

Board of Commissioners Meeting
March 17, 2011

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

Call To Order

Chairman McClure called the meeting to order at 9:00 a.m. with all three Commission members present.

Public Comments

Building Department Update

David Kloss, City of La Grande Building Inspector, explained that as per the intergovernmental agreement March and September are the times that he comes and updates the Commissioners on the building department. He gave the Commissioners a report that reflects what the department budgeted for this fiscal year and where it is estimated to be at the end of the year. It is the beginning stages of formulating the budget for the next fiscal year so he has no hard numbers for the Commissioners to look at this time. He stated that he would get the numbers to the Commissioners to look over once he has those formulated. He also gave the Commissioners the results that came out of the Insurance Services Organization Survey that was conducted. David brought the new electrical inspector, Tim Samples, with him to meet the Commissioners.

Commissioner Davidson stated that on the survey the building department scored a (3) three and he asked David if (1) one was the highest and (10) ten is the lowest. David stated that (1) one is the highest. He explained that the building department had not been surveyed before so it was the first for their department in La Grande. He was pleased with the (3) three. It showed some areas where they can strategically make improvements so the next survey will be more successful than this one. The survey is typically done every five years. The survey requires a significant amount of staff time of the City to put together some numbers and information from Planning and information throughout the County as far as permit numbers and what type of inspections and buildings they are. He explained that they scored extremely well when compared to the rest of the State and significantly higher than the rest of the nation. In the report there is one really glaring negative which is in the training. The ISO establishes a benchmark of (96) ninety-six hours per year per employee for continued education such as code training and professional development. They are at about a third of that benchmark. They are providing the bare minimum to keep their certifications current. With budgets as they are they are trying to be responsible in finding the most cost effective ways in getting that training. In this survey it tells them that to be more effective as a building department it would require more training hours.

In the area of staffing level they are right where they need to be. In the level of plan review and inspections they scored well.

Commissioner McClure asked what the staffing level is at now and if they are using Mr. Black on contract. David stated that they have three full time employees; Sandy, a permit technician, Tim Samples, electrical inspector, and David Kloss, building inspector manager. They also have a part time employee. David Black is on contract with Baker City and is working two days a week for the City of La Grande. The amount of days he is in La Grande depends on the work load here as well as the work load in Baker City. When there is training that one of the staff has to attend they will call him in to fill in for them. Clayton Severn and Gary Hedden who have retired are still willing and available to fill in as needed.

Commissioner McClure asked if the Building Department is doing Commercial Plan Reviews or if they are sending them out to be reviewed. David explained that they are not sending anything out and doing everything in-house. If something came in that was quite complicated he has a relationship with Inspections Inc. out of Ontario that would still help them. The City of Bend, his former employer has also expressed a willingness to help out if it was needed.

Commissioner McClure asked how the plan review is going. David stated that they started tracking the residential plan reviews last April and they are averaging just less than four days turn around. That doesn't mean it is issued in four days it means that the first review has been done within that four day average. How soon they get the permit is determined by how complete their plans are when they come into the Planning Department.

David explained that there are some significant changes in the residential code that are going to have some additional requirements on builders and designers. Some of it he struggles with because their typical builder is not going to be able to bring in plans at that level of detail. There are some legislation requirements that go into effect April 1st which includes that carbon monoxide detectors are required in all new residential construction and any existing residential dwellings that introduce a source of carbon monoxide would be required to install a carbon monoxide detector.

Commissioner Rosholt stated that in the budget the numbers are down 27-34% so he asked if the budget figures were ambitious or were they close to what was done during the previous fiscal year. David said that they were close. Last year he took the previous years numbers and basically put a 10% increase on it. He agreed that they did fall short. He explained that for next fiscal year he is going to use this ending year estimates and increase 5% above that. He thinks that would be a more accurate projection. Commissioner Rosholt asked what the history has been and if it has been as much as 10%. David stated that it is tough to tell when looking back on the last few years. The wind farm generates a large amount of

fees so the numbers have some big jumps. Just looking at the numbers it doesn't give a good way to project for the next year.

Commissioner Davidson asked about the \$50,000 that was budget in contingency that shows that it will be expended but David's budget also shows that labor is down and materials and services is down so Commissioner Davidson would like to know where those funds are going. David explained that it is not being spent but the year end estimated is what will be spent so he showed it as zero. Commissioner Davidson pointed out the unappropriated ending fund balance is up by almost \$30,000. David explained that one of the things they did in last years budget is they weren't sure what was going to happen in their electrical program and with budgetary laws he had to capture money in both labor costs and material and services because the contract that was a private contract with Mr. Potter came out of the consultant line item until materials and services. Not knowing if they would continue with that or actually hire someone and bring them on board that money would then have to be in the labor side. Last years budget was purposefully inflated on both sides because he can't move money from one to the other. The labor and material and services funds will look lower this year because the private contract has gone away.

Commissioner Davidson asked what the trend is on their ending fund balance. David explained it will be up this year. Next year he is not sure where it will be but he thinks it will stay level to where it is now. Commissioner Davidson asked if the administration developed a formula that they can articulate as to how they come up with the administrative service fee. David stated that they have not come up with one that he can look at on a piece of paper and follow. Commissioner Davidson stated that he would be asking Robert Strope, City manager, if he was present at the meeting. David explained that he did just get the new numbers for administration for next year. It went up about \$2500 for the building department. There is no breakdown on what the building department is paying for rent, payroll or those types of services.

Commissioner Davidson asked what La Grande is charging on an SDC on a single family residence. David stated that he is not sure that there are System Development Charges. Building department fees usually run about 1.5-2% of the construction costs.

Commissioner McClure asked if David thought the fee structure was adequate and is supporting the department at this time. He does think that it is enough to sustain the department at this time. The only thing that concerns him is SB2620 that has an emergency clause that would put it into effect immediately if it is passed. The SB would allow building departments to only collect 1/3 of the fees at the time that the permit is issued. Commissioner Davidson asked if the Bill is moving up in the process. David explained that the Oregon Builders Association is taking a strong stance of opposition to the Bill. He believes that the Bill was

well intentioned but it will have a lot of unintended consequences that will increase costs and not lower them in the long run. If that was to pass he would immediately file a notice for a fee increase. It would increase the staff time so he thinks a fee increase would be appropriate.

