

MINUTES & NOTICE OF BOARD ACTION

BOOK 150 PAGE 1913

APPROVED

June 24, 1992



LANE COUNTY BOARD OF COMMISSIONERS

This document, upon approval in a public meeting by the Board of County Commissioners, serves as official minutes of such meetings as required under the Open Meetings Law, ORS 192.650.

Pursuant to notice made by mailing agendas to news media, a selected list of jurisdictions and individuals in Lane County, a meeting of the Board of County Commissioners was held.

Questions should be directed to The Board Office Specialist 3, ext. 4203.

May 20, 1992
7:00 p.m.

REGULAR MEETING
BOARD OF COUNTY COMMISSIONERS

Harris Hall
Main Floor

Chair Ellie Dumdi presided with Steve Cornacchia, Marie Frazier, Jack Roberts and Jerry Rust present. Judy Haldeman, Recording Secretary.

11. PUBLIC HEARING AND ORDER 92-5-20-11/In the Matter of the Application of Field Trip Productions for Approval to Hold an Outdoor Mass Gathering Pursuant to ORS 433.750.

Bill Van Vactor, County Counsel, explained that this is a hearing on the regulation of an outdoor mass gathering. He stated that "it comes to you in the context of being controlled by state statutory law as opposed to any sort of local regulation". The policy that the Legislature has chosen to adopt in ORS 433.740 states that the Legislative Assembly finds that "uncontrolled outdoor gatherings of large groups of persons for extended periods of time have necessitated a need for the establishment of reasonable health and safety rules to regulate such outdoor mass gatherings". He stated that a mass gathering was defined as "an actual or reasonably anticipated assembly of more than 3,000 persons which continues, or can reasonably be expected to continue, for more than 24 hours but less than 120 hours within any three-month period and which is held primarily in open spaces and not in any permanent structure". He stated that the County had received an application for a mass gathering under this statute and definition.

Van Vactor stressed that what the Board must consider is what is specified in the statute and that the primary obligation under the statute was to hold a hearing, provide notice and give referrals. There were three primary referrals given to the Sheriff, the County Health Officer and the Chief of the Fire District. The Board has authority to provide additional referrals and has provided those to 12 other agencies which are referred to in the proposed order. The State Health Department is given statutory authority to adopt Administrative Rules which address adequate water supply, drainage and sewage facilities, adequate toilet facilities,

adequate refuse storage and disposal, adequate food and sanitary food services, adequate emergency medical facilities and communications systems, adequate fire protection and adequate security personnel and traffic control. This hearing is essentially a health and safety evaluation and ORS 433.765 indicates that local regulations which are inconsistent with these regulations do not survive; in other words, they are preempted. Van Vactor stated that the scope of this hearing is limited to those health and safety issues.

Van Vactor noted that the approval standard is set in ORS 433.750 which states that "the governing body of a county in which an outdoor mass gathering is to take place shall issue a permit upon application when the organizer demonstrates compliance with, or the ability to comply with, the health and safety rules governing outdoor mass gatherings; to be regulated according to the anticipated crowd and the rules adopted by the health department". He stated that the key issue is that the Legislature had a policy choice as to whether or not to preempt land use and they specifically chose to do so; the use of the term "shall" is mandatory language.

Dumdi asked the Board to declare any ex parte contacts. Rust stated that he had been asked about this issue at a University of Oregon class and that he had outlined the procedures and discussed his understanding of state law; he stated that he is free of prejudice and ready to hear this matter. Frazier stated that she had spoken before a class at Lane Community College under the same circumstances. Roberts stated that he had received letters which were part of the record and that he had received phone calls mainly regarding the timing of the hearing. He stated that he had not talked about the substance of the issue and that he is not prejudiced in any way by these conversations. Cornacchia stated that his comments would be the same as his colleagues with the exception of the class at Lane Community College. Dumdi stated that she had received numerous letters and phone calls and that she had decided not to return those phone calls, but she had kept a record of the calls. She stated that she had spoken with two people in the Veneta area, but she is not in any way prejudiced about this permit. Frazier added that she had received a phone call from an owner of a hotel/motel, but this would not prejudice her decision.

