

Board of Commissioners Meeting  
June 6, 2012

Present: Commissioner Steve McClure  
Commissioner Mark D. Davidson  
Commissioner William D. Rosholt

Chairman Rosholt called the meeting to order at 9:00 a.m. and began with the Pledge of Allegiance. All three Commission members were present.

Public Comments

Intergovernmental Agreement Amendment 2

Vicky Brogoitti, Director of Commission on Children and Families, brought the Intergovernmental Agreement Amendment 2 to the Commissioners for consideration. She explained that this document provides for the full two year allocation of funds to the Union County Commission on Children and Families.

**Commissioner McClure moved approval of the Intergovernmental Agreement Amendment 2 as presented. Commissioner Davidson seconded. Motion carried unanimously.**

Used Vehicle Purchase

Doug Wright, Public Works Director, explained that the Public Works Department would like to purchase two used vehicles from the Forest Service. They would like to purchase a Dodge pickup with approximately 63,000 miles on it and a Chevy Pickup with approximately 61,000 miles on it. The Forest Service has put these vehicles in their surplus in Baker City. The vehicles can be purchased directly from the Forest Service because Union County is a government agency. He will be replacing a Chevy pickup with 266,000 miles and a Ford with over 200,000 miles. **Commissioner Davidson moved to approve the purchase of two used vehicles as presented. Commissioner McClure seconded. Motion carried unanimously.**

Consent Agenda

**The May 17 and 24 claims journals; the May 16 and 23 Public Works claims journals; and April 18 Board of Commissioners Minutes were approved as presented on the consent agenda.**

Appointment to Union County Ambulance Advisory Committee

Court Order 2012-27, In the Matter of Appointment to the Ambulance District Advisory Committee, was presented for consideration. Shelley explained that this Court Order would appoint Scott Abernathy to the Ambulance Advisory Committee to represent the Elgin District. **Commissioner McClure moved approval of Court Order 2012-27 as presented. Commissioner Davidson seconded. Motion carried unanimously.**

Community Corrections Plan FY 2012-13

Shelley brought the Community Corrections Plan for FY 2012-13 to the Commissioners for consideration. She explained that this is an updated plan for the 2012-13 Fiscal Year. The plan has been reviewed by the Local Public Safety Coordinating Council. The Commissioners need to approve the Plan and once that is approved it will be sent to the State. **Commissioner Davidson moved approval of Community Corrections Plan FY 2012-13 as presented. Commissioner McClure seconded. Motion carried unanimously.**

Community Corrections Intergovernmental Agreement Amendment 1

Shelley brought the Community Corrections Intergovernmental Agreement Amendment 1 to the Commissioners for consideration. She explained that this would authorize the release of the funding for the second year of the biennium. **Commissioner McClure moved approval of the Community Corrections Intergovernmental Agreement Amendment 1 as presented. Commissioner Davidson seconded. Motion carried unanimously.**

Anthony Lakes Mountain Resort Exemption Application

Shelley brought an exemption application from the Anthony Lakes Mountain Ski Resort to the Commissioners for consideration. Linda Hill, Assessor/Tax Collector, received an application requesting property tax exemption under the statute that allows exemptions for non-profit corporations that hold property for public parks and recreation purposes. There are two similar exemptions in the County; the Eastern Oregon Livestock Show Grounds in Union and the Elgin Stampede Grounds in Elgin. **Commissioner McClure moved approval of the Anthony Lakes Mountain Resort Exemption Application as presented. Commissioner Davidson seconded. Motion carried unanimously.**

Executive Session

The meeting went into an executive session under ORS 192.660(1)(d) Labor Negotiations.

Home Occupation Appeal – Public Hearing – Bean

Commissioner Rosholt opened up the land use public hearing. He explained that all of the testimony from the first Planning Commission meeting will be included in this hearing. He will be asking the appellant to give testimony as well as anyone that is in agreement with the appellant. The respondent will then have time to give testimony along with anyone else that is in agreement with the respondent.

Commissioner Davidson declared a conflict of interest and recused himself from the hearing.

Hanley Jenkins, Planning Director, explained that the original application was submitted by Ariel and Ben Bean for a home occupation in a rural residential

zone. The Commissioners have copies of the original application and the materials from the Planning Commission meeting in the record.

