

## MINUTES

### BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting  
May 9, 2011, 8:30 a.m.  
Commissioners' Conference Room  
Benton County Courthouse, Prosser, WA

**Present:** Chairman Leo Bowman  
Commissioner James Beaver  
Commissioner Shon Small  
County Administrator David Sparks  
Clerk of the Board Cami McKenzie

**Benton County Employees Present During All or a Portion of the Meeting:** Deputy Administrator Loretta Smith Kelty; Adam Fyall, Community Development Coordinator; Finance Manager Keith Mercer; County Engineer Malcolm Bowie; Public Works Manager Steve Becken; Planning Manager Mike Shuttleworth; Deputy Treasurer Erhiza Rivera; Personnel Manager Melina Wenner; DPA Ryan Brown; Marianne Ophardt, Benton County WSU Extension; DPA Steve Hallstrom; Central Services Manager Randy Reid; Auditor Brenda Chilton; R.J. Lott, Planning.

#### Workshop Agenda

Commissioner Small reported on his attendance at the LEOFF conference the previous week and thanked the Road Department for installing a stop sign at Hinzerling & McCready. Additionally, he discussed the proposed gang task force and asked the Board if it would support him reviewing this matter further. Chairman Bowman said he was not opposed to it.

Commissioner Beaver said he had discussions with Mr. Sparks about how to fund the task force and anticipated there would be a proposal in front of the Board.

Chairman Bowman said he had the official letter regarding Commute Trip Reduction (CTR) and that Benton County was out until 2013. Commissioner Beaver said it was discussed at the TRIDEC meeting and noted that Commissioner Bowman was instrumental in getting that issue resolved for Benton County.

#### 800 Mhz Report

The Board discussed having legal counsel send a letter to BCES since they had not yet returned the money. The Board requested Mr. Brown work with David Sparks and Loretta Smith Kelty about sending another letter to BCES.

Chairman Bowman reported on his trip to D.C. and said the issue of gangs and the re-entry of Juveniles back into the community was discussed. He provided a written report and said he was excited about having another conversation with the Assistant Attorney General.

The Board briefly recessed, reconvening at 9:00 a.m. for the regular session.

### **Approval of Minutes**

The Minutes of May 2, 2011 were approved.

### **Consent Agenda**

**MOTION:** Commissioner Beaver moved to approve the consent agenda items “a” through “v”. Commissioner Small seconded and upon vote, the Board approved the following:

#### **Auditor**

- a. Line Item Transfer, Fund No. 0000-101, Dept. 102
- b. Line Item Transfer, Fund No. 0106-101, Dept. 000

#### **Central Services**

- c. Purchase Authorization for Apple iPad Tablets

#### **Commissioners**

- d. Line Item Transfer, Fund No. 0153-101, Dept. 000
- e. Adoption of Mileage, Lodging and Per Diem Rates

#### **Juvenile**

- f. Personal Service Contract w/Knowledge Counseling
- g. Agreement w/Pasco School District for Chiawana High School Probation Liaison
- h. Agreement w/Pasco School District for Pasco High School Probation Liaison

#### **Office of Public Defense**

- i. Excess Case Compensation for Attorney T Orosco

#### **Public Works**

- j. Line Item Transfer, Fund No. 0101-101, Dept. 500
- k. Authorization to Pre-Level Missimer Road in Accordance w/Standard Road Specifications
- l. Authorization to Proceed w/Bituminous Surface Treatment in Accordance w/Specifications
- m. Revision of One Year Road Program for 2011 Regarding Miscellaneous Project Money
- n. Approval of Administrative Authority Letter & Task Assignment for Piert Road
- o. Property Acquisition Documentation for Olympia Street
- p. Easement Supplement for Locust Grove Road
- q. Easement Agreement & Memorandum of Easement for Webber Canyon Underpass
- r. Public Hearing Franchise Authorization for Cascade Natural Gas Corporation
- s. Public Hearing Franchise Authorization for Col Solare, LLP

#### **Sheriff**

- t. Authorization for Invitation to Bid for Replacement Sidearm Pistols
- u. Contract Extension w/CORPS for John Day Project

## **Sustainable Development**

- v. Line Item Transfer, Fund No. 0135-101, Dept. 000

The Board briefly recessed, reconvening at 9:05 a.m.