Commissioner Davidson asked what kind of feedback David has received from the Representatives on the Senate Bill. The legislative committee for the Building Official Association is the entity that is lobbying with the Representatives for the building officials. He doesn't think there is any widespread support for it.

Commissioner McClure asked if it would be appropriate for the County to write a letter to the City Manager requesting the administrative fee formula. Commissioner Davidson thought that it is appropriate and that the County needs to ask him what that formula is. Commissioner McClure asked that the Administrative Officer draft a letter to the City Manager asking for that formula.

Consent Agenda

The March 3 and 10 claims journals; the March 3 and 9 Public Works claims journals; and the March 2 Board of Commissioners Minutes were approved as presented on the consent agenda

Appropriating Unanticipated Funds

Court Order 2011-19, In the Matter of Appropriating Unanticipated Funds, was presented for consideration. Shelley Burgess, Administrative Officer, explained that this Court Order would add an appropriation in the current 2010-11 budget in the OTIA project fund of \$5,000,000. It would allow acceptance of HB 2001 funds which is the JTA program. It would authorize an expenditure in the same amount under Capital Outlay. This project is the Pierce Road project. A grant agreement as been signed for this project but at the time the budget was prepared she wasn't aware that these funds would be available during this fiscal year. That project is currently out to bid. She believes there will be construction costs before July 1st that will need to be paid. This would authorize acceptance and expenditure of those funds. **Commissioner Davidson moved approval of Court Order 2011-19 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Appointment to Renewable Energy Committee

Court Order 2011-20, In the Matter of Appointment to the Renewable Energy Advisory Committee, was presented for consideration. There is currently a vacancy on the Committee and an application was received from David Felley. This Court Order would appoint him effective immediately with a term to expire December 31, 2012. **Commissioner Davidson moved approval of Court Order 2011-20 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Appointment to STF Advisory Committee

Court Order 2011-21, In the Matter of Appointment to the Union County Special Transportation Fund Advisory Committee, was presented for consideration. Jessie Huxoll who was appointed to the Committee has resigned leaving an open position and Desarae Nawras has applied. This Court Order would appoint her to begin serving immediately with an expiration of December 31, 2011. She is eligible under the definition of qualified individuals to serve. **Commissioner Davidson moved approval of Court Order 2011-21 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Community Dispute Resolution

Resolution 2011-01, In the Matter of Participation in Funding Activities of the Oregon Office for Community Dispute Resolution, was presented for consideration. Shelley explained that this is a program that the County has participated in for a number of years. It is a biennial program. The funds are made available through the State legislature. They come to the County through the University of Oregon Law School who administers the Community Dispute Program. This Resolution would notify them that Union County does want to participate and there is an RFP process to select the agency that would provide the mediation services and the County would select a provider. If the County chooses not to participate then the funds that would be allocated to Union County roll into the pot and would be distributed elsewhere. Shelley explained that this has been a successful program for the County in the past and she recommends that the Commissioners approve the Resolution to participate again. This would start in July 2011 but there is an RFP process that needs to start before then. **Commissioner Davidson moved approval of Resolution 2011-01 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Appeal Hearing – Fregulia Conditional Use (Stevens)

Commissioner McClure explained that the record that came from Island City is part of the Commissioners record. None of the testimony or documents has to be resubmitted. He explained that the Commission will ask the appellant to make his case first or anyone that supports the appellant. The Fregulia side will then have an opportunity to present their testimony. There will then be an opportunity for rebuttal from the appellant. There are quite a few people in attendance and both parties are represented by attorneys so Commissioner McClure would like to give the attorneys special consideration and let them have the time to present their full case. The rest of the testimony will be limited to 3-5 minutes. He would like the testimony to be on what is being talked about at this hearing. He asked the other two Commissioners if they have had any ex parte' contact with any of the parties involved. None of the Commissioners have had any discussions with the parties involved. Commissioner Davidson stated that he and Commissioner McClure did go with the Planning Department Director on a tour of the site.

Commissioner McClure explained that Hanley Jenkins II, Planning Director, will give a staff report to bring the Commissioners up to speed on where the process is and the criteria that are being looked at. Commissioner McClure asked Hanley if there is anything in the process that he was missing. Hanley stated that it is a denovo hearing so the Commissioners are excepting new evidence in addition to incorporating the Island City record into the Commissioners record.

Hanley Jenkins stated that the materials that were received from the City of Island City has been put in chronological order and has been presented to the Board of Commissioners. The Board has had the materials for a week. There has been new evidence and testimony received that has been presented since the appeal was filed which that is part of the record and has been provided to the Commissioners which include the chronology of events that have transpired up to this point and actions taken, the applicable law for the review of this application, and a copy of the joint management agreement between the City of Island City and Union County addressing who has what responsibilities for land use actions. Hanley read the chronology of events that is included in the record.

Island City has their own comprehensive land use plan and their plan identifies an urban growth boundary that goes beyond the Island City City limits. That area is referred to as the urban growth area. The County adopted the Island City land use plan by County Ordinance 1984-06 and the subject property was identified in the low density residential land designation. The City and the County entered into a joint management agreement. That was done through Ordinance 1983-08 and as a part of that Ordinance the County also adopted the City's land use regulations that were identified as their zoning and subdivision Ordinance. In the joint management agreement section 4 says that Island City is responsible for administering its Ordinance. The County adopted the City's land use development codes for that area and Island City is to administer that code. The land use actions first go through Island City however, in section 7 it states that all appeals from the City Council first come to the Board of Commissioners before, if necessary, they go to State Land Use Board of Appeals (LUBA). The joint management agreement agreed to by the City and the County allows the Commissioners to be the final decision makers of local decisions before a decision would be reviewed by LUBA. The applicable law is found in Island City's land use regulations and Island City has a development code series 2004 and they also have a zoning map. That map identifies the subject property in a low density residential zone. In that low density residential zone two classifications are identified. The City's findings and the City's staff report states that they believe the property is in an R-E Residential Environmental zone. The low density residential zone doesn't make a distinction nor do the maps. They talk about an R-1 zone and an R-E zone. The R-E zone applies to larger lots that are large enough to accommodate livestock. That's why Island City states that this property is recognized as being a part of the R-E zone. It is not relevant because the standards in the low density residential zone apply to both. The standards for

