

Board of Commissioners Meeting  
April 5, 2017

Present: Commissioner Steve McClure  
Commissioner Jack Howard  
Commissioner Donna Beverage

Commissioner McClure opened the meeting at 9:00 a.m. and the pledge of allegiance was given with all three commissioners present.

**Public Comments and Concerns**

Morgan Lake Road Public Comment

Lois Barry, 60688 Morgan Lake Road, La Grande, stated that Morgan Lake Road is a steep road and difficult to maintain. She has lived there for fifty years and the current conditions are as bad as they have ever been. The City of La Grande is responsible for maintaining the road into the lake. She suggested that the county's grader fill the potholes if the city would provide funding for gravel. It would make people approaching the park aware that the place is maintained; it currently appears that you are approaching a junkyard in a nasty neighborhood. She would appreciate the County and City Public Works Directors be encouraged to discuss that option. Commissioner McClure stated that he would talk with the Public Works directors about the possibility of working cooperatively.

Meetings Public Comment

Margaret Mead, 57744 Foothill Road, La Grande, stated that some time ago she requested that the county provide a microphone at commission meetings so that others could hear speakers. Citizen input is valuable and everyone should be able to hear it.

Commissioners' Comment

Commissioner McClure appreciated Ms. Mead's comments about microphones and stated that they would look into options for meetings. Commissioner Howard stated that he had already looked into it and planned to have speakers in the back of the room.

Liberty Theatre Public Comment

Margaret Mead, 57744 Foothill Road, La Grande, would like to see the county contribute discretionary funds to the Liberty Theatre. People came here from other states for the Eastern Oregon Film Festival and one venue was the Liberty Theatre. Funding it would increase tourism and add a variety of things for Union County citizens.

B2H Meeting Public Comment

Irene Gilbert, 2310 Adams Avenue, thanked the commissioners for the B2H meeting held the previous evening. She felt the commissioners handled it well and a lot of good information was exchanged.

### **Elected Official, Department Head & Employee Comments**

#### Resolution 2017-05, County Assessment Function Funding Assistance (CAFFA) Grant

Cody Vavra, Tax Assessor/Collector, stated that the CAFFA grant provides funding assistance for assessment taxation processes for all counties in the state. Revenue appears to be stable in Union County next year, which comes from recording fees and delinquent interest. Those funds are distributed to his department, Clerk's Office, Treasurer's Office, and the Information Technology department. His budget is relatively close to the previous year; personnel services will increase slightly, but overall expenditures will decrease as they will continue to use working equipment and vehicles before replacement. There is an increase in market activity, which may result in an increase in CAFFA funds.

Commissioner McClure asked if any capital items were budgeted for the next year; Mr. Vavra stated that there were none.

Shelley Burgess, Administrative Officer, stated that the commissioners would need to adopt a resolution that authorizes Mr. Vavra to submit the CAFFA Grant application, which is based on the draft budget submitted.

Commissioner McClure asked if the funding would be forfeited if the money is not spent. Mrs. Burgess stated that if less money is appropriated than the county plans to spend, then the county would need to notify them that the amount was reduced. The grant is based on a percentage of expenditures. She reviewed the submitted budget and agreed that it is very similar to the previous year.

**Commissioner Howard moved approval of Resolution 2017-05. Commissioner Beverage seconded. Motion carried unanimously.**

#### Court Order 2017-18, Appointment of Medical Examiner

Kelsie McDaniel, Union County District Attorney, presented this court order for the commissioners' consideration. She noted for the record that there was a scrivener's error on Dr. Gunson's documentation; Dr. Porter is a D.O., not an M.D., which still qualifies her for the position under the statute. Dr. Mary Porter works for Grande Ronde Hospital and has agreed to this appointment. This position has been vacated since September by Dr. Stanton.

Commissioner McClure stated that a Medical Examiner is needed when there is an unattended death.

Ms. McDaniel stated that Dr. Porter would oversee the three Oregon Medical Legal Death Investigators that are currently operating and had been using the State as a resource.

