

MALHEUR COUNTY COURT MINUTES

January 15, 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, and Building Official Adele Schaffeld. 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 #2020-0235

MINUTES OF SPECIAL MEETING

Commissioner Hodge moved to approve Joint Special Meeting of the Counties of Baker, Deschutes, Grant, Harney, Jefferson, Lake, Malheur, Wasco, and Wheeler minutes as written. Commissioner Wilson seconded and the motion passed unanimously.

CROSSING PERMITS

Commissioner Hodge moved to approve Crossing Permit #01-20 to Idaho Power Company to replace poles on Stanton Blvd. #762; and Permit #02-20 to Idaho Power Company to replace poles on Heinz Blvd. #771. Commissioner Wilson seconded and the motion passed unanimously. Original permits will be kept on file at the Road Department.

EMPLOYMENT AGREEMENT – SMITH

Commissioner Hodge moved to approve Malheur County A-level and B-level Inspector Employment Agreement with Richard H. Smith. Commissioner Wilson seconded and the motion passed unanimously. See instrument #2020-0237

SUPPLEMENTAL BUDGET RESOLUTION

Commissioner Hodge moved to approve Supplemental Budget Resolution No. R20-05: 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. The purpose of the supplemental budget resolution is to allocate additional State Mental Health funds that were received but not anticipated when the adopted budget was prepared; these funds are passed through to Lifeways who the County sub-contracts with for mental health services. See instrument #2020-0236

REQUEST TO CHANGE BOUNDARY OF NYSSA AND ONTARIO SCHOOL DISTRICTS

A request to change the boundary of Nyssa and Ontario school districts, by mutual consent of the districts was received. A hearing on the request will be held on February 12, 2020. See instrument #2020-260 and #2020-261

COMMUNITY IN ACTION - UPDATE ON TEMPORARY TRANSITIONAL HOUSING PROJECT

Heather Echeveste, Community in Action Housing Programs Manager, met with the Court and provided an update on homelessness and the temporary transitional housing project on North Oregon Street in Ontario. Community in Action, in partnership with Origins Faith Community, have been working with the City of Ontario on the temporary transitional housing project. City owned property on N. Oregon Street will be utilized as the site for the project. Community in Action has entered into a contract for the construction of 20 units that will be used for overnight winter shelter. (The units are 8x10 (80 square feet) garden sheds that will be insulated and have a window, door, interior light, heater, electrical outlet, and bed (cot) (cost is \$3990 per unit); Ms. Schaffeld noted that the electrician for the project has said that the electrical code also requires a light on the outside of each unit.) (These units are not tiny homes - they are temporary transitional housing units.) Funding for the project is through a State grant in the amount of \$150,000; this is a pilot project and will only run through the end of April 2020. If the pilot project is successful there will be an opportunity to apply for another grant to expand on the project. Portable toilets will be setup on the site; and the warming day shelter at Origins offers showers, a laundry facility, and a daily meal. There will also be onsite supervision at all times.

Case management services will be provided to those who utilize the temporary transitional housing project; it is projected that stays may be up to 90 nights. As part of case management, individuals will be required to secure employment, apply for a Housing and Urban Development (HUD) voucher for housing, and apply to the low-income housing facilities in the county in order to secure permanent supported housing.

Community in Action has offered a Ready to Rent monthly class for at least the last 18 months and no one has attended the class. Community in Action has now joined the local landlord's association and is encouraging landlords to make the class a requirement of lease agreements. Another Ready to Rent class was recently held in which nine participants attended. Success stories include removing two families from the river (both had been there for multiple winters) and securing permanent supported housing for them. One individual went back to school and completed their degree. It is important to note that for some, homelessness is a way of life and they do not want to change; but for many it is not a choice and these programs can help those people.

The priority list will be: elderly and disabled, families with children, and extremely low income. Commissioner Hodge inquired about electrical services to the units. Ms. Schaffeld explained an underground electrical permit will be needed as well as permits for each unit. The electrical will be run underground to each unit and there will be feeders (similar to a manufactured home lot) with a shutoff on the outside of each unit.

Ms. Echeveste answered questions from the Court; the Court thanked Ms. Echeveste for the update.

