

**MALHEUR COUNTY COURT MINUTES**  
**June 27, 2018**

County Court met with Judge Dan Joyce presiding with Commissioner Don Hodge present. Also present was Larry Meyer of the Argus Observer. Administrative Officer Lorinda DuBois and County Counsel Stephanie Williams later joined the meeting.

**APPEAL HEARING - PLANNING COMMISSION DECISION - JOHNSON**

Present for the hearing on the appeal of a Planning Commission decision to approve the application of Brett and Kathryn Johnson for a conditional use permit for a non-farm partition and a non-farm dwelling were: Planner Alvin Scott, Assistant Planner Jamie Willet, Kathryn Johnson, Rock Hartley, John Schoorl, Kristin Schoorl, and Jon Beal. Notice of the hearing was published in the Argus Observer. The Planning Department File Number is: 2018-03-007. The Appellants are John and Kristin Schoorl. The property identification is Tax Lot 600, Section 23, T. 20S, R. 46E, W.M.

Judge Joyce opened the hearing. There was no time limit for testimony imposed.

Judge Joyce asked for abstentions and potential or actual conflicts of interest from the members of the Court; and asked for any ex parte communications or site visits to be divulged.

Commissioner Hodge: None from me.

Judge Joyce: I've been to the site and - I was there Sunday. I've been there numerous times on that road, but at any rate, so, I know both parties, if that includes ex parte communications.

Judge Joyce asked for any objections to the jurisdiction; there were none. Judge Joyce asked for any objections to any member of the County Court hearing this matter; there were none.

Judge Joyce stated: Failure to raise an issue may preclude raising it before LUBA (Land Use Board of Appeals). Failure to raise constitutional or other issues relating to proposed conditions of approve with sufficient specificity to allow the County Court to respond to the issue may preclude an action for damages in Circuit Court.

Judge Joyce asked for a Staff Report.

Planner Alvin Scott: This is the Staff Report for Planning Department File No. 2018-03-007; it is a conditional use application for one non-farm dwelling and one non-farm partition. Planning Commission date was April 26, 2018. Applicants are Brett and Kathryn Johnson; owner of record is Alan and Tami Peterson. The proposed action is a conditional use approval for one non-farm dwelling and one non-farm partition. Property identification is Tax lot 600, Section 23, Township 20 South, Range 46 East, Willamette Meridian, Assessor's Map 20S4623; Malheur County reference number 18759. The property location is: from Nyssa southwest on Adrian Boulevard, approximately 6.5 miles to Klamath

Avenue, turn right, and then its six-tenths of a mile and the property is on the left. The zoning is Exclusive Farm Use. The parcel size is 115.8 acres. The parcel use - the ground is set aside, ideal for dry water years and flood/furrow irrigation when watered normally. Surrounding use - the application indicates pasture, row crops and pivot irrigated farm use. The access is Klamath Avenue. Sanitation requirements would be a DEQ approved sanitation system. Fire protection - the parcel is within the Nyssa Rural Fire Protection District. Natural hazards are none. The water rights, we were originally told they were eight acres but I believe it is larger now. The irrigation company had given us a different reading. We have no zoning history. That's all your honor.

Judge Joyce asked for proponent testimony.

Kathryn Johnson: I would like to ask if we could dismiss this appeal and stop it. There is a piece of paper that was put into the packet with a timeline. As, which was stated on the letter that we, that was sent out after the first board meeting, that you have 10 days from receiving the letter to submit the paperwork paid in full and application done. On the timeline it shows that the paperwork was accepted 17 days after I received my letter and 12 days after they came in and paid their money.

Judge Joyce: So is that all of your proponent testimony?

K. Johnson: um

Judge Joyce: We will go through the hearing process and then we will take it under advisement. So there's no other proponent testimony at this time?

Judge Joyce asked if there was opponent testimony.

Kristin School: Yes there is; and regarding the timeline, we received the conditional use letter, what Alvin Scott just read on 5/17 and I took my \$200 in to you on 5/21; on that date I asked what I needed to do further and you said you would meet with county counsel the next day, which was 5/22; and that day you left a voicemail with me saying I forgot to have you fill out a form. I called back to your office before 4:00 and got voicemail; I provided you with my email address, which you already had on file because we received the public notice, at any rate, I gave you my email address (*inaudible*) Jamie called back, we still hadn't, as of 5/28 still had not received the one page form that we were to fill out

John School: We haven't received it yet until they emailed it, until they finally emailed it to us; we've never received it in the mail.

