

MALHEUR COUNTY COURT MINUTES

November 13, 2019

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:01 a.m. in the County Court Office of the Malheur County Courthouse with Commissioner Don Hodge and Commissioner Larry Wilson present. Others present were Planner Eric Evans, Economic Development Contractor Greg Smith and his staff John Braese, public member Clayne Beck, and Pat Caldwell of the Malheur Enterprise. Notice of the meeting was posted on the County website, Courthouse public bulletin board, and emailed to the Argus Observer, Malheur Enterprise, and those persons who have requested notice.

SECOND PUBLIC HEARING - ORDINANCE NO. 219

Judge Joyce opened the second public hearing for consideration of Ordinance No. 219: An Ordinance Amending the Text of Malheur County Code Title 5 Chapter 2 Entitled Flood Control to Conform with Federal Floodplain Regulations and Oregon Specialty Codes. Notice of the hearing was published in the Argus Observer on October 13 and October 25, 2019. No written or oral comments were received. Mr. Evans explained the County's flood control provisions have not been updated since 1987 and changes are needed in order to comply with the minimum standards for participation in the National Flood Insurance Program and the Oregon Specialty Codes. Judge Joyce closed the hearing. Commissioner Wilson moved to approve Ordinance No. 219: An Ordinance Amending the Text of Malheur County Code Title 5 Chapter 2 Entitled Flood Control to Conform with Federal Floodplain Regulations and Oregon Specialty Codes. Commissioner Hodge seconded and the motion passed unanimously. See instrument # [2019-4142](#)

PUBLIC COMMENTS

Public member Clayne Beck explained to the Court that in July 2019 he had a bicycle accident on Vale View Road. Mr. Beck explained he was riding on Kochsmeier Road and turned right onto Vale View Road; unbeknownst to him, Vale View Road had been recently chip sealed and Mr. Beck fell and broke his hip. Mr. Beck explained there were no signs posted on Kochsmeier alerting travelers of the chip seal on Vale View Road. Mr. Beck made a claim to the County's insurance company and the claim was denied. Mr. Beck explained he wanted the Court members to be aware of the potentially dangerous situation for bicyclers and possibly motorcyclists also. Judge Joyce told Mr. Beck he would inform the Safety Committee of the matter.

County Counsel Stephanie Williams joined the meeting.

Mr. Beck left the meeting.

ECONOMIC DEVELOPMENT UPDATE

Economic Development Director Contractor Greg Smith and Staff John Braese met with the Court. Mr. Smith provided an update on the reload facility project. Mr. Smith explained it is important to understand that at this point in the reload facility project he (and staff) are trying to facilitate conversations that will lead to the development of a reload facility; each entity involved

has different requirements that must be adhered to. If it were a private development the developer would direct how they want the project to proceed forward; when you're utilizing public resources with many entities that have say in how the project proceeds forward it becomes an opportunity to facilitate how that's going to happen. The end goal is through the facilitation to move everyone to the center and to get the project completed.

Assessor Dave Ingram joined the meeting.

The shippers will be hosting a private meeting amongst themselves to determine an entity to create to negotiate what a lease agreement would be like with a third party operator of the reload facility. A third party operator has stated that it would be much more beneficial for shippers in the county and for the operator to have a single entity to negotiate with, rather than having multiple individual shippers all trying to negotiate a price and level of service. However, this does not stop any individual shipper from negotiating on their own. Union Pacific has also stated the same. Once the shippers determine if it is in their best interest to form a single operating entity, further conversations with a potential operator of the reload facility can take place as well as further negotiations with Union Pacific. The shippers have looked at the economics of the project and feel that the facility can operate at a level that will be beneficial to all of them; they feel that it will benefit the agricultural industry of the Treasure Valley.

Mr. Smith clarified that the Development Corporation will be the owner of the reload facility; the Development Corporation will lease the facility through a triple net lease to an operator; the operator will then negotiate with the entities that want to utilize the reload facility. There is nothing that would preclude any company or any commodity from negotiating for use of the facility.