Jim Johnson, County Administrator, explained that the draft order and permit was prepared by staff in order to give the Board of County Commissioners some idea of the conditions that would be appropriate should they decide to award the permit and allow the mass gathering to occur. He summarized the conditions contained in this order and permit and stated that in each case there was a deadline for meeting those conditions (see material on file).

Dumdi opened the Public Hearing.

Bill Kloos, representing the applicant, stated that County staff has done a terrific job reviewing this application, handling referrals and putting

together the draft permit with a mandate from the Board of Commissioners to minimize impacts to the surrounding area. He stated that he and his client are completely comfortable with the draft permit which is before the Board and can comply with all conditions. He stated that the local fire department will be fully staffed during the concert and one of the ambulances on-site will be available to answer district calls. There will be at least four physicians on-site during the day and one will be on-site during the night. There will be at least six nurses on-site during the day and several at night, as well as a fully equipped and staffed emergency medical center open at all times. The Sheriff has required an emergency evacuation helicopter on-site and available to local residents, if needed. There will be uniformed deputies hired at the expense of the concert organizer available to work the neighborhood immediately adjacent to the concert. Kloos stated that, in total, there are 27 conditions which have been proposed in connection with this permit and that Lane County was setting the standard for how these permits should be handled.

Kit Kesey, local organizer for this event, commented that his family had been involved with promotion of concerts on this site in 1972 and 1982. The proposed concert in 1992 would be the Third Decadenal Field Trip. He located the proposed concert facilities on the plot plan displayed.

Mike Farthing, representing the Fern Ridge Community Coalition, stated that he was submitting a letter requesting additional time to respond to the detailed plot plans. He stated that the County must find that the organizer has demonstrated compliance with, or the ability to comply with, the health and safety rules adopted by the Health Division. He stated that the application is inadequate at this time since half of the conditions ask for additional information; therefore, they have not demonstrated ability to comply with the health and safety rules. He asked that the Public Hearing not be closed until this additional information is received and he has had a chance to review the information. He stated that technically the County could deny this application right now based on insufficient information. He reiterated his objections to the decision made by the Board with regard to preemption since this is a land use decision, in his opinion. He requested that the record be left open for at least seven days; in lieu of that, he requested that the Hearing be continued until such time as the applicant submits the additional information called for by the staff report with seven days for the opponent to respond.

Farthing commented that he believed that the applicant had miscalculated the water supply standards of 12 gallons of water per person per day, which would total 504,000 gallons of water. The applicant did not take into account the showers or emergency requirements for water or the requirement of 12 gallons per person per day maintained on the site. He would like to have the locations of all of the off-site toilets and whether the applicant has permission to locate them where they are proposed to be located. He commented that the applicant should be required to propose a clean-up program for adjacent roads and he stated

that he calculated that 42 cots would be required in an enclosed medical facility. He suggested that the entire site be fenced to mitigate trespass; traffic impacts have not been addressed at intersections at Clear Lake Road and Territorial, Clear Lake Road and Greenhill, or at Greenhill and Highway 126. He stated that there would be County liability for any adverse consequences of the failure to address land use considerations. He requested that the County reconsider the preemption issue since the concert does not meet the definition of having over 3,000 people on-site for 24 hours and should have to meet the criteria for a temporary use permit. He stated that it was inappropriate for his client to comment on this partial application and that the additional information must be submitted prior to approval of the permit.

Bill Kloos commented that the land use decision issue has been laid to rest. He stated that his client had gone way beyond the requirements of the application and that specific and detailed proposals had been made about all of the issues. The details will continue to be refined as this moves toward execution to make sure that there is complete control over the operation.

David Montgomery, P. O. Box 477, Noti, Chairman of the Fern Ridge Community Coalition, commented that there had been no attempt to contact his organization regarding impacts from this mass gathering. He stated that the proposal to hold a concert on Oregon Country Fair property is not in the best interest of the community. He commented that fire danger is often high in late August and the State Forester may place restrictions on state protected lands. He commented that he was worried about catalytic converters, smoking and campfires in the area. He asked the County if it was willing to accept the responsibility if a serious fire occurs.

Gary Saner, 25602 Lawrence Road, Elmira, representative for the Fern Ridge Ministerial Association and Vice-Chair of the Fern Ridge Community Coalition, commented that he could not comprehend that a crowd of this magnitude would be thrust on the community without its input. He stated that the community is opposed to this concert.