Commissioner Howard stated that he read an article describing the occurrences of overdoses and common lack of funding in rural counties for autopsies appropriate for certain

types of opioid overdoses and deaths. He asked if that is a funding issue that Union County needs to address and identify extra funds for autopsy expenses. Ms. McDaniel stated that she would be happy to talk more in depth about the issue during her budget proposal. She stated that last year she requested increased funding for the Medical Examiner program because it is a concern; the major costs come from transportation fees and personnel costs. Commissioner Howard would like to see the county provide more funding support for that.

**Commissioner Beverage moved approval of Court Order 2017-18. Commissioner Howard seconded. Motion carried unanimously.**

#### OSU Extension Agreement

Carole Smith, OSU Extension Staff Chair, presented an updated agreement for review between Oregon State University and its Extension Service with the Union County 4-H & Extension Service District; the current agreement expires June 30, 2017. There are no significant changes with the exception of updated language and a contract period of five years instead of three years. She is requesting that the commissioners suggest changes or approve the updated contract as presented.

Mrs. Burgess stated that if there were no suggested changes and a consensus, she would forward the agreement to county counsel for review.

Commissioner Howard would like county counsel to review the agreement. He asked if this was an opportunity to engage the community about what services or programs are available, such as the City of Union and schools. Ms. Smith stated that she collects program input at advisory council meetings and with people directly. She offered to meet with Commissioner Howard to continue that conversation and added that this agreement covers general education, not specific programs. Commissioner Howard stated that he would love to see 4-H do something with the Buffalo Peak Golf Course.

#### Consent Agenda

**Commissioner Howard moved approval of the Consent Agenda, which included Claims Journals from March 8, 9, 15, 16, and 23 and meeting minutes from February 15. Commissioner Beverage seconded. Motion carried unanimously.**

#### Administrative Matters

##### Liberty Theatre Funding Request

Mrs. Burgess stated that the commissioners held a joint work session with the City of La Grande on March 20, 2017, at which time a funding request from the Liberty Theatre was made. No discussion took place at the time and it was scheduled for this agenda.

Kelly Ducote, Liberty Theatre, provided additional information about the project. They are continuing to pursue funding from the State.

Commissioner McClure asked if there was adequate parking for this venue. Ms. Ducote stated that the parking lot behind the alley on Washington could be utilized and most of the streets would be empty during the evening. She did not think it would be a major issue at night or during the weekends. Commissioner McClure asked if there had been any thought given to the parking lots by the library and MODA. Ms. Ducote stated that those discussions had not taken place. Commissioner Howard stated that he had noticed that street parking is full at 2:00 a.m., perhaps due to residential parking.

Commissioner Beverage asked if the City of La Grande had provided any new information to them since their last meeting. Ms. Ducote stated that there had been no new information, but the City has a scheduled meeting for the same evening.

Commissioner McClure stated that he was unsure if the county could fund the project, but he would like it to go through the budget process for review.

Commissioner Beverage agreed that it should be reviewed during the budget process and offered to supply a letter of support without specific funding commitment. Ms. Ducote stated that a letter of support indicating financial support at some level would be extremely helpful.

Commissioner McClure stated that county funding, if made available, would be subject to the project receiving funding from the State. Commissioner Howard added that it would also be subject to receiving funding from the City of La Grande as well.

Commissioner Howard would like to provide a letter of support in the next few weeks to the Cultural Commission to help leverage support.

Commissioner McClure stated that a letter of support could be provided indicating that the request would be considered during the budget process.

Commissioner Howard anticipated that the county would make some kind of financial contribution.

Mrs. Burgess asked Commissioner McClure if he supported providing a letter indicating that the commission agrees by consensus that it would recommend some funding to go through the budget process or that the request would be entertained.

Commissioner Howard thought that the commission was aware of other funding sources and it supports the diminished funding request. He thinks the commission is taking some firm steps to target a specific amount.

