

03507

September 19, 1979
1:30 p.m.

REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

Harris Hall

Reba Charles was Recording Secretary for items 25.a., b., c., d., and e.
Board Clerk Lois Donis recorded the remainder of this session.

23. COMMISSIONERS' ANNOUNCEMENTS AND BUSINESS

24. PUBLIC WORKS (No business)

25. ENVIRONMENTAL MANAGEMENT

a. DISCUSSION AND ACTION/Appeal of Directors Administrative Denial of a
Request for a Three-Foot Variance to Minimum Floodplain Elevation
(Applicant: Robert E. Smith)

George Currin, Floodplain Manager, explained the applicable sections of the Lane Code and Board Order 78-8-16-8, establishing procedures for special permits. He answered questions about floodplains and floodways and stated that the appeal is an exception to the required elevation, but that variances could be granted if certain criteria are met. Freeman stated that he had viewed the property and that there is a house directly below the proposed site which has been there for two years and to the left, another house which has been there for five years. Currin stated that the ordinances now governing had not been adopted at that time. He said that future flood insurance rates for the area, currently \$.25/\$100 on a subsidized program, could run as high as \$25/\$100 after January 1, 1980.

Freeman opened the public hearing. Robert E. Smith, the appellant, stated that insurance was available on the floodplain for \$25/\$100. Currin said that this figure was a subsidized rate, but that actuarial rates would go into effect in January 1980. Smith submitted statements from neighbors together with pictures, letters and maps to show the floodway below his building site. Rutherford stated doubt as to meeting the criteria for variance and inquired if appellant had any proof of hardship. Smith said that he had invested \$500 in the building permit and had plans that would have to be altered to build up higher. Currin stated that a garage floor can be at grade, but any mechanical or electrical work has to be above that level. Smith cited statements from neighbors who have lived in the area for 70 years that it has never been flooded. t'Hooft inquired about the most recent flood information and Currin stated that HUD requirements are to use the most recent and best information you have. The detailed flood studies of the area which are most recent show the site to be in the flood area. Freeman inquired about a new flood study, and Currin said that it would increase the flood height. Legal Counsel Hendriksen said it would be necessary to find something special about this piece of land and about the personal hardship in order to grant a variance. She said the ordinance had been adopted so that the County would be eligible for floodplain insurance. Smith said he had already spent \$2,058, and that he thought he could not build at all if the level were raised even one and one-half feet. Rust questioned whether a house in that location would be an obstruction in case of flood.

Weinstein asked when Smith had found out about the requirements for the elevation, and he replied only a few days after receiving the building permit. Rutherford remarked that there would be additional costs in building a higher foundation and that Smith was being asked to build something that was out of the usual for that area. Rich Owings, Environmental Management, stated that a building permit clearly indicates that a minimum elevation would be required, and that there had been no negligence on the part of staff in this respect. A permit for a site in the floodplain was automatically flagged and a warning is given to the applicant at that time telling exactly what the elevation needs to be. Rutherford asked if the warning should not be given before the applicant pays for the building permit. Owings stated that current procedure does not require this but that Smith had been advised about the flood problem three days before he got the permit. Hendriksen said that the burden of proof was on the appellant to establish hardship and proof that the building would not create a flood problem. Currin stated, regarding the garage level, that a special permit would be required to build a family room or any other kind of room at the garage level. The public hearing was closed.

Rutherford stated that he thought the appellant had shown hardship because of being required to build higher than other houses around him. Freeman stated there might be a problem if the floodplain required it to be raised one and one-half or two feet, because of the flood study yet to be completed. Rust said he thought there was not enough proof to grant a variance, and that granting a variance would tend to keep people in the dark about current regulations. Rust moved to support the staff decision and deny the appeal; Rutherford seconded. Weinstein read a letter from Robert E. Smith dated April 19, 1979, stating his opinion that the building would not create a nuisance, and that from an economic viewpoint it is the best and highest use of the land. On the question Weinstein voted no; the other four Commissioners voted aye and the motion passed.

- b. CONTINUED SECOND READING, PUBLIC HEARING AND ACTION/Ordinance No. 753
 Rezoning Certain Land in Section 25, Township 18 South, Range 3 West, W.M., From Agriculture, Grazing and Timber Raising (AGT) District to Agriculture, Grazing and Timber Raising-5 (AGT-5) District With Exception to Statewide Goal 3 (Agriculture)
Applicant: Ronald D. Burke, ZC 79-184
Location: 34525 Mathews Road, Midway Between Goshen and Coast Fork of the Willamette River, South of Highway 58

Vern Delk, Planning, stated that this case was continued to advertise that an exception might be considered. The soils are Class III. The applicant owns 16 acres in the plot and wishes to rezone so that he could sell five acres and the house. On inquiry, Legal Counsel Hendriksen stated the requirements set forth in Goal 2 for taking an exception. Delk explained the area around this acreage and said that the Planning Commission denial in the past had been because of difficulty obtaining groundwater for domestic use, both in quantity and quality. There is a waterline in the area, but only for the already existing houses. The applicant showed that he had a well which would produce an estimated 25 gallons per minute. Chairman Freeman opened the public hearing.