Ms. Schaffeld and Ms. DuBois left the meeting.

APPEAL HEARING – BRUNING

Judge Joyce opened the quasi-judicial land use hearing on the appeal of the Planning Commission's decision to approve a conditional use permit application for two non-farm partitions and two non-farm dwellings. Planning Department File No. 2019-10-006; Appellant: Donna Shenk. Applicant: Harold and Deborah Bruning. Property Identification: Tax Lot 200, T23S, R47E, Sec. 6; Assessors Map 23S47E; Ref. #11043. This matter was a de novo hearing pursuant to the Court's Order of December 18, 2019 (instrument #2019-4639).

Present for the hearing were: Planner Eric Evans, Planning Management Assistant Tatiana Burgess, Harold and Deborah Bruning, Donna Shenk, David Shenk, Janet Shira, and Ronney Yost. Judge Joyce announced that time limits were 20 minutes for the applicant, 10 minutes for rebuttal, and 5 minutes for testimony; and directed that all testimony and questions be directed to or through the Court and not directly to witnesses.

Judge Joyce asked for any abstentions, disclosure of potential or actual conflicts, biases, ex parte communications, or site visits to be divulged from the members of the Court. Commissioner Wilson stated he has been by the property but has not talked with anybody.

Judge Joyce asked for any objections to any members of the County Court hearing the matter; there were none. Judge Joyce asked for any challenges to the County Court's jurisdiction to hear the matter; there were none.

Judge Joyce read the following land use statements into the record: Oregon land use law requires several items to be read into the record at the beginning of this hearing. The applicable substantive criteria upon which the application will be decided are found in Oregon state rules and laws as well as local code provisions which are specifically set out in the staff report and include the Malheur County Code 6-6-7, 6-6-8-1, 6-6-8-2, and OAR 660 Division 33. Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in state law, the Malheur County Comprehensive Plan, or the Malheur County Code that the speaker believes to apply to the decision. The failure of anyone to raise an issue accompanied by the statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond to the issue will preclude appeal on that issue. An issue that may be the basis of an appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements and evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. Failure of an applicant to raise constitutional or other issues relating to the proposed conditions of approval with sufficient specificity to allow the decision makers to respond to the issue precludes an appeal before Land Use Board of Appeals (LUBA) or an action for damages to circuit court.

Judge Joyce asked for a staff report.

Eric Evans: We met on December 18th regarding this. We had an application from Mr. and Mrs. Bruning for two non-farm partitions and two non-farm dwellings; one of the non-farm dwellings actually already exists, but we will get into that a little later. The Planning Commission met on November 19th and approved that conditional use permit unanimously, 5-0, we only had five there that day. Notice was published in the paper, we did have a little bit of a mistake I guess, a snafu in my office, we initially sent the wrong date for the hearing, and then we sent a second notice - the next day, correcting that. Mrs. Shenk received the first notice, and she attempted to come to the hearing on the 20th instead of the 19th. So again, we met on the 18th of December to discuss that, you found there was good cause to hear this de novo rather than on the record. So that's what we're doing here today. Some of the reasons for the appeal: that it can't be shown to benefit the community as a whole; it's a strain on services, for instance, road, water, law enforcement, medical, school district, and fire; unfarmed lands act as buffer zones for wildlife conservation; not substantial evidence to support the Conditional Use Permit (CUP); and, I think one of the big things is that the Appellant definitely wanted to have that opportunity that she wasn't afforded to the first go around. They do have the burden to demonstrate that the decision of the Planning Commission was not supported by substantial evidence on the record; and you can do three things, our normal three things: uphold; overturn; or remand back to the Planning Commission.

Judge Joyce asked for Appellant testimony.