K. School: on 5/29 Jamie left a voicemail saying that she had mailed the form on the 24th; the form, we never received the form, so I called Jamie on May 30th to tell her I had not received the form. She said she could put it via email, and so, and I told her you know, there's a time constraint in which I realize. And she said we need it back immediately that I talked to Alvin, he said, I took the money and he said you're still within the timeframe. I took our, the formal form back with additional documentation on June 1st, to the office, and

we were told we were still within the timeframe; but we seriously felt we were stonewalled, every time we went in I got push back. After receiving the public notice I called the office on, I received the public notice on a Saturday, I called the office on a Tuesday and provided them with my name, she took down my name, and I was told verbally that they had basically been given the green light; I expressed my concerns, my concerns were water initially (inaudible - coughing in background) at any rate, and I didn't appreciate being told they'd been given the green light because we hadn't even had a public hearing, an opinion should not be interjected as far as I'm concerned. At any rate, we were within all the guidelines and I have documentation of everything. So I'm disputing what she's saying about the timeline, and maybe she received her letter prior to us.

J. School: But you're wanting testimony on why we feel that this shouldn't go forward.

Judge Joyce: Exactly.

J. School: Okay. We feel that if you go by the laws and the rules of the land and the state of Oregon, that land does not fall within those, to allow that variance to be done. Because that is farmable ground; it is not farmed because it's chose not to be farmed. There's a piece across the road from me that is now being not farmed because a new pivot was put in; it doesn't reach there. So in a year from now are they going to choose that that's something that they want to build on because they chose not to farm. They've chose not to farm it; the waters there, the water rights are there, they've chose not to use it. So that doesn't make it unfarmable. They've got spuds on both sides of it, I mean its good ground, they choose not to farm it, for what reason, that's their personal reasons. We feel that if you look at the law and the rules within the guideline that it doesn't fall within that criteria. And there wasn't, when they gave them this variance or decided it down at the church the other day, there wasn't due diligence done, they didn't even know what ground they were looking at. I know you went and looked at it and I think that's great, but they made a decision without any real knowledge, and there was some testimony or some things said at that meeting that are not fact, they're not true, that ground has been, you know, took a crop or two off of it, since I've lived there in the 19 years. They said it hadn't. You know, but, they choose not to farm it because of, they'd have to figure out a way to get, there's water rights there, they just have to figure out how to get the water to it. And we've already got a problem out there right now with getting water delivered to two of us because they're using the same system. So now we're going to create another problem to try and get water. I just think that if you look at the law and the rules, and the guidelines, it doesn't, I mean if I wanted to look at somebody's backyard I'd live in town, you know what I mean; we need to keep our country setting so that we have that setting to go to. And I understand people want to live, but we need to keep town and small acreage close to town.

K. School: And my concern is they're not, to me they haven't proved, how is generally unsuitable for the production of farm crops and livestock per the Oregon code? Nobody has given me what makes it unsuitable for farming, is what I want to know, nobody has given evidence of that. In the public hearing they kept referring to it as a 10 acre parcel; it's an 8.5 acre parcel. One lady looked at the wrong piece of property, which she said, you know, she looked at the property along Morinaka's. Which understandably she, but I thought, the

board themselves did not even know the correct parcel. And then we were also told when the water rights came up, we were told that it was our responsibility to investigate the water rights; and I thought, well I don't think Jay Chamberlin would allow me to have access to Alan Peterson's private water right records. The onerous was on them to do the due diligence and it was not done.

J. School: Then as far as well water, our concern is okay, they poke a hole in the ground and get into our aquifer; my well's only 60 feet, the neighbor's is only 40 or 50 feet, they put a big house there with a four or five family, people in their family, they're going to use a lot of water, so when they suck our aquifer down, my well, I've got to dig a deeper hole, I've got to bear that burden.

Judge Joyce: Other opponent testimony?

K. School: Oh I have lots. The other thing that came up was the class; I talked to Alvin about the class of soils. Well the class of soil there is, our property and Peterson's is Class 4; which is by Oregon code, that's considered good farm ground. And then, and this brings up one of the Trendwell West conditional use occupations on Gem Avenue, granted it was for oil and gas drilling, but they turned that one down that same evening because it is on a parcel of ground that is considered high value farm ground. On that parcel, it's approximately a 36 acre parcel - 30 of those acres is Class 3 soil, the remaining 6 point whatever is Class 4. So there's an example of where they turned one back trying to preserve farm ground, which has a lower class of soil than the parcel we're appealing. So, Class 4 is considered by Oregon law perfectly farmable good ground. You know if it were a Class 7 or lower it would rate as poor.

