeology & Historic Preservation
- 2015-385: Changing Location of Commissioners' Board Meetings, Rescinding Resolution 2015-005
- 2015-386: Payment Authorization to Kone, Inc. for Elevator Corrections Per 2014 Inspection Reports
- 2015-387: Payment Authorization to Kone, Inc. for Repair to Jail Kitchen Service Elevator
- 2015-388: Payment Authorization to Schindler Elevator for Software Updates at Health District
- 2015-389: Payment to Roto Rooter Service for Emergency Services at District Court
- 2015-390: Contract w/River City Environmental, Inc. to Pump & Clean Grease Interceptor @ Jail
- 2015-391: Line Item Transfer, Fund No. 0000-101, Dept. 110
- 2015-392: Contract w/Ray Poland and Sons, Inc. for Construction of New Camping Area
- 2015-393: Amended Election Management System w/DFM Associates
- 2015-394: Amended Contract w/Apollo Sheet Metal for Preventive Maintenance & Repair Services
- 2015-395: Contract w/Fire Systems West, Inc. for Fire Alarm Inspection, Extinguisher Testing & Sprinkler Inspection
- 2015-396: District Court Public Defense Services Agreement w/J Andrews
- 2015-397: Superior Court Public Defense Services Agreement w/E Scott
- 2015-398: Termination of Superior Court Public Defense Contract w/M Dowding
- 2015-399: Superior Court Public Defense Services Agreement w/M Trombley
- 2015-400: Agreement w/A Sheridan for Consulting, Training & Legal Research & Writing Services
- 2015-401: Line Item Transfer, Fund No. 0110-102, Dept. 000
- 2015-402: Contract w/Pacific Microrem, Inc. for X-Ray and Metal Detector Machines
- 2015-403: Authorizing Payment to Pacific Microrem, Inc. for Security Screening Maintenance
- 2015-404: Classification Descriptions and Salary Grades for Assessor's Office
- 2015-405: Request for Proposals Authorization for Traffic Control Services
- 2015-406: Local Agency Federal Aid Project Prospectus for Prosser to Grandview Pedestrian Pathway Improvements
- 2015-407: Amended Agreement w/State of WA Department of Ecology for Coordinated Prevention Grant
- 2015-408: Agreement w/Franklin County for Mutual Use of Jail Facilities

There being no further business before the Board, the meeting adjourned at approximately 11:15 a.m.

Clerk of the Board

Chairman