Donna Shenk: (Ms. Shenk read from her prepared statement.) I'm Donna Shenk. I've lived in my present location for 64 years. During that time the government has changed my mailing address five times. I've seen many changes. When the present land use law was enacted, we, like many others thought they were unnecessarily restrictive. Over the years they have at times affected a lot of us now and then with restrictions we felt were an intrusion of our ability to use our property as we thought best. However, we realized that any law that seeks the good of all us would at times seem repressive to some of us. Time however, has clearly demonstrated not only the need for them but we have realized the protections they afford us all. I for one am very thankful for them. I realize that any major decision I make regarding the land that I believe I hold in trust for the next generation, will have some effect on my neighbors as well as the entire community. It is with this in mind that I strongly object to any liberalizing of our present zoning laws, where it cannot be shown to benefit the whole of Malheur County. I would like it recorded that I am in no way harboring any animas against the Brunings. In March 2015 I learned that Mr. Bruning had constructed a small pump house containing a pump to withdraw water from Succor Creek for which he has a water right, but he mistakenly placed it across our property line. I wrote him a brief letter which solved the problem with no hard feelings that I know of. I have enclosed a copy of the letter, which was approved by our lawyer before I sent it.

The Bruning petition for the subdivision of his property with the attached building permit, while financially beneficial to his interest cannot be shown to benefit the community or the county as a whole. This community is suited for its historic use which is farming. It is not suited for residential use. If a new residence is needed there are an abundance of areas of all sizes and locations that are zoned for and available for that purpose. Though the division of that property will add to its

financial value, and counties sometimes mistakenly grasp residential zoning to broaden their tax base, it is penny wise and pound foolish for all but the individual who has enhanced his property value at the expense of the county and its residents. The Bruning farm has been for sale for the past year, although the signs have recently been removed. While it may actuate a real financial gain to the property owner, for the counties and its citizens, it is an added burden to our operating costs. In every single instance, shown in a hundred and sixty studies, the costs in services is far more than is realized in tax revenues. My head is stuffed full of studies but the least cost raise in services listed was 40 plus percent and in some cases, it is well over 100%.

The reality is, our civil services are provided by the volunteer services of Homedale, who have reciprocal arrangements with its surrounding neighbors. With 600 families a month pouring into Idaho the strain on those services is staggering. Our own access, therefore to Homedale's assistance is compromised.

Specifically, Roads: The Stateline Road is totally maintained by the Homedale Highway District. This road is the one accessed by the Bruning driveway. The traffic on these roads is greatly increased, and we do not know why that is. These roads, once adequate for our farm traffic are far from it now. For the past 30 years, for every one time the County grades the roads, the farmers with their equipment grade them three times. When we went home from meeting with Eric there were two big John Deere tractors doing the roads thank God. I don't know when Mr. Tiffany last traveled these roads, but he erroneously states that the site proposed for building will have no need for a culvert and there is no visibility problem. As for visibility it is and has been for some time advisable to send a pilot car ahead of any equipment both for the safety of the moving machinery as well as anyone else on the road. There are several blind corners in Desert Glen Road from where it intersects Stateline, on out to the highway. Very near or abutting the proposed building site, there is a huge spot in the road in which the hard foundation is completely gone as well as the road mix. At ninety years of age, I could, without a bar, dig a hole and set a post in it. By the time this winter, if wet as predicted, is over it will be a bog and I will have to go around to access Market road where Dave lives. Water: Domestic is a real problem, both in quality and amount. We hauled our water for years as did most other farms. What provision is being made for the division of this now fractured water right? Will two head gates be provided? Will the water district be responsible in setting times and amounts of use? A new well will need drilled for domestic water. Since it will be below my well which is 700 feet deep, how will that impact my water supply. Law Enforcement: Hardly adequate as is. We are 30 miles from the headquarters of our law enforcement. Medical services: I recently was hospitalized and we met the ambulance in Homedale. We waited for that volunteer service for at least 20 minutes. School District: Already strained to its limit. Fire: While we are officially under the voluntary service of Adrian Fire District, the practical reality is this, we use that of Homedale. We surely appreciate those guys but it is at best iffy. Every new residence, as well as training all the civil services, adds to fire danger. A study by Underwriters Laboratory's states, "a house built 30 years ago took 17 minutes to burn, new construction homes burn in less than 5 minutes." I recently had a discussion with our insurance agent who told me that the bulk of the cost of my coverage was for fire loss. Because, he said, "basically you have no fire protection." The residence is a primary source of fire. And while it seems like a good idea to set them out on

these knobs, (inaudible) the farm ground, that would be right, but I've seen those hills burn like crazy and they burned right up to the canal and thank God didn't jump it. A fire set on those bare hills goes like mad and it's not long until it has to meet an obstacle that can stop it; a grain field sure wouldn't stop it - a ripe grain field.

