

**SPECIAL MEETING MINUTES
JOINT MEETING OF MALHEUR COUNTY COURT
AND
NYSSA CITY COUNCIL**

December 11, 2018

County Court held a special meeting with the Nyssa City Council on December 11, 2018 at the Nyssa City Council Chambers, 14 S. Third Street, Nyssa. The meeting began at 7:00 p.m. (Please note that this was a regularly scheduled Nyssa City Council meeting; the County Court portion of the meeting was for the specific purpose of holding a joint public hearing with the Nyssa City Council to co-opt ordinances to amend the Nyssa Urban Growth Boundary for the Treasure Valley Reload Center.) Notice of the joint hearing was published in the Argus Observer and posted on the County website.

Present from Nyssa were: Mayor Ross Ballard, Council President Sue Walker, Councilor Robert DeLeon, Councilor Betty Holcomb, and Councilor Pat Oliver. Staff present included City Manager Jim Maret, Administrative Assistant/City Recorder Marla Roberts, and various other Nyssa City Staff. Attorney Jeff Kleinman joined the hearing by telephone at approximately 7:20 p.m.

Present from Malheur County were: Judge Dan Joyce, Commissioner Don Hodge, and Commissioner Larry Wilson. Staff present were: County Counsel Stephanie Williams and Planner Eric Evans.

Also present was John Braese from Malheur County Economic Development, Larry Meyer of the Argus Observer, Consultant Greg Winterowd with Winterbrook Planning, Grant Kitamura and Kay Riley with Malheur County Economic Development Corporation, Alexis Biddle with 1000 Friends of Oregon, and various other public members.

Nyssa Mayor Ballard opened the Nyssa City Council meeting, conducted roll call (a quorum was present) and Nyssa City business was conducted. During the public comment period Alexis Biddle with 1000 Friends of Oregon made the following comments:

Mr. Biddle: Council, members of the Court, it's an honor to be with you tonight. My name is Alexis Biddle and I'm with 1000 Friends of Oregon. As you know, we've had concerns about the first proposal for the Treasure Valley Reload Facility of the expansion of the Urban Growth Boundary. I am here tonight to thank you and the staff for working with us to ensure that this project supports the agricultural economy of Eastern Oregon while protecting farmland to the greatest extent possible. We are satisfied with the report that supports the UGB expansion and I would like to personally thank Senator Bentz and Representative Findley for their leadership on this issue. In addition, I would like to thank Representative Smith, Eric Evans, Jim Maret, Greg Winterowd, and the City and County Counsel for their thoughtful and hard work on this project. Land use decisions are not easy and we appreciate all the time and effort necessary to strike the proper balance between protecting farmland and expanding development. So thank you, and thank you all for your public service.

Mayor Ballard welcomed the County Court members. Malheur County Counsel Stephanie Williams explained she would serve as the moderator for the public hearing and would read the required land use statements into the record. Those wishing to testify were asked to complete the public testimony sheet. Maps were available for the public and also displayed. Additionally the County's proposed ordinance was available for the public.

Mayor Ballard opened the public hearing for the City Council at 7:07 p.m.

Judge Joyce opened the public hearing for the County Court also at 7:07 p.m. and stated that there was a quorum in attendance.

Ms. Williams explained that this was a combined hearing between the Malheur County Court and the City of Nyssa and thanked Mr. Maret for hosting the public hearing. Ms. Williams explained that the proposed action was to amend Nyssa's Urban Growth Boundary by adding 281 acres; amend the County and City Zoning Maps to rezone about 213 acres of the Farmer property from Exclusive Farm Use to Nyssa UGA-Industrial; amend County and City Zoning maps to rezone the Seubert property consisting of approximately 68 acres from County Heavy Industrial to Nyssa UGA-Industrial; amend the text of the Nyssa Comprehensive Plan - particular provisions for amendment include the population projection, industrial comprehensive plan text amendments, economic opportunities analysis (the Economic Opportunity Area Overlay, the 2014 Western Treasure Valley Regional Economic Opportunities Analysis), the Nyssa Public Facility Plan, the Nyssa Industrial Lands Transportation Impact Analysis; amendment of the City and County Zoning Maps to remove the Economic Opportunity Area Overlay zone from about 49 acres that are owned by the Sparks; and text changes to the Nyssa Zoning Ordinance - specifically on the 213 acres of the Farmer property the use is being limited to rail-dependent, agricultural processing, warehouse and distribution and supporting limited industrial services that benefit from location in a full-service industrial park next to the Treasure Valley Reload Center; commercial and residential uses will be prohibited on the 213 acres; but farming of the site may continue until it is developed as the reload facility. The amendments and zone changes are necessary to accommodate the proposed Treasure Valley Reload Facility.

