

MALHEUR COUNTY COURT MINUTES

SPECIAL MEETING

DECEMBER 30, 2019

The Malheur County Court held a Special Meeting on December 30, 2019; Judge Joyce called the meeting to order at 9:01 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 and County Counsel Stephanie Williams. 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.

Present from the Malheur Enterprise were Pat Caldwell and Yadira Lopez.

PUBLIC HEARING – SUPPLEMENTAL BUDGET

Present for the public hearing for consideration of Supplemental Budget Resolution R19-38 were public members: George Glerup, Dirk DeBoer, Roger Corrigall, Rob Hunsucker, Joe Mendiola, Mike Walker, Todd Applegate, Jennifer Applegate, Doug Maag, Kevin Clarich, Kathy Clarich, Alfredo Rodriguez, Chris Artiach, Bonnie Christensen, Chris Christensen, Michael Amick, and Tom McElroy. Notice of the hearing was published in the Argus Observer and Malheur Enterprise. 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.

Malheur Enterprise live-streamed the hearing via Facebook.

Judge Joyce opened the hearing and asked for a Staff Report. Ms. DuBois explained the supplemental budget is needed to authorize the allocation of General Contingency funds in the amount of \$969,900 to the Reload/Industrial Park Project fund in the Non-Program budget.

Judge Joyce asked for proponent testimony.

Doug Maag: My name is Doug Maag, I was born and raised in this community, I have a business in town here and I'm involved in the agricultural area. I've had the privilege to serve on a lot of agricultural committees; I'm a managing member of the Snake River Sugar Company and I see this as a potential, very positive, in moving our product out of this area to where our customers are at. I pay a fair amount of taxes in this community and sometimes we have to spend money to make money. And I'm not sure if this is going to go for sure but I know there's been a committee appointed and they're going to evaluate it and I think we leave it in their hands, and everything I've seen about it I think it'd be very positive to this area. Thank you.

Mike Walker: My name is Mike Walker, 2445 Jefferson Dr., Nyssa; I'm a newcomer to the county; I purchased a farm and moved here in 2017. I'm going to read my statement: I support passage of the supplemental budget. Really the commissioners have no choice but to move ahead. Without

passage this opportunity for Malheur County to participate in the wave of growth from the greater Boise area will be lost either to critics in Salem or to (inaudible) lawyers in a series of restraining orders. It's critical that long range plans to facilitate jobs and economic opportunities be supported by infrastructure development, such as the Treasure Valley Reload Center and Industrial Park. However, it's very clear that this initial land acquisition, the very first step of the project, was not well done and resulted in significant cost overruns from the County. Thus, I would like to hear from the Commissioners what measures to strengthen the management and execution of the project will be taken to avoid (inaudible) in the future. Three mistakes were made that were very obvious. Why was James Farmer, the owner of the 290-acre plot, allowed to remain on the Economic Development Corporation's board of directors while negotiations to acquire his land were underway? This must be a new low point in corporate governance; certainly Mr. Farmer would've been privy to the board's siting discussions and strategies. Negotiating a fair market value under these circumstances is like playing poker and showing your opponent your hand before you make your bet. Yes, it is true that someone finally woke up in February 2019 and decided that this wasn't a good idea and Mr. Farmer left the board. However, by then the purchase price had been decided, a purchase agreement had been signed, and money had changed hands via the escrow agreement. In simple terms, the cows had already left the pasture and were headed for the corn. Second, why did the county Economic Development director make a 3 million dollar offer for the Farmer property based on a single comparable sale? The Canadian purchase of an industrial site near Vale. When the comparable sales approach is used to evaluate fair market value of a property at least four or five comparable properties are used and not a single sale, which ultimately as later events proved wasn't even a good comparable. Basing a purchase offer on a single comparative sale was reckless. And finally, why did the purchase agreement not contain contingency clauses to protect the County in case the offer price was in serious disagreement with the appraised fair market value? Such contingency clauses are common in property purchase agreements, particularly when the fair market value may not be easy to determine. To sign a purchase agreement without protective contingency clauses was again reckless. So, in summary, I support passage of the supplemental budget but let's all pull together, learn from our mistakes, and execute more effectively as the project proceeds. Thank you.

There was no further proponent testimony.

Judge Joyce asked for opponent testimony.