Last but not least to most of us, Wildlife Conservation: the building site proposed in the present petition is in the perfect environment of the once numerous Ground Owl, a farmers' friend. I haven't seen one for many years, but within our farmable grounds are small bits of habitat suitable for them. The Antelope Ground Squirrel: again, I have not seen one for years but there are still a few. The Cotton Tail Rabbit: still a few but sometimes I don't see any for two or three years; they used to come up in the yard. The Owls and others still left are a part of what makes our quality of life special. These oasis of unfarmable acres are desert wildlife habitat. They are buffer zones and we need them. Long after the Brunings have moved on and I am gone I hope that Malheur County will still be secured by the protections provided by the present agricultural zoning statutes. Once they are breached for the benefit of an individual, they are vulnerable to further degradation. One million acres every year are being lost to agriculture, a loss to every citizen in this country and especially in this county. You are the guardians of those laws. I hope you will not add any more acres to that number of vanishing agricultural acres. Thank you.

David Shenk: Well I'm coming from it a little different angle a little bit. I sat on planning and zoning in Owyhee County for several years. I first of all thank you for hearing me because I do not live in Oregon, I live in Idaho, 3993 East Market Road.

Donna Shenk: He owns part of the property.

David Shenk: I do have a vested interest in that property because when mom's gone I'll be a 1/3 owner.

Donna Shenk: It's in an LLC.

David Shenk: As I shared with Harold, I served with Harold on the water board, problem one of the issues that I have even with the process is what it does; and it was an issue I had when I set on planning and zoning, is the conditional use permit process somewhats lost its way a little bit. I've seen it, not just in Owyhee County but in Malheur County and other counties, and it tends to put neighbor against neighbor when a plan and P&Z map and all those things are available and they're strictly enforced then it is a buffer between neighbors. I don't know exactly how you're set up here, but in Owyhee County the use is automatically to be denied unless just cause can be shown. And we used to say this disclaimer 'one use does not set a precedence for another, or this hearing doesn't' but we all know that it does, and partly because when the plan is not allowed to really work fully then you get into spot zoning, and that's what this will be. The reasons for the P&Z, this is my view, is to take care of the unforeseeable that laws can't and it is to protect and help, maybe even enhance, the laws intent. For example, if you had a farm that prior to this latest law that you operate under, was separated from its farm dwelling, and the people bought it and they had to travel to take

care of that farm, then you could provide, through the conditional use permit process a home dwelling for that farm use. That would enhance the use of that farm, so you're stabilizing agriculture at that point because you're eliminating a hardship. But when it's strictly for a monetary gain, and this is what I saw, when a piece can be taken off, and the premises well it is dry ground, and I commend that, that's better than irrigated ground, but when it is taken off you've diluted, you've kind of diminished the whole purpose of your zoning laws when you say okay, we're going to make this exception; well there's lots of dry knobs in Malheur County, just like in Owyhee County. What I see with this is then when you allow that use it does set a precedence because the next guy considering it says, well P&Z is open to that; when the intent is we're trying to keep the very reason why people come to Malheur County, and used to come to Owyhee County, anymore I'm kind of starting to wonder why they come to Owyhee County because it's a free-for-all, but the reason they came was its remoteness and the sparse population and that type of life; and your zoning laws protected that. When you set that aside for a reason other than the necessity to help that agricultural process, yes, it is beneficial gain, and we've all went through hard times; two years ago, I was struggling very hard to hang on to my outfit and the temptation, and I could easily sell pieces and parts off, in Owyhee County you can do it easily. I'm willing to die by my own sword, when I was talking to the bank I said I'll be damned if I'm going to just sell off a little piece here or there, it's all or nothing. I said, because someday we're going to need to hold this in trust and give it to somebody else. This is the reason why I see planning and zoning becoming a problem between neighbors, because if it was allowed to work, and I put this in the paper and wrote quite an article on it, if it was allowed to work neighbors are not testifying against neighbors. The plan works; and if the plan's wrong the people come together collectively in that county and change the plan, they'll amend it, they'll do something. When you step outside of that you encourage further hearings just like this.