review are those that are found under the low density residential zone. In that zone section 4.03(b) identifies home occupation as a use that is subject to going through the conditional use review process. That process is identified in Article 12 which he provided to the Commissioners. Under the general standards in section 10.07 they identify the specific review requirements for a home occupation. There are eight specific criteria that apply to home occupation. These are typical of any jurisdiction for requirements that might be found when reviewing home occupation use. When the County reviews home occupations they inform the applicant that a home occupation is something small scale part time. It is not a full scale commercial operation that would normally need to be in a commercial zone or an industrial zone. This is something that can be compatible with residential uses. These criteria are intended to try and demonstrate or show how the proposed use are generally small scales and fit into a residential zone. They include that the home occupation needs to be secondary to the residence on the property, can be no greater than 25% or consume no more than 25% of the primary structure. There is a provision that allows for locating in an accessory structure and the City's Ordinance states that if the business is located in an accessory structure it cannot be bigger than 600sq. ft. It cannot detract from the residential appearance of the property. There cannot be more than one employee besides the immediate members of the family that live in the residence on the property. There are equipment limitations such as no material or mechanical equipment shall be used which is detrimental to the residential use of the dwelling or adjoining dwellings. There can be no parking of customer vehicles. No materials or commodities shall be delivered to or from residences that are in such bulk or quantity as to create undesirable traffic congestion. There is also a limitation on signs. Those are the specific criteria for home occupation then the City does have specific requirements in Article 12 that talk about how they review a conditional use application. Generally, the City's conditional use application process requires going through the City Council. They have to give notice and an opportunity for comment.

There are review criteria found in section 12.04 and those five criteria require that the application conform with the code requirements which are that the site should be appropriate for the use and the neighborhood and the applicant needs to demonstrate that there won't be any adverse impacts to the neighborhood. Conditional uses have the ability under the City's Ordinances to be approved or denied and the City has provided themselves authority for attaching conditions on approval to mitigate potential conflicts to try and bring the proposed use so it meets these criteria and addresses the review criteria for conditions.

Commissioner McClure asked if the Commissioners have the same authority so if they want to mitigate in some different fashion that authority comes to them as the governing body. Hanley stated that is correct. He explained that the County did adopt the City's comprehensive land use plan and the land use regulations so

they are the Commissioners for that urban growth area. The Commissioners now have the authority to review and administer that code.

Commissioner Davidson asked if the Commissioners did amend the permit and approve it then is the enforcement going forward the County's or does it return to the City. Hanley explained that the County has delegated the administrative authority to the City. The joint management agreement says that this appeal is coming to the Commissioners. The appeal process allows the Commissioners to except new evidence and testimony and change the decision. The Commissioners decision would then be administered by the City.

There was an email that was received for testimony that was submitted to the Commissioners for the record. There was correspondence that was received for the record by Wes Williams representing the Fregulias. All of the notifications because of the change in the dates for the hearing there has been multiple notices which are also a part of the record. Hanley explained that this hearing is the Commissioners opportunity to accept new evidence and testimony and if they are able to deliberate, make a decision.

Commissioner McClure stated that Commissioners can ask questions during this process for clarification. He asked the attorney for Mr. Stevens to address the Commissioners with testimony.

The attorney asked Commissioner McClure if he could let the people testify in favor of the appeal and then he would make a statement. Commissioner McClure stated that would be acceptable if that is the way he would like to proceed.

Scott Stevens, 62817 Buchanan Lane, La Grande, explained that although his address is a La Grande address his four acres falls inside the Island City Urban Growth Boundary. He stated that he is testifying today to ask the Union County Commissioners to overturn the home occupation conditional use permit Island City has issued to Oregon Trail Transport which is a commercial trucking company that has four acres to the East of his property. Their property is zoned residential-environmental. The public notice states that he must raise a specific issue today. He stated that he will raise several issues which any one should overturn the permit and collectively they should be overwhelming proof that this commercial trucking company does not meet the standards for the home occupation permit for the 10.07 standards. First, home occupation 10.07 standard (a) Secondary to the Residence; states that the home occupation shall be secondary to the main uses of the property as a residence. With the amount of drivers, vendors, mechanic starting work at 3 am until 10 pm seven days a week and the shop business is the primary use of property and the residence becomes secondary. Home occupation 10.07 (b) Not Greater Than 25% of the Structure; states that the home occupation shall be limited to either an accessory structure or 25% of the main dwelling. If located in an accessory structure the

home occupation shall not utilize over 600sq. ft. Most of the business tools and equipment of Oregon Trail Transport are in the shop. Oregon Trail Transport's application states that the shop is 2500sq. ft. which is over four times the amount that is allowed by the standard. There seems to be some confusion about the shop. Oregon Trail Transport calls it a shop, Island City calls it a garage, Mr. Williams calls it a barn but regardless if it is a shed or a lean-to it is still a structure and the standards refer to it as a structure. The Union County assessor has it as a 4600 sq. ft. structure. Third, the home occupation 10.07 (c) Residential Appearance; states that the structural appearance shall be minimized and shall not detract from the outward appearance of the property as a residential use. The size of a large commercial truck shop that trucks and trailers park next to does not have an outward appearance of a residence but has an outward appearance of a commercial truck shop. Home occupation 10.07 (d) Maximum One Employee; states that not more than one person other than immediate family residing in the dwelling is to be engaged in the home occupation. Oregon Trail Transport's application dated June 14, 2010 states they have five drivers. It does not mention their mechanic who is pictured twice in the photographs they submitted on their application which is Reid Fregulia. Although they claim Reid is not on the payroll and is a disabled amputee he does work on the trucks all the time. He is Oregon Trail Transport's mechanic. Reid can do anything anyone else can do but just does it a little different. He has seen him fabricate and build things that a man with two arms couldn't do. How Reid is compensated for his work as a mechanic for Oregon Trail Transport is not of his concern but more as a matter of Oregon Department of Labor, Oregon Department of Revenue and the Internal Revenue Service. They will be submitting many photos that prove Reid is on site and does work for Oregon Trail Transport. He doesn't have any set hours but is there on a regular basis. Oregon Trail Transport at this time has six drivers and one mechanic. Another employee has been driving Mr. Fregulia's truck which is no longer exempt if driven by an employee. This means now there are seven non-resident employees engaged in the business which is six more than the standards allow. The standards do not say one employee at a time. Island City final council land use decision the findings report on page 6 states that the council received testimony that there would be more than one non-resident employee on site. The council adopted a clear condition that no more than one non-resident employee is to be allowed on site as with other adopted conditions that are approved failure to comply with an adopted condition may result in the review or likely loss of the conditional use permit. Section 10.07 (e) Equipment Limitations; states that no material or mechanical equipment shall be used which are a detriment to the residential use of the dwelling or adjoining dwellings because of the vibration, dust, smoke, odor or interference with radio, television or other factors. He stated that it is a detriment to him and his wife and they are a part of the neighborhood. They built their house back from Buchanan Lane 18 years ago to avoid the noise and traffic knowing that the Island City Cemetery would some day expand behind them which would ensure they had a quite place to live out their lives. The

