

ANNOTATED MINUTES

Tuesday, November 26, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:33 a.m., with Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present, and Vice-Chair Dan Saltzman arriving at 9:35 a.m.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-14)
WAS APPROVED, WITH COMMISSIONERS KELLEY,
HANSEN, COLLIER AND STEIN VOTING AYE.**

NON-DEPARTMENTAL

- C-1 Appointment of Ramsey Weit as City of Portland Representative to the AFFORDABLE HOUSING REVIEW COMMITTEE
- C-2 Appointments of Christa Meyer and Terri Thorson to the DUII COMMUNITY ADVISORY BOARD
- C-3 Appointment of Marie Sowers to the PORTLAND MULTNOMAH COMMISSION ON AGING
- C-4 Appointment of Stephanie Parish-Taylor to the PRIVATE INDUSTRY COUNCIL

DEPARTMENT OF HEALTH

- C-5 Intergovernmental Agreement 200847 with Oregon Health Sciences University, Providing Obstetrical and Gynecological Consultation to Health Department Clinics

DEPARTMENT OF AGING SERVICES

- C-6 Intergovernmental Revenue Agreement 400097 with the City of Gresham, Providing Coordination of Services and Programs for Gresham Area Seniors
- C-7 Amendment 1 to Intergovernmental Agreement 400016 with Oregon Senior and Disabled Services, Providing Administrative, Long Term Care, and Contracted Community Services Funds for the Period July 1, 1995 through June 30, 1997

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-8 Intergovernmental Revenue Agreement 103117 with the State Office for Services to Children and Families, Funding Capitated Mental Health Services for Children Not Eligible for the Multnomah CAPCare Program Services

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-9 Intergovernmental Agreement 300757 with the City of Portland, Providing Design and Construction of 13 Off-Bridge Willamette River Bridges Accessibility Improvements
- C-10 ORDER Authorizing Execution of Deed D971381 Upon Complete Performance of a Contract to William D. Barnes

ORDER 96-203.

- C-11 ORDER Authorizing Execution of Deed D971382 Upon Complete Performance of a Contract to Michael Trojan

ORDER 96-204.

- C-12 ORDER Authorizing Execution of Deed D971383 Upon Complete Performance of a Contract to Margaret Lewis

ORDER 96-205.

- C-13 ORDER Authorizing Execution of Deed D971384 Upon Complete Performance of a Contract to Jeffrey Paul Fish

ORDER 96-206.

SHERIFF'S OFFICE

C-14 Intergovernmental Agreement 800847 with the Oregon Department of Transportation, Involving a Multi-Agency Effort to Enhance DUII Enforcement in Multnomah County

REGULAR AGENDA

AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, CONSIDERATION OF THE FOLLOWING ITEM WAS APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, COLLIER AND STEIN VOTING AYE.

DEPARTMENT OF SUPPORT SERVICES

UC-1 Intergovernmental Agreement 500407 with Riverdale School District Implementing a \$10,000 One Time Only Payment Included in the 1996-97 Adopted Budget

COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF UC-1. DAVE WARREN EXPLANATION. AGREEMENT APPROVED, WITH COMMISSIONERS KELLEY, HANSEN, COLLIER AND STEIN VOTING AYE.

PUBLIC COMMENT

R-1 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

Vice-Chair Dan Saltzman arrived at 9:35 a.m.

DIANNA ROBERTS COMMENTED IN OPPOSITION TO ADULT CARE HOME INSPECTIONS ON THURSDAY MORNINGS, AND THE COUNTY BOARD CONDUCTING EXECUTIVE SESSIONS CONCERNING PENDING LITIGATION. CHAIR STEIN ASSURED MS. ROBERTS THAT EXECUTIVE SESSIONS ARE CONDUCTED PER STATUTORY GUIDELINES.

DEPARTMENT OF COMMUNITY CORRECTIONS

R-2 Budget Modification DCC 5 Creating a Budget for the Centralized Casebank Unit, Transferring Existing Positions and Materials and Services

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, R-2 WAS TABLED.

NON-DEPARTMENTAL

R-3 RESOLUTION Approving the Fire Code Ordinance of Tualatin Valley Fire and Rescue, a Rural Fire Protection District

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-3. TUALATIN VALLEY FIRE MARSHAL JEFF GRUNEWALD EXPLANATION. RESOLUTION 96-207 UNANIMOUSLY APPROVED.