Hanley explained that the Planning Department received the application on March 12<sup>th</sup> and the hearing for the Planning Commission was set for March 26<sup>th</sup>. Notice was given in the newspaper and sent to the adjacent land owners on March 16<sup>th</sup>. A staff report was prepared and presented to the Planning Commission. There was substantial written and oral testimony received prior to and during the Planning Commission hearing. The Planning Commission did make a decision on March 26<sup>th</sup> to give a conditioned approval. The Planning Commission's decision was put in writing and sent to the applicant and any participating parties. There was a request to appeal the decision received on April 11<sup>th</sup>. The Planning Department sent notice on April 20<sup>th</sup> of a hearing on May 2<sup>nd</sup> before the Board of Commissioners on the Appeal. There was a request received to reschedule the hearing to June 6<sup>th</sup>. The hearing today was then published in the newspaper and participating parties were notified.

Hanley explained that all of the records from the Planning Commission's decision come forward to the Commissioners and new evidence and testimony is received by the Commissioners at this hearing.

Commissioner Rosholt asked for testimony in support of the appeal.

Carol Kroll, 61854 Riddle Road, stated that the Commissioners have been provided with a copy of a letter from Ed Sullivan stating the reasons for the appeal. She read a portion of the letter into the record.

Ed Robertson, 61915 Riddle Road, has lived at his place a long time and has seen things come and go. A few years ago there were people that wanted to start a dog grooming business and they were turned down because of the additional traffic in the neighborhood. The motorcycle shop is going to produce just as much traffic in the neighborhood. The shop was built before he applied for a home occupation permit.

Julie Baldwin, 61991 West Road, stated that she has an adult foster home in the area and has been in that business for twelve years. The adults come to their place because it is quiet and they can walk without traffic. She has a man with down syndrome that has wondered what the noise is. They worry that someone that doesn't know the area will not watch out for their residents walking down the street.

Beverly Lousignont, 62753 Asla Lane, presented the Commissioners with written documents and maps. She explained on the maps that the orange are the people that are in opposition to the automotive repair shop. The signatures are on two different petitions that were submitted to the Planning Commission and the one

that was submitted with the application for appeal. As a business owner she is sympathetic to Ben Bean trying to start a business to support himself and his father, but you cannot build a structure and invest time and money and expect this type of business to be accepted in an established R2 residential area and change the present land use. In the Union County partition and subdivision ordinance Article 1 under definitions it shows that home occupations is that the business is conducted in such a manner as not to give an outward appearance nor manifest any character of a business in the ordinary meaning of the term nor infringe upon the neighbor's residence to enjoy the peaceful occupancy of their homes. An automotive repair business requires the customers to come to the business. They have noticed an increase in traffic on Riddle and West Roads which impacts present uses such as residents walking, riding bikes, pushing strollers, sitting outside and ordinary use traveling in and out of the property. There is little to no traffic on that road. Auto and motorcycle repair business is not a residential compatible business. It is mainly found in commercial and industrial zoned districts. The activities impact the area giving an outward appearance of a business in the increase in volume of traffic. There are pickups towing trailers with non-operating vehicles going to be repaired. Noise from auto mechanic power tools, air tools and equipment has interrupted the serenity of adjacent neighbors enjoying their outside activities. There is noise of the vehicles coming and going and motorcycles after being repaired are test driven down West Road. She stated that she understands that Ben does not have control over his customers coming and going down to his repair shop but their activities and manners are justification for the Commissioners to deny this conditional use for a home occupation. A close neighbor has observed two of the customers urinating in the parking area. She has observed two bay doors being open with vehicles on the racks being repaired and a pickup pulled in with a motorcycle in the back of it. It is obvious that they don't know how much business he will receive and they have to anticipate the worst which could be a lot of volume of traffic.

Beverly stated that the R2 residential use is a boiler plate. It lines out minimum standards and action by the Planning Commission and the Commissioners to evaluate present uses versus conditional uses for compatibility. It is up to the Commissioners and the affected property owners to work in partnership bringing harmony when the minimum uses are not significant enough to deny it at the beginning. She explained that the neighbors are asking the Commissioners to listen to their concerns and not allow a business that should be in a commercial or industrial zone to be allowed in the R2 residential zone. There are 75% of the adjacent property owners that are in opposition to the home occupation. She stated that the road is a deteriorating country road. It was submitted to the Planning Commission that David Bean thought someone from out of the neighborhood should not be testifying for or against this issue. She agrees, but when 75% of the people are going to be affected she believes that is significant enough for the Commissioners to not allow the business to be in this area. As Ben Bean proposed for the home based business he needs to have an income

and the shop is designed to be a full scale automotive business. For these reasons she is urging the Commissioners to deny the application for a home occupation permit. It would be in Ben's best interest to establish his business in a long term area rather than short term. She explained that the differences of opinion as to whether the uses would be compatible or not with the present use is based on the quality of life and the disruption that his customers would bring to their community.