Hugh Miller, 22807 Willow Lane, Veneta, read a resolution from the Lane Pamona Grange and asked the Board to deny the permit.

Elizabeth Hopla, 24155 Warthen Road, Elmira, coordinator for the Elmira Community Homeowners Organization, stated that the concerns of the people should be addressed. She stated that her group had had very little communication with the coordinator of the concert. She stated that she has had only five days to review County documents and stated that her process was being denied.

Karen Smith, P. O. Box 143, Veneta, Treasurer of the Fern Ridge Coalition, stated that there had not been any communication from Kloos. She stated that trespassers are a problem during the Oregon Country Fair and this event will not be any different. She stated that the constitutional rights of the community are not being taken into consideration.

Delphine Prine, 21411 Vaughn Road, Veneta, commented that there are increasing problems with people trespassing on her property during the summer. She stated that early arrivals to the concert have not been addressed and she is impacted by the traffic problems.

Con Magnuson, 24003 Suttle Road, Veneta, commented that he had tried to meet with the Oregon Country Fair group regarding problems and the problems continue. He commented that he had people camping on his property in 1982 during the previous concert and fuel was stolen from his tanks. A \$25,000 bond is not enough to protect residents. He noted that a heliport could pose problems to his airport traffic.

Judith Abele, 23866 Suttle Road, Veneta, commented that she is concerned about fire danger and the numbers of people who will attend the concert. She suggested that there be camping one week before and after the concert to accommodate early arrivals who have no place to stay.

Paul Fuller, 23314 West Sheffler Road, Veneta, commented that he would be providing cooler units to keep the food preserved during the concert. He stated that the conditions have been addressed, that there is ample parking and that he supports the concert.

Doug Shock, 89239 Forest View, Elmira, commented that he was a property owner and that he had attended 200 Grateful Dead concerts. He asked that people be allowed to seek freedom to pursue happiness; this special interest minority represents a biased and prejudiced attack on the American musical institution which has existed for a quarter of a century. This concert will be an economic boom to a troubled economy and the gains outweigh the inconveniences.

Mike Blou, 1081 Van Buren, commented that he believed in public opinion, but the legal stipulations are on the books. The only thing in question seems to be people's personal opinions which have nothing to do with what is guaranteed by law. He stated that there is no reason not to proceed on this issue.

Forrest Walker, 35285 Washburn Heights Drive, Brownsville, commented that he had attended many concerts as well and he would like to work with the community to help alleviate the problems. He cited the First Amendment rights to a peaceful assembly and commented that this promoter is truly professional.

Deb Trist, 1220 McLean Boulevard, commented that it was important that the Grateful Dead be allowed to play and that the concert was a peaceful place for her to bring her children.

Ellen Cagle, 23724 Warthen Road, Elmira, stated that she lives close to the Oregon Country Fair property and that she had never had her property disrupted. She stated that she was pleased to have this event in the Veneta area.

Anthony Forcellini, 89239 Forestview, Elmira, stated that he was shocked by the paranoia and shocked that people must be reminded that this is America. He stated that the lawyers for the opponents are trying to stall this as much as possible. There will be lost revenue if this does not take place.

Ken Kesey, Ridgeway Road, Pleasant Hill, stated that this concert will be a show that the community can be proud of and should bring the community together.

Nancy Hamren, 1315 Ravenswood Road, commented that she had attended both the 1972 and 1982 concerts and had found both of the events very well organized with all services provided.

Patti Lomont, 34428 Deerwood Drive, commented that she was the neighbors liaison for the Oregon Country Fair and the goal is to be a good neighbor. She stated that she had held a positive and successful meeting attended by about 30 people to discuss the impacts of the concert.

Ken Kennedy, P. O. Box 367, Elmira, stated that he likes Willie Nelson but did not consider himself a bigot. He stated that there has been alot of work by the promoter to get people in and out of the concert, but he has a real concern that there will be negative impacts to the local residents.

Leslie Scott, 3977 Dillard Road, General Manager of Oregon Country Fair, commented that she was looking forward to her first Grateful Dead concert. She stated that the Country Fair will continue to want a good dialogue with the neighbors and will try to be good neighbors.