Judge Joyce: Other opponent testimony?

K. School: I think that's the main thing.

J. School: That's the gist of it.

Judge Joyce: That's the gist of it from you guys?

J. School: If you'll look at the law I think it doesn't.

Judge Joyce: Public agency testimony - irrigation, drainage districts, road districts, sanitation department etc.

A. Scott: We had all those. The Nyssa Fire District stated that they were in the Nyssa Fire District. Two letters from the Owyhee Irrigation District - one stating that it had eight irrigated acres, and the other one says *the Owyhee Irrigation District has no objection to this application. Please be aware that the District will require separate measuring devices for both parcels.* That would be the existing parcel and the new parcel if they intended to put water on that although with eight acres I'm not sure where it would go. *The owner of the property may contact the District and request installation.* Anyway, it just indicates that

they need to talk to the irrigation district before they do anything if that is indeed what they do. And I have a letter from Nyssa Road District signed by Wes Allison that they have no objection to a dwelling on the proposed parcel.

Commissioner Hodge: Yeah, I think it stated that they had to have what, a 20-foot, 20 feet for their turnaround or whatever it was.

A. Scott: Right. It's a standard that the fire department, the international fire code, and that's the way that if and when they get a permit to build, that will be included in the permit.

Judge Joyce: Does the conclude the public agency testimony?

A. Scott: Yes your honor.

Judge Joyce: Okay. Now, there is a piece in here for rebuttal for both proponents and opponents. But before that there is a staff report and recommendation summary.

A. Scott: Okay. I've given you the staff report. The proposed findings of fact are included in the conditional use application. The proposed conditions of approval are the following: the following statement must be entered into the chain of title for a new non-farm dwelling parcel, that statement reads: The property herein described is situated in or near a resource (farm or ranch) zone, where the intent is to encourage agricultural use and minimize conflicts with non-resource uses. Non-resource residents may be subjected to common, customary and accepted farm and ranch practices that are conducted in accordance with federal and state laws but ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantees, including their heirs, assigns, and lessees, by the recording of this statement, and in return for allowing a non-resource dwelling on this property, hereby accept the potential impacts of accepted farm and ranch practices as normal and necessary and part of the risk of establishing a dwelling in this area, and grantee acknowledges the need to avoid activities that conflict with nearby resource uses. Adequate firebreaks shall be constructed and maintained to minimize the danger from potential wildfire. This approval would be valid for four years from the date of the order. Substantial action must be taken within this time period or the approval will lapse. That's all your honor.

Judge Joyce: Okay. Rebuttal by proponents.

K. Johnson: This process is hard to find a piece of land that qualifies to be able to build a home on. Spent months looking for one. The criteria, which was told to me by Alvin, was that you need to leave 80 plus acres on the mother part of the land. Found this place, found that it interrupted nobody else's farming area, didn't have to go through anybody's place, right on the road, and that they had not been farming it. They tried dry crop, dry wheat. It was just there, not being done with anything. We went through all the work, kept on a timeline; put our due diligence in getting everything ready for this. We have made it clear at the meeting, we would like, we are going to have animals, we are going to have a pasture, we want to do an orchard, we want, we went in many times to Mr. Chamberlin in town – how are we going to get those water rights to us? He said that's my job, I will get them

there. Currently at the moment, the two places it goes by have not been very well maintained and you can't get the water there but they are going to fix that for us. We feel like, that we've checked off every box that the city and the state have asked us to do. The ground quality, if you look online, a four is the mother place, which is 108 acres on the other side, or 105, I can't remember. Ours is six; it's not for quality ground. That 8.3 acres is a six. That is what on the website as I look on Malheur County. We have been trying to figure out all the things that we need to cross off, dot our I's, we feel like it would be what is surrounding the area, we are not disrupting, we have pasture to our left which is the defendant, we have across the road is another pasture and then there's houses next to us. So, we feel like it's a great spot.

