

MALHEUR COUNTY COURT MINUTES

March 11, 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, County Counsel Stephanie Williams, and Surveyor/Engineer Tom Edwards. 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 #[2020-944](#)

PUBLIC HEARING – ORDINANCE NO. 223

Present for the first public hearing to consider Ordinance No. 223: An Ordinance for a Post Acknowledgement Plan Amendment (PAPA) to Include a Portion of Tax Lot 1500 Map 17S47E19 of the Malheur County Assessor's Office as a Significant Aggregate Site to Malheur County's Comprehensive Plan, Goal 5, Mineral and Aggregate Inventory was Planner Eric Evans, Planning Management Assistant Tatiana Burgess, Rural Road Assessment District No. 3 Supervisor Karl Shrum, and Applicant's Attorney Michael Lilly. Notice of the hearing was published in the Argus Observer. The Applicant is Rural Road Assessment District No. 3; Property Owner is the Larry and Judy White Trust. Planning Department File No. 2019-12-010. A hearing was held before the Planning Commission on February 27, 2020 and the Planning Commission recommended that the site be placed on the Goal 5 Resource Inventory.

Judge Joyce opened the hearing and asked for any abstentions or conflicts of interest from the members of the Court; there were none. Judge Joyce asked for any ex parte communication or site visits to be divulged from the members of the Court; Commissioner Wilson stated he had driven by the site. Judge Joyce asked for any objections to the jurisdiction or to any members of the County Court hearing the matter; there were none.

Judge Joyce stated: Failure to raise an issue may preclude raising it before LUBA (Land Use Board of Appeals). Failure to raise constitutional or other issues relating to 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: Up on the screen there is the parcel that we're talking about. The two fields to the east, the lighter green, is the proposed area – the approximately 13.4 acres. We held a hearing in front of the Planning Commission February 27th on this matter for the conditional use permit; they unanimously approved the conditional use permit and they unanimously recommended that the Court adopt this ordinance for the post acknowledgement plan amendment.

Judge Joyce asked for proponent testimony.

Michael Lilly: 121 SW Morrison Street, Suite 1100, Portland, Oregon, 97204. Thank you, commissioners, for taking the time to hear our presentation; I also want to thank Eric Evans, he did a great job in doing the staff work and putting this together, and the Planning Commission, they were very attentive and had some good questions for us and went through a lot of detail. Karl

Shrum is with me, he's the Supervisor for Rural Road District No. 3; he's the on-the-ground guy who does the stuff. So, very quickly, Rural Road District No. 3, you may not be aware of its exact boundaries, but it maintains 250 miles of road, public road, in the northeast part of Malheur County. This site is about the geographic center of Rural Road District No. 3; that's obviously advantageous for us. This site also meets the main criteria you're looking at today; it's really a geology issue – is there enough rock there to meet the significant standard and is it a high enough quality to make good base rock (inaudible); and the answer to those questions is Yes. We had a geologist look at it, tested it, took samples, and it looks great.

So, I'm just going to answer a few questions. You may be wondering, I mean it's a legitimate question, why are you just looking at these two places here, not this whole tax lot. Because the whole tax lot has the rock; it's not just these two. And the reason is fairly simple; we're going to do this in stages. What we don't want to do is take a big chunk of land out of agricultural production and just make it a huge scar on the land. What we're going to do is we're going to mine in stages; we're going to mine a portion of it, reclaim it, mine another portion, and reclaim it. This is mostly flat, it's not completely flat but it's mostly flat, and there's about ten feet of overburden on it and so that means we have to scoop that out. Well we decided to make lemonade from the lemons there, that ten foot of overburden is going to be our berm. There are some houses down here and over here, houses over here, houses here - that ten feet of overburden is going to be piled up into a berm which will cut down on the dust, it will cut down on the noise, and it will eliminate the visual impact. We'll stay out of the water; we're not going to go into the water table, so we're going to have pretty minimal impact on the surrounding community.

If you're worried about traffic I will tell you there are two (inaudible) points to think about on traffic. First of all, this is going to be rock for the use of Rural Road District No. 3 only; we're not going to sell it to other people, this is just for the District. So that means there's a relatively small amount of it. Last year, Karl tells me, that the entire year their crushing took only a week. So, it's not like that crusher's going to be operating out there for hundreds of days a year; it's a week. Their busy time when they do chip seal also lasts about a week and that's when the busiest traffic is. In order to reduce that traffic somehow, in somewhat, we're going to have stockpiles both to the north and the south so that we don't have to haul all the rock out of here during that one busy week of chip seal in June to reduce the traffic impact.

Commissioner Hodge: How high do you think that berm would be? A rough idea.