DEPARTMENT OF SUPPORT SERVICES

R-4 Intergovernmental Agreement 500317 with the State of Oregon Regarding Senate Bill 1145 Facilities Lease and Sublease Documents

CHAIR STEIN ADVISED THAT FINANCE DIRECTOR DAVE BOYER REQUESTED THAT R-4 BE POSTPONED INDEFINITELY. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, R-4 WAS UNANIMOUSLY POSTPONED INDEFINITELY.

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

R-5 Request for Approval of a NOTICE OF INTENT to Submit a Grant Application to Meyer Memorial Trust in the Amount of \$298,072 for a Two Year Period to Establish Hispanic Retention Programs at Roosevelt and Madison High Schools in Partnership with Portland Public Schools, Multnomah County and Private Non-Profit Organizations

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL

OF R-5. IRIS BELL EXPLANATION AND RESPONSE TO COMMISSIONER SALTZMAN'S COMMENTS IN SUPPORT. NOTICE OF INTENT UNANIMOUSLY APPROVED.

R-6 Approval of Application for a Grant from Meyer Memorial Trust in the Amount of \$298,072 for a Two Year Period

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-6. IRIS BELL EXPLANATION, COMMENTS IN SUPPORT, AND RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN REGARDING THE ATTRIBUTES OF PARTICULAR SCHOOLS. APPLICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF COMMUNITY CORRECTIONS

R-2 Budget Modification DCC 5 Creating a Budget for the Centralized Casebank Unit, Transferring Existing Positions and Materials and Services

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, R-2 WAS UNANIMOUSLY POSTPONED INDEFINITELY.

There being no further business, the regular meeting was adjourned at 9:45 a.m.

Tuesday, November 26, 1996 - 10:00 AM
OR IMMEDIATELY FOLLOWING REGULAR MEETING
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

EXECUTIVE SESSION

Chair Beverly Stein convened the meeting at 9:45 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.

E-1 The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h) for Legal Counsel Consultation

Concerning Current Litigation or Litigation Likely to be Filed. Presented by Sandra Duffy.

EXECUTIVE SESSION HELD.

There being no further business, the executive session was adjourned at 11:05 a.m.

Tuesday, November 26, 1996 - 1:30 PM
Justice Building, 15th Floor Chief's Conference Room
1111 SW Second, Portland

MULTNOMAH CITIES/COUNTY JOINT MEETING

Portland Mayor Vera Katz and County Chair Beverly Stein convened the meeting at 1:36 p.m., with Gresham Mayor Gussie McRobert, Troutdale Mayor Paul Thalhofer, Portland Commissioners Erik Sten, Jim Francesconi, Charlie Hales, a representative of Commissioner Mike Lindberg, Portland Auditor Barbara Clark County Vice-Chair Dan Saltzman, and County Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.

JM-1 Elected Officials for Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village.

PRESENTATIONS, DISCUSSION AND RESPONSE TO QUESTIONS WITH MAYOR KATZ, CHAIR STEIN, COMMISSIONER KELLEY, MARY, CAROL FORD, COMMISSIONER SALTZMAN, MAYOR MCROBERT, MAYOR THALHOFER, A REPRESENTATIVE OF COMMISSIONER LINDBERG, COMMISSIONER FRANCESCONI, COMMISSIONER HALES, COMMISSIONER COLLIER, COMMISSIONER HANSEN, BARBARA CLARK, COMMISSIONER STEN. FOUR C GROUP TO DEVELOP AGENDA FOR NEXT JOINT MEETING TO BE SCHEDULED FOR A WEDNESDAY OR THURSDAY EVENING MID JANUARY, 1997.

There being no further business, the meeting was adjourned at 3:15 p.m.

Wednesday, November 27, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

LAND USE PLANNING MEETING

Chair Beverly Stein convened the meeting at 9:32 a.m., with Vice-Chair Dan Saltzman, Commissioners Sharron Kelley, Gary Hansen and Tanya Collier present.

P-1 CU 6-96/SEC 18-96 DE NOVO HEARING on the Appeal of the Hearings Officer Decision Regarding a Conditional Use Permit and a SEC Permit for the Mining of Approximately 250 Acres Previously Approved Under CU 17-90, on Property Located at 14545 NW ST. HELENS ROAD.

CHAIR STEIN EXPLAINED QUASI-JUDICIAL PROCESS. AT CHAIR STEIN'S REQUEST FOR DISCLOSURE, NO EX PARTE CONTACTS WERE REPORTED. AT CHAIR STEIN'S REQUEST FOR CHALLENGES AND/OR OBJECTIONS, NONE WERE OFFERED.

In order to allow proponents and opponents to coordinate their time, Chair Stein recessed the meeting at 9:36 a.m. and reconvened the meeting at 9:40 a.m.