Jennifer Applegate: My name's Jennifer Applegate, 810 Haul Road, Vale; I don't claim to completely understand how these mistakes were made; I appreciate Mike Walker for covering absolutely all of my questions and concerns. I am opposed based on a lack of candor, honesty, and competence, based on what I can research and find out; I oppose this project move.

Dirk DeBoer: My name is Dirk DeBoer, I farm in the, did farm in the Nyssa area but I also farm very close to the land that you are purchasing. I have been opposed to that lot for the simple reason that I think the elevation between the main track and the land is considerable and a lot of money to make that land available for the railroad facility. Mr. Smith said in the meeting right across the road here that this facility will be paid for with the grant and once it's in operation the profits of this facility will be used to buy land and to build more buildings. He also said, and that's what got my (inaudible), 'I have calls every day from all over the United States and beyond', now I thought

he was stretching the truth a little bit. In the two years that this facility has been in the make I haven't seen any numbers from how much it's going to cost to put this operation, to make this operation work, I just don't see the numbers to make this work. So now, we're buying land, 300 acres, when we only need seventy-something acres for this facility, so we're buying that land for \$10,000 an acre, we're renting it back to the Farmer brothers for basically zero rent – all they have to do is pay the water. What kind of deal is this? Don't you put it out for bid? For farmers? There may be farmers that want to pay \$200 an acre to rent this land because it's not going to be in operation this year – the facility. I just don't understand where you people are coming from. If this operation is not going to be working for several years you're wasting thousands and thousands of dollars on a land buy that they can farm for free basically. I don't understand it. And from what I understood it isn't 100% sure that the transportation board will go all the way to the end, so why are we buying all this land right now; I don't understand it so I'm opposed to it.

Joe Mendiola: My name's Joe Mendiola, 4658 S Rd G, Vale; and I just have two questions. How much money, how much taxpayer dollars are we willing to throw at this thing to make it work? And how will it benefit the average person in Malheur County? I don't understand that. The second question is: Have we dealt with the fact that U.P. says they don't have enough cars to facilitate this project? That was brought up early on. Union Pacific said they don't have enough cars to make it work and so where are we going to get those? So that's why I'm opposed to it. I think the only way you're going to benefit the people, the average people in Malheur county is take that 43 million dollars you're going to spend and send us all a check. That's why I'm opposed.

Roger Corrigan: I'm Roger Corrigan, 923 Onion Avenue; I've lived in this community most of my life and I've been involved in agriculture. And the reasons that I'm opposed is one: we're stealing from Adam to pay Paul, we do not know exactly, well we do not know for sure if all of the expenses are going to be covered by the State and is this going to come around and bite us in the back again? Are we going to have to keep adding money? It kind of seems like to me we've got a black hole. And I'm also, what's been said before, I don't think enough emphasis or enough effort went into selecting the site that we've gotten, I guess that we're stuck with. If it was my money I would purchase the land closer to the railroad, and this has been done in this community. There are several people that ship on railroads and they purchased land right next to the railroad to do that. I think that if it was at all possible we should just put the brakes on this, sit down and go back and look over everything so we know exactly what our costs are and where the money's actually going to come from. Because this thing about us having to put up the money, the County, kind of snuck up on everybody, no one in this room was aware that that was going to happen. When this thing started everybody just assumed that the State was just going to close their eyes and hand over dollars when we asked them to. And if we, as an individual, were going to borrow the money to build this, if the appraised value came up to over what we had agreed on the deal would have been over. Anyway, I think it's a bad idea, I think that we need to go back and look at a lot of things, especially who's going to provide the cars. If we decide that the farmer is going to have to provide the cars a lot of the interest from the farming area is going to disappear. And we still have not resolved the issue of how we're going to get those cars back. But anyway, I think we should just slow up, sit back, and go over everything and follow the problems that have already occurred and try not to make any additional problems. One other thing, I do not think that government should enter into a business enterprise. And now I'm going to sit down.

Kathy Clarich: I'm Kathy Clarich; I've been a resident of Vale for several years but I originally came from Nyssa. And even though I think it would be great to have this railroad facility, I think we're speculating that we're going to be able to buy the rest of this ground and sale it to other people and if that was the case I even think Farmers' would have kept that ground; I think they would have just sold you just the amount that you needed for the railroad. And I don't know why we can't go back and renegotiate with them for just that purchase of that ground for the railroad reload site. I think the rest of speculation is going to cost the taxpayers even more money than what we think it's going to cost us or what we're being told it's going to cost us at this point and time. And I just don't think our County government should be in the speculation business.