The civil engineering is on schedule per ODOT (Oregon Department of Transportation) requirements and timeline; this week surveyors are out doing final surveying work and it is anticipated it will be completed by the end of the week. Additionally, topographical measuring and lidar measuring are being completed.

The Special Public Works Fund application was accepted by Business Oregon and has gone through underwriting. (This funding will assist in a portion of the financing on acquiring the entire property.) Mr. Smith explained that in conversations with Business Oregon there was a consensus that it was prudent to acquire the needed real estate for a long term investment and as such the Nyssa Industries property was included in the Special Public Works Fund application. Commissioner Wilson stated that he will be abstaining from anything related to the Nyssa Industries property.

A separate application for the Regionally Significant Industrial Site program will be made; this program allows for repayment of expenses associated with industrial improvements, including the acquisition of industrial land. As part of the Special Public Works Fund industrial land will be purchased; over the next ten years it is projected that there may be water, sewer, and road investments that will need to be made and the Special Public Works Fund may be used to accommodate those investments. Should a qualifying company locate on the site (employs a minimum of 25 employees and qualifying wages), their state income taxes are reimbursed to the

applicant (County) to repay industrial investments, such as land acquisition and infrastructure costs. The site must be designated as a Regionally Significant Industrial Site before eligible activities can be reimbursed.

Primary methods of repayment for the Special Public Works Fund include:

- Lease revenue generated from a triple net lease agreement with an operating company on the facility (the County and Development Corporation will need to determine what portion will need to be retained by the Development Corporation to take care of depreciation, upkeep, maintenance, insurance, etc. and what portion will be assigned to paying down debt).
- Additional lease revenues from future expansion
- Sale of available industrial property (non-Connect Oregon property)
- Lease of available industrial property (non-Connect Oregon property)
- Refinancing
- Sale of the industrial property that has enhanced value due to water, sewer, and road infrastructure
- Regionally Significant Industrial Site program

Mr. Smith discussed the need for the Development Corporation to establish a line of credit for payment of vendors as the Connect Oregon funds are payable on a reimbursement basis only. CPA Lonny Hytrek has been retained to provide bookkeeping services. ODOT has outlined what tasks can be completed with the Connect Oregon funding; contractors will submit their invoices for payment - the invoices are reviewed by Mr. Smith (who will confer with ODOT) and several Development Corp. Board members; once approved Mr. Hytrek will issue payment of the invoices; after the checks clear a request for reimbursement can be made to ODOT. A line of credit is needed to pay the invoices while awaiting reimbursement from ODOT. The financial institution will need a resolution from the County Court being the guarantor of the line of credit. Mr. Smith also encouraged the Court to appoint a County representative to review the invoices before they are approved for payment. Commissioner Hodge stated he wanted to be involved in the acquisition process of the line of credit; Mr. Smith encouraged him to participate on the subcommittee assigned to the financial process. Commissioner Wilson confirmed that interest charges are not eligible for reimbursement; Mr. Smith concurred and as such invoices and reimbursement requests must be made in a timely matter.

Commissioner Wilson inquired how it would be ensured that work performed by the contractors are eligible for reimbursement; Mr. Smith explained there are milestones that ODOT has set out and eligible work must be within those milestones. Additionally, one member of the Court could join the weekly Monday phone conferences with the contractors.

Public member Andy Bentz joined the meeting.

Ms. Williams noted the need to confer with Administrative Officer Lorinda Dubois and the auditor regarding the line of credit.

Mr. Smith noted that Bluebird carwash has filed an appeal with the Oregon Tax Court, Magistrate Division, appealing the denial of an enterprise zone tax exemption. Mr. Smith

expressed his desire to help the company in any way possible but it was not possible to designate the enterprise zone exemption for the carwash as retail is not eligible; in economic development the goal is to try to get through barriers and problems but in this case it was not possible.