Jeff Harrison, 1118 West 10th, commented that he shared many of the concerns of the local opponents, though he felt that most of these concerns had been addressed.

Colleen Bauman, 87890 Oakhill Drive, operator and owner of Dana's Cheesecake Bakery, commented that she is delighted that the Kesey's are organizing this event as her experience has been that they follow through with details. This event will be a good place for the community to come together.

Kathryn Madden, 2960 Portland Street, commented that some of the proceeds will go toward studying the archeological record on the Oregon Country Fair property.

Edgar Brown, 24164 Highway 36, Cheshire, commented that his son attended a Grateful Dead concert in San Francisco and was injured.

John Cissel, 2705 Polk Street, commented that this is a technical question which does not need to be before a political body. He stated that some legitimate concerns have been raised, that the organization has gone out of its way to address these concerns and that this event should be allowed to proceed.

Frank Head, 69 Rosewood, commented that he had attended many Grateful Dead concerts and he is looking forward to them coming this year. He stated that he did not want to be a burden to the community and he hopes that the promoters will address all of the problems.

Reginald Soto, 31679 Lynx Hollow Road, Creswell, commented that he would like to assure the opponents that fire and security issues will be covered. He stated that he is certified to fight fire and he will be available to work at the concert.

Ken O'Grain, 88632 Faulhaber, Elmira, commented that he is against the gathering of this many people in this neighborhood. He stated that water trucks will run day and night and trespassers will be a problem. He stated that he had called about trespassers before and was told to call the Sheriff. The Sheriff will not come out to tell people to leave.

Thom Chambliss, 1510 Mill Street, member of the Board of Directors for the Oregon Country Fair stated that the property was being leased to the promoters for the concerts. He stated that he had been impressed with how the concerns have been addressed by the promoters and he would support the application.

Kyle Everitt, 2095 Elanco, commented that this concert would provide revenue to the community and to himself.

Susan Haney, 1755 Lake Drive, commented in support of the Grateful Dead concert. She stated that she would like to spend her money in this community.

George Braddock, 910 Coburg Road, commented that he will be providing sauna, shower and bath services to the concert and that he supports the concert.

William Welch, 25520 Wolf Creek, commented that most of the people in favor of the concert live someplace else and he is concerned about the fire danger and the protection of life and property.

Phil Hufstader, 88615 Evers Road, commented that his property is directly effected by the Oregon Country Fair; he has had his fences cut, his horses let out and his telephone line cut to tie up someone's dog. He asked that this concert be moved to Autzen Stadium. He is prepared with a court injunction on this issue.

Rick Schneider, 24880 Suttle Road, Elmira, commented that he has not had much problem with the Oregon Country Fair but he had a problem with people who cut his fences and block his driveway. The criteria cannot be enforced due to the sheer volume of people who will be attending this concert.

Les Wright, 25885 Tidball Lane, Veneta, commented that traffic safety at the Oregon Country Fair is a problem and he is concerned about the fire danger.

Mel McBaron stated that he lives about a mile from the Oregon Country Fair and that he has attended the Fair for 22 years.

Courtney Paget, 820 East 26th, asked if the number of people attending the concert could be decreased to help address the concerns of the residents.

Bob Flott, 88634 Faulhaber, Elmira, commented that there were many elderly people living around him and they may not be able to get to the hospital on time if the traffic is backed up on the highway.

Mike Perchern, 88676 Evers Road, Elmira, commented that he has never been contacted by anyone for his input. He has had trespassers on his property. He stated that if he has an emergency and he cannot get services, he will sue the County.

John Dustin, 88869 Evers Road, Elmira, commented that he is opposed to the concert being held in this spot.

There being no one else present who wished to testify, Dumdi closed the Public Hearing.

Cornacchia commented that he had some concerns about vehicles with catalytic converters being driven on the grass parking lot given the fire danger. Stan Petrasek, Environmental Health Manager, stated that the Fire Marshall will have to approve the plan and he would like to see that the field is mowed prior to the event. Cornacchia discussed the security bond of \$25,000 and asked if the County would be ultimately liable. Bill Van Vactor, County Counsel, stated that the County should not be liable. Kloos stated that the promoter has a letter of commitment for \$10,000,000 worth of general liability insurance on this event. Cornacchia asked if traffic control could be extended to Greenhill Road and Petrasek stated that the Board could make that request. Rust asked about the comment that the helicopter would be in line with a private airport and Kloos commented that he had the approval of the FAA with regard to the emergency helicopter.

