

MALHEUR COUNTY COURT MINUTES

August 11, 2021

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 Ron Jacobs present. Staff present was Administrative Officer Lorinda DuBois. Members of the media, public and staff were present electronically. Notice of the meeting was emailed to the Argus Observer, Malheur Enterprise and those persons who have requested notice, and posted on the Courthouse bulletin board. The meeting was audio recorded. The agenda is recorded as instrument # 2021-4105

COURT MINUTES

Commissioner Hodge moved to approve Court Minutes of July 28, 2021 as written. Commissioner Jacobs seconded and the motion passed unanimously.

SUB-GRANTS WITH VALLEY FAMILY HEALTH CARE AND SNAKE RIVER PEDIATRICS

Commissioner Jacobs moved to approve Sub-Grant with Valley Family Health Care, Inc for CARES Act/CoronaVirus Relief Funds Pursuant to State of Oregon Grant Agreement Grant No. 2623; and Sub-Grant with Snake River Pediatrics PC, for CARES Act/CoronaVirus Relief Funds Pursuant to State of Oregon Grant Agreement Grant No. 2623. Commissioner Hodge seconded and the motion passed unanimously. Valley Family Health Care and Snake River Pediatrics will market, promote and encourage the COVID-19 vaccination and provide a culturally responsive, low-barrier access to COVID-19 vaccination, with a special emphasis on populations experiencing vaccine inequality or reduced vaccination rates; incentives for those receiving the vaccination may be made, such as gift cards with a value of \$25 or less. See instrument # 2021-4103 and 2021-4104

JUVENILE CRIME PREVENTION IGA - OREGON YOUTH AUTHORITY AND YOUTH DEVELOPMENT DIVISION

Commissioner Jacobs moved to approve State of Oregon Intergovernmental Agreement Juvenile Crime Prevention (JCP) Basic Services Agreement #14687 with Oregon Youth Authority; and State of Oregon Grant Agreement No. 15682 with Oregon Department of Education, Youth Development Division for High-Risk Juvenile Crime Prevention Services. Commissioner Hodge seconded and the motion passed unanimously. Funding for the 2021-2023 biennium shall not exceed \$93,468 for the Oregon Youth Authority IGA; and \$63,000 for the Youth Development Division IGA (Intergovernmental Agreement). Copies of the IGAs will be returned for recording

ORDER DESIGNATING NEWSPAPER - 2021 TAX FORECLOSURE

Commissioner Hodge moved to approve Order No. GO-06-21: In the Matter of the Designation of a Newspaper for the Publication of the 2021 Malheur County Tax Foreclosure List. Commissioner Jacobs seconded and the motion passed unanimously. The Argus Observer will be the newspaper of designation for the 2021 tax foreclosure. See instrument # 2021-4106

HEAT STRESS PREVENTION POLICY

Commissioner Hodge moved to approve Heat Stress Prevention Temporary Policy. Commissioner Jacobs seconded and the motion passed unanimously. OSHA (Oregon Safety Health Association) adopted temporary rules to address employee exposure to high ambient temperatures. Reasonable measures will be taken to protect employees from heat illnesses in compliance with the OSHA rules specific to the hazards of high and extreme heat. See instrument # 2021-4102

EOCA MEETING UPDATE

Judge Joyce briefly gave the Court members an update from the recent Eastern Oregon Counties Alliance (EOCA) meeting; EOCA will be authoring letters relating to the River Democracy Act and face coverings in schools.

PUBLIC HEARING - ORDINANCE NO. 228

Present for the second public hearing to consider proposed Ordinance No. 228: An Ordinance for a Post Acknowledgement Plan Amendment (PAPA) to include a portion of tax lot 3200 Map 16S47E of the Malheur County Assessor's Office as a significant aggregate site to Malheur County's Comprehensive Plan, Goal 5, Mineral and Aggregate Inventory were: Planner Eric Evans, Michael Hastings, and Dinah Lord. Present electronically were Mandi Hastings, Patty Dickinson, and Bill Downing. Notice of the hearing was published in the Argus Observer. The applicant is Darren Lee; Property Owner is Dallas Head. Planning Department File No. 2021-03-010.