AT THE REQUEST OF ARNOLD ROCHLIN, THE BOARD GRANTED 25 MINUTES FOR TESTIMONY FROM EACH SIDE. PLANNER PHILLIP BOURQUIN PRESENTED STAFF REPORT AND RECOMMENDATIONS TO ELIMINATE, OVERTURN AND DELETE CERTAIN HEARINGS OFFICER CONDITIONS, AND RESPONDED TO BOARD QUESTIONS. HEARINGS OFFICER LIZ FANCHER PRESENTED CONDITIONS, FINDINGS OF FACT AND CRITERIA USED IN HER DETERMINATION, ADVISING THIS WAS HER FIRST HEARING FOR MULTNOMAH COUNTY AND THE BOARD WILL HAVE MORE DISCRETION THAN SHE HAD. MS. FANCHER ADDRESSED MINING, RECLAMATION, STREAM DRAINAGE, RIPARIAN AND ROAD ISSUES AND RESPONDED TO BOARD QUESTIONS. AT CHAIR STEIN'S REQUEST, COUNTY ATTORNEY SANDRA DUFFY EXPLAINED THE BOARD NEEDS

TO DECIDE WHETHER THE ANGELL BROTHERS MEDIATED CONSERVATION EASEMENT REGARDING SITE SPECIFIC PLANS IS THE ONLY DOCUMENT TO LOOK AT, OR WHETHER THEY SHOULD LOOK AT THE ZONING CODE AND HEARINGS OFFICER DECISION IN MAKING ITS DETERMINATION. APPLICANT'S ATTORNEY FRANK PARISI SUBMITTED ANGELL BROTHERS MATERIALS REGARDING HISTORY, MEDIATION, HOURS OF OPERATION, MINERAL AND AGGREGATE RESOURCE INVENTORY, RECLAMATION AND CONDITIONS, AND TESTIFIED IN SUPPORT OF THE MEDIATED CONSERVATION EASEMENT, ADVISING THE ZONING CODE IS NOT APPLICABLE IN THIS CASE. IN RESPONSE TO A QUESTION OF CHAIR STEIN, MR. PARISI ADVISED ANGELL BROTHERS HAS OPERATED FROM 6:00 A.M. UNTIL 10:00 P.M. SINCE 1980. LES BLAIZE TESTIFIED IN SUPPORT OF THE MINING OPERATIONS. CHRIS FOSTER, HANK MCCURDY, CHRIS WRENCH, SETH TANE, DONNA MATRAZZO, ARNOLD ROCHLIN, JANE HART OF METRO AND PAULA THIEDE SUBMITTED WRITTEN AND PRESENTED TESTIMONY IN OPPOSITION TO APPLICANT'S REQUEST AND IN SUPPORT OF HEARINGS OFFICER DECISION. HANK MCCURDY AND ARNOLD ROCHLIN RESPONSE TO BOARD QUESTIONS. MR. PARISI REBUTTAL TO TESTIMONY, INCLUDING THE EASEMENT ISSUE. IN RESPONSE TO CHAIR STEIN'S REQUEST FOR CONTINUANCE OR OBJECTION TO HEARING, NONE WERE OFFERED. HEARING CLOSED.

At 11:10 a.m., Commissioner Gary Hansen advised he had to leave for a meeting in Salem but he supports a decision of the Board that best meets the original agreement.

LIZ FANCHER AND SANDRA DUFFY RESPONSE TO BOARD QUESTIONS REGARDING CERTAIN CONDITIONS. COMMISSIONER KELLEY'S MOTION TO ADOPT PLANNING STAFF RECOMMENDATION TO ELIMINATE CONDITION

14, AND ADD A CONDITION TO KEEP NW MCNAMEE AND NEWBERRY ROADS CLOSED TO THROUGH TRUCKS AS DIRECTED BY THE COUNTY ENGINEER ON OCTOBER 17, 1996, FAILED FOR LACK OF A SECOND.

COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, TO ELIMINATE CONDITION 14 OF THE HEARINGS OFFICER DECISION. MOTION TO ELIMINATE HEARINGS OFFICER CONDITION 14 APPROVED, WITH COMMISSIONERS COLLIER, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER KELLEY VOTING NO.

FOLLOWING BOARD DISCUSSION AND RESPONSE TO QUESTIONS REGARDING HOURS OF OPERATION, NOISE, PRODUCTION AND DEQ ENFORCEMENT WITH SANDRA DUFFY, FRANK PARISI, HANK MCCURDY, SKIP ANDERSON, PHILLIP BOURQUIN, DAVID KING, ARNOLD ROCHLIN, COMMISSIONER KELLEY'S MOTION TO UPHOLD CONDITION 7 OF THE HEARINGS OFFICER DECISION, FAILED FOR LACK OF A SECOND.

COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER COLLIER TO AMEND HEARINGS OFFICER CONDITION 7 LIMITING THE HOURS OF OPERATION FROM 6:00 AM TO 10:00 PM. FOLLOWING DISCUSSION WITH SANDRA DUFFY, COMMISSIONER COLLIER RESTATED THE INTENT OF HER MOTION IS TO PROVIDE THAT MCC.7325(C) APPLIES, EXCEPT IN THE HOURS OF OPERATION, WHICH SHALL BE FROM 6:00 AM TO 10 PM ON THE APPLICABLE DAYS. BOARD DISCUSSION WITH PHILLIP BOURQUIN AND FRANK PARISI REGARDING ANGELL BROTHERS WILLINGNESS TO PURCHASE EQUIPMENT TO MONITOR NOISE AND SUBMIT QUARTERLY LOGS TO LAND USE STAFF. COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, AN AMENDMENT TO THEIR

PREVIOUS MOTION ADDING THAT ANGELL BROTHERS WILL MONITOR NOISE AND SUBMIT QUARTERLY LOGS TO THE LAND USE PLANNING STAFF. COMMISSIONER SALTZMAN COMMENTS IN SUPPORT OF MOTION. MOTION PROVIDING THAT MCC.7325(C) APPLIES, EXCEPT IN THE HOURS OF OPERATION, WHICH SHALL BE FROM 6:00 AM TO 10 PM ON THE APPLICABLE DAYS, AND PROVIDING THAT ANGELL BROTHERS WILL MONITOR NOISE AND SUBMIT QUARTERLY LOGS TO THE LAND USE PLANNING STAFF, APPROVED, WITH COMMISSIONERS COLLIER, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONER KELLEY VOTING NO.

FOLLOWING BOARD DISCUSSION WITH ARNOLD ROCHLIN, FRANK PARISI, SANDRA DUFFY AND HANK MCCURDY REGARDING WATERSHED, RECONCILIATION REPORT, ORDINANCE 832, AMENDED MINERAL EXTRACTION MAPS, AND STREAMS, RIPARIAN, WILDLIFE PROTECTION ISSUES, COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, TO ADOPT THE PLANNING STAFF RECOMMENDATION TO OVERTURN AND DELETE CONDITION 12 OF THE HEARINGS OFFICER DECISION. IN RESPONSE TO SETH TANE'S STREAM DRAINAGE CONCERNS, COMMISSIONER SALTZMAN COMMENTED IN SUPPORT OF THE MEDIATED AGREEMENT. MOTION TO OVERTURN AND DELETE HEARINGS OFFICER CONDITION 12 UNANIMOUSLY APPROVED.

REGARDING PHASING AND RECLAMATION ISSUES, COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, TO OVERTURN AND DELETE CONDITION 15 OF THE HEARINGS OFFICER DECISION. PHILLIP BOURQUIN EXPLANATION AND RESPONSE TO QUESTION OF COMMISSIONER COLLIER REGARDING STAFF RECOMMENDATION THAT THE BOARD PLACE CONDITIONS REQUIRING RECLAMATION OF ANY PORTION OF THE SITE

THAT IS MINED AND NOT UTILIZED FOR ROADS, ETC. TO BE RECLAMATED WITHIN THREE YEARS. AT THE REQUEST OF COMMISSIONER KELLEY, E. FRANK SCHNITZER OF THE OREGON DEPARTMENT OF GEOLOGY AND MINERAL INDUSTRIES, TESTIFIED IN SUPPORT OF ANGELL BROTHERS MINING OPERATIONS AND RECLAMATION PLAN, AND RESPONDED TO BOARD QUESTIONS REGARDING TIMING OF RECLAMATION PHASES AND FOREST VEGETATION. COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER SALTZMAN, PLACE CONDITIONS REQUIRING RECLAMATION OF ANY PORTION OF THE SITE THAT IS MINED AND NOT UTILIZED FOR ROADS, ETC. TO BE RECLAMATED WITHIN THREE YEARS. FOLLOWING BOARD DISCUSSION WITH ARNOLD ROCHLIN, FRANK SCHNITZER AND PHILLIP BOURQUIN REGARDING DOGAMI TESTING, PERMIT CONDITIONS AND STAFF CONCERNS, COMMISSIONERS COLLIER, KELLEY AND SALTZMAN WITHDREW THEIR PREVIOUS MOTIONS AND SECONDS. COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER SALTZMAN, TO OVERTURN AND DELETE CONDITION 15 OF THE HEARINGS OFFICER DECISION AND SIMPLY PLACE CONDITIONS REQUIRING RECLAMATION OF ANY PORTION OF THE SITE THAT IS MINED AND NOT UTILIZED FOR ROADS, ETC. TO BE RECLAMATED WITHIN THREE YEARS, AND REQUIRING DOGAMI INSPECTIONS AND PERMITS. MOTION UNANIMOUSLY APPROVED.