The other little issue I have is any developments out there from Price's that way is putting a burden on Idaho and in particular the Homedale services; because realistically Adrian ambulance cannot transport, they can stay there with the person and stabilize them until medical people can get there, so realistically nobody's going to use them and they don't. So, we're putting further strain on the Homedale ambulance system, the fire system, with no revenues brought in. And roads, six times to one they're going to go through the Homedale highway district from that community. So, there you have what I have to say. I do want to close with this, I was a little different take on it than my family out there but I want to say whatever you decide I respect and I do hope that my neighbors will still be my neighbors when this is done because I'm speaking from my heart and I don't like being in this position. I saw neighbors torn apart in planning and zoning out there and I also saw neighbors that advocated the use, got the use, come back before me and set there and be against the very same use when their neighbor tried to do it; and that's a little rough. So, I'm just sharing with you how I see things. Thank you.

Ronney Yost: I'm Ronney Yost, and I live by the Shenk's on Lonesome Road. I don't care if they build another house. My son wanted to build a house on our place and they said you can build one but then you've got to tear the other one down, so there would only be one house on my place, as soon as that house got built I would have to tear the old one down, and that's what they told him,

whenever he came and checked on that. And I don't care if they build another house, I want the other house, it can be a hired hand house, but they can't sell it, no one else can live in it except for a hired hand. Beings I can't build without tearing mine down. But they said we could build a house but then mine's got to go down. That's what I'm complaining about; they can have two houses there where they said I could only have one after I built a new one.

Commissioner Wilson: How big is your property that you're talking about?

R. Yost: It's 110 acres. And I've got another place...

E. Evans: If you want to have that discussion then come into my office and we can discuss that. The law allows, if it's 110 acres, exactly what the Bruning's are doing.

Commissioner Wilson: The reason that I ask is, I thought my place is just under 80 acres, I'm south of Cairo towards Nyssa just a little bit, I think its 78.9 acres, well the only reason I even got to build there was because there was an existing home, two old farmhouses on it, in fact my wife is still mad at me because I haven't torn them down in 12 years or whatever, but I could either, if I kept them, if I was a farmer I could keep them for farm help that work for me, otherwise, I didn't have to tear them down but I had to disable them to where they couldn't be lived in...

R. Yost: Yeah that's what they said to me

Commissioner Wilson: So, they're just a shed for me now, and then we got to build a replacement dwelling. That's why I asked, but if yours is 110 acres I think you got some misinformation somewhere, and Eric's fairly new at the Planning but

R. Yost: That was a couple years ago when he asked.

Commissioner Wilson: you could talk to him if you

R. Yost: It could be done then out there without tearing the old one down

Commissioner Wilson: Yeah it sounds to me like

E. Evans: Definitely worth the conversation.

Judge Joyce: Question, how long have you lived there?

R. Yost: Since 1970.

Judge Joyce: 1970, okay.

R. Yost: And he's talking about the roads, if they build a house I wished they'd take better care of the roads. There was a washout in front of our house, it ran into the ditch and there was a big rut there, (inaudible) hear a big ole bang out there, a car or a pickup or something had hit that big ole rut.

Judge Joyce: What road is that?

R. Yost: Desert Glen, right on the corner of Desert Glen.
multiple talking

Commissioner Wilson: Dave, did you have Jim Thomas, did you have Jim call me about the roads out there

David Shenk: That would've been Paul

Commissioner Wilson: Okay, alright, that's what I was thinking
multiple people speaking at once

David Shenk: There's a stop sign out there that's been down, broke off, for two months and Mr. Tiffany comments a lot on a road that he does very little with.

R. Yost: It's on Succor Creek Road right there when you go on Succor Creek Road.

Judge Joyce: Bottom of the hill or top?

multiple speaking at once: bottom

R. Yost: (inaudible) on Ridgeview Road they pushed it over, it was a metal post there and they just pushed it over, they ran into it, whoever done it planned on doing it.

