

## **MALHEUR COUNTY COURT MINUTES**

### **SPECIAL MEETING**

**DECEMBER 20, 2019**

The Malheur County Court held a Special Meeting on December 20, 2019; Judge Joyce called the meeting to order 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. 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.

Also present was public member Mike Walker.

#### **PUBLIC HEARING - SUPPLEMENTAL BUDGET**

Judge Joyce opened the hearing for consideration of supplemental budget resolution R19-36. 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.

Judge Joyce asked for a Staff Report. Ms. DuBois explained the supplemental budget is needed to create the Fund in the County budget for the Reload/Industrial Park Project and to appropriate the funds for the property purchase.

Judge Joyce asked for proponent testimony; there was none.

Judge Joyce asked for opponent testimony.

Mike Walker (2445 Jefferson Drive, Nyssa): First off, I'm not against the strategy of investment in the reload center. I'm not against the industrial build out; there's so much growth in the greater Boise area, no river is going to be able to stop that growth coming into Malheur county. So, I think the strategy is great. The problem I have is this latest issue with the appraisal. You've got a situation where the appraisal came in at half the negotiated purchase price. Now Larry Wilson, you know this better than anybody else, when an appraisal comes in light like that that's a big green light to renegotiate the purchase price and it's inconceivable to me that the board or commissioners could have signed a purchase agreement for that property without some kind of contingency clauses related to what if the appraisal comes in light. So, what my advice to the commissioner's is don't approve this budget. Tell your project manager to go back and renegotiate the deal with Farmers and Nyssa Industries. Now you might not get it to \$5000 an acre; I bet you can get it to \$7500 an acre. That's the way every commercial deal goes down when you have this kind of disparity in the appraisal versus purchase price. It's not a new concept, it's very common. And if this goes through everybody's going to be looking at that and you'll be the laughingstocks of the entire state for overpaying on that property. It's not a good start to a project. And yeah, there's going to be a delay; you've had so many delays already on this reload facility another month or two won't make any difference. You haven't closed; you've got time.

That's my comment.

Judge Joyce asked for additional public comments; there were none.

Judge Joyce asked for a summary and recommendation from Staff. Ms. DuBois again explained that the supplemental budget allocates the Special Public Works Fund loan funds; it does not purchase anything; and the terms of the SPWF (Special Public Works Fund) loan are still being negotiated.

Commissioner Wilson explained that various site locations were explored; there was certain criteria that the property needed to meet; Union Pacific needs at least a one-mile stretch of property in order to bring a unit train off of the mainline; and cost comparisons were done. The appraisal was on the entire property which is over 280 acres; the seller was not willing to divide the property before selling it.

The hearing was closed.

Commissioner Hodge voiced his support for the project and the site selected.

Commissioner Wilson commented that the parameters of funding for the project have changed as originally it was thought that the ODOT (Oregon Department of Transportation) funds (Connect Oregon) would be used for the entire project rather than just approximately 65 acres. Malheur County Development Corporation (MCDC) will pay to the County the entire amount it is reimbursed from ODOT for the property purchase and that amount will be applied to the SPWF loan.

Judge Joyce did not have any questions or concerns.

Commissioner Hodge moved to approve Resolution R19-36 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. See instrument #2019-4657

Commissioner Hodge thanked Mr. Walker for attending the meeting.

County Counsel Stephanie Williams joined the meeting.

### **COURT MINUTES**

Commissioner Wilson moved to approve Court Special Meeting Minutes of November 7, 2019 as written. Judge Joyce seconded and the motion passed. (Commissioner Hodge was not present on November 7, 2019.)

Commissioner Hodge moved to approve Court Minutes of December 11, 2019 as written. Commissioner Wilson seconded and the motion passed unanimously.

Commissioner Hodge moved to approve Court Minutes of December 18, 2019 as written. Commissioner Wilson seconded and the motion passed unanimously.

### **NYSSA INDUSTRIES PROPERTY**

Commissioner Wilson abstained from the discussion on the Nyssa Industries property. Commissioner Hodge and Judge Joyce indicated they wanted an appraisal done on the property; and payment for the appraisal was to be made from the Economic Development fund (an estimate for the appraisal is \$3500) - Ms. DuBois said it could be paid from the Technical Assistance line-item in the Economic Development fund.

Commissioner Hodge moved to order the appraisal. Judge Joyce seconded and the motion passed.

After the appraisal is received the Court will need to determine if the County will purchase the property and what funds will be used for the purchase.

### **LETTER OF AGREEMENT WITH MCDC**

Ms. Williams presented a Letter of Agreement (LOA) with Malheur County Development Corporation (MCDC); Business Oregon has requested the document as part of receiving the Special Public Works Fund (SPWF) loan. An agreement is currently being negotiated between the County and MCDC for development, management, and operation of the reload center; it cannot be completed until various components of the project are finalized. The LOA sets forth general expectations and how the County and Corporation will exchange funds to repay the SPWF. Commissioner Hodge moved to approve the Letter of Agreement between Malheur County and the Malheur County Development Corporation. Commissioner Wilson seconded and the motion passed unanimously. See instrument #2019-4669

### **SUPPLEMENTAL BUDGET RESOLUTION**

Commissioner Wilson moved to approve Supplemental Budget Resolution R19-40: 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 donation funds in the amount of \$500 that were not anticipated when the adopted budget was prepared; the funds will be used for aid to indigent veterans. See instrument #2019-4658

### **PUBLIC COMMENTS**

Mike Walker: Question for the commission, how comfortable are you going into a situation where you have noncompetitive sole source negotiation with the operator? We sort of got a taste of what happens when you do that with the land purchase. Isn't that a little bit unsettling? And number two, this triple net lease is not a good idea because a private operator will have a certain amount of money that they can spend for the facility; they have to pay taxes and utilities blah blah, they'll just take that amount off what they're going to pay the County; it's a fixed amount they're going to pay because they need to make a profit. But, if I'm a private operator I've got no idea what the property's going to be assessed at; I've got no idea what the utilities are going to be; I've got no idea of even when this project is going to be completed so I'm going to have to add contingencies on to each one of those items and they're going to be significant contingencies because I want to cover all those costs but I don't know yet what they are. You'd be much better off just bending

that idea of that triple net lease. Let them pay what they're going to pay and then the County take the risk on the taxes and utilities. Otherwise you're going to be paying them to take the risk.

The Court thanked Mr. Walker for his comments and attendance.

**COURT ADJOURNMENT**

Commissioner Wilson moved to adjourn the meeting. Commissioner Hodge seconded and the motion passed unanimously.