

MALHEUR COUNTY COURT MINUTES

January 8, 2020

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:00 a.m. in the County Court Office of the Malheur County Courthouse with Commissioner Don Hodge and Commissioner Larry Wilson present. Staff present was Administrative Officer Lorinda DuBois, Surveyor/Engineer Tom Edwards, Building Official Adele Schaffeld, and Planner Eric Evans. Notice of the meeting was posted on the County website and Courthouse public bulletin board; and emailed to the Argus Observer, Malheur Enterprise, and those persons who have requested notice. The meeting was audio recorded. The agenda is recorded as instrument#2020-0090

Public present was Tom Dey; and Larry Meyer of the Argus Observer.

PUBLIC HEARING – SUPPLEMENTAL BUDGET

Judge Joyce opened the public hearing for consideration of Supplemental Budget Resolution R20-02. Notice of the hearing was published in the Argus Observer and Malheur Enterprise. A public hearing was required as the supplemental budget will adjust the current budget fund by 10% or more of the expenditures of that fund. The purpose of the supplemental budget is to allocate transfer funds from the County General Fund in the amount of \$969,900; the funds are to be used to purchase property for the reload and industrial park project. This will make the Reload/Industrial Park Project fund appropriations total \$3,019,900. No public comments were received; no written comments were received. Judge Joyce closed the hearing. Commissioner Hodge moved to approve Resolution No. R20-02: In the Matter of Fiscal Year 2019/2020 Supplemental Budget by Resolution Under Local Budget Law ORS 294.471. Commissioner Wilson seconded and the motion passed unanimously. See instrument #[2020-0082](#)

COURT MINUTES

Commissioner Hodge moved to approve Court Minutes of the Special Meeting of December 30, 2019 as written. Commissioner Wilson seconded and the motion passed unanimously.

JUSTICE OF THE PEACE PRO TEMPORE

Commissioner Wilson moved to approve Order GO-01-20: Order Appointing Justice of the Peace Pro Tempore for Malheur County Justice Court During the 2020 Calendar Year.

Commissioner Hodge seconded and the motion passed unanimously. County Counsel Stephanie Williams is appointed as Judge Pro Tempore for the Malheur County Justice Court. See instrument #[2020-0085](#)

AUTHORIZATION OF REFUNDS

Commissioner Hodge moved to approve Resolution R20-01: In the Matter of Authorization of Refunds by Tax Collector. Commissioner Wilson seconded and the motion passed unanimously. See instrument #[2020-0083](#)

INVESTING FUNDS

Commissioner Wilson moved to approve Order GO-02-20: In the Matter of Investing Any Sinking Fund, Bond Fund or Surplus Funds. Commissioner Hodge seconded and the motion passed unanimously. See instrument #[2020-0084](#)

BUDGET OFFICER

Commissioner Hodge moved to appoint Administrative Officer Lorinda DuBois as budget officer for FY 2020-21. Commissioner Wilson seconded and the motion passed unanimously.

AUDIT

Commissioner Hodge moved to approve the County's 2018-2019 audit prepared by Zwygart, John and Associates; and sign the plan of action correspondence to the Office of the Secretary of State. Commissioner Wilson seconded and the motion passed unanimously. See instrument #[2020-0088](#) and #[2020-0089](#)

BUDGET TRANSFER RESOLUTION

Commissioner Hodge moved to approve Resolution No. R20-03: In the Matter of Fund Transfers Under Local Budget Law ORS 294.463. Commissioner Wilson seconded and the motion passed unanimously. Funds transferred are within the Building Program budget. See instrument #[2020-0086](#)

PROVIDER CONTRACT – COMMUNITIES IN ACTION

Commissioner Wilson moved to approve Provider Contract for Juvenile Crime Prevention Services 2019-2021 with Communities in Action. Commissioner Hodge seconded and the motion passed unanimously. See instrument #[2020-0087](#)

CROSSING PERMIT

Commissioner Hodge moved to approve Crossing Permit #35-19 to Idaho Power Company to install a pole and transformers for service to a pump on Grove Road #920. Commissioner Wilson seconded and the motion passed unanimously. The original permit will be kept on file at the Road Department.