Van Vactor stated in response to a question from Frazier that the County has the right to revoke the permit if the conditions are not met. Dumdi stated that she was concerned about camp followers who don't buy tickets and she wondered if the camping period could be extended to accommodate those people who come early or stay late. Van Vactor and Petrasek responded that extending the time period outside of the mass gathering permit would require a temporary use permit. Petrasek stated that there would be uniformed officers outside of the grounds to address trespassing issues. Cornacchia commented that he was prepared to follow the staff recommendation with a discussion of the conditions such as a special plan for fire prevention in the parking lots, officers to respond to

trespassing complaints and traffic considerations to Greenhill Road. The Board discussed the maximum number of people on the site as being 40,000. Kloos commented that he could reduce the number of tickets sold to keep the amount of people actually on-site at 40,000 or boost the facilities to accommodate extra people. Roberts suggested that the language be left as it reads now.

Dumdi commented on the restrictions around the heliport to insure that there would be no conflicts with the neighboring airstrip. Petrasek stated that the FAA regulations would be stipulated in the permit. MOTION: To approve this order subject to the three conditions previously stated regarding fire safety, traffic conditions and Sheriff's patrols. Cornacchia MOVED, Rust SECONDED. Cornacchia commented that the Board had looked at how this could have been made into a land use issue, but the State Legislature has determined that a mass gathering preempts the County from applying local land use laws. He commented that he would have preferred to have this concert in Autzen Stadium but that he trusted staff to insure that the promoters would meet the conditions and that the best possible protection would be given to address the concerns of the citizens. Roberts stated that he had come to the same conclusion as Cornacchia that this was not necessarily the right place for the concert and that it was not consistent with land use planning. He stated that he would support the motion as it complies with stated law. Rust stated that he represents South Eugene and has dealt with a number of issues and complaints arising from another mass gathering - the Lane County Fair. He stated that large events have an impact on neighbors and the Board is here to try to mitigate those impacts. He agreed that this application meets the Oregon State Statutes. He stated that he will rely heavily on County staff and other local professionals for fire and health safety issues. He stated that he would not want to have local government deciding when and where groups could meet and he stated that the permit should be issued if the standards can be met. Frazier commented that the County charge is to issue a permit when the organizers demonstrate compliance with health and safety rules. She asked if the criteria stated were adequate to address the health and safety risks. She stated that she would not be supporting the motion as she feels that the issues of health and safety cannot be addressed adequately under this permit process. Dumdi commented that most of the concerns have been well addressed by staff; she is concerned about the fire problem on the site given the location and the dry conditions. She stated that she agreed with Cornacchia and Roberts that Autzen Stadium would be a better location for the concert. She commented that the Oregon Country Fair imposes a function on the community that is not a community-wide event, but an outside event. She stated that she is pleased with what staff has done to try to insure that this will be come off successfully and that local concerns will be considered. She stated that the organizers have complied with the staff requests and that the County is bound by the State Statues to issue a permit. She noted that residents' Constitutional rights are a concern, but she feels that she has no choice but to vote for the motion. Frazier commented that she had attended a wildfire conference in Portland and had been alarmed by the danger posed by fire. Johnson stated that the fire protection plan shall

include grass field fire prevention and suppression; the security staffing shall be in addition to existing law enforcement staff in the Veneta area and that Oregon Department of Transportation staff will control the traffic signal at Territorial - Highway 126 intersection and at the Greenhill - Highway 126 intersection as well as general control along Highway 126. Dumdi added that she had requested FAA consideration for the neighboring airstrip to assure that there will be no conflict within the airspace. Dumdi added that the issue which carries the most weight for her is the issue of fire suppression and she will take the liberty of joining Frazier in voting no. VOTE: 3-2, Dumdi and Frazier dissenting.

There being no further business, this meeting adjourned at 10:58 p.m.


Judy Haedeman
Recording Secretary