Judge Joyce: Other

Rock Hartley: My name's Rock Hartley, brother of my sister Katie. As far as it goes with the law of the land, you can't just look at one piece of the law, you've got to look at all of it. And if I have sufficient amount of land I can basically put my house where I want. They meet that criteria. This piece of land is set aside off of the mother; it is divided off of the mother parcel and it is set aside and it's not farmed because of today's normal farming practices. You cannot farm little pieces of land and make a living in these days. Hobby farmers can. But the large farm like you need to have in these days, you cannot farm three acres here, and five acres there, two acres here. As far as it goes with the water, there are laws in the land, they have documentation when their well was drilled, if we interrupt their water, my sister interrupts their water, we fix it. If the water runs dry we get shut off first. They have their water right, their well right, talking well, like they said, their well is 60 the neighbors are 40, that is because there is plenty and adequate water. A household is not going to take and drain that aquifer. If I was putting in a 10,000 gallon well you might have concerns, or if your well was 600 feet you could say there's probably not a whole lot of water there, but the water table is high, it is adequate, it's never ran dry. There's no one in that area that has ever had their well run dry on statement and document, their well might have fallen apart, needed to drill a new well, but as far as the aquifer goes there's sufficient water. As far as the irrigation district, the irrigation district will not ask the opponents to pay money; they've already paid their money to get their water delivered. If there's a new system that goes in the irrigation district will pay for that. The new irrigation district, or the new irrigation people, my sister, they may have to come up with some money to get the water there. But they have already paid their water and they have up kept their water, the irrigation district will supply them with water with no cost to them. So, whether the system is broken now or not broken now, if they want water the irrigation district by law has to get them water. They have paid their water right. If their water right is up kept they, and paid in full, there's nothing else they need to do. All they have to do is call in for water, and the irrigation, by law, has to give them water. And they won't have to pay anything. They will get water. So adding a new well or measuring device is only going to increase or update the service they have right now and make it better than what it is. Because it's going to be, if the irrigation district decides it's going to be Katherine and Brett's out-of-pocket to put that new service in, it's not going to be the School's. If it's broken now it's just going to be updated and made better so I don't see how the law of the land, the water table, or having another water system there - having another water system there is only going to allow the

land to be used more adequately by someone that wants to be, have a pasture, where right now it's not being used at all. It is weeds, it is dry dirt. And that is because on a large farm scale of any size, if that is your employ, if that is your occupation, those little acreages that are in the corners of a pivot and things of that nature, you can't make a profit by farming those small acreages. That's all I have.

Judge Joyce: Other proponents. Opponents testimony – rebuttal.

J. School: As far as the water delivery, I have to share with Bob right now because the Owyhee Irrigation doesn't want to spend the money to put back Bob's system, Bob's delivery. Right now. So at this point, I was out of town the other day, Bob comes, or Chamberlin comes out and hunts my wife up and says Bob needs that water for the corn. And I said what does that, my wife calls me and I said what's that have to do with me, I have my own delivery. Well no, Bob tore his out when he put the pivot in and Owyhee Irrigation hasn't put it back, or whoever has to, so now there using my delivery to deliver water to Bob's place, Petersons, right now. So I have to split with him right now. So there's a problem out there already. I have to; I have to work my schedule around him because he's a bigger farmer. And I know we're supposed to be friends and share but there's a problem there already that the Owyhee Irrigation can't pay or someone's not paying to fix. So now we're going to put another system in? We weren't informed that they were going tap into my pipe that delivers water from the main ditch to my place, it's all underground, I wasn't informed they were going to tap in, they just did it last June, didn't bother to tell me. So this year when I want my water, I'm getting my water, calls me, comes and digs my wife up and says Bob needs that water for the corn. I said what's that have to do with me? He should have his own delivery. But no, they're using my system and dumping it into his ditch on down, and he tore that other ditch out that goes up to his delivery and Owyhee Irrigation does not want, or someone does not want to pay for that right now. They've had a year to fix it.

K. School: Yeah, they put in a pivot and in order to make the pivot work

J. School: Go clear around they took their delivery ditch out for that field that's east of my place.

Judge Joyce: That was your delivery point, that ditch was?

J. School: No, the pipe was delivering solely mine, they went in there and knocked a hole in my pipe and took it out and dumping it in the ditch that's left that delivers it on east.

Judge Joyce: So wouldn't that be the responsibility of the irrigation district to fix that?

J. School: Sure would think so, or whoever took that system out, you know what I mean. So right now there's a problem already there that the Owyhee Irrigation doesn't have the money or Peterson's don't want to spend the money to put back their delivery system so they're using mine.

