

Board of Commissioners Meeting
April 6, 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

Subdivision Plat

Rick Robinson, Bagett, Griffith and Blackman, brought a subdivision plat to the Commissioners for approval. He explained that this is the can food ownership and it encompasses all of the paved area on the site. They are doing a five lot subdivision to create independent parcels on that property. **Commissioner Davidson moved approval of the RI Subdivision plat as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

CAFFA Grant

Resolution 2011-02, In the Matter of a Resolution Authorizing Participation in the Assessment & Taxation Grant, was presented for consideration. Linda Hill, Assessor/Tax Collector, explained that she prepared the State CAFFA Grant application for the Commissioners approval. CAFFA is an acronym that stands for County Assessment Function Funding Assistance. The total for expenditures is \$1,159,192.

McClure asked if the Assessor/Tax Collector office is working with Scott Hartell from the Planning Department on the GIS function for mapping. Linda explained that the remapping has been done. There are certain support functions that needs to be done every year and there are some training that is being done which would come out of the mapping line item.

Linda explained that this grant application has to be submitted by May 1st. The resolution would authorize the submission of the grant. **Commissioner Davidson moved approval of Resolution 2011-02 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Rock Bid Award

Bob Kelly, Public Works Assistant Director, stated that the Public Works Department requested bids for the supply of ¾" -0 crushed rock for the construction season of 2011. Most of the material will go to the Pierce Road project. The quantity is about 2500 tons. The following bids were received, Rogers Asphalt bid \$8.25 a ton, Royal Rock bid \$5.20 per ton and R.D. Mac

\$4.50 per ton. He is recommending that R.D. Mac be awarded the bid for this season. **Commissioner Rosholt moved approval of the bid award as recommended. Commissioner Davidson seconded. Motion carried unanimously.**

FASC Fund Exchange Award

Shelley Burgess, Administrative Officer, brought the contract agreement #27469 between the State of Oregon Department of Transportation and Union County to the Commissioners for consideration. It is the 2011 fund exchange agreement for the purpose of chip seal on various County roads. This would exchange \$94 of State money for \$100 of Federal so it is a \$.06 per \$100 adjustment. The amount of the agreement that Union County would receive would be \$225,305. The list of roads have not been determined yet.

Bob Kelly explained that the funding was not used to chip seal last year. They will double the funding this year and do a double chip seal to cover the North Powder area. They will be chip sealing all of North Powder River Road and also all of Wolf Creek Lane. Those two roads will come out to just about 18 miles and it will take all the funding to pay for the rock and oil to do the chip seal.

Commissioner McClure stated that it is Federal money that comes directly to the County but because all of the Federal strings all Counties exchange it for State money. If the money is State money not all of the Federal regulations have to be followed.

Shelley explained that the agreement has been approved by legal council and is ready for the Commissioners approval. **Commissioner Davidson moved approval the 2011 Fund Exchange Agreement as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Pierce Road Improvement Project Bid Award

Howard Perry, Anderson, Perry and Associates, explained that the County opened bids on the Pierce Road Improvement Project. There were four bidders on the project. The apparent low bidder was High Desert Aggregate and Paving, the second bidder was Roy Houck, the third bidder was Kerr Contractors, and the fourth bidder was Hampton Paving. The bids that were received were very attractive. The cost was significantly below the engineers estimate. The primary savings was in the area of asphalt/concrete. The last year bids that were received for asphalt/concrete was \$98 a ton and this bid was \$60 a ton so it made a big difference in the bids. He explained that they did allow in the contract a price escalation for asphalt/cement because of the volatile prices of oil. It is difficult for contractors on what asphalt/cement is going to be particularly when a portion of the project will be done next year. The project resulted with there being an estimate of \$680,000 of contingency funds available. They are also able to build the alternative work which would be paving Airport Lane from Pierce Road to the end of the existing pavement by the business park. He explained that there