vibration, dust, smoke, noise and odor from the commercial trucking company were not anything they could have imagined to be allowed in a residential environmental zoned area. Listening to trucks starting up at 3 am and idling for 20 minutes or more seven days a week is a detriment to them. At the end of the day trucks return as late as 10pm. They drive around the shop and shine their lights in the Steven's living room window to pull into their parking spots. It's not only Oregon Trail Transport's trucks but there are just as many other trucks that frequent the property on a regular basis. The employees park their personal vehicles there daily and there is also noise coming from the shop such as air compressors, hand tools and hammering.

The staff report recommends any material changes in nature proposed in the home occupation could result in permit revocation. On January 10, 2011 Oregon Trail Transport purchased another set of tanker trailers. He explained that they have photos that they will be submitting that show they continue to expand their business. Parking is not an issue with customers but employee parking is undesirable traffic. Home occupation 10.07(g) Delivery Limitations; states that no materials or commodities shall be delivered to the residence to which are of such a bulk quantity to create undesirable traffic. There are several vendors that frequent the property such as Peterbilt, Kenworth, Freightliner, Commercial Tire, Les Schwab, Sterling Batteries as well as the trucks of the employees create undesirable traffic. There is a large log deck next to the fence that the neighbors share. It has been there for four years. The log deck is hauled in by trucks and unloaded. The log deck is a bulk commodity. The logs are being chopped up and cut into firewood. People come and pick the logs up so they are offloading a commodity; distributing and people are coming to their location and picking it up. Island City staff report states that their home and the Clemens home are 150 feet away. There is nowhere that he can see 150 feet is a boundary. His home is closer than 150 feet to the parking area and the Clemens home is less than 80 feet from where the trucks drive in and out of the property. He asked the Commissioners if the home occupation permit when it was created if it was the intended use for this permit.

The burden of proof should be on the applicant to prove that the business fits with the neighborhood not the neighborhood should bear the proof that it doesn't. There is another concern of his that he would like to address. Since the beginning of the process there has been an Island City councilman that has an interest in a company that helped participate in the preparation of the building site, parking lot area, excavation for water, sewer and power who is a personal friend of the Fregulias. He has been at their house on several occasions and he has seen him interact with the family and the drivers. The councilman was present during all the meetings and took part in the discussion and voted. When asked if the councilman had any ex parte' contact with the Fregulias on a business or personal level he admitted to a business relationship but said nothing of a personal relationship. He feels that this councilman should have been

truthful and disqualified himself however he voted in favor of the Fregulias tainting the whole process. He is asking that the Commissioners make their decision based on the facts and follow the rules. Mr. Stevens submitted a log of the activity that has been on the Fregulia property pertaining to the business and their violation of the conditional uses for the home occupation permit.

Debra Stevens, 62817 Buchannan Lane, La Grande, explained that they purchased their property in 1989 after confirming with the Planning department the zoning for land use was residential and it would remain that way. They built their home far back off the road away from traffic with the hope of retiring there in their later years. Seven years ago the Fregulias moved in next door. They found them to be nice polite neighbors and for the first five years they got along fine.

They knew that Mr. Fregulia had a few trucks but they never saw them because he kept them somewhere else. When the Fregulias built their shop in 2008 it was twice the size they thought it was going to be. As the project neared completion Mr. Fregulia requested that power receptacles be added to the outside wall. At that time they told Mr. Fregulia if he intended to use his property for commercial purposes he needs to talk to the planning department. Shortly thereafter around November 2008 seven commercial trucks and multiple sets of trailers hauling gasoline, diesel and fertilizer arrived on the property. In May 2009 Hanley Jenkins received a complaint that was forwarded to Island City. At some point Island City sent the Fregulias a letter notifying them of several complaints. Island City knew about this problem for a year and chose to ignore it by not following through. When they felt there was no possibility of change they put their home up for sale. The trucking company had become unbearable and impossible to ignore. Three months into the real estate contract they decided that they should not be the ones to move and their home was taken off the market. The conditions of approval that Island City placed on the Fregulias brought very little change and the commercial trucking business continues to operate as usual. These trucks haul hazardous materials such as gasoline, diesel and fertilizers and are parked next to a very large shop building. Island City's minutes quote Mr. Fregulia as saying, "there is no way you can light a truck on fire without dying." By his own admission these trucks are volatile and often loaded. Accidents happen; the Interpretive Center in Island City should not have burnt down, the Bronson Lumber Company in Island City should not have burnt down, and neither should the Riverside Park Pavilion. She asked if this is a liability that the Commissioners want to assume. For approximately 835 days she has been living in fear wondering if it is the day she is going to die. Oregon Trail Transport by no means fits the criteria to operate under a home occupation permit. If Island City can pass this trucking company allowing the Fregulias to operate there isn't a single business that can ever be denied a home occupation permit in the future. She urged the Commissioners not to set precedence. If one can do it others will follow out of fairness of law. The staff report states that if complex conditions of approval are required this is an indication that the proposed use may be

inappropriate for the proposed site. The trucks need to be located to an area that is not threatening to others. Doing so will allow the Fregulias to grow their business and expand it by adding as many trucks and drivers as they would like and becoming more profitable in the process.