Judge Joyce: So I would have a

R. Hartley: Can I talk?

Judge Joyce: Yeah

R. Hartley: That's what this will solve. The irrigation district has the right, it will give, they have the right, and you have the right, if you are not getting your water and your water is paid, it doesn't need to come here it needs to come to the water district and the state and if you've paid your water you have that right.

J. School: I met them up there at the ditch and J.L. told me, said it's just the way it is John. And I said, well it's not very convenient for me because their hired man goes up there and decides whether I get water or not now, he puts my slide down and they turn it in his ditch and take it. So now I've got to dance around the big farmer that wants his water.

R. Hartley: That's not (inaudible - multiple talking)

J. School: But I'm telling you that's creating another problem. Owyhee Irrigation doesn't have the money or someone doesn't have the money they want to spend right now, so we're going to create another system.

K. School: And part of the problem is, because when Jay came and spoke to me and said call Bob. And I, at this point we weren't aware of this new pipe that had been put in and I said, sure I'll call Allison, no problem, I can call Bob's wife, but I thought now wait a minute, you're supposed

J. School: you're getting off the point

K. School: well you're supposed to call the irrigation, you know, the water master

J. School: call the ditch rider

K. School: the ditch rider, so now, the issue now is what's on the books as far as when we had water, when Bob had water, so there's an issue there which is keeping the records straight of water delivery, you know, who's getting their allotted application of water, so you know

J. School: There's a problem already there.

K. School: So at any rate, that just came up after the public hearing, this just came to light so there are issues

J. School: Owyhee Irrigation's not going to run right up there and put a new system in for delivery, because it's obvious they're not going to, they didn't do it last year when Bob tore that all out. They just tapped into mine. Like I told them, I said if John School tore his out

I'm sure they'd told me to put it back. So my concern is that. And as far as the soil, there's spuds on both sides of it so it's the exact same ground. And here's something that tells you what the ground is.

K. Schoorl: Yeah, let me show you. This is the plat map, and it shows 8.5 acres and the soil class (inaudible- multiple talking)

J. Schoorl: it's not bad ground

K. Schoorl: it's four, and she stated six, that 8.5 acres is four. Three acres is six.

J. Schoorl: And I understand that they're large farmers but they chose not to use it, I didn't. And just like he said, the pivot, okay so you're going to leave another dry piece and next year we're going to want to build a house there. Let's keep the country, you know within, I guess it all blows back to if we look at the law and the rules and the bylaws, the ground does not fall within that.

K. Schoorl: And as I reiterated in the public hearing and took, Ms. Johnson, this is not personal, this is absolutely not personal, it's about, this is the Oregon code right here, it is about staying within the confines of this law to protect the integrity of our farm ground. And again, it just, point D, is you know is situated on land generally unsuitable, situated on generally unsuitable land for the production of farm crops or livestock considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of tract. It is not unsuitable for farming, regardless, again, that is the criteria it does not meet.

J. Schoorl: There's a problem there already and we just think that it's going to add more and we're just asking the court to stay within the law of the land.

Judge Joyce: Other rebuttal – opponent rebuttal? Is that it? So I have a question Rock on the water issue.

R. Hartley: Yep

Judge Joyce: So what kind of assurances do these people have? I realize we're not the irrigation district but what kind of assurances do they have in terms of delivery? If it was you in other words?

R. Hartley: If it was me

Judge Joyce: Yes

R. Hartley: and I ordered water and my water amount that I was ordering falls in the criteria of the one acre foot per acre and I give them 24 hour notice, which is the law, the district's law or whatever you may say, you can't just order and it come that day, you have to give them 24 hours

Commissioner Hodge: policy

Judge Joyce: its policy yeah

Commissioner Hodge: policy

Judge Joyce: it's the same over here

R. Hartley: so if I order it on time and I have my water paid it is my right to that water and if they do not deliver it to me I have a suit against them that I can take to the state and they are required by law to give me that water when I order it if I've met those criteria. I cannot order more than one acre foot per acre, I have to have my water paid and I have to give them notice of when I want it and as long as those things are met they are required, the district, by law to give me that water. If he has issues with, he says somebody turning it on and off, his water

J. Schoorl: It's my delivery they don't have their own delivery

R. Hartley: the delivery

J. Schoorl: everybody has their own separate delivery for a reason so we don't have to ask the neighbor to turn it on

R. Hartley: that is not true. The district

J. Schoorl: the ditch riders not taking care of it anymore

R. Hartley: then you're right, the ditch rider may not be, that is between the ditch rider and you and the ditch rider can be and should be putting a lock on it to solve that issue and then if not then he will bring a court hearing with the Peterson's and you and you discuss that.