FOLLOWING DISCUSSION OF NOISE AND GROUNDWATER ISSUES WITH SANDRA DUFFY, COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER KELLEY, TO UPHOLD THE HEARINGS OFFICER FINDINGS AND CONDITIONS, INCLUDING 11 AND 17, WITH TODAY'S BOARD AMENDMENTS. CHAIR STEIN THANKED EVERYONE FOR THEIR PARTICIPATION. MOTION TO UPHOLD THE

**HEARINGS OFFICER FINDINGS AND
CONDITIONS, INCLUDING 11 AND 17, WITH
TODAY'S BOARD AMENDMENTS, UNANIMOUSLY
APPROVED. [FINAL ORDER 97-15 ADOPTED
FEBRUARY 13, 1997 AFFIRMING AND MODIFYING
THE OCTOBER 17, 1996 HEARINGS OFFICER
DECISION IN LAND USE PLANNING CASE CU 6-96
SEC 18-96]**

There being no further business, the meeting was adjourned at 12:36 p.m.

BOARD CLERK FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 SW FIFTH AVENUE
PORTLAND, OREGON 97204
CLERK'S OFFICE • 248-3277 • 248-5222
FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR • 248-3308
DAN SALTZMAN • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
TANYA COLLIER • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

NOVEMBER 25, 1996 - NOVEMBER 29, 1996

- Tuesday, November 26, 1996 - 9:30 AM - Regular MeetingPage 2*
- Tuesday, November 26, 1996 -10:00 AM - Executive Session.....Page 4*
- Tuesday, November 26, 1996 - 1:30 PM - Joint Meeting.....Page 4*
- Wednesday, November 27, 1996 - 9:30 AM - De Novo HearingPage 5*
- Thursday, November 28, 1996 - HOLIDAY - OFFICES CLOSED*

*Thursday Meetings of the Multnomah County Board of Commissioners are *cable-cast* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

Thursday, 9:30 AM, (LIVE) Channel 30

Friday, 10:00 PM, Channel 30

Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community Television

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

Tuesday, November 26, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 *Appointment of Ramsey Weit as City of Portland Representative to the AFFORDABLE HOUSING REVIEW COMMITTEE*
- C-2 *Appointments of Christa Meyer and Terri Thorson to the DUII COMMUNITY ADVISORY BOARD*
- C-3 *Appointment of Marie Sowers to the PORTLAND MULTNOMAH COMMISSION ON AGING*
- C-4 *Appointment of Stephanie Parish-Taylor to the PRIVATE INDUSTRY COUNCIL*

DEPARTMENT OF HEALTH

- C-5 *Intergovernmental Agreement 200847 with Oregon Health Sciences University, Providing Obstetrical and Gynecological Consultation to Health Department Clinics*

DEPARTMENT OF AGING SERVICES

- C-6 *Intergovernmental Revenue Agreement 400097 with the City of Gresham, Providing Coordination of Services and Programs for Gresham Area Seniors*
- C-7 *Amendment 1 to Intergovernmental Agreement 400016 with Oregon Senior and Disabled Services, Providing Administrative, Long Term Care, and Contracted Community Services Funds for the Period July 1, 1995 through June 30, 1997*

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

- C-8 *Intergovernmental Revenue Agreement 103117 with the State Office for Services to Children and Families, Funding Capitated Mental Health*

*Services for Children Not Eligible for the Multnomah CAPCare Program
Services*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-9 *Intergovernmental Agreement 300757 with the City of Portland, Providing Design and Construction of 13 Off-Bridge Willamette River Bridges Accessibility Improvements*
- C-10 *ORDER Authorizing Execution of Deed D971381 Upon Complete Performance of a Contract to William D. Barnes*
- C-11 *ORDER Authorizing Execution of Deed D971382 Upon Complete Performance of a Contract to Michael Trojan*
- C-12 *ORDER Authorizing Execution of Deed D971383 Upon Complete Performance of a Contract to Margaret Lewis*
- C-13 *ORDER Authorizing Execution of Deed D971384 Upon Complete Performance of a Contract to Jeffrey Paul Fish*