David Clemens, 62843 Buchanan Lane, La Grande, gave testimony that explained the reasons why the business should not have been granted a home occupation permit and the trouble it is causing in the neighborhood. He submitted his written testimony and it was put into the record.

Phillip Wasley, lawyer, representing Debra and Scott Stevens who oppose allowing a commercial trucking operation next door to them in a residential environmental zone. The Stevens were assisted by Dave and Sherry Clemens by contributing to the appeal fee. He appreciates that the Commissioners have a difficult job with their normal duties but they are being called on to render a legal decision today. The Commissioners are being called on to interpret the law in a fair and impartial manner. The Island City decision is not to be given precedence because this is a denovo hearing which means that this hearing is starting anew. The evidence is looked at with fresh eyes. The evidence shows that the Fregulias are operating a large scale commercial trucking operation in the middle of a residential environmental zone. The trucking operation consists of a small home office, large maintenance facility that is being run twelve hours a day or more, and the use of several acres of land that is used to store other equipment such as trucks and personal vehicles.

He explained that they previously submitted photos on a DVD which is part of the record and he submitted two more CDs labeled UC1 and UC2. On the CDs there will be 300 or more photographs all taken since the Island City's decision by his clients. There is a shortened version of the DVD that was submitted to Island City that doesn't have sound but it is a quicker review of what happens when the trucks come in and out of the property. Commissioner McClure asked Hanley if the Commissioners received a DVD in the Island City record. He stated that the Commissioners have not received or viewed the DVD. Phillip also submitted a color coated calendar marked UC6 and a log of events marked UC7 which were both made by his clients. Those should be read together. The log and the calendar were made only when his clients were home or awake. A lot of things happen when they are asleep or at work. Those documents show the inappropriateness of the operation. There are up to five semi-trucks coming in and out of the property. There are vendor trucks coming quite frequently and the time that the trucks are coming and going is unlimited. Section 12.04 in the development code in Island City states that if even one of the criteria of the code cannot be met the use shall be denied. Some of the criteria do allow for modifications or mitigation criteria. There are numerous identifiable criteria that are clearly not met by this application. They are specific such as the use shall be secondary to the residential use; the second is the limitation of the area required

by the use. There is a 4600sq. ft. accessory structure as well as a house so under the rules this permit should not be allowable. The inquiry should be ended on that point alone. Island City's explanation that the rule is not meant to limit the service that a personal vehicle in a garage is in his opinion laughable. Island City's interpretation would allow maintenance of a fleet of jet airliners if they were owned by the person that occupied the land. Other criteria required that not more than one person other than the immediate family residing there is to be engaged in the home occupation. Not one person at a time, not employees but the rule states that not more than one other person in the immediate family is to be engaged in the operation. There is a mechanic who they do not know how he is paid and there are five or six employee truck drivers that are coming and going all the time. They are all employed in the home occupation making daily trips, storing their vehicles and getting maintenance. There are also vendors making appearances. They are engaged in the operation. They are hired to be there. They are hired to come in and deliver parts and supplies to further the maintenance of the trucking operation. The rule is being violated and it is not permissible under the code. Section 10.07 (e) requires that no materials or mechanical equipment shall be used which are detrimental to the residential use of the adjoining dwellings because of vibration, noise, dust, smoke or odor. A fleet of semi-trucks and the equipment used to maintain them with the noise, dust, smoke and odor associated with that activity is detrimental to the adjoining land owners. He asked the Commissioners if they would rather live in a place that has a commercial trucking operation next door or would you rather live in one that didn't.

He doesn't see how they can make a determination that this use is not detrimental to the land owners and abide by the rules. If you apply the evidence to the rules only one decision can be made. He believes the Fregulias are going to state that the mitigating conditions are enough but they are not the kind of mitigating conditions that erase what the rules require. The rules require one employee only in the whole operation. The rules require that there be an office space or small accessory building. The rules need to be followed and they cannot be erased by applying a mitigating condition. The Stevens and Clemens are entitled to enjoy the benefits of the land use law. They purchased a home and they are now suffering from diesel semi-trucks coming and going on a daily basis. The business is running Sunday through Saturday without a break. Land use rules ensure quality of life and protect property values. He asked the Commissioners to review the case, evidence and follow the rules and deny this permit.

Wes Williams, lawyer, representing the Fregulias, stated that he provided the Commissioners with brief that detailed how the Fregulias satisfy the Island City development code in both section 10.07 for the home occupation and section 12.04. As he sees it the two key issues are whether there are any adverse impacts with the Fregulia's home occupation and whether those adverse impacts

can be mitigated. He has brought an aerial photograph for additional evidence. There are some concerned neighbors. He is not degrading their concerns but he does want to make it clear what the facts on the ground are. The Fregulia property is about 4 acres. On that property they have a home and in their home is an office. The office is in the foyer and occupies approximately 60sq. ft. It consists of a desk, computer, phone/fax machine and there are no employees using that office other than Mr. and Mrs. Fregulia. There is no sign advertising the business. Adjacent to the house is a garage. In a prior building permit process the Fregulias built a barn style all purpose building. That building is approximately 4600sq. ft. and Mr. Fregulia and his brother store their personal property in that building also Mr. Fregulia uses it for maintenance of the trucks that are a part of his business. In the testimony that was giving earlier that Mr. Stevens is an electrician and has a home occupation permit in his home. He has the 4 acres West of the Fregulia's property. Mr. Stevens assisted Mr. Fregulia in wiring the shop in which he is now complaining about. The trucks that are parked on the property are now limited to two in the parking area and one in the barn by the conditions imposed by the Island City council. Mr. and Mrs. Fregulia don't object to abiding by those mitigating conditions. The photograph was taken before the mitigations were imposed. There is one truck parked beside the barn. Mr. Fregulia has instructed his drivers when the trucks are parked at the end of the day they must point South towards Buchanan Lane so if they leave in the dark in the morning to not use their headlights while they are idling out so the headlight glare is not on Mr. and Mrs. Stevens home. He has also instructed his drivers to idle out and limit brake use so the noise is at a minimum. When Mr. and Mrs. Fregulia learned that Mr. and Mrs. Stevens had a concern of headlight glare they instructed their drivers to turn their headlights off as they round the barn if they come in the dark. Originally Mr. Fregulia had six trucks but that is not the case now because of the mitigating conditions imposed by the Island City council. Now he has one truck in the barn and two trucks parked outside the barn. Most of the drivers are able to park their trucks on their own property or elsewhere. There is one driver who is unable and another driver is now out fighting in Iraq so there are now two trucks parked on the property which is allowed. It is important to note another mitigating condition that was imposed by the Island City council which is that there can only be one trip out per vehicle per day and one trip in per vehicle per day. There is no longer a situation where trucks are going in and out all the time. The business picks up the supplies some place else and haul it to another locations. They are loading and off loading in another location. The log deck that Mr. Stevens mentioned are logs that are brought for Mr. Fregulia's personal firewood. It is not part of the business. This is a rural area. There are large rural lots. Just South of Buchanan Lane there is an industrial park with six businesses. They should expect some traffic noise from the industrial park and from the commercial vehicles that serve that industrial park or the employees that work at the industrial park. The Island City council found that there are two potential adverse impacts which are headlight glare and the noise from the trucks coming and going and second is noise from Mr.