J. Schoorl: I think, I mean

R. Hartley: the district now

J. Schoorl: I think you're missing the point, they're using my delivery for his water too and I'm afraid they're going to want to go right on down the line from my pipe to that piece of ground and so there'll be three of us on that delivery.

K. Johnson: When I spoke to Mr. Chamberlin he told me that they had not fixed the pipe yet because nobody past Bob was using their water rights there. That is what I was told. He said now you are moving in if you want your water rights we were planning on doing it last year but saw that there wasn't a need for it currently because no one past Bob is paying or using the water rights on that side. If you are going, you have the rights of them; if you are going to pay for them we will get you that. That is what Mr. Chamberlin said the day after our meeting. I went down there on the 27<sup>th</sup>.

Judge Joyce: Okay, so we're getting a little bit off track but that's the assurances that you would be getting from Jay, because if it was you instead of John that was being turned off.

R. Hartley: Absolutely. Those are the three criteria that need to be met.

Judge Joyce: Okay, so other rebuttal by proponents or opponents?

K. Schoorl: Well I (inaudible) I was just going to say, you know, again, that they can get a variance if the ground is generally unsuitable for farming. They're planning on putting on pasture, she stated in the meeting maybe have cattle, maybe put in some trees for an orchard, that's farming, so there's these contradictions again with how they're going to use the land, it's not just going to be a house, they'll be farming it.

Judge Joyce: Other rebuttal - either one? Have we exhausted the rebuttal?

Unknown: yes

Judge Joyce: We have?

R. Hartley: Do you have any questions? Do you have any more questions?

Judge Joyce: Don't?

Commissioner Hodge: No

Judge Joyce: I don't. Any other closing arguments?

K. Johnson: The point I brought up about the timeline, just if that can be considered a dismissal just because of the timeline not being met but also if you agree that this place can be built upon I have to wait another two months to start anything. This is just more time. After our first meeting the letter was supposed to be sent out in two or three days; it took me three weeks to get a letter, calling in. Things are taking an extra amount of time that I am not being able to do anything on the place that we would like to be able to build on. They did not meet the timeline.

K. Schoorl: And then I have records

J. Schoorl: We did not receive it; we never even received the application

K. Schoorl: Ms. Johnson for the date we received

*(Inaudible – multiple talking)*

K. Schoorl: no, I have my timeline. I will go above this to prove to you that we met the timeline. And I even talked to them about it, they said, and Alvin said, no, you're within

your time limits. I met the timeline limits. We received paperwork on different days and I have my documentation.

K. Johnson: One day.

J. Schoorl: I called in the day after

K. Schoorl: No

K. Johnson: you said May 16<sup>th</sup>, I have May 17

K. Schoorl: mam but we received documentation on different days

J. Schoorl: I called this man right after the meeting in Vale; I told him I said I'll be at the courthouse to pay the 200. He said no, he said don't do that until we send you a letter. When we received the letter then we finally come and paid the 200; at that time he told my wife, he said, he called her back and said, she said what do I need to fill out; he didn't give her anything. He called her at home and said, oh I forgot to give you this form, we'll send it in the mail. We have not received the form yet in the mail. Finally got it through an email and said you've got to have it back the next day and we did.

K. Schoorl: On 5/30 I talked

J. Schoorl: So that's the timeline

K. Schoorl: I had it back and if it wasn't within the timeline when I took it into the office on June 1<sup>st</sup> they should have told me, oh you've missed the deadline, but we met the deadline according to when I received the formal application so I

J. Schoorl: It's not that we didn't try to do due diligence and keep up with it. He told me not to bring the money until we got a letter, never got the letter

K. Johnson: I spoke with Alvin on May 29<sup>th</sup>, no on the 25<sup>th</sup> which was Friday, which was day 10 of receiving the letter.