#### Resolution 2017-07, Establishing Natural Resources Advisory Committee

Mrs. Burgess read Resolution 2017-17 in its entirety. She stated that in a work session the commissioners identified as a goal the development of the Natural Resource Plan for

Federal lands; this step is needed to form the committee to review the plan as it is drafted. Notice had been published for committee openings.

Commissioner McClure appreciated Commissioner Beverage's undertaking; Federal lands need to be included in the Land Management Plan and there is a lot of information already available to help start the process.

**Commissioner Beverage moved approval of Resolution 2017-07. Commissioner Howard seconded.**

Natural Resources Advisory Committee Public Comment

Lois Barry thought that the list of potential committee members could include a representative from a local environmental or conservation group.

Commissioner Beverage stated her suggestion had been considered and discussed. Each of the representatives listed care about the water and environment as part of their jobs and there are two at-large positions available.

Natural Resources Advisory Committee Public Comment

George Mead, 57744 Foothill Road, La Grande, asked if there was a Natural Resources Advisory Committee for the rest of the county that does not include Federal lands.

Mrs. Burgess stated that there was no committee with that description at this time.

Mr. Mead asked why this committee would be so myopic that it only looks at Federal lands and not the whole county.

Commissioner Beverage stated that each county decides for themselves what is important for their area. Union County has 50% or more in Federal lands. This committee is needed so that when someone comes in with a project, they will have guidelines to follow. If there was no Federal lands policy in place, then they wouldn't have to follow guidelines from the county.

Commissioner McClure stated that the county already has a comprehensive land use plan in place; it just doesn't include Federal lands. He thinks the county made a mistake when Federal lands were not included to begin with. The county is trying to correct an oversight that should have been done years ago. All of the private lands are either zoned in cities or in the county.

Mr. Mead asked how the county has jurisdiction on what is done on Federal property.

Commissioner McClure stated that the county does land use planning on private property all the time. The fact that it belongs to the federal government does not change the county's right to do land use planning.

Commissioner Beverage stated that most counties already have this plan in place, including Baker and Wallowa Counties. Federal lands belong to everyone.

Mr. Mead stated that he was looking at a jurisdictional screw up. The federal government makes policies for their land and manages it. Commissioner Beverage stated that it is not their land. Mr. Mead was curious about how the county could manage someone else's property. Commissioner Beverage stated that that is why they will be a part of the committee. Mr. Mead asked what effect other counties with a plan have had on behaviors of the U.S. Forest Service or Bureau of Land Management. He added that you can make all the suggestions you want, but legally the U.S. Forest Service makes the decision.

Commissioner Beverage gave the example of a potential wind farm with homes close to USFS land. The plan would include minimum boundaries around homes that would be required for the wind farm site.

Mr. Mead stated that he was questioning that would effectively make a difference. Commissioner Beverage stated that it would make a difference; they would have to follow local plans.

Commissioner McClure stated that the important thing to understand is that the county cannot trump Federal law; the plan would have to reflect those laws, such as clean water, clean air, and endangered species.

Commissioner Beverage added that the committee would include Federal agencies so that they are engaged in establishing the plan.

#### Natural Resources Advisory Committee Public Comment

Pat Larsen, 61931 Cottonwood Road, La Grande, stated that the county usually has a cooperating agency agreement with Federal agencies so that if there is a land use plan coming up or a grazing plan, the county can take that agreement and be considered in their decision. The Natural Resources Committee works because of the cooperating agency agreement.

#### Natural Resources Advisory Committee Discussion

Commissioner Howard stated that he understood the sentiment for the committee but shares the concerns about imposing opinions on Federal jurisdictions. He has concerns without any operational guidelines.

Commissioner McClure stated that the county has land use laws with other private owners and will not tell the Federal government to violate any laws, but instead let them know what is wanted.