SHERIFF'S OFFICE

- C-14 *Intergovernmental Agreement 800847 with the Oregon Department of Transportation, Involving a Multi-Agency Effort to Enhance DUI Enforcement in Multnomah County*

REGULAR AGENDA

PUBLIC COMMENT

- R-1 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-2 *Budget Modification DCC 5 Creating a Budget for the Centralized Casebank Unit, Transferring Existing Positions and Materials and Services*

NON-DEPARTMENTAL

- R-3 *RESOLUTION Approving the Fire Code Ordinance of Tualatin Valley Fire and Rescue, a Rural Fire Protection District*

DEPARTMENT OF SUPPORT SERVICES

R-4 *Intergovernmental Agreement 500317 with the State of Oregon
Regarding Senate Bill 1145 Facilities Lease and Sublease Documents*

DEPARTMENT OF COMMUNITY AND FAMILY SERVICES

R-5 *Request for Approval of a NOTICE OF INTENT to Submit a Grant
Application to Meyer Memorial Trust in the Amount of \$298,072 for a
Two Year Period to Establish Hispanic Retention Programs at Roosevelt
and Madison High Schools in Partnership with Portland Public Schools,
Multnomah County and Private Non-Profit Organizations*

R-6 *Approval of Application for a Grant from Meyer Memorial Trust in the
Amount of \$298,072 for a Two Year Period*

Tuesday, November 26, 1996 - 10:00 AM
OR IMMEDIATELY FOLLOWING REGULAR MEETING
*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

EXECUTIVE SESSION

E-1 *The Multnomah County Board of Commissioners Will Meet in Executive
Session Pursuant to ORS 192.660(1)(h) for Legal Counsel Consultation
Concerning Current Litigation or Litigation Likely to be Filed.
Presented by Sandra Duffy. 30 MINUTES REQUESTED.*

Tuesday, November 26, 1996 - 1:30 PM
Justice Building, 15th Floor Chief's Conference Room
1111 SW Second, Portland

MULTNOMAH CITIES/COUNTY JOINT MEETING

JM-1 *Elected Officials for Multnomah County and the Cities of Fairview,
Gresham, Portland, Troutdale and Wood Village. 90 MINUTES
REQUESTED.*

*Wednesday, November 27, 1996 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

LAND USE PLANNING MEETING

P-1

*CU 6-96/SEC 18/96 DE NOVO HEARING on the Appeal of the
Hearings Officer Decision Regarding a Conditional Use Permit and a
SEC Permit for the Mining of Approximately 250 Acres Previously
Approved Under CU 17-90, on Property Located at 14545 NW ST.
HELENS ROAD. 90 MINUTES REQUESTED.*

MEETING DATE: November 26, 1996

AGENDA #: E-1

ESTIMATED START TIME: 10:00

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Executive Session Per ORS 192.660(1)(h) for Legal Counsel Consultation

BOARD BRIEFING: DATE REQUESTED: _____
REQUESTED BY: _____
AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: DATE REQUESTED: Tuesday, November 26, 1996
AMOUNT OF TIME NEEDED: 30 Minutes

DEPARTMENT: Non-Departmental DIVISION: Chair Beverly Stein

CONTACT: Sandra Duffy TELEPHONE #: 248-3138
BLDG/ROOM #: 106/1530

PERSON(S) MAKING PRESENTATION: Chief Assistant County Counsel Sandra Duffy

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUGGESTED AGENDA TITLE:

The Multnomah County Board of Commissioners Will Meet in Executive Session Pursuant to ORS 192.660(1)(h) for Legal Counsel Consultation Concerning Current Litigation or Litigation Likely to be Filed

SIGNATURES REQUIRED:

ELECTED
OFFICIAL:
(OR)
DEPARTMENT
MANAGER:



BOARD OF
COUNTY COMMISSIONERS
96 NOV 20 PM 4: 32
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222

THIS EXECUTIVE SESSION IS HELD PURSUANT TO THE AUTHORITY SET OUT IN ORS 192.660(1)(h) (to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

TO: Board of County Commissioners

FROM: Sandra Duffy
Chief Assistant County Counsel

RE: Executive session to discuss Multnomah County's participation in a constitutional challenge to Ballot Measure 47 and other related issues.

DATE: November 26, 1996

I. SHOULD MULTNOMAH COUNTY FILE A CONSTITUTIONAL CHALLENGE TO BALLOT MEASURE 47 OR PARTICIPATE AS A NAMED PLAINTIFF IN A SUIT TO BE FILED BY ANOTHER PLAINTIFF?