COMPARISON OF CALENDARS

Commissioner Hodge noted he would attend the monthly Emergency Management Team Meeting and Traffic Safety Commission Meeting on January 9th. Commissioner Wilson noted he would attend the Owyhee Watershed Council meeting today. Mr. Evans reminded Commissioner Hodge of the Vale LIT meeting on January 27th. Commissioner Hodge also plans to attend the National Incident Management System (NIMS) Overview for Senior Officials course in Fruitland on January 28, 2020.

RELOAD FACILITY PROJECT

County Counsel Stephanie Williams provided an update in regards to the purchase of property from Farmers and the financing contract for the Special Public Works Fund (SPWF). Closing is scheduled for January 10, 2020. The loan funds will be deposited directly with the title company into escrow – they will not come to the County first. Commissioner Hodge moved to authorize

Judge Joyce to be the sole signer on the closing documents. Commissioner Wilson seconded and the motion passed unanimously.

Ms. Williams discussed the draft finance contract for the Special Public Works Fund with the Court members. The Court proposed some changes to terms in the contract they wanted made.

Ms. Williams is in discussions with Oregon Business Development Department (OBDD) regarding the finance contract terms. Some of the terms proposed by OBDD include: interest payments are due December 2020, 2021, and 2022; OBDD will file a mortgage on the property; the property can be leased; OBDD must consent to the sale of any property with 90 days advance notice; appraisals must be completed on all parcels sold and the price must be at minimum fair market value; and a 20-year operating agreement must be in place between Malheur County Development Corporation (MCDC) and the County. OBDD will have to sign off on the partition documents.

In addition to the finance contract, OBDD requires a resolution from the Court authorizing the loan from the SPWF. Commissioner Hodge moved to approve Resolution No. R20-04: Resolution of Malheur County Authorizing a Loan from the Special Public Works Fund by Entering into a Financing Contract with the Oregon Infrastructure Finance Authority; and moved to authorize Judge Joyce to sign the finance contract at the closing on January 10, 2020. Commissioner Wilson seconded and the motion passed unanimously.

APPEAL HEARING - HUNTINGTON TRAVEL PLAZA

Judge Joyce opened the hearing on the appeal of the Planning Commission's decision to approve a conditional use permit application to amend an existing conditional use permit to allow two additional commercial activities at 5945 Hwy 30, Huntington (truck repair/truck wash and stand-alone restaurant). Planning Department File No. 2019-09-014; Appellant: Ben Wigley; Applicant: Huntington Travel Plaza; Owner: Nadiya Alibhai; Applicant/Owner's

Representative: Joseph Alee

Present for the hearing were: Planner Eric Evans, Planning Management Assistant Tatiana Burgess, Environmental Health Director Craig Geddes, Joseph Alee, Larry Hinton, Clint Abbe, Watermaster Ron Jacobs, and Assistant Watermaster Jered Hoshaw.

It was determined that time limits would be 20 minutes for the applicant, 10 minutes for rebuttal, and 5 minutes for testimony. Judge Joyce directed that all testimony and questions be directed to or through the Court and not directly to witnesses.

Judge Joyce asked for any abstentions, potential, or actual conflicts of interest from the members of the Court; and asked for any ex parte communications or site visits to be divulged.

Commissioner Wilson stated he did not talk to anybody, however himself and Commissioner Hodge did visit the site. Judge Joyce said he has had conversations with many of the parties involved and has been at the site.

Judge Joyce asked for any objections to the jurisdiction of the hearing; there was none. Judge Joyce asked if there were any objections to any member of the County Court hearing the matter; there was none.

Judge Joyce stated: Failure to raise an issue may preclude raising it before Land Use Board of Appeals (LUBA). Failure to raise constitutional and other issues relating to the proposed conditions of approval with sufficient specificity to allow the County Court to respond to the issue may preclude an action for damages in circuit court.