Fregulia maintaining the trucks inside the barn. The Island City council imposed mitigation to help with these adverse impacts. Those mitigating conditions are that there may be only one trip in and one trip out per truck per day. The hours of operation can be from 7 am to 7 pm. Any maintenance has to occur only on Mr. Fregulia's personal vehicles in the shop during those business hours. Wes stated that Hanley Jenkins misspoke when talking about section 12.04 when he said there could be no adverse impacts. He doesn't think Hanley intentionally misspoke. Section 12.04 (d) the Statute states identified adverse impacts on neighboring property owners can be mitigated by conditions of approval not that there are no adverse impacts. It does not say no adverse impacts but it states that impacts that have been identified needs to be mitigated through conditions of approval. Wes believes that Phillip Wasley misspoke when he quoted section 12.05. Section 12.05 does not say that it is limited to these conditions but in the final sentence of the section is states that such conditions include but are not limited to the following. That Statute is not meant to limit the Commissioners discretionary decision making. Mr. and Mrs. Fregulia are willing that if the home occupation permit is allowed they will put in a vegetative barrier all the way from the Northwest corner of their property down the boundary line with Mr. and Mrs. Stevens in order to deal with the adverse impacts they brought up of noise and headlight glare. Mr. and Mrs. Fregulia invite the Commissioners to visit the site as many times as they would like at any time. He is asking that the Commissioners uphold the Island City Council's decision granting the home occupancy permit with their mitigating conditions and any other mitigating conditions the Commissioners feel are appropriate. There is nowhere in the Statute that it states it must be a part time occupation to have a home occupancy permit.

John Fregulia, 62833 Buchanan Lane, La Grande, explained that he moved his trucking company to La Grande fifteen years ago. He bought the property he is located on now seven years ago. Before he purchased the property he went to Island City and told them that he had three log trucks and he wanted to purchase the property and build a building to do maintenance on the trucks. They had no problem with it. He had to get a home occupation because of his neighbor Mr. Stevens. When he first moved onto the property Mr. Stevens was a good neighbor and friend. He was willing to plow his snow without asking and did all the electrical work on his house, the electrical work on the shop and came over to visit. He would have never bought the place if he would have known it was going to be an issue. He didn't have any intentions on having six trucks on the property but when he purchased Oregon Trail Transport the trucks were parked at Blue Mountain Oil. When they sold to Byrnes Oil he had to move the trucks somewhere because he couldn't park them there anymore. He has no problem relocating them but he had three trucks on the property when he moved there. There are two trucks currently on a daily basis. There is a third one occasionally when it is in the shop getting worked on. There is one employee that comes onsite to pick up his truck daily because he doesn't have a place to park his truck

and Mr. Fregulia doesn't have another place for him to park it. The drivers are instructed to idle in and idle out. There is no more dust, noise or odor coming from his place then there is coming from Buchanan or McAlister. He went to Mr. Stevens after the trucks were parking at the house and asked if the trucks are waking him up at night. He said that his bedroom is on the far side of his house and he doesn't even know when they leave. He asked them if he needed to have the guys turn their headlights off if it was shining on their house. He said that his house is elevated enough that the only way he knows they are coming in is that he sees a glare off the ceiling. He still instructs them on turning their headlights off before they round the building in the dark and park. Dave came to Mr. Fregulia right after the building was built and complimented him on the quality of the building and how nice it looked. Mr. Fregulia went to him when he realized there was a problem with Mr. Stevens. Dave stated that if it were up to him he would like to see the trucks leave but Island City approved him they would shake hands and go their ways. He would be willing to do a hedge and as far as him keeping his business in Union County he wants to. But if he is not approved to do that he will have to take his business somewhere else.

Tracy Fregulia, 62833 Buchanan Lane, La Grande, states that they own and operate a small scale family business. They have done this for fifteen years. At the current location they have the shop area with the trucks. They try to keep it under the conditions that were set for them by Island City. An incident was brought up on December 29th where there were more trucks there than what should have been. The Mayor did come and check it out. The situation that day was that the freeways were closed because of a storm. There was no where for their workers to go. She works mainly in the home in the office area that was described at approximately 60sq. ft. That is her office where she does payroll, billing, file reports as well as send out her Christmas cards and check her email and everything anyone else does from their home office. They do not load or offload any products onsite. The area is well maintained. They have courteous employees and truck drivers who are members of their family. They come and go as employees but they are members of their family. They are there when they are not on duty as well. They are very proud of the business they built and proud to have it in Island City at this point. She stated that she would hate to have to move it for that reason. They are very involved in this community as far as having children in town. They support activities and have many friends. Her brother in-law occupies part of the shop with his personal belongings so he is there a lot. He does help out on the trucking part of things on occasion. He is family and family helps each other out. Their business is secondary to their home. Vendors do come in and out of the home. There is a Peterbuilt gentleman who delivers parts on occasion. She stated that they do not hire him but he is hired by Peterbuilt. They do not hire the Schwann's man who delivers to them as well as the UPS man. There is dust out there from the driveways and farms as well. There are trucks on Buchanan Lane and McAlister daily. They hired Kevin Hampton to do some excavating work for them. That is his job and they are

active in the community so they know many people. Kevin has become a friend. He does come to their home as a friend and as a person who provides them a service from time to time. The Stevens did put their home for sale and they were told they found another property they were interested in but it was up for sale for quite a while. She stated that there are pictures of anything from videos all hours of the night. He has videoed their children doing yard work or on the dirt track out back riding their four wheelers and dune buggies. They are in the trucking business so they have many friends in the trucking business and they have friends that own trucks that come over not for services but as friends. She feels that not only her business is being attacked but her family as well.