A. Introduction:

At this time it looks as if three separate challenges will be filed to Ballot Measure 47. Oregon Education Association, represented by the Bennett Hartman law firm will be filing a suit in Marion County on December 4, 1996. Some special districts and other Unions may be named plaintiffs as well. The law firm is not encouraging cities or counties to participate in its lawsuit, but is encouraging a multiplicity of suits which he will seek to have consolidated for decision. Mr. Hartman believes the coordination of multiple lawyers for multiple plaintiffs is too difficult logistically.

The Harrang Long firm in Eugene is seeking as many cities, counties, special districts and other potential plaintiffs as possible to participate in its suit to show a broad base of support against BM 47. Both law firms will include some select, individual plaintiffs through whom special harm from BM 47 can be demonstrated.

The City of Portland has five votes at this time to proceed to file a challenge to BM 47. They considered participating in the Harrang Long suit, but believe that firm is limiting its challenge to too few bases. That firm is challenging BM 47 on the bases of: (1) the one subject rule; (2) the measure was a constitutional revision rather than an amendment and cannot be enacted through an initiative; and, (3) violation of the federal Guaranty Clause (ensuring a

republican form of government and a deliberative process for legislation. On the other hand the City of Portland is prepared to proffer half-a-dozen additional bases for the challenge to BM 47. If the City does not file a separate suit, those additional challenges may not be considered by the Court. The City is operating on the theory that if the Supreme Court is looking for a "hook" to invalidate BM 47, it should have as full a menu as possible. The City would like us to participate as a plaintiff in its suit.

B. The Pros and Cons of Multnomah County being a plaintiff in a challenge to BM 47.

(1) Pros for filing a legal challenge:

(a) A challenge by Multnomah County shows the court a broader base of support and solidarity with other taxing districts participating.

(b) If we do not participate it may give the courts the message that the county believes that the Measure is constitutional and enforceable. (At this time no county has indicated it will participate as a plaintiff.)

(c) The citizens of Multnomah County defeated Measure 47. We would be assuring those citizens that we will bear the expense of implementation of BM 47 only if we have court ratification of its validity.

(d) If the challenge is successful, it will preserve property tax revenues for County services and programs.

(e) If the challenge is successful, it will insure local control for spending priorities.

(f) There is a general belief among municipal lawyers that the Oregon Supreme Court would be a "friendly forum" in which to bring the challenge. The outcome of Measure 8 is evidence of that. The addition of Ted Kulongowski to the Supreme Court is seen as a positive addition.*

Greg Harman, representing OEA, has informed me that Tom Brian is poised to open the legislative session (January 13, 1997) with a bill conferring original jurisdiction on the Supreme Court for a challenge to BM 47.

(g) I believe there is a credible federal constitutional claim to be made that BM 47 violates the Equal Protection Clause. Portland believes that the U.S. Supreme Court decision upholding the Proposition 13 tax limit in California controls this issue and it would not be successful. Prop 13 was different in several significant ways. It "reconnected" tax assessments to value at the time of a resale of property. (The Supreme Court referred to it as substituting an acquisition value system of taxation for the more commonplace current value of taxation.) The "disconnect" in BM 47 is permanent. This means that over time slow appreciating properties will be assessed at a greater percentage of fair market value than fast appreciating properties. BM 47 provides a remedy for property owners who paid increased fees after June 30, 1995 which were not voted on by the electorate. They may deduct that fee from their property taxes. Non-property owners have no remedy even though they may have paid the same fee. BM 47 will also institutionalize the shift in property taxes from business property to residential property.

If we participate with Portland in a challenge, I believe they would incorporate this equal protection challenge giving the Supreme Court another "hook" to hang their judicial decision upon. (However, I may be able to get the City to incorporate this challenge even if we are not plaintiffs.)

(h) Participation with Portland would not cost us any significant resources. Portland has a draft complaint ready. They have a team of lawyers preparing a motion for summary judgment. Participation for the county would mean the time of county lawyers to review and edit that motion from the county's perspective. While that review uses county resources, I would estimate 10-20 years which is a minimal county investment.

(i) Provides for a ratification of BM 47 to assure validity before committing extensive resources to planning and implementation.

(2) Cons for filing a legal challenge to BM 47.

(a) The majority of Oregonians voted for property tax relief. A challenge may be perceived as the government looking for a technical end run around the electorate.

(b) At AOC many counties voiced opinions that BM 47 was an opportunity to reinvent county government and perhaps even give back to the State certain programs.