K. Schoorl: But mam

K. Johnson: No. He said Monday is a holiday, I would like to give them till Tuesday please and I'm going to call them. We called them that day at the end, he said I left two messages, let's give them till Wednesday. I said Alvin, okay, we'll do that. Wednesday, he gave them Wednesday, he gave them Thursday, we called in the 30<sup>th</sup> of May, spoke with Alvin at 9:30 in the morning and he said, I am done, we are done, I've called them, I've left messages, I've received nothing. Called Stephanie, Stephanie's out of the office today. Called Stephanie Monday morning, which was June 1<sup>st</sup> and, wait, which date was it, no, June 3<sup>rd</sup> and she is going to sign off on it. I called Stephanie early in the morning and she, after giving my spiel, she said I don't know what you're talking about, Jamie just walked in with

the application. I said, I was told Friday it's over at 9:30 in the morning. I have had to jump through every hoop that is a lot of paperwork and a lot of work to do and on a timely manner; I've had to keep the rules. The rules aren't you get 10 days plus an extra one if you didn't get an application. Its 10 days. You have 10 days till 5 p.m. to get the paperwork in. I came the next day on the 4<sup>th</sup> and said Stephanie what is going on, how can they do this. And she said now it's a judicial matter you will have to wait. If you guys listen to this and go on I have to wait another two months to get anything done, anything at all. They did not follow the rules.

J. Schoorl: We received that, or the 10 day letter after the deal so that we had 10 days to return our money to come in and pay, received it just before the Spray rodeo, which was, which is Memorial weekend, and I told my wife, I said well Monday's a holiday you can't take it in there, we got it on a Friday I believe and I was in Spray because that's slack Friday, Saturday, and Sunday; Monday, Tuesday morning, Tuesday she brought that money here and paid it and that is when he didn't give her the application, and like I said, we still have not received it, we're still waiting

K. Schoorl: And the only voicemail I received, as god is my witness, was on May 22<sup>nd</sup> when Alvin, I dropped my money off on the 21<sup>st</sup>, Alvin called back the next day saying you need to have this form, I gave him my email, again my address, and I'm repeating this, again, as of Friday, no form, Monday the 28<sup>th</sup> a holiday, I emailed the office on Memorial Day and said, hey we haven't received this form, I told her it had never showed up. On 5/29 Jamie left a voicemail saying she mailed the form on the 24<sup>th</sup>; the form still was not to our house on 5/30. Again we never received the form. On the 30<sup>th</sup> of May I called Jamie to tell her that I still didn't have the form and what to do? And she did say we need it back immediately, I knew there was a timeline. So, she said she could email the form which she did immediately; I got the form and by receiving that form on that day I had X-number of days to get it back. So on Friday, 6/1 I dropped off the form with all my documentation. I did not receive any, no additional voicemails from Mr. Scott, none, none; the only one I received was the day after I dropped off my money. So we just have differences of what went on, and we did meet the deadline.

Judge Joyce: Any other comments? No other comments? No other comments? So, we will close this public hearing; and now, when we do this no other public testimony can be heard at this point unless the hearing is reopened or continued. So, we have other business to do here, so we will take this under advisement and deliberate. So this hearing is closed. Ms. Williams explained that the next meeting of the County Court would be July 11<sup>th</sup> and after that it would be in August; the Court will need to do a written decision with findings. The Court may not have a final written decision by July 11<sup>th</sup>; it may only be a tentative decision until County staff can prepare findings and a written decision.

The meeting recessed for a break.

Pat Caldwell of the Malheur Enterprise joined the meeting.

### **DISCUSSION - JOHNSON APPEAL**

Ms. Williams explained that Judge Joyce and Commissioner Hodge could deliberate and make a tentative decision and she would prepare findings. The Court could also include Commissioner Wilson in the decision making by having him listen to the recording of today's hearing and reviewing the record. The matter has two pieces - the motion to dismiss the matter on the basis the appeal is untimely; if the appeal is not dismissed then fact finding on the merits is needed. Consensus of the Court was that the appellants were not provided the necessary form. The appellants did pay the required appeal fee and talked to Planning Department staff.

Commissioner Hodge indicated he was not opposed to the non-farm partition and non-farm dwelling.

### **AMENDMENT - GREGROY SMITH & COMPANY; ADDENDUM - GREGROY SMITH & COMPANY**

Commissioner Hodge moved to approve Fifth Amendment to Contract for Personal Services: Malheur County Economic Development Consultant/Coordinator with Gregory Smith & Company, LLC. Judge Joyce seconded and the motion passed. The amendment expires June 30, 2019. See instrument #2018-2450

Commissioner Hodge moved to approve Second Addendum to Contract for Personal Services: Malheur County Economic Development Consultant/Coordinator. Judge Joyce seconded and the motion passed. The addendum provides additional funding of \$6,000 per month for Fiscal Year 2018/2019 to provide additional technical writing services; additional staff may be hired to perform the additional services. See instrument #2018-2451