George Glerup: George Glerup, 650 Ash St., Vale; I am the person that started George's Shop and Rock and the trucking business and I know that when I was in the trucking business I talked to some of the suppliers and onion people and stuff trying to get the freight out of here and taken care of it, it's quite a problem moving when you go to moving them onions like that from what I could find out. I know we had trouble in the trucking industry to do it (inaudible) it was faster than the cars and that's where they had a problem – the cars did not get there in time. So, I think for the protection of the County Court and for us taxpayers it should be put up for a vote and I think that we'll see what everybody thinks because we're all going to have money in this thing. It appears to me that everybody's going to have to pay the tax and do whatever; there should be a vote by the county and all of those people that are going to help pay the bill (inaudible). I oppose it; I just don't think it's quite planned right like these gentlemen were saying and the lady there; it just doesn't appear to have been planned right. Anyway, that's my opinion. I'm against it.

There was no further opponent testimony.

Judge Joyce asked for rebuttal from the proponents.

Mike Walker: I'll just say, this is a long-term project. Development of that industrial park is going to stretch 10 to 15 years from now. We don't even have any idea the businesses that could develop and site on that property. Maybe its maintenance facilities that service autonomous trucks that drive automatically all over the United States. We need to think long-term. Boise is growing, it's growing very rapidly; some of that growth is going to come across the river. Let's take advantage of it.

Doug Maag: Some of the questions that have been brought up about the cars and in this project, I'm not on the committee, but I know some of those questions have already been answered and some of the names of the people that are involved in providing the cars cannot be talked about at this time; so there's a lot of those things that have been talked about and I know the committee has, from what I've heard, has tried to resolve all those issues. But you know, it's going to be a work in progress and I still think in my case I'm getting some of my tax dollars back by positive results that this could provide and this is an ag community and that's going to filter down to all the businesses in town and so I kind of agree with Mr. Walker there, it's a long-term project and I know there's businesses that don't even want their name brought up that would maybe locate in this facility.

It was noted that written comments were received from two individuals.

Commissioner Wilson read the comments submitted from Sarah Ray as follows:

Please submit on my behalf. I want to be clear I am not against any project that brings innovation and jobs to our county. I want the voter to understand this project and I feel these questions clearly answered will help. This is a very complex project which even to educated voters can be very confusing. People feel as if circles are being talked around them. Please consider reading parts of this for questions to be answered as simply as possible. I'm submitting this with the most sincere intentions. I trust you to use your best judgment with the limited time available. Thanks for your consideration.

Questions that need answers:

A. The grant states that Malheur County will be responsible for \$14 million to develop the property. I was told that companies who wish to be part of the site will be paying that funds.

a. How are we going to account/pay for this as a county? Will the private companies report what they are spending on the project to the county? Is the county selling shares or rights to develop the site?

b. How was the \$14 million arrived at? Does the county have bids, proposals, and/or estimates?

c. What happens if the site is not developed, under developed, or modified during the roll out phase? Is the county on the hook for the \$14 million?

B. The independent 3rd party contractor that conducted a feasibility study on the site.

a. What does it say about the impact on the roads due to increased traffic?

b. What are the expected jobs impact?

c. What are the expected number of businesses willing to locate here?

d. What is the expected tax revenue increase for this development?

e. Are there going to be improvements to surrounding infrastructure to account for this?

C. Does the County have records on all the work done on this potential project?

a. Are they somewhere I can read them?

D. Were other sites considered? If so, which ones? And were studies conducted on them? (We know other ones were considered.) Can the public have access to why the Ontario sites were not picked for instance? So, the public can understand why Nyssa was the choice of the railroad board.

a. Did/does the grant provide funding to the County to pay for feasibility studies?

E. Has a private company been formed to control this project or are we working with one already? Who will have oversight of everything being done? How will progress be reported and disseminated to the citizens? (would this be considered the railroad board) question directed to them?

a. This is a speculative project that may have huge impacts on our county. Risk needs to be shared as well as rewards. I believe that the County needs to take a leap of faith on an important project like this. If the County does provide the \$14 million what guarantees does the County have that the risk is justified?