Ronald D. Burk, applicant, stated that in the multiple listing book, there are only nine properties in the whole area for sale and only three that had properties between one and 10 acres. The property is only eight miles from town, one mile from I-5 and has never been used for agriculture but for pasture. Water would be in short supply to grow row crops. Rutherford inquired about the long-term effect on environment. Burke replied that it was difficult for the present owners to keep the whole 15 acres, but that another family could do so and raise some beef, a garden, etc.

Appearing against the proposal was Jerry Betz, who wanted to know if the variance could be given for five acres without changing the zoning. He said he was totally against the blanket rezoning. The public hearing was closed.

Rutherford moved approval of ordinance no. 753 as titled above; Weinstein seconded. Rutherford stated he thought the rezoning would not take the land out of agricultural use and that the applicant had proved that the other uses are valid and that there is a need for parcels of this size. Rust stated that he thought the Board would not be justified in taking Class II soil for residential use, and that he thought it possible to make a living on 15 acres if one would be dedicated to intensive farming. Rutherford remarked on the irrigation needs for intensive farming. On the question, Rust voted no, the other Commissioners voted aye and the motion carried.

- c. CONTINUED APPEAL of Land Development Review Committee's Continuance to 1-80 of a Major Partition
Applicant/Appellant: Gene Oland, M 370-79
Location: Hampton Road, Goshen

Joe Hudzikiewicz, Planner, stated that it appeared the applicant did not have any standing here since he sold the property in December of 1978 before he made the request for a partition. The Code states that the application should be submitted by the owner or agent. A public hearing was opened but no one appeared. Rust moved that the item be tabled indefinitely because of lack of a valid application; Hooft seconded; all voted aye and the motion carried.

- d. CONTINUED APPEAL of Land Development Review Committee's Conditional Approval of a Major Partition
Applicant: Jeff Powell, M 322-79
Appellant: Diane Albino
Location: Howard Road, Off Marcola Road

Legal Counsel Margie Hendriksen said that the attorney for the applicant had advised that he was no longer involved and that the County had heard no further from the applicant. Joe Hudzikiewicz, Planner, presented a map of the area on the screen and stated that there had been several appeals in the same vicinity. Planning is operating on the idea that policy favored five-acre parcels under RWG since in the plan document, pages B-4 and B-5, the Howard Road area is RWG. If the Board is inclined to grant the partition, there would be need to give notice of possible exceptions to Goals 3 and 4, since the soils are Class II and III. Rutherford asked how much of the land is

included in that category and Hudzikiewicz replied all of it. He also stated that a letter had been received from an abutting property owner approving the partition, which asked for two lots and included dedication of a 60-foot road through parcel 2. Chairman Freeman opened the public hearing. A letter was submitted from Robert M. and Eva D. Terman, stating that they owned adjoining property but would be unable to attend the public hearing. They urged that the subdivision be allowed with division into lots of five acres or more. Jeff Powell, the applicant, stated that the neighborhood is already committed to residential use and that his application is compatible with the existing neighborhood. He was asking for three lots, but said he had not had an opportunity to draw an exception to the Timber Resource designation. He felt that neighbors did not want parceling of the land because they were presently using it as a park. He said that any of his parcels would be three times the size of the appellant's lot. Rust objected to any attack on the appellant, saying that the appellant was not on trial. Powell replied that he did not intend offense but that this was not a new type of conflict in the area. Rutherford asked if he had submitted the application in his handwriting and Powell replied yes. Rutherford noted an indication of plans for future partition and Powell said that when he submitted the application he was asked if there was any potential future development. At that time, he had thought of dividing into two five-acre lots in the panhandle, but that is no longer true.