Testimony will generally be limited to 3 minutes; a spokesperson on behalf of a group testimony is limited to 5 minutes. The applicant's initial presentation will be 20 minutes; with rebuttal of 10 minutes. Those giving testimony are asked to sign-in and state their name and address when testifying. All testimony and questions should be directed either to Mayor Ballard or to Judge Joyce - dependent on which particular body you are addressing.

Ms. Williams also explained that the hearing would be conducted as a quasi-judicial hearing. Ms. Williams asked if any members of the Nyssa City Council needed to abstain; there were none. Ms. Williams asked if any members of the County Court needed to abstain; Commissioner Wilson stated he was abstaining from voting and stated he wanted to make it really clear that he has no financial interest in the project in any way, shape or form, nor his real-estate office, but he has over the last 2 1/2 years helped with letters of support and he thought that it would be best if he abstained from voting. There were no other abstentions from the members of the County Court.

Ms. Williams asked if any members of the Nyssa City Council had any conflicts of interest, either actual or potential, to disclose; there were none. Ms. Williams asked if any members of the County Court had any conflicts of interest to disclose; there were none.

Ms. Williams asked if any members of the Nyssa City Council had any bias to disclose; there was none. Ms. Williams asked if any members of the County Court had any bias to disclose; there was none.

Ms. Williams asked if any members of the Nyssa City Council had any ex parte communications to divulge; there were none. Ms. Williams asked if any members of the County Court had any ex parte communications to divulge; there were none.

Ms. Williams asked if any members of the audience had any objections to any members of the Nyssa City Council or Malheur County Court hearing this application. There were no objections to any member of the City Council or County Court hearing the application.

Ms. Williams asked if anyone present challenged the Nyssa City Council or County Court's jurisdiction of this matter; there were no challenges to jurisdiction.

Ms. Williams explained that Oregon law requires several land use statements be read into the record at the beginning of the hearing. Ms. Williams read the following statements:

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: Statewide Planning Goals 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and their respective administrative rules (Division 24), the Joint Management Agreement between Malheur County and the City of Nyssa sections 3.060-3.070, the Malheur County Code, and the Nyssa City Code. Testimony, arguments, and evidence presented must be directed toward these approval criteria or other criteria in the Malheur County or Nyssa Comprehensive Plan or the Nyssa or Malheur County Code that the speaker believes applies to this decision. The failure of 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 on that issue.

An issue that may be the basis of any appeal must be raised no later than the close of the record. Such issues must be raised and accompanied by statements or 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 proposed conditions of approval with sufficient specificity to allow the decision maker to respond to the issue precludes an appeal or an action for damages to circuit court.

Prior to the conclusion of this hearing, any participant may request a continuance for the purpose of presenting or rebutting additional or new evidence, arguments or testimony. The governing bodies may grant such a request by continuing this hearing to a date and time certain at least 7 days from today; or by leaving the record open for a period of at least 7 days.

Ms. Williams explained the order of proceeding for the hearing. The applicant - the City of Nyssa is represented by Greg Winterowd from Winterbrook Planning and will be allocated up to 20 minutes for his initial presentation. The applicant may also present up to 10 minutes for final rebuttal. All others wishing to testify will be given 3 minutes each; or 5 minutes on behalf of a group. The order of testimony is: Staff Report on behalf of Malheur County and the City of Nyssa will be presented by Malheur County Planning Director Eric Evans; the Applicant represented by Mr. Winterowd will be allowed 20 minutes; proponent testimony; opponent testimony; neutral testimony; public agency testimony; Staff comments and recommendation; applicant rebuttal; opponent rebuttal (Opponent rebuttal is discretionary under Malheur County Code and as legal counsel for Malheur County Ms. Williams recommended that the County not hold an opponent rebuttal period, therefore the opponents were asked to cover everything in their testimony. The County Court will need to vote on this but this is the recommendation of County Counsel.); then each body will close their public hearing and deliberate. The City of Nyssa has an ordinance prepared for its first reading. The County Court has Ordinance No. 217 to consider for adoption at the end of the public hearing.

Staff Report from Malheur County Planning Director Eric Evans was presented on behalf of the City of Nyssa and Malheur County. Mr. Evans explained that the September 25, 2018 decision to include 128 acres of tax lot 100 to accommodate the Treasure Valley Reload Center was being reconsidered as the September decision lacked an adequate factual basis for the decision based on comments from DLCD and 1000 Friends of Oregon. Since that time, City staff, County staff and the consultant have been working with those two groups to address their concerns. Both groups now support the application as presented. 1000 Friends of Oregon has submitted a letter of support that has been entered into the record as Exhibit 12. A letter from Oregon Department of Aviation was also received and entered into the record. The County's Planning file number is 2018-08-013. Ms. Williams has already explained what the proposal is. The information and proposed County ordinance has been on the County website for the last week.