PUBLIC HEARING - SUPPLEMENTAL BUDGET

Judge Joyce opened the public hearing for consideration of Resolution R19-31. 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 Hodge moved to approve Resolution No. R19-31: 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 supplemental budget allocates additional STIF (State Transportation Improvement Fund) Formula and Discretionary funds that were not anticipated when the adopted budget was prepared; the funds are to be used as stated in the STIF Plan and the Discretionary award. See instrument [#2019-4143](#)

Mr. Caldwell left the meeting.

WATER RESOURCE DEPARTMENT

Water Resource Department East Region Manager Jason Spriet and Watermaster Ron Jacobs met with the Court. Mr. Spriet explained that an Assistant Watermaster position has been approved and that staff member will start work with Mr. Jacobs December 4th. The position will be housed in the Courthouse in Mr. Jacobs' office. Mr. Spriet requested the Court consider if there was any office space in the Courthouse available that would be more conducive to two persons.

COURT MINUTES

Commissioner Hodge moved to approve Court Minutes of October 30, 2019 as written. Commissioner Wilson seconded and the motion passed. (Judge Joyce was not present on October 30, 2019.)

FAIR BOARD

Commissioner Wilson moved to reappoint Helen Thomas, Warren Osborne, and Chris Johnston to the Fair Board. Commissioner Hodge seconded and the motion passed unanimously.

OWYHEE BASIN STEWARDSHIP COALITION

Paulette Pyle and Owyhee Basin Stewardship Coalition (OBSC) Board Members Steve Russell, Mark Mackenzie, Andy Bentz, Ken Davis, Tom McElroy, and Dan Anderson met with the Court and reviewed the Malheur Community Empowerment for the Owyhee (Malheur C.E.O.s) bill recently introduced by Senator Wyden and answered questions from the Court. OBSC Chairman Steve Russell explained the bill will bring resolution to the WSA (Wilderness Study Area) issues, instigate land health programs, and provide for a Programmatic EIS (Environmental Impact Statement). Vice Chair Mark Mackenzie said the bill does give the county's voice the ability to be heard in the management decisions; under the bill a C.E.O. (Chief Executive Officer) group will be formed that will work with the BLM (Bureau of Land Management) on management decisions on public lands in Malheur county.

Public member Jennifer Martin joined the meeting.

The proposed bill would release approximately 1 million acres from Wilderness Protection and revert back to multiple use. Other areas would be designated as wilderness, but with protections for grazing written into the bill, as well as allowing firefighting and mechanized restoration work.

The bill does not affect existing mineral claims or subservice mineral rights, except for the legislative determination of one administrative mineral withdrawal at Leslie Gulch. Roads are maintained, either cherry-stemmed in Wilderness Areas or for administrative purposes; County roads are not affected.

The bill sets out the funding necessary to monitor, conduct adaptive management, and enforce the anticipated uses of and effects on the federal land; funding appropriations are set out in a ten year increment (2020 - 2030).

Members of OBSC, conservation groups, state universities and federal agencies worked with Senator Wyden's staff to develop the bill.

Mr. McElroy explained that this bill does not establish a wilderness as was done 40 years ago; this bill allows for things still to be done in the wilderness designation; Mr. Mackenzie referred to it as "wilderness with benefits".

The bill leaves two unresolved WSA's as they overlap with Harney County.

The setback for roads adjacent to the wilderness areas is 300 feet in the bill.

The goal of the legislation is to maintain the economic future of Malheur County.

Under the bill voluntarily suspended AUMs (Animal Units Per Month) will be returned to the permit holder when it's determined that the land is capable of supporting them.

Under the bill loop roads are designated to direct recreation opportunities around the county; additionally feasibility studies are authorized to pursue recreational opportunities such as improvements to Oregon State Parks, establishment of marinas on the Owyhee Reservoir, and other opportunities.

Mr. McElroy requested the Court consider supporting the bill; it was requested the Court take time to review the bill and let the OBSC board members know of any questions they may have.

Judge Joyce stated the Court would take the matter under advisement. See instrument [#2019-4189](#) for the written summary of the bill provided by Owyhee Basin Stewardship Coalition.

COURT ADJOURNMENT

The meeting was adjourned.