Judge Joyce asked for a Staff Report.

Planner Eric Evans: This is actually coming before you as an appeal from the decision the Planning Commission made on November 19th. They made a unanimous (5-0) decision to approve Mr. Alee's conditional use permit and it's actually an amendment to a conditional use permit he had prior. He was allowed in 2018 a convenience store, which included, I believe, a restaurant inside and a hotel. At this point in time, he has received the zoning permit for the convenience store; we haven't moved forward with the hotel yet. He is amending that in order to add a truck repair shop and truck wash and a detached restaurant as well. This hearing is on the record, so it will be everything that is in your stuff - our record through the Planning Commission; we shouldn't be allowing any new testimony to be heard. You also have a copy of the transcript I gave you a couple of weeks ago. Some of the reasons for the appeal - this is me paraphrasing his letter that he submitted to you that is in your packet:

1. They're harmful to existing businesses;
2. Project continues to build without sanitation compliance; and
3. Without accurate flow test, there is no way of knowing what the affect will be on neighboring wells.

In your memo that I gave you the Appellant's burden is to demonstrate the decision of the Planning Commission to approve the conditional use permit is not supported by substantial evidence in the record. You have three options today; it will be tentative decision and after today we will draft an order for you to sign next week, depending on which way you go. So, tentatively, you could uphold the Planning Commission's decision; you could overturn the Planning Commission's decision; or, you could remand it for additional considerations to the Planning Commission.

Judge Joyce asked for testimony from the Applicant.

Joseph Alee: Joseph Alee, site address is 5945 US Hwy 30, Huntington, Oregon 97907. As you all know, we're putting a truck stop over there; it was supposed to be a regular fueling station and then we got approved for Travel Center of America so it will be a Technical Assistance (TA) over there. TA requirement is to have a repair shop with the fueling station and that's why we applied to amend; and Mr. Ben is across the street from us, as you all know, he owns a repair shop too so he's worried about his business and we talked about it and he, I wish he was here right now, but, I get the feeling he wants us to buy his property, which, he's asking too much, but, he's just putting the pressure on us to go that way. We've invested so much money in it that we cannot back out of

it now, we're about ready to open the doors; but without the repair shop TA will not allow us to open the store itself - that's the requirement.

Commissioner Wilson: I just had a quick question, now the IHOP deal will be a separate building also?

J. Alee: IHOP will be a separate building also because, initially we got approved for inside the building but IHOP does not allow to serve liquor or alcohol in IHOP's so that's why we had to move the IHOP outside the building and leave the bar inside.

Commissioner Wilson: And then the repair shop will also have the truck wash in it?

J. Alee: It will have a truck wash, yes sir.

Commissioner Wilson: And that's a requirement of Travel America?

J. Alee: That is a requirement sir.

Judge Joyce asked for proponent testimony.

Larry Hinton: My name's Larry Hinton, we're the engineer of record currently at the truck stop, working on (inaudible) drainage and engineering. We also assisted Mr. Alee in completing his amended application for his conditional use permit. In our mind, in providing that information, which is probably most likely in your packet, for a rural service center we were of the feeling that everything Mr. Alee was proposing was in line of the rural service center and the previous uses of which that facility has had - various businesses through the decades. Also, immediately following the last hearing it had been requested for data that had already been generated on the well pumps, so there had been a well test, and we did provide that to the Planning Commission as to assist in completing their package, it was one of the requests that came out of that hearing. Hydraulically the well test has shown that there was a total of four foot of draw down pumping at 88 Gallons Per Minute (GPM), of which is slightly more than a flow rate that is at the peak requirement allowed by Water Resources for that facility, therefore it has two large storage tanks for both the potable water and for the fire control water and other water that will be required on site of which the water balance on that is within reason. But again, we found that it was within the rural service center zoning, of which that facility has been in the past and should be in the future.

