

MALHEUR COUNTY COURT MINUTES

January 25, 2017

County Court met with Judge Dan Joyce presiding with Commissioner Don Hodge and Commissioner Larry Wilson present. Staff present was Administrative Officer Lorinda DuBois and County Counsel Stephanie Williams.

Also present was Larry Meyer of the Argus Observer, John Braese of the Malheur Enterprise, and Watermaster Ron Jacobs.

SECOND AMENDMENT PRESERVATION ORDINANCE PROPOSAL

Citizen Bruce Bond met with the Court and presented a Second Amendment Preservation Ordinance for the Court's consideration. Also present were citizens' Brian Bond, Ron Pressley, and Ken Schwabauer. Coos County Citizen Rob Taylor was also present telephonically. Bruce Bond explained that he was asking the Court to consider an ordinance that would help preserve second amendment rights; two years ago Oregon passed SB (Senate Bill) 941. When the bill was passed many counties and sheriff's refused to support or enforce the law. However, after the recent elections and upon taking an oath of office to uphold the Oregon Constitution, the Governor immediately established an Executive Order prohibiting state employees from having a licensed firearm for self-defense on all property, facilities owned, leased, rented, or otherwise occupied by the Oregon State Government; this includes grounds, buildings, parking structures, lots, vehicles, and other equipment and any site an employee enters on behalf of the employee's employment with Oregon State Government except for an employee's own home. This policy extends to all employees including limited duration, temporary employees, board and commission members, volunteers, and others working in an agency. The proposed ordinance is a way to begin to push back against the encroachment of the State Government on the Second Amendment Rights and the inherent rights to a firearm as stated in the Oregon Constitution.

Rob Taylor explained that the State of Oregon passed SB 941 which is not only a background check bill but is also a gun registration bill because every gun that goes through a transaction now has to be registered during the purchase. Mr. Taylor explained this is a problem with SB 941 because most guns that are in the communities today are not registered because they are passed down from one generation to another generation; and there is a segment in certain parts of the state that wants to take away our guns. Mr. Taylor further explained that Oregon is a Home Rule state which means that counties and cities can enact an ordinance that is equivalent to state law. Mr. Taylor reviewed the proposed ordinance: Section 2 says the Second Amendment Preservation Ordinance preserves the right of the people of, on and in Malheur County to keep and bear arms as originally understood, in self-defense and preservation, and in defense of one's community and country; and to freely manufacture, transfer, sell and buy firearms, firearm accessories and ammunition, which are designed primarily for the same purposes. Section B of the proposed ordinances reviews the rights of the people that are protected by the Constitution of the United States and the Oregon Constitution.

Citizen Derek Chamberlain joined the session.

Mr. Taylor continued reviewing the proposed ordinance and reviewed Section C which says: Therefore, any regulation of the right to keep and bear arms or ancillary firearms rights that violate the Second, Ninth, or Tenth Amendments to the Constitution of the United States of America, or Article 1 sections 27 and 33 of the Constitution of the State of Oregon, as articulated herein, shall be regarded by the people on and in Malheur County as unconstitutional; a transgression of the Supreme Law of the Land and its spirit of Liberty, and therefore by necessity *void ab initio* (Latin for dead on arrival).

And, Section D reads: The people on and in Malheur County do resolve by this instrument that the Malheur County Government shall not authorize or appropriate government funds, resources, employees, agencies, contractors, buildings, detention centers or offices for the purpose of enforcing any element of such acts, laws, orders, mandates, rules or regulations, that infringe on the right of the people to keep and bear arms. Mr. Taylor explained that he believes this is possible as Oregon is a Home Rule state and cities and counties have the authority to pass laws that are equivalent to state laws. Mr. Taylor reviewed the "Oregon Sanctuary State Law" and explained that most Oregon county sheriff's offices adhere to an Oregon law (ORS (Oregon Revised Statute) 181.850) enacted in the 1980's that prevents local law enforcement from enforcing federal immigration laws. Mr. Taylor explained that part of the proposed second amendment ordinance is based on this state immigration law which allows the state, county, and city law enforcement agencies to not dedicate any monies or resources to uphold federal immigration laws. Mr. Taylor said the proposed second amendment preservation ordinance does the same thing as the Oregon Sanctuary State Law but only at the county level rather than the state level. Wallowa, Wheeler, Coos, and Curry Counties have enacted Second Amendment Preservation Ordinances. Further, Section E of the proposed ordinance reads: It shall be the duty of the Sheriff of Malheur County to determine as a matter of internal policy and county concern per ORS 203.035, whether any federal, state or local regulation affecting firearms, firearms accessories and ammunition, that is enforceable within his/her jurisdiction, violates the Second, Ninth, or Tenth Amendments to the Constitution of these United States, or Article 1, sections 27 and 33 of the Constitution of the State of Oregon, as articulated herein. Mr. Taylor explained that this provision allows the local sheriff to determine if something is constitutional or unconstitutional based on his own discretionary authority that he already has in the state of Oregon; and that authority allows him and allows the county through the ordinance not to fund any of those state or federal mandates. The proposed ordinance does not have any effect on retail sales. Mr. Taylor said he believes that this ordinance is very sound.

The Court thanked those present for the presentation and took the matter under advisement.

Mr. Braese and Mr. Jacobs left the meeting.

COURT MINUTES

Commissioner Wilson moved to approve Court Minutes of January 18, 2017 as written. Commissioner Hodge seconded and the motion passed unanimously.