F. Who is ultimately responsible for this decision? County elected officials?

G. Could this be put up for a bond issue? We would not need to dip into the contingency funds if a bond was issued.

H. Final thought. Since Malheur County has a billion-dollar onion industry why are we the poorest county in Ontario. (*possibly intended to say Oregon*) As I thought about questions to be asked to our elected officials one thought kept coming back to my mind. We can run circles about why industries don't want to move to Oregon because of taxes or this or that. Yet frankly until hearts and minds change about how employees and their families are viewed with wages and better care nothing is going to change. Being an employer myself for almost two decades I know that has to start with ourselves. We must do better and changing the way that we think about business. Thinking about how we invest in our resource in community and the people that work for us. See instrument [#2019-4741](#)

Judge Joyce read the comments submitted by R. Thomas Butler as follows:

Members of the Malheur County Court: Please accept this letter of inquiry from an interested party to the series of financial transactions which is expected to culminate into portions of the long-anticipated agriculture industrial park presently being contemplated by Malheur County elected/appointed leaders. I am a resident of Malheur County but am currently away from home and cannot attend the 9:00 a.m. Monday, December 30 public hearing in Vale. There are a number of questions I have, but I respectfully request that the members of the County Court disclose to the public what the total anticipated costs of this project may be (beyond the total financial investment which is being committed by Oregon Department of Transportation). Specifically, I understand that there will need to be additional acquisitions of rights-of-way from private land owners as well as potential cost over-runs for utility construction costs and significant additional infrastructure installation. Will additional private lands need to be acquired through eminent domain proceedings? There is great expectation by some that "if we build it, they will come," but my concern is that there always needs to be alternative plans for repayment of amounts presently being committed from County General Fund property tax revenues. This is especially the case in light of the fact that the County Contingency Funds will be largely depleted (from previously unanticipated costs relating to this project even before there is a shovel-ready parcel. Sincerely submitted, R. Thomas Butler. Cc: Malheur Enterprise. See instrument [#2019-4742](#)

Judge Joyce asked for further comments.

Michael Amick: Michael Amick, 3821 Birch Road; I've been in this area ever since I was born, farmed and ranched, and I would probably guess that my thoughts would be similar to a lot of peoples. Originally, I was for it; sounds like a great deal for the county. Come in and set up a rail facility and shipping point; it looks great, it's going to be paid by the State, can't get any better. But then we start getting all the problems; find out it costs more money – a lot more money; and then it just looks like – these last couple of letters asked a lot of questions that a lot of us would have. There's a big black hole here and how much are we going to dump into it? It just keeps building up. So, I would agree with some of them that said we need to slow down, let's relook this over, make sure everything's rights and get a little bit more information to the people that are sitting here on the fence – ah it looks good but now it looks bad. I'm still on the fence, I don't know which way to go but it needs more questions answered and more possibilities looked into.

Dirk DeBoer: I just want to see numbers. I want to see figures. I saw a drawing of the facility; I have never seen any numbers of how much it's going to cost to make this thing operational. I want to see numbers. When I had a farm loan I had to write down my costs; I had to do everything. We haven't seen anything like that. I want to see numbers; not just promises and promises and promises, I want to see how many packers are really willing to ship from this facility. And they say, well we can't commit ourselves because we don't know how much it cost per hundred or to ship. Let's get some numbers together that we know how much it will cost to ship to reload. All we see is promises.

Judge Joyce asked for further comments; there were none.

The hearing was closed. The Court took a ten-minute recess.

Public member John Messick joined the session.

The meeting was resumed. Judge Joyce asked Commissioner Wilson and Commissioner Hodge if they would like to address some of the questions that had been raised in the hearing.

Commissioner Wilson explained the proposed site has public road access on three sides and he did not believe that additional acquisitions of right-of way from private landowners would be needed; additional private lands do not need to be acquired through eminent domain proceedings. The largest share of utility construction and infrastructure costs should be taken from the \$26 million (Connect Oregon funds). Feasibility studies performed as part of the County's application to the State for the facility revealed there is enough need for the facility and that it will be profitable.

Commissioner Wilson explained that the County is borrowing funds (\$2,050,000) through the Special Public Works Fund (SPWF) for the land acquisition of the Farmer property. Two sites in Nyssa and four sites in the Ontario area were considered by the Malheur County Development Corporation (MCDC) Board for the reload facility (the selected site had to be within a reasonable distance to connect to water and sewer facilities; and the railroad indicated that the property needed to have a mile or more of rail footage); costs for the properties ranged from \$10,000 an acre to \$36,000 an acre (one owner would only negotiate a price if the owner's property was selected); the MCDC Board had seven criteria that was applied to all the properties and the Farmer property ranked the highest and was selected. Various studies were done, including traffic, soil compaction,

environmental, and archeological; at no time has the railroad indicated that the elevation of the property won't be adequate. The Farmer property is one parcel and was offered for sale as one parcel. Additionally, Union Pacific would not consider the rail line from Cairo Junction to Vale for a rail facility. Negotiations with a potential operator of the reload facility include the issue of providing railcars.