Judge Joyce: So, was the Appellant's business there when the previous business was there?

L. Hinton: I don't know. He did not own that property then.

J. Alee: May I? His shop was on that property, Ben's repair shop was on that property itself and then after they sold it he moved it across the street.

E. Evans: I'll make a couple of notes; we did receive the pump record from Leon's Pumps, I'm not sure what the date is, for the draw down. It is actually not part of the record because it was received after the record was closed so I can't insert it as part of the record, but we did receive that. I believe

we passed that along to Mr. Wigley as well. We do have an affidavit that I signed on the 4th of December, in which we mailed out the Notice of Appeal to Mr. Alee and Ben Wigley as well, so he did have notice.

Commissioner Wilson: Either one of you can answer this or Ron but I was reading all of this and Ron Jacobs had said that the water rights for .22 cubic feet a second, which is layman's terms I don't know what that is

Ron Jacobs: 98 gallons a minute

Commissioner Wilson: 98? because I saw that and... so if this was at 88 or something you're a little below that, what you're allowed to take right? And then the Snake River water right, that can be converted to wash the trucks?

R. Jacobs: Potentially, through a transfer process.

E. Evans: One thing to know about the truck wash that they didn't hit on is that it's actually not using fresh water on every wash, they have some sort of recirculation...

Commissioner Wilson: I saw that... a recycle deal. We ran into this a long time ago, I can't remember now what it was about, but it was a dispute over somebody had punched a well in and the neighbor thought that... so like, whether it's Mr. Wigley, or whoever out there, if they wanted to... don't they need to establish where their well level is, right now, before he goes into operation? That way if it did dramatically affect it, we'd have... is that what you were talking about in there? So, it would be required then, it would have to cut back a little bit until it came up to that 5.61 gallons a minute, was the minimum?

R. Jacobs: Well it will be a good idea for him to establish the static water level measurement, but I don't know that it's required for him. However, the truck stop needs to do regular static water measurements annually and potentially more often if the state required him to do that.

Commissioner Wilson: But that is covered in the conditional use permit that they agree to?

E. Evans: Well yes, the conditions of their water resources permit, yes.

Commissioner Hodge: Right now, according to this, I think, Ron, you mentioned in there that they had a permit to drill three wells and right now they are currently working off one well?

R. Jacobs: They've only drilled one well that I'm aware of so far.

Commissioner Hodge: So, if it did change the water conditions out there, they still have the option that they could drill another well or maybe up to two more wells?

R. Jacobs: Yes. The permit is for three wells. They have to drill those wells within five years.

Commissioner Hodge: I was going to say, is there an expiration on it?

R. Jacobs: Five years to (INAUDIBLE) on this water right.

Commissioner Hodge: So, when were those set up, two years ago?

R. Jacobs: I think the date was March, 2019.

Commissioner Hodge: So, they've got until March, 2024, to make sure...

Commissioner Wilson: Well the other question I had was, in his reason for his appeal he touched on the sewer issues and said there was no sewage permit approval but it looks to me like that's covered in here. Isn't that that number two, the Department of Environmental Quality that...

E. Evans: Right. He obviously had stated some of these concerns at the meeting so we did add some conditions that...

Commissioner Wilson: And Mr. Alee understands that he has to meet those requirements, right?

J. Alee: That is correct. We cannot open unless we have all of this.

Commissioner Wilson: Where is that sewer lagoon or...

J. Alee: It's at the west end of the property, the four lagoons are over there.

Commissioner Wilson: Kind of over past those two tanks?

J. Alee: It is right past the two tanks, yes sir.

Commissioner Wilson: And there's a little sort of a draw in there or something?

Clint Abbe: It's across that draw.

L. Hinton: The high side.

Commissioner Wilson: Yeah, okay I didn't know how far over it went.