Ken Wallace, 62039 West Road, stated that since the home occupation permit has passed the Planning Commission and they see what is going on now he has some issues. He comes home at 5 pm and can hear him working on vehicles. He is able to operate his business until 6pm. The building is supposed to be 1200 sq. ft. and it is larger than that and is operating out of that larger facility. He stated that it is not a good fit for their area.

Commissioner Rosholt asked if there was any more testimony from the appellant. There was no more testimony given for the appellant. Commissioner Rosholt then opened the testimony up for the respondent and those in support of the respondent.

Benjamin Bean, 62010 West Rd., explained that a lot has been made about how the business has the appearance of a commercial facility so he has taken pictures of other shops in the neighborhood so the Commissioners have an idea of how much his looks or doesn't look like the rest in the area. There has been talk about volume of traffic and what a large concern that is in the area. He gave the Commissioners his invoicing for customer vehicles worked on since the conditional use permit was granted. There are a total of 27 invoices. Some of the invoices are parts only. If the parts only invoices are removed it is a total of 22 vehicles repaired in 49 work days. If they have a vehicle drop them off and a vehicle pick them up in the evening there is still only a total of 66 vehicles in 49 days. The home based foster care across the road has a bus that comes out twice a day which is 98 trips which is more than he is generating in the same time frame. The Baldwins also have gatherings about once a month where they have friends over with approximately 10 extra vehicles coming down which would make 118 vehicles they have had down the road at the same time. If there is a business in the neighborhood that is causing decay in the road it would be almost 2 to 1 to the neighbors across the street not to what he is doing. The appellants claim that the proposed auto shop will not maintain the character of the site. He states that his shop doesn't appear to look any different then other shops out in the neighborhood. It looks cleaner than some others. The appellants claim that the approval allows the auto shop to give an appearance of a business. He explains that it specifically limits him to no lights, no lighted displays, no displays outside and limits him to 16 sq. ft. of sign denoting only what he does and where the property is. The appellants also claim that the auto shop will infringe on the neighbors right to enjoy the peaceful occupancy of their home. He stated that this

building was completed and he made a mistake that he believed his building permit was signed off of and he found out that he did not have his final permit. He has rectified that and it has had a final inspection. He has been in the building since November of 2010 and began by working on his own vehicles. The appellants claim that the auto shop is not compatible with the residential use of the zone and will interfere with practices on the adjacent lands. He doesn't understand how working in his shop is any different than his neighbor working in their shop. They claim that the proposed auto shop will not be secondary to the main use of the property residence. He is limited to a maximum of 45 hours per week. He hasn't worked out there more than 20 hours since this was approved. His father uses the property as a residence 168 hours a week and that is a significantly larger amount of time. He lives there as well. They spend far more time in the home than out in the shop. They claim that the shop violates the zoning ordinance. He explained that the zoning ordinance is subject to conditional use. Conditional use is as dictated by the Planning Commission. Conditional means outside the normal zone use of the property and is reviewed on a case by case basis and that is why it is not granted without a hearing. He is not sure what will be detrimental about his business. There is no date or time specific as to when he has violated any conditions on the conditional use permit. The appellant stated that the shop should be able to relocate within 30 days and not 12 months. Ben explained that after his father passes he will have to take care of his father's estate and move his business and 30 days is not enough time to take care of all of this. He offered the Planning Commission to build a dividing wall in the accessory structure to make the shop portion 1200 sq. ft. but they told him it was not necessary. As far as enforcement was concerned they were sure that if he violated any of the conditions they would hear about it immediately. There have been no complaints lodged on violations since then.