John Fregulia explained that the new tanks that were made comment about earlier are not an addition or a growth to his company. Those were replacements for a vehicle that was destroyed in a crash in which they lost their senior driver and friend. It was on the front page of the observer. He just received those in January but they replaced that vehicle. There are five drivers and six trucks. There were seven but he did not replace the seventh truck after the crash he just replaced the trailers. Peterbuilt and Kenworth do come to make deliveries of parts just like UPS would. The wood deck is something that he uses for personal use only.

Commissioner Rosholt asked how many drivers Mr. Fregulia has. Mr. Fregulia stated that he has five employees and six trucks one of which he drives himself.

Dale Matson, 62812 Buchanan Lane, La Grande, stated that most of what he wanted to talk about has been covered thoroughly. He stated that these people are courteous and the drivers go by at an idle. He has a John Deere tractor that he drives faster past his house than the tanker trucks go. As far as coming in at all hours of the day and night he lives there and is very active outside but there was only once that the headlights hit the house. The trucks go by about 6 am and if they go by at 4 or 5 am he doesn't hear them. The trucks are not loud. Some of the pickups that go by are louder than the trucks. The fields around the area create more dust than the trucks. He spent forty years driving truck and 99% of the trucks are coming in empty. He can tell by the sound of the trucks that are loaded and not loaded. He doesn't go over to inspect them but he can tell by the sound.

Don Voltburg, 62961 Buchanan Lane, La Grande, stated that he is a professional driver and owns his own truck. He can say that he has a million miles in trucking and about that many hours in heavy equipment. He has heard lots of noises in the way of heavy equipment and trucks. John's establishment where he lives he doesn't hear any noise. There is more noise on Buchanan Lane from pickups, fast cars and McAlister Lane is very loud. He is out there this time of the year in the early hours of the morning and late night taking care of his lambs. He can hear a lot of noise out there but there are more noises coming

from other areas than what Oregon Trail Trucking might create. As far as traffic he has more problems with some of the residents not wanting to stop and forfeit the right of way when he is going down Buchanan Lane. The tanker drivers stop and wait for him and he feels safe driving by them. John's establishment is well kept and clean. There is no sign of tires or grease cans or oil drums anywhere.

Tony Peterson, 64840 Hunter Road, La Grande, stated that he and his father own the commercial property to the South of Buchanan Lane, AC Electric. His office sits about 40 feet from where John turns his trucks into his property. He couldn't tell that a truck turned in there unless he is standing at the window or outside. It is just like any other truck that goes by. There are trucks and cars that come from employees or friends of his that work at Nash that drive down Buchanan Lane at 40mph past there that have loud trucks. John is very courteous of how he makes his drivers come in and out of the facility. He has them idle and there has never been a jake brake. If the headlights are pointed anywhere it is at John's house in the morning or their building where there are no windows on that side of the building. The property that he has used to be Phil Knights with Rambling Rotors which was a helicopter business and flew in and out of there with sprayers every day. Dave's house is a house that has been at the site the longest and used to be right next to the facility. They didn't need to build the houses where they are now. It was established to be residential and they chose to build their houses there. The commercial buildings were there originally. Maybe they shouldn't have built close to a commercial area if they don't like the situation. He is friends with John and his family. John has told him that if it is not approved then he is moving his business probably to Idaho. He doesn't want to see local businesses that provide five family wage jobs leave. He doesn't have any problems with Mr. Clemens or Mr. Stevens. Mr. Stevens is a direct competitor with him and runs his business out of his house which is what John is trying to do. John and Tracy are accommodating to any of the residents there. There has never been an issue with him. He is parking a truck at their shop right now because he can't go over the two trucks and the individual doesn't have a place to park the truck. To him it sounds like he is meeting all of the contingencies of running his business.

Margaret Byron, 62795 Buchanan Lane, La Grande, stated that she lives across from Dale Matson and they connect at Scott and Debbie's property. The Fregulias are across a field from them. She does hear the trucks. They drive past their house and it does not disturb them. They used to be good friends with the Stevens and it has changed because they feel that the Fregulias have not hurt them in any way so they don't speak to the Stevens. Their neighborhood has become so sad after this issue. It is not the pleasant neighborhood that it used to be. They have never had problems with their neighbors. They all have tractors and riding lawn mowers they are on for hours. She is outside all the time and none of the neighbors bother her. She has a life that she enjoys there and unless a neighbor is in trouble or needs help they would be there to help. She stated

that John and Tracy are good for the community and there is no issue with the trucks. She thinks it would be a real disservice for them to have to leave the County.

Reid Fregulia, 210 Aries, La Grande, stated that he is John Fregulia's brother and that if the Commissioner just come and look the three driveways and the dust that comes off of the driveways the gravel that John has in his driveway is by far the nicest driveway. There are semi-trucks and diesel pickups on the surrounding roads. The Dodge diesel pickups are louder than the trucks that come in to John's property. He knows because he is there all the time because he works on his stuff there. He consumes a little over a quarter of the storage area in the shop. He has about a third of the main shop used up with his tools and equipment. If the Commissioners were to come out and compare the elements of the dust noise and smoke. The trucks do not put off any smoke. The dust comes from farming and not driving trucks.

Commissioner McClure then allowed for rebuttal testimony.