Commissioner Howard stated that the government's job is not to tell us what to do or what not to do. He is concerned that the State-Federal relationship is changing right now. He is

also concerned about the committee's membership, focus and lack of clarity. Environmentalists need to be represented on this committee. There are other interested players. He stated that he is conservative politically and likes the idea of this committee, but just because he is conservative politically doesn't mean that he thinks conservatively politically with committee structure and group function. He thinks it will face some innocent hurdles if it is not a truly objective research oriented group. It is clearly distinct from county planning rules that are imposed by the state; if the county chafes under those rules, imagine how much less authority the county will confront if it only approaches it from a political perspective rather than real facts about a community interest of making our resources work for the whole county and region. He stated that he was not voting against it, but it will be a work in progress and he is interested to see how it develops.

Commissioner McClure agreed that it would need to be a document based on facts. An honest evaluation needs to be done while understanding limitations with the Federal government. It can be a good document, but it is going to take some work and effort.

Commissioner Beverage stated that every county is a little bit different. This committee would consist of local people talking about local needs for Union County. The plan would be open to public comment. She thinks it is a great idea and other counties have shared their opinion that it would be smart to have it in place.

**Roll Call on Resolution 2017-07, Establishing Natural Resources Advisory Committee: Commissioner Beverage, yes. Commissioner Howard, abstain. Commissioner McClure, yes. Motion carried.**

#### **Buffalo Peak Golf Course Advisory Committee**

Mrs. Burgess stated that openings for the Buffalo Peak Golf Course Advisory Committee had been advertised, but not as widely as intended. There was a consensus to delay the appointments to a later meeting.

Commissioner McClure recessed the meeting and called it back to order at 10:00 a.m.

#### **Livestock District Annexation Petition**

Scott Hartell, Planning Director, stated that a public hearing on the annexation petition to Livestock District #1 from Joel Rice was held and closed on March 15, 2017, at which time the Commissioners requested additional information. He stated that the subject property in the area is in A4 timber/grazing zone where timber production, livestock grazing, and wildlife habitat are permitted uses. With the subject property in open range, there are no conflicts for livestock grazing activities and by placing the property in closed range it would not create any conflicts. The only change is the control mechanism of livestock, not whether or not livestock can use property. He did not find any conflict placing the petitioned property in closed range.

Commissioner Howard asked about Mr. Hartell's use of the phrase "control mechanism." Mr. Hartell stated that in open range, livestock can graze the area. It is the property owner's responsibility to fence livestock out if there is a problem with livestock. If the petition is approved, the county would be changing who would control the livestock movements.

Commissioner Howard asked if the phrase was a term of art; Mr. Hartell indicated that it was not a specific planning term.

Commissioner Howard stated that if Mr. Hartell uses the phrase "control mechanism", it is not a change in use so there would be no conflict created. His concern was the potential of later questioning of what was meant by "control mechanism." If Mr. Hartell actually means control mechanism just as a phrase that is useful, because a fence is a control and doesn't mean anything besides that, and if it is a term of art, doesn't it also suggest how the use of the property has changed? Commissioner Howard stated that it does to him. He stated that he remembered that Mr. Hartell said there was a control mechanism but it doesn't change the use of the property. He asked Mr. Hartell if he heard that correctly.

Mr. Hartell stated that the use of the property with respects to the zoning is still an A4 timber /grazing zone. Whether it is closed range or open range is up to the individual property owner. By placing a property in a closed range or open range dictates who needs to control the livestock movement. A change to him would be if the county disallows livestock to graze the property as a requirement or change in law or zoning ordinance.

Commissioner Howard stated that change in use that are affected by mechanisms, such as fences, blocks, or roads, may be in conflict with the underlying zoning code. They can still be used though. He was not sure he understands where Mr. Hartell was going with that in terms of functional use zoning rules. He wondered if putting up a fence conflicts with some type of use under goal five. Mr. Hartell stated that there is no requirement to put a fence up to control livestock; any mechanism can be used to control livestock. Fences are the general mechanism used to control livestock in this part of the country, but the law does not require that a fence be installed to control livestock. Commissioner McClure stated that sheep can be controlled by herding. Mr. Hartell agreed that there are multiple measures that can be taken to control livestock.