Mr. Lilly: About ten feet. We actually have an engineer that's working on that right now. That particular kind of detail is going to be driven in part by Department of Geology and Mineral Industries because they require us to get another permit. Your Planning Commission, rightfully so, made our permit conditioned upon getting a permit from DOGAMI (Department of Geology and Mineral Industries). DOGAMI requires us to go in with engineering drawings that show here's what we're going to cut, here's how high it's going to be, here's how we're going to put it back. So that's going to be a very detailed process with them coming up.

Commissioner Hodge: What kind of a life do you figure you'll get out of those two pieces of property?

Karl Shrum: Honestly,

Commissioner Hodge: Evidently years.

Mr. Shrum: Twenty years; we crushed 20,000 ton and I expect it to last us probably five years at the rate that we use it and that's shoulder work, that's pit run, that's everything.

Mr. Lilly: Knowing all that background, it didn't make sense for us to come in now and apply for permits for that whole tax lot, alright, because if we had, I think we'd have raised a lot of fears, perhaps legitimately, that we were going to go in with this huge mining operation, which we're not doing. And if you're not going in with a huge mining operation why are you applying for a permit for the whole tax lot, right? So, we decided let's cut it down to a logical smaller piece. So that's the story behind not applying for the whole tax lot.

Commissioner Hodge: When you reclaim that, will they be able to go back to farming it?

Mr. Lilly: That's the plan.

Mr. Shrum: That's exactly the plan. That's why we're going to kind of leapfrog, go behind, take that reclaim, top soil and all that, so we can keep it farmed.

Commissioner Wilson: Was there much opposition?

Mr. Lilly: No.

Mr. Evans: Nobody opposed it.

Mr. Lilly: As a matter of fact, the fellow who is in this house right here, who has stables of horses, came and testified in our favor. And he said, initially, he said, "Well I always feel a man has a right to do what he wants with his property, but I had some doubts about this, but then I came to the hearing and I listened to the proposal that they made and I'm really happy with it so I support their application". That was this guy.

Commissioner Wilson: The reason I ask is because when I was on the Planning Commission you usually get a lot of opposition and it always sounds great but most gravel pits you look at around here are pretty shabby looking; they don't...

Unknown: Maintain.

Mr. Lilly: I don't want to throw stones

Commissioner Wilson: Yeah, they look horrible, nothing but weeds and stuff and so hopefully the berm looks nice.

Mr. Evans: One thing that has changed these days is that DOGAMI does require reclamation, so some of these older pits they weren't opened at a time where they needed to have the reclamation so that's why you see all those scars.

Mr. Lilly: It was back in the 70's or, and once you start on a site, and you may have a quarter of the site mined, if you started to mine back in the early 70's, you were grandfathered for the whole lot and eventually they're probably going to have to reclaim that, but not until they finish the whole

thing. We decided not to try that, we wanted to give everyone confidence that we were going to have a friendlier approach.

Commissioner Wilson: Okay.

Mr. Lilly: So that's all I have to say unless you have questions.

Commissioner Wilson: I don't.

Judge Joyce: I don't.

Commissioner Hodge: No, I think you answered mine.

Mr. Lilly: Okay.

Judge Joyce asked for further proponent testimony; there was none.

Judge Joyce asked for opponent testimony; there was none.

Judge Joyce asked for public agency testimony; there was none. Mr. Evans stated there was none at the Planning Commission hearing.

Judge Joyce asked for a Staff Summary.

Mr. Evans: This is the first of two hearings; we'll have a hearing also on March 25th, so this is just the first hearing; there's no action to be taken today.

Judge Joyce asked for any other comments. There were none.

Judge Joyce closed the hearing. The second hearing is March 25, 2020 at 9:00 a.m.

Juvenile Department Director Susan Gregory joined the meeting.

COURT MINUTES

Commissioner Hodge moved to approve Court Minutes of February 26, 2020 as written. Commissioner Wilson seconded and the motion passed unanimously.

CROSSING PERMITS

Commissioner Wilson moved to approve Crossing Permit #06-20 to McElroy Ranches, Inc. to lay irrigation mainline on Stage Road #1011; Crossing Permit #07-20 to Brent Ishida/Eddie Kinkade to bury irrigation pipeline on Russett Road #834; Crossing Permit #08-20 to David Belnap to replace existing irrigation pipe on Kochsmeier Road #509; Crossing Permit #09-20 to Idaho Power Company to install a pole and transformer for a new pump on Miller Road #833; Crossing Permit #10-20 to Gus Bezates for irrigation line on Jacobsen Gulch Road #771; Crossing Permit #11-20 to David Belnap to install irrigation pipe on 3rd Ave E #1076; Crossing Permit #12-20 to David Belnap to install irrigation pipe on Kochsmeier Road #509; Crossing Permit #13-20 to Track Utilities, LLC for work on Boat Landing Road #915; and Crossing Permit #14-20 to Warrington

Irrigation for irrigation pipe on Oak Road #1066. Commissioner Hodge seconded and the motion passed unanimously. Original permits will be kept on file at the Road Department.