Ben explained that as far as conditional uses and home based businesses in that area the neighborhood has a tile company with a showroom located in it where all of the employees gather at that location and disperse from there. The customers go there and purchase the product. There is a landscape company in the neighborhood where employees come and park their vehicles there and get in multiple company vehicles there every day. There used to be a logging company that ran their company out of their home. There is an ATV and firearms dealer that has a home based business. They have customers come and look at the firearms and ATVs off of his property. The dog groomer that was mentioned earlier did operate for some time in the neighborhood. There is a fruit and vegetable stand which does fit with the agricultural nature of the neighborhood but does bring traffic in the summer when they are selling the produce out of their garden. There is a tax preparer in the neighborhood that runs a home based business and has traffic through the tax season. He explained that there used to be a lighting store that had a showroom and had their customers pick up supplies. The Baldwins have their adult foster care home which brings their employees and the bus to their home. He has been told by other neighbors that

Ken Wallace used to run his plumbing business out of his home. John Bodfish used to run a landscape business out of his home. It isn't unusual to have a home based business in this neighborhood. After adding himself to that list there are thirteen home based businesses in a half a mile of road. It seems that it is more the norm and accepted practice in that neighborhood to base your business out of your home. Someone stated that they know nowhere else that has allowed auto repair in a residential zone. There was an auto repair place ran by Ken Gregory on Cherry Street. Laurence's Auto Body is less than half a block away from Willow school and is residential on one side. Those are just a couple examples where it is not completely unaccepted. The issue of having the people walking on the road and them not being safe with the traffic on the road then maybe themselves or an employee should be walking with them. There are other cars on the road other than the ones that his business generates. The issue with the noise after 5pm is that the Planning Commission chose the hours of 9am to 6pm. He has no problem moving the hours to 8 to 5 if that works better for the neighbors.

He requested time to review or have an attorney review the letter that was submitted by the attorney in Portland. He doesn't feel that he has had enough time to review the letter since it was submitted less than 24 hours prior to this meeting.

David Bean, 61811 Riddle Rd., stated that all of his neighbors have to go past his place and there is a lot of traffic on Riddle Road and a lot of it ends up on West Road. There is very little that ends up at Ben's place but if these neighbors go past his place only twice a day he is wondering if they are sick or out of town because there is a lot of traffic. When they talk about noise in the neighborhood he doesn't know if Ben is in his shop working until he opens the shop door and can hear the radio inside. If noise is a concern he believes that someone should make an onsite check to see how far away from the building you can hear the noise. It bothers him more to have lawn mowers going in the neighborhood because they generate a lot more noise than the shop does. Ben has been involved in mentoring young men who have come there to work on their cars with his tools and his supervision at no charge. He thinks that should be encouraged to be continued. In the letter that was just received from the lawyer firm in Portland he finds it a little underhanded to submit it at this late date. There is a statement in the letter that says there are people in the neighborhood who have no right to be there. He finds that difficult to accept because it is a public road and all of the neighbors should be much more concerned with the proposed bike path that is going to come from Riverside Park and go through the neighborhood bringing all kinds of people into that area. As far as motorcycles are concerned he hears motorcycles go past his house daily because there are people on West Road who own motorcycles and they go past a number of times. When they test motorcycles they should be going out on the highway and testing them out there. He was born in the area in 1936 and lived there his whole life. As far as the

number of vehicles dealt with he has been in Ben's shop a number of times in the last few months and he has seen vehicles in there and also seen nothing in there and nothing outside waiting to be worked on. The heading on the petition given to the neighbors doesn't state the purpose of the petition so he wonders what the neighbors were told. He was not approached to sign it so he is not sure what was told to the other neighbors. He feels that Ben should be permitted to continue under the stipulations of the previous meeting that was held. He would like there to be an extension because of the late submission of the letter from the lawyer to consider those points and to allow Ben's lawyer respond to the subject.

Commissioner Rosholt stated that this hearing will be continued. The record will be kept open for additional written testimony from both parties. The Commissioners will accept additional written testimony until June 15<sup>th</sup> at 5pm at the Commissioners office. The Commissioners will accept written rebuttal testimony until June 22<sup>nd</sup> at 5pm at the Commissioners office.

Commissioner McClure asked Hanley if he could look at the home occupancies that have been testified as being in the neighborhood and see if they have permits for these businesses. Hanley stated that he can submit that by June 15<sup>th</sup> so it is in the record.

Commissioner Rosholt stated that there will be a time specific tentative decision on June 26<sup>th</sup> at 11am. The final hearing will be held on July 18<sup>th</sup> at 10am.

Commissioner McClure told Hanley that he needs to do a check on the home occupancies out there and make it part of the record so that if people want to comment on it they can. Hanley explained that they will review their records to see what home occupation permits have been approved.

Adjournment

The meeting was adjourned at 11:00 a.m.

Respectfully Submitted,

Ashley Wilhelm  
Sr. Dept. Specialist II