Commissioner Beverage noted that the annexation application identified cattle and horses. Mr. Hartell agreed that cattle and horses were the identified animals that would be controlled. Commissioner Beverage asked if cattle and horses would not be allowed on the property to be annexed if they belonged to the owner of the property. Mr. Hartell stated that if it is a closed range and the property owner had livestock that left his property into an open range area, he wouldn't necessarily do anything to control them on adjacent property.

Commissioner McClure stated that the use within the zone was not changing, just the responsible party for livestock; Mr. Hartell agreed.

Commissioner Beverage asked if fencing laws applied to this situation. Wyatt Baum, Union County counsel, stated that Oregon is traditionally a fence out state. The livestock district law as it exists now does not require livestock to be fenced in. The Legislature in 1957 instituted those potential criminal liabilities trespass remedies. There is no duty with livestock districts to fence in or fence out. Livestock owners are potentially liable for trespass when they allow their livestock on to livestock district land.

Commissioner Beverage asked if there was a law about shared fencing responsibilities between neighbors. Mr. Baum stated that ORS 96, ORS607, and ORS608 address fencing laws; typically when on an open range it is your duty to fence livestock out of your property. Then if you have an adequate fence and livestock come in, the owner of the livestock is liable for the damages. Without the fence, they are not liable if you are in open range. There are no fencing laws that pertain to shared neighbor responsibilities; those are generally mutual agreements between neighbors.

Mr. Baum stated that he was asked to look at the Legislative history of livestock districts. In 1893, Oregon's first livestock district control law was a herd law, which continued until about 1947. At that time, Oregon began updating laws because it stepped in to take more control over livestock districts, open range, and land in general. It came about because of major range battles between sheep herders and cattle herders. The major changes in law were last enacted in 1957. The law has stayed in a very similar state since then. Some provisions that are issued today with subsection 20 were updated in 1983 and again in 1995, adding provisions on how one annexes their land, the petition process, and the ability to waive the petition process if they are sole owner of that proposed parcel. One of the major reasons they had these laws was to allow complete counties to set up livestock districts, like Multnomah and Hood River, to ban livestock altogether for industrial growth. The laws that were set up for the western side of the state for the development of industrialization bled east. That policy set up specifically for industrialization is now affecting eastern Oregon in ways in which people can annex and add land into the livestock districts.

Commissioner McClure stated that the State made the initial rules for open range and closed range in Union County; Mr. Baum agreed that was correct. Mr. Baum added that the Federal government stepped in initially with the Bureau of Land Management in 1893 until the state became more proactive in the 1940's.

Commissioner McClure asked if there was anything the county could do except approve the petition. Mr. Baum stated that in his opinion based on past practices of the county, no. Mr. Baum added that the petitioner had complied with the requirements and because of that they have gone through the steps necessary under the statute to annex their property, which qualifies for an annexation.

Commissioner McClure stated that it was frustrating that a public hearing was required when the Commissioners could not make a decision as they would want because the end result was already prescribed in statute. He asked why the county holds a public hearing at all. Mr.

Baum stated that the county has a public hearing when it may seem that it doesn't matter because the statute uses the word "shall" and directs the county commissioners to approve the petition after the public hearing. His understanding was that public hearings help counties start a record so that it can be taken to the Legislature to show that something is not working, instead of having no evidence of that. If a subcommittee was established, the county could testify and provide all the public hearing records. If the county does not have the public hearing, then there is no record to show why this law needs to change.

Commissioner Howard stated that in terms of fencing rights and people begin treated fairly, there is a public process that assures that people aren't having private practices or unwritten rules and laws imposed.

Commissioner Howard was interested in hearing what the Legislators had to say about how much authority they intended to give each county to set up their own livestock district. Mr. Baum stated that the county could potentially establish a livestock district over the footprint of the entire county. They also wanted to make it a little more difficult to add land to livestock districts because it was originally only 1,000 acres, which was later increased to 2,000 acres. They wanted to put the power in the hands of the counties; if the counties felt it was necessary for their development, then they could definitely set up a livestock district over the entire footprint of the county. It would go to the voters and there would be petitioner requirements.