Commissioner Wilson: One thing about it, we're all paying taxes here so when that stuff goes down call Dave Tiffany, that's his job and if he doesn't hear from anybody then, but if he hears and you never hear anything back why I guess call us. But he's supposed to take care of that.

David Shenk: You might ought to drive out there once in a while.

Janet Shira: How long has he been in his position?

multiple speaking: a year, little over a year

Commissioner Wilson: Rich Moulton was there prior to that for quite a while.

Janet Shira: I just remember it used to be, it's been quite some time back, but those guys, you guys would have snow and Ontario would have snow and we wouldn't have anything, and the road crew would come out to grade the snow, to plow the snow, and they'd hide out in the orchard and wouldn't go back. That's been a long time ago.

laughter

David Shenk: There's some funny stories about that.

Janet Shira: Yeah, not so funny.

Donna Shenk: They've taken the orchards out now so they can't, there's nowhere to hide

laughter

Commissioner Wilson: Took their hiding spot away huh

David Shenk: When Adrian called and tried to get that hill there, we always called it (inaudible) hill (inaudible) for years and department of Oregon wouldn't take care of it, nobody would listen. Their motor home come down and crashed into the bank before the school bus run off to avoid hitting the school bus and after that it got sanded real regularly.

R. Yost: This was quite a few years ago, there was a gopher hole right under the road and it caved in and one spot had a hole about this big so I called the County up and told them there was a hole out there and they got me, I showed them where it was and they said okay and they acted like they weren't going to fix it, and I had a stick in it so, I didn't have a post, I just had a stick in case somebody hit it, and there were quite a few guys that hit that hole and I called them up and they said they weren't going to do anything and I said well I don't care if you fix it or not I know where the hole is but the other guys don't. They finally come out and fixed it, but I was surprised, they said we don't care.

Judge Joyce asked for testimony from the Applicant.

Harold Bruning handed out a packet to the Court members; these documents will be incorporated into the Planning Department file. The Court individually reviewed the documents.

Harold Bruning: My name's Harold Bruning, 1113 Stateline Road. (Mr. Bruning read from his prepared statement.) There are three major concerns that Donna Shenk in her appeal to the approved decision of the board. I think we've satisfied all three of these. Liberalizing of the zoning law. The Brunings are in no way trying to change the zoning laws of Malheur County. The request that has been made aligns with these current laws and within the parameters of the existing laws. The agricultural use of the Bruning parcel will not change from this portion. The number of acres farmed will neither decrease or increase. The farming of a certified organic alfalfa and lavender

will continue as currently being done. When the Brunings moved here in 2005, the intention always was to build a new residence on this piece of land and now they are in a position to improve the land in this way and time. Number two. Public safety network: the road maintenance, fire, law enforcement, used by this new property will indeed be supported by Malheur's network, and will be supported by a payment of taxes of the new residence. If the taxes assessed by the county do not cover the cost of the services provided, this is a different issue entirely, and should be addressed at the governmental level, not at the expense of one single family. Wildlife and conservation: It is very important to the Bruning family. The entire 142.68 acres that the Brunings own are certified organic. The farming of the Bruning ranch is done with the intent and a purpose to have the most limited impact on wildlife. Below is an attestation in support of the proposed division of the Bruning property at 1113 Stateline Road.

If you turn back to the page, the map from GPS, you can see that Donna Shenk's house is approximately 2.3 miles from the 1113 Stateline Road. There is also concern in her letter of Desert Glen and Stateline being a corner or an intersection that you cannot see. If you turn to the next page you'll see that there is a 53-foot haystack hay truck on the corner and this is about, not having the footage down, about a quarter of a mile away from this truck right here, you can see it clearly on Desert Glen going to Stateline. If you go to the next page you can see that David Tiffany, who is the head of the County road condition, has approved this house (inaudible) road, said there won't be no objection. The next one is Adrian Fire Department; he says that there will be no problem either. And then you go to South Board of Irrigation; and John Ellis said there would be no problem. So, I think that we have tried to cover all the bases that the law allows us to do and that's why it was probably passed the first time. That's all I have.