Judge Joyce opened the hearing; asked that those testifying state their name and address for the record; and announced that the applicant would be allotted 10 minutes for his initial presentation and 5 minutes for rebuttal; and proponents/opponents would be allotted 3 minutes for testimony; and that all testimony and questions should be directed to or through the Judge – not directed to staff or witnesses.

Judge Joyce asked for any abstentions or conflicts of interest from the members of the Court and for any disclosure of bias or ex parte communications or site visits; Judge Joyce stated he had attempted to make a site visit but was unable to locate the property.

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

Judge Joyce stated: Oregon land use law requires several items to be read into the record at the beginning of this hearing. I will now read those items. The applicable substantive criteria upon which the application will be decided are found in Oregon state laws and rules as well as local code provisions which are specifically set out in the Staff Report and include OAR 660 Division 23 Section 3. 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. Failure for anyone to raise

an issue accompanied by statements or evidence sufficient to afford the decision makers and the parties the opportunity to respond to the issue will preclude appeal to LUBA (Land Use Board of Appeals) 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 of evidence sufficient to afford the decision makers and the parties an adequate opportunity to respond to each issue. The failure of the 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 or an action for damages to Circuit Court.

Order of proceedings: The applicant will be allotted up to 10 minutes for initial applicant presentation; the applicant may also present up to 5 minutes for final rebuttal. All others will be given 3 minutes each. Staff Report by the County. Applicant 10 minutes. Testimony in favor. Testimony in opposition. Staff comments. Applicant rebuttal 5 minutes. Close the hearing - No public testimony can be heard after this point; if a continuance is requested or a request to leave the record open it must be granted. County staff recommends a continuance rather than leaving the record open. And we shall deliberate when it's closed.

Judge Joyce turned the hearing over to Planning Director Eric Evans. Mr. Evans explained that those present electronically could mute/unmute by pressing *6 and asked for roll call of who was present telephonically.

The Applicant, Darren Lee, was not present electronically or in-person.

Mr. Evans: I don't really have a new Staff Report, it would be the same as last time.

Judge Joyce: Okay, that's fine, so it's in the record in other words.

Mr. Evans: It's in the record. And we are working on, well I can go over some of this new stuff, we are working on the findings for the Planning Commission. So, I did present you with a paper from our County Surveyor that actually defines what that legal description that Darren provided to us on July 28th, and so if you'll notice there is kind of an orange box to the northern, it kind of goes through where it says Buckhorn Road, that actually is what's defined, that very last sentence, where it says SE ¼ of the NE ¼ of Section 7. So that's what that's defined as. Tom did say, the Surveyor did say that he could probably call that a scrivener's error and instead of SE ¼ of the NE ¼ he thinks that it should say SE ¼ of the SE ¼ is what it should be. It is incorrect in that legal description but he didn't think that it was a huge deal. That's all I have.

Judge Joyce asked for testimony in favor of the application; there was none.

Judge Joyce asked for testimony in opposition.

Mike Hastings: 464 and 470 Jasmine Road. First of all, I just wanted to thank Eric and the Commission and everybody, Tatiana, everybody that's been involved with this for five months,

it's been a huge learning experience and I know that it probably was a little overwhelming, you know, it gets emotional sometimes, and so I just wanted to thank Eric, especially and everybody involved. The main thing that I wanted to talk about real quick is we were talking about these inadequacies of identifying location, quantity, and quality, and one thing that's never been discussed is that the landowner himself, Dallas Head, as far as I know, unless I'm mistaken, the only thing that we have from him is his signature on the conditional use permit, it's his signature and a date; that signature to my understanding hasn't been notarized, I've never seen any kind of a power of attorney, never seen a memo, he literally hasn't even testified in favor of this project that is taking place on his land. I mean, there's been no legal representation, nothing. I really find that strikes at the heart of location right out of the gate; it is his land we're discussing rezoning however many acres it ended up being, I was confused, you know, it's changed throughout the course, but we're literally talking about changing the zoning of an individual's land and all that we have is a single signature with no notary. So that was really just the final thing that I wanted to bring up and just depart from. The project really just seems like just a bad idea across the board and I have huge concerns about my water. I know without a doubt, when we bought our property we spent a lot of money with engineers to come out, we dug test holes, we know, we did soil samples on our property and we are downstream directly downstream of where he wants to dig and our water is 15, between 15 and 40 feet deep and that gravel, the water travels through the gravel that he wants to expose. So that's just kind of my final thing, again thank you for everything.