Mr. Evans also explained the proposal on the map displayed. Additionally, a letters from Senator Bentz and Owyhee Irrigation District were received and entered in the record.

Mr. Evans was asked to review the Exhibits in the record. Exhibit 1 - Staff Report; Exhibit 2 - Public Notice and Affidavit; Exhibit 3 - Proposed Comprehensive Plan, Text, and Map Amendment; Exhibit 4 - Revised Economic Opportunity Analysis; Exhibit 5 - Revised Public Facilities Plan; Exhibit 6 - Proposed Zoning Ordinance Amendments; Exhibit 7 - Transportation Impact Study; Exhibit 8 - Letters from the Economic Opportunity Overlay property owners (Sparks Conservator; and David and Linda Sparks); Exhibit 9 - (7) letters from entities interested in the reload center (Badger Ventures LLC, Baker & Murakami Produce, Campo & Poole Distributing, Fort Boise Produce, Golden West Produce, Frahm Farms & Frahm Fresh Produce, Froerer & Owyhee Produce); Exhibit 10 - letters of support (City of Ontario, Ontario Area Chamber of Commerce, City of Nyssa, Malheur County Economic Development Office & Malheur County Development Corporation, Senator Bentz, Owyhee Irrigation District, Oregon Department of Aviation, 1000 Friends of Oregon (Exhibit 12)).

Applicant's Consultant Greg Winterowd stated it was an honor to be there because of the great thing that was being done for the community, the economy, and for Oregon. A lot of work had

been done since the September 25th public hearing by many people, including Commissioner Wilson, Planner Eric Evans, County Counsel Stephanie Williams, Nyssa City Manager Jim Maret, and City of Nyssa's Attorney for this matter Jeff Kleinman. Mr. Winterowd expressed appreciation to the growers and packers who have supported and worked for this project; thanked Alexis Biddle of 1000 Friends of Oregon; thanked Phil Stenbeck of DLCDC; thanked Nyssa City Engineer Doug Argo; and thanked Brad Baird of Anderson Perry.

Mr. Winterowd explained the process he used in putting the application together. The City's criteria was examined - must be consistent with statewide planning goals and the Nyssa comprehensive plan, must find that the proposal is in the public's interest, and must document and explain needed changes. Several important things have changed since the 2014 Nyssa Economic Opportunities Analysis was prepared. Changes include the identified need for a reload facility and the interest in an industrial park. In order to recognize several identified changes a 2018 Nyssa Economic Opportunities Analysis Amendment is proposed. Various changes since 2014 also support the need for adding approximately 281 acres to Nyssa's UGB. The Staff Report details the various criteria and findings for the rezoning of these lands.

Judge Joyce asked for proponent testimony.

Grant Kitamura, President of Malheur County Development Corporation (MCDC) testified in support of the proposal. Mr. Kitamura explained that MCDC is the entity charged with putting the project together for the Treasure Valley Reload Center which initially was a reload facility for onions. Mr. Kitamura thanked everyone for their combined efforts in moving the project forward and explained that the need for the transload facility is right now.

Kay Riley, General Manager of Snake River Produce testified in support of the proposal. Mr. Riley also serves on the MCDC board. Mr. Riley stated the need for this facility is there and the additional acreage for an industrial park will add to its viability.

Judge Joyce asked for opponent testimony. There was none.

Judge Joyce asked for neutral testimony. There was none.

Judge Joyce asked for public agency testimony. There was none.

Judge Joyce asked for Staff Comments and Recommendation. Planner Eric Evans recommended the County Court adopt Ordinance No. 217 and the City of Nyssa adopt their corresponding ordinance as well.

Judge Joyce closed the County Court hearing.

Judge Joyce moved to read Ordinance No. 217 by title only and to adopt it. Commissioner Hodge seconded and the motion passed. Judge Joyce read the entire title of the ordinance. See instrument #[2018-4561](#)

Nyssa Mayor Ballard closed the Nyssa Public Hearing. City Manager Jim Maret read Nyssa Ordinance 663-18 in full. Councilor DeLeon moved to approve Ordinance 663-18. Councilor Oliver seconded and the motion passed unanimously by all present. It was noted that the City requires three readings of its ordinances; if the second reading is unanimous the third reading can be dispensed. The second reading will be at its January 2019 meeting.

Judge Joyce adjourned the County Court meeting and the County Court members and staff left. The City of Nyssa continued its City Council meeting.