Judge Joyce: So, what's the eight minutes for on this first map?

Deborah (Debbie) Bruning: That's how long it takes to get from the proposed home site to Donna Shenk's house down Desert Glen Road. And, from the proposed house site, we would never, I would not say never, but you'd wouldn't go that way to get, exit to go to town, you would go, because we're only like 200 yards to Stateline Road which is then a paved road which you would take to go into town. The problem that she's worrying about with the road conditions isn't going to be affected because, like I say, we're only 200 yards to the Idaho border, about 200 yards from where the new home site's going to be, and that's on Desert Glen.

H. Bruning: There's absolutely no reason for us to go a gravel road all the way out; traffic goes out Stateline Road and goes to Homedale, or up the highway to Ontario.

E. Evans: For my staff report can you tell me who these signatures are?

D. Bruning: The first one is Nathan Brown, he lives at 1039 Stateline Road.

E. Evans: And then is it Betty Johnson?

D. Bruning: Yes, Betty Johnson, she's the bordering neighbor to the northeast. That one is Debra Greco and David Greco is the next one, they are in Adrian.

Court staff member: What's the third one, I'm sorry, after Betty?

D. Bruning: That's Clint Nelson, and they're on Succor Creek Road.

E. Evans: Then Miller, David Miller?

D. Bruning: That's Machen. They are in Adrian. And then Deborah Machen is in Adrian. The last one is Sharon Atkins, she borders the property straight to the south. Her property borders ours to the south.

(Names of persons who signed the Bruning document were: Nathan Brown, Betty Johnson, Clint Nelson, Debra Greco-Machen, David Machen, and Sharon Atkins.)

H. Bruning: Any questions, other questions?

E. Evans: I did go ahead and put that up there. Right in the south, in the middle is the Bruning property. I'm not sure if the Shenks are on there or not or if I have to zoom out a lit bit.

(The Court members and those present reviewed a map of the property online.)

Commissioner Hodge: Can you point to that area?

E. Evans: This is the Brunings. Their proposal is two non-farm partitions. One of them is here, this is the existing house this little dot here.

Judge Joyce: That's Succor Creek that runs right through the bottom end.

David Shenk: This is Donna Shenk's residence here.

Judge Joyce: Okay, so that fits with this map, right?

H. Bruning: The Shenk map yeah. One is from the Google Map Road, MapQuest, and then this one right here is off (inaudible)

E. Evans: Okay, so this is the existing house. They are going to do a non-farm partition that is going to include 5 acres here and then this unfarmed ground with no irrigation

Commissioner Hodge: So where is the new house going?

multiple people speaking at once

H. Bruning: On the knoll right there.

E. Evans: But then this bottom part is going to be about 27 acres.

Judge Joyce: Where do you live Ronney? Where's yours?

H. Bruning: You'll have to zoom out a little bit.

R. Yost: Lonesome Road and Desert Glen.

Commissioner Hodge: So how deep are you going to have to go on your well?

H. Bruning: Our well right now is around 83 feet; our water table is at 17 feet.

Commissioner Wilson: That's pretty good.

H. Bruning: Yeah, we get about 12 gallons a minute.

Commissioner Hodge: Is it good drinkable water?

H. Bruning: We use it, I don't know if it's good.

multiple people speaking at once

Judge Joyce asked for rebuttal testimony.

Donna Shenk: It's just the general thing, if everybody can get it set aside to build a house on the knob somewhere, we farmers historically, it's been in the newspapers, the conflicts that occur between residential housing and farming. It just doesn't work. And like I say, I'm concerned also about habitat for the desert wildlife which is very fragile.

Judge Joyce asked for response from Brunings.

H. Bruning: I am concerned the same that you are about wildlife, that's why we are certified organic; we don't spray, we don't do anything on our property, we maintain it the best that we can. There's a concern that people have about farming, me being a farmer I kind of know where to go with this, they're concerned about wildlife but then a perfect example of that is, this is for your own personal, I don't think it has anything to do with our goal here, but their own personal is that then they'll farm out, and the farmers now a days don't have 100 people that come over and help them on the farm, they have a swather that does 32 miles an hour; no wildlife will get out of the way, nothing. And they have combines, they have all this other stuff that people say they're concerned about the wildlife, if you're concerned about the wildlife that's what you've got to stop. In the old wagon days when they had the horse and little sickle bar animals got out of the way.