ROAD ACCEPTANCE

Surveyor/Engineer Tom Edwards presented a road dedication on a partition plat. Commissioner Wilson moved to accept road dedication of a portion of Cow Hollow Road on Newell and Wendy Cleaver's Partition Plat # 20-04. Commissioner Hodge seconded and the motion passed unanimously. See instrument #2020-942

LOCAL MENTAL HEALTH ADVISORY COMMITTEE

County Counsel Stephanie Williams presented draft bylaws of the Malheur County Community Mental Health, Local Alcohol and Drug and Development Disabilities Advisory Committee; and a draft membership roster. The Committee was first established in 1999 and active until approximately 2013. The Committee needs to be reestablished and reconvened; Ms. Williams has been working with Lifeways to develop the bylaws, a tentative agenda for the first meeting, and a roster of members. Members proposed include a representative from Ontario School District, Malheur Education Service District (ESD), the Juvenile Department, local law enforcement, and others. It is proposed to hold the first Committee meeting in April as part of a County Court meeting; Lifeways will give a presentation to include responsibilities of the Committee. In addition to the local mental health advisory committee, statute also requires a local alcohol and drug advisory committee and a community development disabilities programs issues advisory committee. It is proposed that all three committees be combined into one; to be known as the Malheur County Community Mental Health, Local Alcohol and Drug and Development Disabilities Advisory Committee. By consensus, the Court approved the proposals as presented and authorized staff to move forward with contacting the proposed members and organizing the first committee meeting to be inclusive of a County Court meeting.

Ms. Gregory left the meeting.

PLANNING COMMISSION

Planner Eric Evans explained that Planning Commission member Gary Pierson recently resigned. Clark Forsyth was contacted and is willing to serve on the Planning Commission. Commissioner Wilson moved to appoint Clark Forsyth to the position recently vacated by Gary Pierson on the Planning Commission. Commissioner Hodge seconded and the motion passed unanimously.

Mr. Evans also explained that he had implemented a policy that provides for recognition and appreciation of Planning Commission members, who are unpaid volunteers, based on years of service.

NYSSA INDUSTRIES PROPERTY

Ms. Williams requested direction from the Court in regards to the Nyssa Industries property. Commissioner Wilson abstained from the discussion. The current addendum to extend the closing date under the purchase and sale agreement for the property expires March 31, 2020. An appraisal of the property has not been ordered. Commissioner Hodge moved to authorize Judge Joyce to sign a letter to Nyssa Industries requesting another extension to the closing date. Judge Joyce seconded and the motion passed. Commissioner Wilson abstained.

7TH AMENDMENT – IGA #159173

Commissioner Wilson moved to approve Seventh Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Mental Health, Addiction Treatment, Recovery, & Prevention, and Problem Gambling Services Agreement #159173. Commissioner Hodge seconded and the motion passed unanimously. The amendment increases funding for Alcohol and Drug (A&D) Service Element (SE) 66 to implement project HB4143 Prime Plus Peer Project. The original IGA (Intergovernmental Agreement) is recorded as instrument # 2019-2611. A copy of the amendment will be returned for recording.

Ms. Williams noted that a draft contract for the school based mental health services (MHS 13) had been sent to Valley Family Health Care for their consideration; it is unknown at this time if Valley Family can fulfill the obligations of the service element set out in the State contract or how long funding from the State may be available for the program after December 2020.

PUBLIC HEARING – SUPPLEMENTAL BUDGET

Judge Joyce opened the public hearing for consideration of Resolution R20-08. Notice of the hearing was published in the Argus Observer. 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. No public comments were received. Judge Joyce closed the hearing. Commissioner Wilson moved to approve Resolution No. R20-08: In the Matter of Fiscal Year 2019/2020 Supplemental Budget by Resolution Under Local Budget Law ORS 294.471. Commissioner Hodge seconded and the motion passed unanimously. The supplemental budget allocates Cash on Hand and interest funds to be used for the Wolf Depredation program. See instrument #[2020-945](#)

BUDGET TRANSFER RESOLUTION

Commissioner Wilson moved to approve Resolution R20-09: 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 Wolf Depredation fund. See instrument #[2020-946](#)

COURT ADJOURNMENT

The meeting was adjourned.