A potential source of repayment of the Special Public Works Fund loan is the Regionally Significant Industrial Site (RSIS) program. The program allows for repayment of expenses associated with industrial improvements. A site must receive the RSIS designation before expenses are incurred. The RSIS application was submitted to the State and future anticipated industrial development expenses had to be projected in the application (approximately \$14 million). For this reason, every possible development use was included in the RSIS application even though some costs may not be actually incurred.

The appraised value of the property was on farm use as the property has not been developed. The value of the property will increase as it is developed. The property was not appraised as industrial land.

Commissioner Hodge explained that future lease revenues from the facility will be used to repay the Special Public Works Fund (the funds the County is borrowing). Properties in the industrial park will also be leased or sold and those funds will be used to repay the Special Public Works Fund loan.

Commissioner Wilson noted that economic analyses were completed on the proposed project (i.e. EcoNorthwest, Tioga). The growers/shippers submitted confidential proposals on their level of intent for use of the facility; the onion growers are forming a single entity to negotiate their rates with Union Pacific.

Judge Joyce noted that the Court appointed the members of the Malheur County Development Corporation - the Board that is working on the reload facility project. The parameters of the project and the financial process have significantly changed since the legislature first appropriated the funding and everyone, including the County, has had to adapt to the changes.

Commissioner Wilson moved to approve Resolution No. R19-38: 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 purpose of the supplemental budget is to allocate General Fund Contingency Funds to Non-Program to be used to purchase land for the Reload/Industrial Park Project in the amount of \$969,900. See instrument [#2019-4743](#)

COURT MINUTES

Commissioner Wilson moved to approve Court Minutes of December 20, 2019 as written. Commissioner Hodge seconded and the motion passed unanimously.

RESOLUTION - CIVIL RIGHTS PROGRAM TITLE VI

Commissioner Hodge moved to approve Resolution R19-25: In the Matter of Adopting Malheur County's 2019 Civil Rights Program Title VI, Limited English Proficiency Plan for Public Transportation Services. Commissioner Wilson seconded and the motion passed unanimously. The Plan will be submitted to ODOT (Oregon Department of Transportation) in satisfaction of federal requirements. See instrument #[2019-4760](#)

PROCUREMENT POLICY FOR FEDERAL 5310 FUNDS

Commissioner Wilson moved to approve Malheur County FTA (Federal Transit Administration) Procurement Policy. Commissioner Hodge seconded and the motion passed unanimously. The policy is applicable to federal 5310 funds received for the public transportation program. See instrument #[2019-4745](#)

UPDATES TO COUNTY POLICIES 100 AND 101

Ms. Williams explained that Senate Bill 726 (2019), also known as the Oregon Workplace Fairness Act, requires that the County update policies 100 and 101. The anti-discrimination policy must be in writing and the statute of limitations for unlawful discrimination claims has been increased from one year to five years. There are restrictions on nondisclosure or no-rehire provisions in severance agreements. Additionally, sexual assault was added to the policies. Commissioner Hodge moved to approve updated County Policy 100 – Equal Opportunity; and Policy 101 – Prohibition of Harassment, Sexual Assault, Discrimination and Bullying; No-Retaliation; Complaint Procedure; Request for Accommodation (Disability and Pregnancy Related); Reporting Concerns or Violations of Other Laws. See instrument #[2019-4744](#) and #[2019-4740](#)

AMENDMENTS TO IGA#159173

Commissioner Hodge moved to approve Third Amendment and the Fourth 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. The amendments revise the financial assistance award. Copies will be returned for recording.

FAIR ADVISORY BOARD

Commissioner Wilson moved to reappoint David Tschida to the Fair Board as an Advisory Member. Commissioner Hodge seconded and the motion passed unanimously.

Commissioner Hodge moved to appoint Garrett Chamberlain to the Fair Board as an Advisory Member. Commissioner Wilson seconded and the motion passed unanimously.

COURT ADJOURNMENT

The meeting was adjourned.