Diane Albino, appellant, 39741 Howard Road, said that 150 acres of land with Class II soil had been turned into residential use. At the hearing of the Land Development Review Committee, Powell had stated that he would never put any use restrictions on his land if he sold it. She presented a letter from some 20 residents of the area opposing his partition. She stated that the land had been used for forestry; she had moved to the area to live in a peaceful, rural environment, and the applicant's development would threaten the life-style of people already there. She stated that the people who were moving out there were taking down trees, that the traffic had become dangerous and that it was becoming something other than a "rural environment," which the plan calls for. Answering a question, she said there had been no exceptions taken to the timber designation. Freeman asked where the one-, two- and four-acre lots had come from and Albino replied that there had been a subdivision that was protested by herself and her neighbors and lost.

Jerry Schultz, Howard Road, stated that small parcels could be effectively used for timber production, but that with the development that has gone on, the land values have gone so high that no one can afford to buy it for timber. Land adjacent to the subdivision had been assessed since then and the taxes are higher. He said that Powell was harvesting timber prematurely and was obviously a developer. t'Hooft inquired about exception being taken to the AG Goal. Schultz said the subarea plan report was brought pre-prepared and exceptions to the AG Goal were already taken. At that time he said the residents did not know enough to object to the exceptions that were made.

In rebuttal, Powell said that State Forestry officials had made the statement that small woodlots would be our savior for timber production and could supply a lot of wood. He said he was taking timber that should be taken in order to improve the future stands. Rutherford asked if he would wish to proceed with the exception process and Powell said he did not know.

The public hearing was closed. Rust protested against the personal references made during the hearing and requested the Chairman to call witnesses out of order. He said he thought the most serious threat to the timber resource was development of this kind. Rutherford moved to continue the appeal for four weeks to October 17; Weinstein seconded; all voted aye and the motion carried.

- e. Appeal of Land Development Review Committee's Denial of a Major Partition
Applicant/Appellant: Lawrence E. White, M 284-79
Location: Hill Road, Approximately Two Miles Past McKenzie View Drive

Hudzikiewicz noted that this was a revised partition, not the original request. The previous request for a minor partition had been approved; then the applicant had requested on August 13 to amend the original partition, and that was denied because the property was RWG. He said he didn't have the soils classification, but that the area along Hill Road did have an exception within the plan to the AG Goal. If the Board were going to approve the partition it would be necessary to deal with the exception. Chairman Freeman opened the public hearing. Lawrence White, 90136 Hill Road, said his property was about five miles out of Springfield, across the road from a 47-acre tract. He said he wanted to preserve a tree farm of about 360 acres back behind the piece which he wished to partition, which consisted of six acres with a house on it. The six acres is very rocky. He said that the land in the area was being parceled into five-acre tracts before the moratorium. He would have to preserve a corridor on the roadside of the property to build a road back to the timber. t'Hooft said he would like to look at the property and Rutherford also requested information on soil types. Freeman noted the necessity for advertising a possible exception. t'Hooft moved that the public hearing be continued for two weeks to October 3, at 1:30 p.m.; Rutherford seconded; all voted aye and the motion carried.

26. EMERGENCY BUSINESS

- a. ORDER 79-9-19-3H/Delegating Authority to Peggy Steveson to Sign Documents for the Abbey Lane Project

Morgan reported that the State Housing Division had requested Chairman Freeman to go to Salem September 25, to sign documents on the Abbey Lane project and he asked the Board to consider an action that would permit Peggy Steveson to sign the documents that day because of Board meeting conflict. Rust moved approval of the order; t'Hooft seconded it; all voted aye and the motion carried.

- b. AFSCME/and Report of Current Budget Status

Morgan reported receiving notice of a strike by the Union to begin September 25. He spoke on the need to plan for meeting required services under those conditions and commented on articles in the media concerning the statement that the County has excess funds to allot to pay raises. In June, the balance was \$22,436,533.39, involving 39 different funds. The 79-80 included \$17,308,084. He said the funds available for specified purposes are very meager and create apprehension about contingencies. He reported receiving the 11-month report from O&C showing expected income of \$13,241,000, some \$750,000 less than budgeted for the twelve months.

Morgan also reported on the strike planning group which considered procedures to be followed. Morgan felt it important to seek a ruling from the Employees Relation Board through County Counsel. He asked the Board to address the question of violence in picketing and ask them to consider a Board Order. He read a draft, which addressed concerns on access of citizens and staff to the courts and their place of work. He felt the serving of a notice of intent to strike meant we needed to address possibilities that might occur. He read a resolution on a proposed state of emergency; looking to make changes which would allow the County to operate; recognizing the accountability of other elected officials, consolidating outside services in the courthouse; advising of a continuous special session of the Board. The resolution provided a plan for action and communicated to the bargaining units and all nonrepresented employees the position the County was taking.