## **Public Hearing – Short Plat Appeal – SHPA 11-01**

Mike Shuttleworth and R.J. Lott said the Planning Department received a short plat application from Bruce Etzel and it was approved with 22 conditions. Mr. Etzel filed an appeal regarding the Short Plat Administrator's requirement to provide a 40-foot private road to serve lot 2 of this short plat. Additionally, he requested removal of the requirement that any new private road easement must be offset at least 15 feet from the short plat boundary so that setback requirements do not encroach upon neighboring properties. Mr. Lott stated that Planning recommended the Board deny the applicant's request to eliminate the requirement of a 40-foot private road easement but approve the appeal for the setback requirements.

Chairman Bowman recused himself from the public hearing because Mr. Etzel was a personal friend. He then left the conference room.

Commissioner Small asked the Planning Department how long it had worked on the issue with Mr. Etzel. It was stated the application was filed on March 7 and went through a 30-day review and then a decision sent out on April 8, 2011 with 22 conditions. Commissioner Small asked if Mr. Etzel had been working with the Planning Department before that time and it was stated that Mr. Etzel was working on a boundary line adjustment and mini-storage project on the same parcel, however, the application for short plat was a different project. Mr. Shuttleworth said they had several conversations with him but could not approve this project until application was made and they went through the requirements. He said they also had conversations with his surveyors and they were aware of the proposed changes to the short plat ordinance.

Commissioner Small delegated responsibility of chairing the public hearing to Commissioner Beaver.

## **Public Testimony**

Bruce Etzel said that he started the short plat process approximately one year ago and went through a year of testing with the Health Department. He said he hired a surveyor and was told to do a property line adjustment, however, when that was presented was told he couldn't do a property line adjustment. He then started the short plat process and then the new ordinance came into effect. He said the problem with getting an additional 10 feet was he would have to ask the property owners for an additional 10 feet and then the road would be within 15 feet of their house. He said it was his view there was plenty of access with two access points (40 feet on one lot and 30 feet into the second lot).

Deb Heintz, Prosser said it was important for this short plat application to go through for economic development. She said it had taken too long with lack of communication and he was

caught in between a change of ordinances. She asked the Board to consider a grandfather clause allowing Mr. Etzel to continue his process under the old rules.

Commissioner Beaver asked DPA Ryan Brown if that was legal. Mr. Brown said the Board would have to have implemented a grandfather clause when the ordinance was adopted.

Commissioner Beaver asked when Mr. Etzel come into to the Planning Office and it was stated many months before the application. He also asked if the Planning Department communicated with the surveyor and the answer was yes.

As there was no one else present to testify, the public hearing was closed.

Commissioner Small said that Mr. Etzel had been working on this for a year and asked what effect there would be if the Board grandfathered this in under the old rules. Mr. Shuttleworth said the Planning Department changed the access easement requirement several times before the final one was approved at public hearing. He stated that he had two accesses and two lots (and it would probably be adequate), but they were required to approve based upon the current ordinance in place and in effect at the time of his application.

Mr. Lott said that Mr. Etzel could have made application to the Planning Department before getting final approval of the Health Department so his application was in before the ordinance changed and commented that other applicants recognized this and made application before the change.

Mr. Brown said the Board could not legally ignore the terms of the ordinance, however, it could amend the ordinance and go through a public hearing for authority for the County to grant variances. He said the hard and fast rule was the date of application because there might be 60 other people working on their short plat, but they didn't get their application in before the requirements changed.

**MOTION:** Commissioner Beaver moved to deny Bruce Etzel's request to eliminate the requirement of a 40-foot private road easement, including any utility easements, to serve lot 2 of this short plat. Additionally, to approve the applicant's request to remove the last sentence of requirement #6, "Any new private road easements must be offset at least 15 feet from the short plat boundary so that setback requirements do not encroach upon neighboring properties." Commissioner Small seconded.

### Discussion

Commissioner Beaver said he had to make his motion based upon legal analysis but he didn't have to like it. He said he knows that rules change and we know those customers and he thinks we can notify them when there is a change made, however, he feels like the Board's hands were tied.

Commissioner Small said he felt the same way.

Upon vote, motion carried.

The Board briefly recessed, reconvening at 9:35 a.m. with Chairman Bowman present.

### **Benton County WSU Presentation – Online Survey**

Marianne Ophardt provided information regarding an online survey and requested each of the Board members to take the survey. She said through WSU and WSAC they were looking at ways to cut down on administration due to budget cuts and the survey was developed by six other commissioners and WSU Extension. She asked the Board to complete the survey by May 13.