Dinah Lord: My husband and I live at 458 Jasmine Road. Just a quick, short little testimony today, thank you your honor, thank you commission members. The Goal 5 rule allows for protection of large significant aggregate sites. Protection means that the local comprehensive plan and code supports long-term mining operations on a site. The protection was not considered during a 1978 comprehensive plan and such, today's proposal and testimony to add this site cannot be mitigated in any way as additional residential and business development has occurred after the 1978 comprehensive plan. Goal 5 protection is achieved by placing conditions on new residential and business development that occurs near an aggregate mining site. Those conditions specify that new residential and business development except mining operations, it doesn't state that present landowners and businesses have to accept a new mining development. That comes to the heart of the matter. A lot of these homes were constructed prior to 1961 and new development has been allowed. So, Goal 5 cannot be, the location of Goal 5 in this area cannot be mitigated. I thank the Commission and your honor and the members for hearing our testimony today.

Patty Dickinson: 5120 Power Road. I just want to repeat just a small little paragraph of what I've said before. We have two wells that run simultaneously and with Darren even attempting to go through with this application it's going to jeopardize and I'm not going to allow that so I would like the board to strongly look at the homeowners. I will be right next door to his operation. I can't afford to have that water taken away from me so again, I've repeated this before and I thank you as a board for letting us all speak. Thank you.

The Applicant was not present so no rebuttal testimony was given.

Judge Joyce asked for Staff comments.

Eric Evans: I guess the one thing that I would say, after hearing, I think this is number five, hearing number five for me, I think a lot of it really kind of boils down to an email that I sent to Darren in March, so him and I's first contact was in November and we kind of went kind of back and forth about what he needed to provide. I sent him an email on March 22nd and I'll kind of read and summarize it, it says, Darren I am concerned that your application does not contain sufficient information in regards to Malheur County Code. The application is pretty sparse on information but it does have an answer in each of those sections and therefore I'll deem it complete. Honestly, I'm concerned the Planning Commission might deny it based on not having enough information. And then I explained to him that you'll have to wait six months before you can reapply pursuant to County Code but if that's your desire then let's do it is my email. I think that Planning Commission has found that the applicant didn't meet its burden. I mean, that's what I thought on the application when I first received it and my recommendation to you guys would be to follow the recommendation of the Planning Commission.

Commissioner Jacobs: Did he respond to that email?

Eric Evans: No, I can double-check that, let me double-check that. I think there was a response but I don't think it was directed towards the email I think it was, let me see,

Commissioner Jacobs: I was just curious if at that time he just wanted to move forward like you gave him the option of doing.

Eric Evans: So, he did say he'd defer to me on that and so at that point in time is when he actually provided the operations plan, after that point.

Commissioner Jacobs: Which was still insufficient?

Eric Evans: Yeah, I mean I don't think it provided still all of the information we needed.

Judge Joyce: And that's why the Planning Commission made the decision that they made – correct?

Eric Evans: Correct.

Judge Joyce asked for further comments before closing the hearing; there was none.

Judge Joyce: At this time with no other testimony we will close this public hearing and then go into deliberation.

Mr. Evans explained that he recommended the Court make a tentative decision and allow for Staff to draft findings and an order.

County Counsel explained that the Court could take the matter under advisement, deliberate and decide later. Or, the Court could make a tentative decision today and provide Staff with direction on what they needed to prepare.

Commissioner Hodge moved to tentatively uphold the recommendation of the Planning Commission to not add the site to the County's Goal 5 Mineral and Aggregate Inventory. Commissioner Jacobs seconded and the motion passed unanimously. Findings and an Order will be prepared for the Court's approval at a later date.

COURT ADJOURNMENT

Judge Joyce adjourned the meeting.

County Indoor Mask Requirement in County Buildings Policy Effective Friday, August 13, 2021 was recorded as instrument # 2021-4140