Commissioner Hodge: I think there's a fence around

MULTIPLE PEOPLE SPEAKING AT ONCE

E. Evans: So, Department of Environmental Quality (DEQ) actually signed a land use compatibility statement. They haven't finished their permitting process but they felt like they were to a point where they could actually sign that and allow the development to continue forward.

Commissioner Hodge: So, they've signed off enough that there's one building there, I don't know how many square feet that building is.

J. Alee: 13,000.

Commissioner Hodge: 13,000?

J. Alee: Yes.

Commissioner Hodge: You can see where, I assume is the diesel pumps, and then where the gas pumps look like part of it or the bulk of that looks like it's already been done. To me it looks like so far all of the permits must have been accepted and it was permitted and so you've been allowed to build.

E. Evans: In the conditions I made it a little more, a bit more on them that they had to be farther than sometimes are needed but that was to appease Mr. Wigley.

Commissioner Wilson: What the Planning Commission looked at and what I can see, that kind of answered my questions on those two, is his first issue, fortunately that's life, I mean...

E. Evans: Do we want to have these guys step back and ask for some opponent testimony and then we can have some deliberation? Or if there's anybody else that's opponents or proponents.

Judge Joyce asked for further proponent testimony.

C. Abbe: My names Clint Abbe, I'm the manager for Durbin Creek Ranch out there; Bruce and Mary Agar own it. I have visited with them about it and as far as my well goes I haven't done any tests but I don't see any difference in my well when he pumps his well or doesn't. As far as I'm concerned, and as far as Agar's are concerned, we are all good with it.

Judge Joyce asked for opponent testimony; there was none.

Judge Joyce asked for public agency testimony; there was none.

Judge Joyce asked for a summary, staff report and recommendation?

E. Evans: As he said, this is a rural service center. The purposes of our rural service centers have these industrial/commercial types of developments come out in the County in these rural areas. I think it meets exactly what it was and what it is intended to be for a rural service center so my recommendation would be to tentatively uphold the Planning Commission's decision.

Judge Joyce asked for rebuttal; there was none.

Judge Joyce stated it was time to close the public hearing and that no public testimony could be heard after this point unless the hearing was reopened or continued. There were no objections to closing the hearing. The hearing was closed and Judge Joyce asked for deliberation.

E. Evans: So, what I would like from you guys is some, at least with the three points that he makes in his letter, what you guys want the order to say, some direction from you guys on those three

main points. If you're okay, let's say, with the conditions that we put in the conditional use permit order or just something on each three main points.

Judge Joyce: Do you have a recommendation?

E. Evans: I think that all three points were addressed previously.

Commissioner Wilson: That's why I've got nothing. What I was going to say earlier was, what you guys approved with the conditions you put on looked adequate to me. If I had been on the Planning Commission I feel like those were adequate for two and three. My opinion on number one is, I own a office, a company, and if somebody wants to put one in right across the street from me that does the very same thing there's nothing I can say about it, I just better work harder or make sure my place looks spiffier or whatever but that's competition, so it will probably help both businesses.

C. Abbe: Ben has moved to Ontario and Baker and done the same thing in both of those towns, moved right in next to where there were other shops.

Commissioner Hodge: He's mentioned that in here.

Commissioner Wilson: That's just something that doesn't have any bearing on this, I don't feel like, the land use thing.

Commissioner Hodge: As far as I'm concerned, I think all his three concerns have been addressed by the Planning Commission and I'm happy with the contingencies they've put in place. My question, and I talked to Ron, the Watermaster here this morning a little bit, and if something comes up and it does affect the flow of the surrounding people, then they would have to cut back or something would have to be addressed and I think you've addressed that in here. So as far as I'm concerned, I'm happy with the Planning Commission's decision.

Judge Joyce: I have no objection to their decision, it was unanimous. With that, I would ask for a motion.

Commissioner Wilson moved to tentatively uphold the Planning Commission's decision to amend the existing conditional use permit to allow two additional commercial activities. Commissioner Hodge seconded and the motion passed unanimously. An order will be prepared for the Court's approval.