CROSSING PERMIT

Commissioner Hodge moved to approve Crossing Permit #03-17 to Idaho Power to replace a pole and install new capacitor on Stage Road #1011. Commissioner Wilson seconded and the

motion passed unanimously. Original permits will be kept on file at the Road Department.

ROAD DEPARTMENT

Road Supervisor Richard Moulton met with the Court. Mr. Moulton explained that the estimate to repair one of the graders is \$33,472 (rebuild transmission). The grader has 13,000 hours on it. Mr. Moulton explained that he would rather replace the grader than repair it. The Court agreed.

ASSESSOR'S OFFICE

Assessor Dave Ingram met with the Court. Mr. Ingram explained that the Assessor's Office will be entering into an IGA (Intergovernmental Agreement) with Building Codes Division for the transfer of mobile home ownerships system. It will not change the current process but will utilize the State's E-Permitting system. Mr. Ingram has worked out earlier concerns he had about deposits and transactions for other jurisdictions with the State and is comfortable moving forward with the IGA.

GLYPHOSATE TOLERANT CREEPING BENTGRASS (GTCB)

Jerry Erstrom met with the Court to further discuss Glyphosate Tolerant Creeping Bentgrass (GTCB). Mr. Erstrom provided a history on the Bentgrass issue. Mr. Erstrom started pursuing the GTCB matter as chairman of the Weed Board in February 2016 and with the Weed Board's support started a counter movement to Scotts Co. memorandum of agreement with USDA-APHIS (United States Department of Agriculture Animal and Plant Health Inspection Services) as well as Scotts Co. petition to deregulate. The Weed Board had several expectations and responsibilities of Scotts Co. pertaining to Scotts negligence in allowing the escape of invasive Round Up Ready Creeping Bentgrass into the Malheur County ecosystem (see instrument [#2017-0243](#) for the list). Later Scotts, Paulette Pyle, and Farm Bureau Representative Dan Anderson expressed concern that Mr. Erstrom's association with the Center for Biodiversity could have a devastating effect on agriculture in Malheur County. Scotts also told the Court that there were 425 plants treated this spring and the grass posed very little risk to Malheur County. Mr. Erstrom noted that by the end of the year they had treated over 2000 sites. At this time, the Court gave authority for Dan Anderson and Farm Bureau to negotiate on behalf of the County with Scotts. Since then there have been a lot of meetings but nothing has happened. Mr. Erstrom's research has shown that Monsanto and Syngenta together donate close to 30% of the Oregon Farm Bureau's annual budget (Monsanto and Scotts developed the creeping bentgrass.) Mr. Erstrom again met with the Weed Board and with their support continued to work to get something done (except for working with the Center for Biodiversity). In August 2016 Mr. Erstrom contacted Senator Merkley's Office and requested assistance, shortly after APHIS released an EIS (Environmental Impact Statement) closely followed by a Final EIS. Mr. Erstrom was then contacted by the Willamette Valley seed growers; and these growers are extremely concerned about the bentgrass issues. Exporters of hay say that once it is found out that the bentgrass is growing in our hay fields it will be the end of the export market. The seed growers and Mr. Erstrom met with Lisa Hanson at ODA (Oregon Department of Agriculture) and put together a proposal to present to Scotts; the proposal presented to Scotts was for Scotts to put \$4 million into an escrow account to be managed by the Malheur County Weed Advisory Board to hire a contractor to control the bentgrass for future years to come. Mr. Erstrom has since been working with Senator Wyden's Office; Senators Wyden and Merkley recently sent a

letter to APHIS requesting they exercise their discretionary authority to reverse the deregulation decision.

Mr. Erstrom is requesting the Court support his continued efforts to put pressure on Scotts through Senator Wyden, Senator Merkley, and other political commodity groups. Mr. Erstrom noted that the MOA (Memorandum of Agreement) between Scotts and USDA specifies "regulated" GTCB; and now it has been deregulated. Commissioner Wilson commented that all the parties need to work together as a county. However, the constituency is divided. There is much concern with Mr. Erstrom's association with Center for Biodiversity. Mr. Erstrom stressed that Center for Biodiversity's only interest in Malheur County is bentgrass. Mr. Erstrom indicated he personally believes litigation is going to be necessary. The Weed Board is supportive of efforts to make Scotts do more; however they are hesitant about associating with Biodiversity. Mr. Erstrom requested the Court not immediately sign anything presented from Scotts (if Scotts does present anything).

Mr. Chamberlain commented that he believes there will need to be litigation and that someone needs to take the lead or Biodiversity will do it; he also thought that Farm Bureau would be the logical lead but they are not doing it. The bentgrass working group has indicated they do not want lawyers involved.

EMERGENCY SERVICES UPDATE

Lieutenant Rob Hunsucker met with the Court. Lieutenant Hunsucker requested funds for the purchase of additional sandbags (25,000 bags, approximate cost \$6500). There has not been a federal disaster declaration. Oregon did declare a state of emergency, however there is no state funding for this type of emergency. Communities have been sharing resources and tracking costs just in case federal funds become available.

Commissioner Hodge left the meeting.

The river water level has gone down and approximately half of the ice flow is gone. Damage assessments in the private sector need to be obtained. The State must incur a minimum of \$5.5 million in public damages before it can request a federal disaster declaration; the County must show a minimum of \$113,000 in public infrastructure damages.

Christian Disaster Relief Volunteers has been assisting the senior and disabled with snow removal from roofs in Malheur County.

Judge Joyce moved to approve the purchase of additional sandbags with funding for their purchase to come from Contingency. Commissioner Wilson seconded and the motion passed.

COURT ADJOURNMENT

Court was adjourned.