Bob Clemens, 63423 Buchannan, La Grande, stated that he originally owned the property that is in question. He is curious to know what will take place. He also was a building contractor for 35 years and met with Hanley many times on finding out the codes, regulations, laws and rules for all people to follow. The issue is if the law is being followed. If the law is being followed there is no question as to what the answer should be. If the law is not being followed and the codes that are set down then it is way off base. He asked Hanley what he could do with the property. Hanley explained the codes and restrictions. He had to follow the rules even though he could have made more money doing other things. The rules are for everyone to follow. This individual bought the property knowing that it was a residential area. He goes to his son's house often so he sees what goes on as well. When he sold the property and he told them that it was a quiet place and zoned residential. He understands that the large building was presented to Island City as storage for an RV. There can be a diesel truck with a trailer in it and the doors can close on both ends and work on that truck. He has seen stacks of tires, forklifts and all kinds of things around the building. It is definitely a commercial building. It doesn't make sense to him that he has to follow the law, the rules, codes and Ordinances but other people are able to look the other way. It is not right. If this happens in our Country what kind of a Country is there going to be. He believes the answer is just plain common sense.

Dave Clemens wanted to make it clear that he thinks that John and his wife have been great neighbors. He would hope when this is all said and done that there is not a rift put between them. If he can't shake his hand when it is all over because of his position then that is John's decision. He is not here to draw a line between a neighbor who he feels is a good person. This is not about the quality and type of individuals that the Fregulias are. People have brought this hearing down to

dust, light and noise but there is much more at stake which is the integrity of the Ordinance and what it stands for. What it could allow or the precedence that it could set. He is here because he wants law to carry out the way it reads. He thinks the way it was presented by Mr. Jenkins it is clear. In testimony it was talked about the property across the street that used to be the helicopters rambling rotors. He is very familiar with that and he understands why that property was there and why it is commercial. He sat in on the council meetings when Mike Becker wanted to purchase the property to bring his business in that area. It was unanimously turned down because that was not a commercial area. Knight operated out there and did his business. It was really an illegal operation from what he was told by the council. No one stood up and did anything contrary to it. In the hearing it came out that he was grandfathered in. His business is now gone. They let the buildings stay but it was not their intent to have that a commercial area. Commercial business bring exceptions and if there is not a commercial business there they will not have to keep addressing the exceptions. The undertones of the Ordinance is for residential primary not to try to see how far a commercial business can go. John stated that if Island City pushed this through that he would agree with that but that is not what he said. He had said that if they had upheld the law or the Ordinance than he would agree with that. He thought that Island City wrongfully came to their conclusion. He thought they came to it criminally and biased. He felt that it was fair he would shake hands with John but he believes it was not fair.

Scott Stevens stated that he doesn't have a problem with John and Tracy but all the testimony he has heard on their behalf really hasn't quoted any ordinances or laws. It has all been emotional. John does keep his property clean and for the most part his drivers are polite. He doesn't have a problem with that and not the issue. The issue is the Ordinance and what will happen in the future. As the business continues to grow and the traffic in and out of there and they all get older he doesn't want to have to listen to the trucks in their retirement years. They built their home so they can sit on their patios and entertain friends and they now have to listen to trucks maneuvering in and out, hooking and unhooking from trailers, motorcycles running around the track and they have gotten to where people won't come to their house because of the noise. He has the right to run his motorcycles and there is nothing they can do about that but there are Ordinances pertaining to the trucks. He asked the Commissioners to look at the Ordinances and the rules and go by the Ordinances and rules and not go by emotions.

Debra Stevens explained that her husband took 10 years to collect all the brick on their home and he specially designed the home for outdoor activities. One of her greatest joys is the extensive landscaping where she can spend quiet time working in her numerous flowerbeds and planters. He built the home for her. She feels as though all the enjoyment that she once had at her home has been sucked out of her. She cannot spend quiet time in her garden or even relax on

their patio without the enormous trucks bearing down on her home. The quiet climate is gone. She is trying to protect her home and neighborhood from encroaching commercial development. Commercial development that was never applied for in the first place and never should have been approved by Island City. Laws were created to protect neighborhoods from this type of situation. She doesn't want to see the Fregulias leave Union County but there are places for the activity they are creating and she feels that it would be beneficial to them. They make a lot of money with the trucks and the trailers are not cheap. It would enhance and improve their business so they can be more profitable. She doesn't understand why they would want to move to Idaho but if they do it is their choice because there are places they can relocate here.

Phillip Wasley stated that they want to go to Idaho because there are no land use laws there. The argument is mitigate, mitigate, mitigate because they cannot address the rules. They can't address section 10.07 and they admit that there is more than one employee. They are not arguing that the accessory structure is there and that it is part of the business. They admit that there are detrimental effects by the business. Those rules cannot be mitigated and contrary to what Wes Williams said there is a rule of construction. When looking at the conditions in section 12.05 if there is a statutory list of things there is no wavering. Conditions can be imposed but the list doesn't permit the Commissioners to ignore more specific laws that are written elsewhere. In section (m) of 12.05 states that requiring specific plans or studies to mitigate identified impacts. It doesn't permit the Commissioners to ignore the more specific code provisions. They are saying that they have six employees. He noted that section 12.05(e) states identified adverse impacts on the community as a whole have been mitigated by conditions of approval. The specific statute set forth in 10.07(e) states that no materials or mechanical equipment shall be used that are detrimental to the residential use of the dwelling or adjoining dwellings. The impacts on the adjoining dwellings cannot be mitigated. The specific requirements of these rules cannot be mitigated away.

Hanley stated that he took Commissioner Davidson and Commissioner McClure on a tour of the property. They saw passenger vehicles, the shop building, the residence and the neighbor's residences. There were two trailers that were connected to each other. Those trailers were fuel tankers that were parked in the parking area west of the shop building. There was no activity around the building and as testimony that was received the site was clean. There was no sign of materials that were being off loaded or being loaded on to trucks. Both Commissioner McClure and Commissioner Davidson agreed with Hanley's assessment.

Commissioner McClure took the hearing under advisement on how they would like to handle the hearing. He asked the other Commissioners if they would like to close the hearing or leave it open for further testimony. Commissioner

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Davidson stated that there is a significant record already and significant testimony was received. He doesn't know what could be added so he thinks the Commissioners need to take some time to review the new testimony that was received and take it under advisement making a decision at a future date. Commissioner Rosholt and Commissioner McClure agreed.

Commissioner McClure closed the hearing and will not be taking any new testimony either oral or written.

The hearing will be continued on April 20, 2011 at 10:00 am.

Adjournment

The meeting was adjourned at 12:20 pm.

Respectfully Submitted,

Ashley Wilhelm
Department Specialist