Mr. Dey left the meeting.

RELOAD FACILITY PROJECT

The Court continued to discuss the terms of the finance contract for the Special Public Works Fund. Additionally, the farm lease documents with the Farmers are being drafted per the provisions of the Purchase and Sale Agreement. Consensus was to continue the Court meeting to Friday, January 10, 2020 in order for conversations to continue with Oregon Business Development Department regarding the finance contract and to review the farm lease documents.

MEETING WITH SCHOOL SUPERINTENDENTS

A request was received from Malheur Education Service District (ESD) Superintendent Mark Redmond for one member of the County Court to attend their Superintendents meeting on January 15, 2020 for a discussion on school based mental health services. Commissioner Hodge said he would attend the meeting after County Court concludes that day.

CONTINUATION OF COURT MEETING

Commissioner Wilson moved to continue the Court meeting to 9:00 a.m. on January 10, 2020. Commissioner Hodge seconded and the motion passed unanimously.

The meeting continued on January 10, 2020 at 9:00 a.m. with Judge Dan Joyce presiding and Commissioner Don Hodge and Commissioner Larry Wilson present. Staff present was Administrative Officer Lorinda DuBois, County Counsel Stephanie Williams, and Planner Eric Evans.

Also present was Larry Meyer of the Argus Observer.

RELOAD FACILITY PROJECT

Ms. Williams reviewed various documents with the Court pertaining to the purchase of the Farmer property. OBDD made some changes to the finance contract. The Farmland Lease document with Farmers was also reviewed, as well as the Bill of Sale for three pumps on the property and the Option Agreement for purchase of 5 acres; a Uniform Commercial Code (UCC) statement will be filed on the remaining water rights. The Special Public Works Fund loan monies are to be wired from the State to the title company today - they will not go through the County's budget. Judge Joyce and Ms. Williams will attend the closing at the title company today.

See instrument #[2020-0285](#) for Resolution R20-04: Resolution of Malheur County Authorizing a Loan from the Special Public Works Fund by Entering into a Financing Contract with the Oregon Infrastructure Finance Authority. (Financing Contract number L20002A with OBDD is attached as Exhibit 1.)

Legal Opinion of County Counsel recorded as instrument #[2020-0286](#)

Agreement and Indemnification Regarding Hazardous Substances recorded as instrument #[2020-0287](#)

Warranty Deed between James G. Farmer, Margaret Farmer, and Charles Warren Farmer and Malheur County recorded as instrument #[2020-0140](#);

Line of Credit Instrument, -Mortgage, Security Agreement, Assignment of Lease and Rents, and Fixture Filing between Malheur County and the State of Oregon, Acting by and Through the Oregon Infrastructure Finance Authority of the Business Development Department recorded as instrument #[2020-0141](#)

Farmland Lease and Right of First Refusal of Water Rights between Charles Warren Farmer, James G Farmer and Margaret Farmer and Malheur County recorded as instrument #[2020-0142](#)

Option Agreement for Purchase of Land between Charles Warren Farmer, James G. Farmer and Margaret Farmer and Malheur County recorded as instrument #[2020-0143](#)

Bill of Sale for Personal Property recorded as instrument #[2020-0288](#)

ORDER - HUNTINGTON TRAVEL PLAZA

Planner Eric Evans presented the Order upholding the Planning Commission's decision approving an amendment to the conditional use permit for Huntington Travel Plaza. The hearing on the appeal of the decision was heard by the Court January 8, 2020. Commissioner Hodge moved to approve Findings of Fact Conclusions and Order GO-03-20 - In the Matter of: Appeal of Planning Commission's Decision Approving an Amendment to a Conditional Use Permit for the Construction and Operation of Two Additional Commercial Activities in a Rural Service Center Zone - restaurant and truck repair/wash for Huntington Travel Plaza LLC. Commissioner Wilson seconded and the motion passed unanimously. See instrument #[2020-0110](#)

ADJOURNMENT

The meeting was adjourned.