### **CLASS ACTION OPT-IN NOTICE FORM - KANE COUNTY, UTAH v. UNITED STATES**

Commissioner Hodge moved to participate in the Kane County, Utah vs. United States lawsuit. Judge Joyce seconded and the motion passed. This is a Class Action lawsuit regarding underpayment of Payments in Lieu of Taxes (PILT). Judge Joyce signed the Class Action Opt-In Notice Form. See instrument #2018-2449

### **COMMITTED FUND BALANCES**

Commissioner Hodge moved that the Malheur County Court hereby report the 2017/2018 ending fund balances of the following Special Revenue Funds as "Committed Fund Balances." These committed fund balance amounts can only be used for the specific purposes for which they were imposed unless the Malheur County Court removes or changes the specified use by taking the same type of action (legislation, resolution, or ordinance) it employed to previously commit those amounts.

The Special Revenue Funds are: Major Bridge, Surveyor Corner Preservation, Community Corrections, Law Library, Boat License, Corrections Assessment, DA Enforcement, Taylor Grazing, Task Force, Ambulance Service District, Juvenile Crime Prevention, Wolf Depredation Fund, Economic Development, Agricultural Educational Extension Service District, 911 Fund, Traffic Safety, Court Facilities Security, State Drug Court, State

Mediation, CVSO (County Veterans Service Officer) Expansion, Search & Rescue, GIS (Geographical Information System) Maintenance, Clerk's Record Fund, Special Transportation Fund, Work Release Construction, Federal Forfeitures Fund, and 45 Parallel Fund.

Judge Joyce seconded and the motion passed. This motion is effective as of June 27, 2018.

### **PERSPECTIVE MARIJUANA PETITION**

Ms. Williams explained that the County Clerk has received a perspective petition to put a measure on the November 2018 ballot to repeal County Ordinance Number 210 in order to allow marijuana activities in the unincorporated areas of Malheur County. The perspective petition is currently in the District Attorney's office for review and preparation of a ballot title, caption, and summary. After approved for circulation the petition signature process will begin. The County needs to be prepared if the measure passes at the November election. Ms. Williams is drafting an ordinance that imposes a tax on the retail sale of marijuana items so that it may also be on the November ballot; public hearings will be held in July and August. Additionally, planning and zoning ordinances relating to marijuana activities (retail, growing, processing, etc.) need to be in place by December 2018. The retail sales tax can be collected by the County or the County may contract with Department of Revenue to collect the tax; County Tax Collector Jennifer Forsyth has agreed to collect the tax.

### **SOLID WASTE SYSTEM PARTICIPATION AGREEMENT - CLAY PEAK**

Commissioner Hodge moved to approve Payette County Solid Waste System Participation Agreement for Clay Peak Landfill. Judge Joyce seconded and the motion passed. See instrument #[2018-2452](#)

### **INTERIM PLANNER**

Commissioner Hodge moved to appoint Assistant Planner Jamie Willet as Interim Planner effective July 3, 2018. Judge Joyce seconded and the motion passed. Planner Alvin Scott's last day of employment is July 2, 2018 and the County is required to have an individual designated with Planner authority and signatory authority.

### **CROSSING PERMIT**

Commissioner Hodge moved to approve Crossing Permit #40-18 to Idaho Power Company to install a pole and bank of transformers for a pump on Kingman Road #957. Judge Joyce seconded and the motion passed. The original permit will be kept on file at the Road Department.

### **EOCA DUES**

Commissioner Hodge moved to approve payment of Eastern Oregon Counties Alliance (EOCA) FY 2018-19 dues in the amount of \$14,600.00 Judge Joyce seconded and the motion passed.

### **JOHNSON APPEAL**

The Court revisited the Johnson appeal matter. Consensus was to deny the motion to dismiss the appeal as untimely as the appeal form was not provided to the appellants by staff at the time the appeal fee was collected (the appeal fee was paid within the appeal time frame).

Additionally, the issues with water delivery are under the jurisdiction of the Owyhee Irrigation district and the parties should comply with the district's requirements.

Judge Joyce indicated he had no objections to approval of the non-farm partition and non-farm dwelling as proposed by Johnsons.

By consensus, the Court made a tentative decision to uphold the April 26, 2018 decision of the Planning Commission and based on the findings provided by the applicants.

### **COURT ADJOURNMENT**

The meeting was adjourned.