Commissioner Howard stated that the statute would not have restricted the ability to deny livestock district based on considerations.

Mr. Baum stated that when the livestock district was initially established it would have been the time the county had some ability to alter the boundaries of the livestock district. That is the only language in the statute that gives flexibility and that language has been there since 1957. After the livestock district is set up and the boundaries are approved, there is no language in the statute that gives the county the ability to look at the boundaries and decide from a policy standpoint what best fits the needs of the county.

Commissioner Beverage stated that the petition from Mr. Rice was an annexation petition and not part of the original establishment of the livestock district. Commissioner McClure agreed that that was an important fact; Mr. Rice's petition was an expansion of Livestock District #1.

Commissioner Howard wondered about Legislative intent and the difference in terms of what the Legislators may have intended between the "shall" on making this compulsory. He asked Mr. Baum if there was any discussion when Legislators discussed the bill itself as to whether that might have been a mistake. Mr. Baum stated that there was no discussion on the language and there was very little audio tape and transcript on the hearing that occurred. Mr. Baum added that there was no discussion on subsection (7) and it was passed very easily through both the committee and on the floor.

**Commissioner Beverage motioned to approve Court Order 2017-16, annexation petition to Livestock District #1.**

Commissioner Howard opposed Commissioner McClure's seconding on the ruling. Commissioner Howard wanted to check on the uses being changed by abridgement of fencing. He is satisfied to the greatest extent that county counsel has provided correct advice on the interpretation of the word "shall." There was no second to the motion.

The agenda item was scheduled for April 19, 2017 at 11:00 a.m.

Commissioner McClure recessed the meeting and called it back to order at 11:00 a.m.

**Community Wildfire Protection Plan (CWPP)**

A presentation was given by JB Brock, Union County Emergency Services Manager; Joe Hessel, Oregon Department of Forestry District Forester; Jenny Rhinehart, CWPP writer; Mark Jacques, Cohesive Wildfire Strategy Pilot Project Coordinator; Mitch Williams, Oregon Department of Forestry; Bill Gamble, U.S. Forest Service District Ranger (La Grande); Mike Rassbach, U.S. Forest Service District Ranger (Walla Walla); Brett Thomas, U.S. Forest Service District Fire Management Officer (Walla Walla); Mike McDonald, U.S. Forest Service District Fire Management Officer (La Grande); Larry Wooldridge, La Grande Rural Fire Chief and Union County Fire Chief.

The CWPP Committee included Mr. Hessel, Ms. Rhinehart, Mr. Jakes, Mr. Williams, Mr. Thomas, Mr. McDonald; Mr. Wooldridge, Mr. Brock, and Scott English, BLM Range Technician.

Commissioner Beverage thanked the committee for working together to create the plan.

**Commissioner Howard moved approval of the Community Wildfire Protection Plan. Commissioner Beverage seconded.**

Commissioner Howard felt it was commendable work and the Wildland Urban Interface innovation jumped out. He suggested that they might want to discuss the role of private land owners and it would be nice to see newer data than 2008. He would like to see overlays of wildfire instance showing whether starts are by lightning versus human behavior, which may affect planning decisions. Better communication with the public would be good; he has been an advocate for having a citizens board for emergency services and there is very little that the public is more worried about everyday than wildfires. The fears are real so it is good to see a plan that is just as real.

Ms. Rhinehart stated that the only data from 2008 is the fire data statistics because when the 17 state assessment was done, 2008 was the only consistent data they could find across all states. All other data is up to date in the plan.

**Roll call on the adoption of the CWPP: Commissioner Beverage, yes. Commissioner Howard, yes. Commissioner McClure, yes. Motion carried unanimously.**

**Next Meeting and Location**

The next regular commission meeting is scheduled to take place on Wednesday, April 19, 2017 at 9:00 a.m. at the Joseph Annex Building.

**Adjournment**

The meeting adjourned at 12:15 p.m.

Respectfully Submitted,

Lorcinda Johnston  
Sr. Dept. Specialist II