is a Notice of Intent to Award Contract that is a process the State of Oregon has implemented to send the notice out to all the bidders stating that the County intends to award the contract to High Desert Aggregate and Paving. It gives them a period of 10 days to file a protest if they would object to the process. He doesn't anticipate that would be the case but that steps needs to be completed. Then there is a Notice to Award that would be sent to the contractor. He recommends to approve the Notice to Award subject to no protests being filed as a result of the Notice of Intent to Award and then the Commissioners would not have to meet again and if there are no protests the Notice of Award can be dated and moved forward. Shelley explained that these documents require just one signature so she asked for a motion to authorize the Chairman to sign the documents. **Commissioner Davidson moved to authorize the chairman to sign the Notice of Intent to Award Contract and the Notice of Award Contract to High Desert Aggregate as recommended. Commissioner Rosholt seconded. Motion carried unanimously.**

Appointment to Commission on Children and Families Board

Court Order 2011-23, In the Matter of Appointment to the Union County Commission on Children and Families, was presented for consideration. Vicky Brogoitti, Commission on Children and Families Director, explained that there are two people to be appointed to CCF. Robert Kleng is the new Family and Community Manager at the Head Start program in La Grande. Gabriela Camacho qualifies under the professional representation as well. **Commissioner Davidson moved approval of Court Order 2011-23 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Consent Agenda

The March 17 and 24 claims journals; the March 17 and 23 Public Works claims journals were approved as presented on the consent agenda

Connect Oregon III Grant Amendment

Shelley Burgess brought the amendment number 1 to the Connect Oregon III Contract #26986 for consideration. This is for the multi-mobile transportation fund program rural airport fund. This is used for the improvement to the 12-30 runway safety area. The original application had the project completion date set for December 31, 2010 but because of the delay in receiving the FAA release of funding the completion date has been moved to December 31, 2011. That is the only amendment to the original agreement other than the address for the contacts at ODOT has also been changed. **Commissioner Davidson moved approval of Amendment 01 to the Connect Oregon III Multi-Mobile Transportation Fund Program Rural Airport Fund Grant Agreement as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

MERA – ATV Grant Agreement

Shelley brought a Grant Agreement for the ATV program between Union County and the State of Oregon Parks and Recreation Department. This grant will be for

the FY2011-12. This is the operations and maintenance grant that has been received in the past. The funding from State Parks available to Union County will be \$53,650. Union County is required to match those funds with \$19,337 but it can be matched with volunteer labor and in-kind items. There is no hard cash match. This is the funding to maintain the trails and funds the MERA management position. **Commissioner Davidson moved approval of the ATV Grant Program Agreement as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Appointment to Renewable Energy Advisory Committee

Court Order 2011-22, In the Matter of Appointment to the Renewable Energy Advisory Committee, was presented for consideration. This Court Order would appoint Bruce Mackie to the committee. **Commissioner Davidson moved approval of Court Order 2011-22 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Oregon Parks and Recreation Grant Application

Resolution 2011-03, In the Matter of Applying for an OPRD Local Government Grant, was presented for consideration. Shelley explained that this Resolution would authorize the submission of a grant application to the Local Government Grant Program for a potential land purchase for MERA.

Hanley Jenkins, Planning Director, stated that he is in the process of developing a Local Government Grant that would be submitted Thursday for funds to assist in the purchase of the Dr. Brian Spencer property. It is a 40 acre parcel included within the MERA property. This grant program provides an opportunity to acquire funds for acquisition. The negotiations are not complete with Dr. Spencer. This application comes once a year and it is due before the negotiations will be completed. Their process requires that the grant be submitted and it will go through an advisory committee review process where the County will have to make a presentation and their decision is a recommendation to the Parks Commission. The Parks Commission meets in June so a final decision would not be received until some time in June. **Commissioner Davidson moved approval of Resolution 2011-03 as presented. Commissioner Rosholt seconded. Motion carried unanimously.**

Forest Highway Project Agreement – Palmer Junction

Steve Anderson, North half of the Umatilla National Forest Road Manager, 1415 W. Rose St., Walla Walla, came to the Commission meeting to explain the agreement and clear up any questions the Commissioners might have.