### **Zone Change Request – ZC 11-01**

Mike Shuttleworth said this was a closed record hearing (actual hearing was conducted by Planning Commission) and was an application to rezone property from Agriculture to Light Industrial and Interchange Commercial by Cottonwood Commercial Plaza. He said it was consistent with the Comprehensive Plan and the Planning Commission recommended approval.

**MOTION:** Commissioner Beaver moved to adopt the Planning Commission's recommendations, findings and conclusions as their own and approve the zone change application ZC 11-01. Commissioner Small seconded and upon vote, the motion carried unanimously.

### **Executive Session – Pending Litigation**

The Board went into executive session at 9:45 a.m. for approximately 15 minutes to discuss pending litigation with DPA Ryan Brown. Also present were Steve Hallstrom, David Sparks, Cami McKenzie, Melina Wenner, and Loretta Smith Kelty. The Board came out at 9:52 a.m. Mr. Brown stated the Board took no action.

### **Executive Session – Pending Litigation**

The Board went into executive session at 9:52 a.m. for approximately 20 minutes with special counsel Sarah Perry to discuss pending litigation. Also present were Ryan brown, Melina Wenner, Loretta Smith Kelty and David Sparks. The Board came out at 10:05 a.m. and it was announced the Board took no action.

**MOTION:** Commissioner Beaver moved to approve the settlement with Patricia E. Yayne and put forth a settlement agreement per the resolution. Commissioner Small seconded and upon vote, the motion carried unanimously.

### **Ortho Request for Proposal**

Mary Phillips, GIS, requested the Board's approval to move ahead with an RFP for 2012 Digital Orthophotography.

She said the last photos were in 2008 and prior to that was 2004 and was looking at a joint project with Franklin County and DOE to reduce costs. Additionally, they were looking at the same partners as in 2008.

**MOTION:** Commissioner Beaver moved to approve the RFP for 2012 Digital Orthophotography and proceed with advertising. Commissioner Small seconded and upon vote, the motion carried unanimously.

### **Vouchers**

Check Date: 05/05/2011  
Taxes #: 10111051-10111053  
Warrants #: 33615-33638  
Total all funds: \$1,795,856.86

Check Date: 05/05/2011  
Warrant #: 232269-232377  
Direct Deposit #: 63536-64134  
Total all funds: \$2,065,145.55

Check Date: 05/06/2011  
Warrant #: 33639-33849  
Total all funds: \$333,605.29

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

### **Resolutions**

- 11-289A Settlement Offer to Patricia E. Yayne and Joseph D. Yayne
- 11.290 Line Item Transfer, Fund No. 0000-101, Dept. 102
- 11.291 Line Item Transfer, Fund No. 0106-101, Dept. 000
- 11.292 Purchase Authorization for Apple iPad Tablets
- 11.293 Line Item Transfer, Fund No. 0153-101, Dept. 000
- 11.294 Adoption of Mileage, Lodging and Per Diem Rates
- 11.295 Personal Service Contract w/Knowledge Counseling
- 11.296 Agreement w/Pasco School District for Chiawana High School Probation Liaison
- 11.297 Agreement w/Pasco School District for Pasco High School Probation Liaison
- 11.298 Excess Case Compensation for Attorney T Orosco
- 11.299 Line Item Transfer, Fund No. 0101-101, Dept. 500
- 11.300 Authorization to Pre-Level Missimer Road in Accordance w/Standard Road Specifications
- 11.301 Authorization to Proceed w/Bituminous Surface Treatment in Accordance w/Specifications
- 11.302 Revision of One Year Road Program for 2011 Regarding Miscellaneous Project Money

- 11.303 Approval of Administrative Authority Letter & Task Assignment for Piert Road
- 11.304 Property Acquisition Documentation for Olympia Street
- 11.305 Easement Supplement for Locust Grove Road
- 11.306 Easement Agreement & Memorandum of Easement for Webber Canyon Underpass
- 11.307 Public Hearing Franchise Authorization for Cascade Natural Gas Corporation
- 11.308 Public Hearing Franchise Authorization for Col Solare, LLP
- 11.309 Authorization for Invitation to Bid for Replacement Sidearm Pistols
- 11.310 Contract Extension w/CORPS for John Day Project
- 11.311 Line Item Transfer, Fund No. 0135-101, Dept. 000
- 11.312 Approval of Zone Change Application – ZC 11-01

There being no further business before the Board, the meeting adjourned at approximately 10:15 a.m.

---

Clerk of the Board

---

Chairman