Donna Shenk: You're right about that. I've seen more pheasants this year than I've seen for a long, long time.

Judge Joyce asked for staff comments.

E. Evans: I do have a couple of things. Mr. Shenk had some concerns regarding the legalities and possibly going against our plan. ORS 215.263(5) is actually what allows for non-farm partitions; they pay ten years of back taxes, they can do it one time for a parcel, but statute allows for this to happen. I wouldn't have put this in front of my Planning Commission if it wasn't legal. ORS 215.284 actually allows for non-farm or non-resource dwellings to be placed on the property, I could be wrong on that second statute, but allows for the placement of these non-farm dwellings; that actually might be dwellings in conjunction with farm use though. The second thing, there was no comment from Oregon department of Fish and Wildlife (ODFW); this isn't an area of critical wildlife or fish habitat.

Commissioner Hodge: Not in the middle of sage hen habitat and stuff like that?

E. Evans: Right. Our Comp Plan spells out that we don't do these types of things in critical wildlife habitat. This area hasn't been designated critical for anything. Also, our Comp Plan and what state law allows is reasonable conditions to be applied towards concerns and whatnot. One of the concerns that I've heard quite a bit is the agricultural versus non-agricultural uses. This actually maintains Exclusive Farm Use (EFU) and possibly Exclusive Range Use (ERU) so it has that underlying zone designation still. Both of these new non-farm dwellings, as a condition of approval from the Planning Commission, has to record on their deed the Right to Farm Statement and saying basically myself and my heirs and successors cannot sue anybody for doing normal agricultural practices.

Judge Joyce closed the hearing and stated that no further public testimony could be heard unless a continuance or request to leave the record open was received; no request was made.

Judge Joyce asked for deliberation.

Commissioner Wilson: I've got to commend you Mrs. Shenk you write well; kids nowadays can't write anymore. I mean mine's not as good as yours and my mom was a school teacher so she used to get on me. I understand her concerns. I know from my real estate background stuff, they met the criteria as far as being over, that parent parcel ended up you had to be over 80 acres that was left, you can split off two parcels. This one is not creating a new house, it's already there on the one parcel. I don't always agree with it but on this one they're not losing any farm ground, irrigated farm ground, or they're not gaining any either but it's not losing any either. This rule is pretty restrictive, and the one thing I wanted to say, Oregon has a land use plan, and my contention is it's one size fits all. I don't know why we're the same as the cranberry growers down at Bandon or in Portland or somewhere but this is what we have and there's a reason we don't look like Idaho because of these rules; there is some development but you've got to have the right circumstance

just to find a place to build on, there's not very many places out in the county you can just go buy and build on. I didn't see any, you guys are well aware, it's just like my place, once you're over five miles from a fire department your rates going to be higher, it doesn't matter what end of the county you're in; that's the fire insurance. None of the road districts, the irrigation, nobody had any complaints so I don't think another house is going to overburden and I don't know how we justify it, how we would try to have to say that it's good for the whole county; I don't think it hurts it, I don't know how it would. I think they have the right, as long as they follow the rules, they can build a house out there as far as I'm concerned.

Commissioner Hodge: I think the Planning Commission acted on it and they were supplied with all the information, they looked at it and they analyzed it and they discussed it. And with just what Commissioner Wilson's saying, my decision is to uphold the Planning Commission decision.

Judge Joyce: And this hearing was basically to give Mrs. Shenk an opportunity to speak, which she didn't feel she had the last time. And after hearing and reading all this I would uphold the Planning Commission's decision based on the fact that it was unanimous and they reviewed it probably as close as we have today.

Commissioner Wilson moved to uphold the Planning Commission decision to tentatively approve the conditional use application for two non-farm partitions and two non-farm dwellings. Commissioner Hodge seconded and the motion passed unanimously. An order will be prepared for the Court's approval at its next meeting.

COURT ADJOURNMENT

The meeting was adjourned.