(c) Even though a minority of voters voted for BM 47 in Multnomah County, some of those voters can be expected to generate substantial political flak if the County participates in a challenge to BM 47.

(d) Directs legal resources to the suit to challenge BM 47 at the same time there is an increased demand on legal resources to guide the county through implementation of BM 47. (See Section _____ above; those legal resources are estimated to be minimal.)

(e) Three lawsuits will be filed and it is likely that all credible theories for challenge will be thoroughly briefed and argued by the participants in those suits.

(3) Action required:

You will need to decide whether to authorize the County's participation in a lawsuit, and if yes, whether it will be with the City of Portland or the City of Eugene. If you decide participation in a suit is appropriate, I would recommend we participate with the City of Portland. It shows local solidarity, it would be the least costly alternative and the proximity of the City's legal counsel simplifies coordination of the suit.

II. Other legal issues relating to BM 47.

A. Should a stay of BM 47 be filed?

Legal counsel for the plaintiffs in the three lawsuits poised to be filed have concluded "no" and I concur. In order to obtain a stay, a party must show "irreparable harm" which justifies the stay. M 47 affects revenues for fiscal year 1997-98 which does not begin until July 1, 1997. There is, of course, a great deal of administrative cost associated with the planning for implementation of BM 47 and the budget adjustments that will be required. A waste of administrative time is not likely to be considered "irreparable harm" by the Court. To the extent that budget cuts occur in this fiscal year in anticipation of lost revenues in 1997-98, they will be deemed "voluntary."

While a stay could result in a court determination in december, it is anticipated that the suits filed in early December will be decided sometime in February by the Marion County Circuit Court. If the Supreme Court is given original jurisdiction by the legislature by February, a March or April final decision is possible.

B. Retroactive fee validation.

BM 47 requires that any increases in fees or new fees that were imposed after June 30, 1995 to replace operating budget funds made up of property tax revenues in part or in whole, must be referred to the voters for approval. A majority of the electorate must approve such fees. This will require an inventory of the fees instituted or increased since June 30, 1995. While there is an argument to be made that each fee or fee increase is a separate subject

and must be on separate ballot measures, I would expect a court to uphold a County's decision to combine this ratification in one measure entitled: "Ratification of certain fees to offset County administrative costs."

In the event the measure would not pass, the county would be required to allow property owners who had paid these post-June 30, 1995 fees or fee increases to take an offset against their property taxes.

C. Interpretation of rollback calculation:

Ballot Measure 47, section 11 g (1), sets out how the new assessed values are to be calculated. The formula has the assessor compare the 94-95 taxes and the 95-96 taxes less 10%. The lesser of the two is the property tax for 1997-98, but the assessor adds bonded indebtedness to that figure for the total ad valorem taxes for 1997-98.

The interpretation question is whether the term "excluding bonded indebtedness," which clearly applies to the 97-98 tax calculation, also refers to the 94-95 and 95-96 comparison. If you exclude bonded indebtedness from the comparison it could significantly lower all assessed values in the county.

Based on rules of statutory construction and the Oregon Supreme Court case of PGE v. BOLI, it is my opinion that the assessor should NOT exclude bonded indebtedness from the tax amounts comparing tax years 94-95 and 95-96.

D. Voting for a new tax base.

Subsection 3(a) of BM 47 provides that the 3% limit may be exceeded for "new or additional ad valorem property taxes" that are approved by "not less than 50% of voters voting in a general election in an even numbered year, or other election in which not less than 50% of the registered voters eligible to vote on the question cast a ballot."

The proponents of BM 47 have stated that Section 3(a) is limited to an increase in property taxes to pay for bonded indebtedness because subsections 3(b) and 3(c) deal with bonded indebtedness. But the plain language of subsection 3(a) does not have any language limiting its application to votes of bonded indebtedness. Subsection 3(a) allows the voters to increase property taxes for any purpose. A court is likely to interpret it that way.

E. The impact of Measure 47 on the SIP CSF.

I have not reviewed this issue comprehensively yet. However, BM 47 may have some impacts on the anticipated amount of the CSF.

The CSF is based upon the amount of property taxes which are abated. With BM 47, the amount of property taxes will be limited and it can be anticipated that that will result in a diminished CSF. The diminishment of th CSF will be mitigated by several factors, however. The new value will be added to the tax roll (though at a value of similar properties). A lot of the value of the new plants will be in equipment which does not appreciate in value, but depreciates. The cap will not affect that value. What this change of circumstances means to the contract is yet to be determined.