Rust moved approval of Resolution 79-9-19-9, in the matter of contingent state of emergency, to begin immediately. t'Hooft seconded. Rutherford questioned "major" exceptions on the matter of the Board's accountability and Morgan indicated he would provide all the information, but it would take longer. Rust commented on the seriousness of the problem and the need for a settlement. He indicated his heart was with the public employees and he wondered if he were going to see a financial plan to settle the situation. All voted aye on the motion carried.

t'Hooft moved approval of Resolution 79-9-19-10, questioning the legality of the strike. Freeman seconded. Freeman, t'Hooft, Rutherford and Weinstein voted aye; Rust voted no and the motion carried.

Rutherford moved approval of ORDER 79-9-19-11, concerning violence in the strike. Freeman seconded. All voted aye and the motion carried.

On ORDER 79-9-19-12 suspending benefits for striking employees, Rutherford indicated he would like provisions for benefits to be picked up by employees. Priore said it could be done but an administrative burden would exist. Rust felt it was unnecessary and we should send out a signal that would indicate our intent to bargain in good faith. Rutherford objected to the order but said we should give them the benefit of the premium in the interim. Rust continued his objection to withholding benefits. Freeman stated this order gave employees until the end of the month and the employees knew of the hardship beforehand. Freeman moved approval, stating that the

employees would be given a chance to pick up their own premiums. Morgan addressed the issues of benefits, sick leave, vacation. Rutherford seconded the motion. Rutherford, Freeman, t'Hooft and Weinstein voted aye; Rust voted no and the motion carried.

Morgan suggested holding off on the issue of retroactivity.

t'Hooft commented on the right to strike and the claim by AFSCME under the contract. Rust questioned that if the contract wasn't proper, it should not have been signed.

Morgan said that of the 1,777 people on the 79-80 FY budget, 784 were represented by Public Works and Courthouse locals. Approximately 1,000 employees were not included in the strike (Sheriff's deputies, ONA prosecuting attorneys, CNS, miscellaneous law enforcement, 04's). He explained the letters which would be sent to 750 04, 09 and 08 employees.

Rust asked if we would compel management people to perform AFSCME jobs and if failure to do so would result in termination. Morgan stated that every action would be considered on its own merits. He indicated that there would be no tolerance for management employees demonstrating a sympathy strike. Rutherford asked if we expected all employees to cross the picket line and he had a problem in asking everybody to cross the picket line because of fear of reprisal. Morgan responded by saying that by order we had condemned violence and he further discussed his reasons for dealing with individual situations. Rust asked if we were talking about automatic terminations if the reasons were insufficient. Morgan said it depended on a number of things and how visible the responsibilities of the employees were. Circumstances would be extremely important.

Rust felt that action would be applied fairly and moved approval of sending the letter to all non-AFSCME employees. Freeman seconded. t'Hooft found the action deployable and difficult, but necessary. Rust said he would fulfill his duty as a Commissioner but didn't wish to take the duties normally filled by a striking employee. Rutherford voted no on the motion, the rest voted aye and motion carried.

Morgan then read a letter dealing with work-related issues bargaining units should address. t'Hooft had a problem with the provision on reporting for work when employees were home and not on the picket line. Morgan said this addressed people not on strike and there was consensus the provision was fine. Rust asked for clarification on #9. Morgan stated that a striking employee could not enter the courthouse. Rust had a problem with business obligations striking employees might have in the Courthouse. Morgan clarified that this was not the intent and the language would be changed. Rutherford asked if we could define "lawfully participate" and Hendriksen clarified this meant that if a person in a bargaining unit had an unexcused absence. Rust moved approval to send the letter to all bargaining unit employees. Rutherford seconded but took exception to #10. All voted aye and the motion carried.

Weinstein asked about service in the cafeteria and Morgan said he could not anticipate any action. The cafeteria was on contract with the County. Morgan said that the County was searching for opportunities to negotiate and would like to adjourn to tomorrow at 11:00 a.m. for an Executive Session. All agreed by consensus.

Rust asked when he could expect a revenue contingency plan. Morgan said we had started increase options but could not state specifically when an outline could be provided. Rust said it seemed we needed this information by Monday to assess potential layoff situation prior to the strike. Morgan indicated he would have something available by Monday.

Rust moved to adjourn to Executive Session tomorrow at 11:00 a.m. in the Commissioners' Conference Room as per ORS 192.660 for purposes of negotiations. Freeman seconded. All voted aye and the motion carried.

27. EXECUTIVE SESSION as per ORS 192.660 (Commissioners' Conference Room)
- a. Litigation; b. Personnel Matters; c. Negotiations

Reles Charles

Recording Secretary for the Board

Lois Domici

Clerk of the Board