Commissioner McClure explained that the Federal Transportation act earmarks a certain percentage of money that goes to forest highways. Those are local roads that access National Forest land. Oregon get around \$25,000,000 a year and it is put out for proposals. It is a very competitive process. The Anthony Lakes road that was rebuilt in Baker County was under this project. This project has been in

the works for six years. Umatilla National Forest came to Union County with some issues with the Palmer Junction Road.

Steve Anderson explained that one of the big concerns up there is safety. There is a fair amount of traffic that comes out of the Valley and accesses the National Forest out of Elgin through the Palmer Junction route. With the improvement of this route there will be less traffic on the Jubilee Lake Road. That will always be a two lane gravel road. The other thing it would help is the commercial traffic on Jubilee Lake Road would go down the Palmer Junction Road. In its improved condition that would be a must better and quicker route to get either commercial or recreational traffic to and from the forest. Another big issue is the environmental concerns on both Looking Glass Creek and Little Looking Glass Creek which Palmer Junction Road follows for part of its length. The paving would result in a tremendous amount of sediment reduction going into the streams. The drainage goes into the creek so this would be a big improvement for fish habitat and water quality for both of those creeks. Removal of the fish passage barriers with the redesign of the large culverts would allow the fish to move up on the lands that the fish could have more potential rearing habitat on National Forest lands where there is higher water quality and a lot of habitat that they have been preserving and enhancing. Economically it would make the sales that come off of the National Forest lands more viable but all the private end holdings and private timber lands that tributary to the roads would also be a lot more viable. He stated that they are excited about the benefits of this project.

Commissioner McClure stated that the project starts at Highway 204 at the Boise Cascade Mill Yard and it is over 15 miles of the existing pavement. The pavement was put in the early 80s. It was a forest highway to access the South end of the Umatilla National Forest. It is badly in need of repair. This project provides for a 2 inch overlay for the full 15 miles. It will replace all of the culverts that are fish barriers. It will go through and identify any shoulder problems and repair those and any major asphalt failures they will go in and repair those. It will be a major improvement for the existing system. It will extend the Union County road 63 to the Umatilla National Forest land and that road will also be paved and brought up to standard. The important issue is the environmental issue along Looking Glass and Little Looking Glass Creeks. This road ends at the Boise Cascade log yard so there is a significance to the economy in this community to get the road done. It is a challenge to add another 5 miles in the County system.

Bob Kelly, Assistant Public Works Director, stated that the road department is very pleased that this road will be improved. It is something that the County could not do and it will fix a failing road.

Commissioner McClure stated that this project will be managed by the Federal Highway Administration

Commissioner Davidson moved approval of the Forest Highway Project Agreement on Palmer Junction Road with the Umatilla National Forest and

**the Federal Highway Administration. Commissioner Rosholt seconded.
Motion carried unanimously.**

“S” Names Proposal – CTUIR

Fred Hill, Board of Trustee, Roberta Connor, Malissa Minthorn-Winks and Teara Farrow Ferman, 47106 Wildhorse Blvd. Pendleton, OR, came to the Commissioners and explained that pursuant to Oregon Senate Bill 363, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), Cultural Resources Protection Program (CRPP) is seeking to replace derogatory names for geographic features identified as “Squaw” within the ceded lands, boundaries and traditional use areas. There are three name changes that are being proposed within Union County.

Appeal Hearing – AM Radio Towers Cont.

Commissioner McClure stated that the purpose of the meeting is to try and reach a decision. The Commissioners will not be taking any new testimony but if there are any questions of clarification those will be taken. Commissioner McClure asked Hanley Jenkins to give a staff report before they take the hearing under advisement.

Hanley stated that this application was to site two AM Radio towers 195 each, on the applicants property. The property is located North of the city of La Grande. This application was submitted as a use that is permitted outright where the applicant can meet conditions in the County’s A-1 exclusive farm use zone. The County’s Ordinance allows applicants to go through an administrative review process where applicants can meet the specific conditions. Because there were four letters of opposition were received and the concerns in the letters were that the applicants couldn’t meet the conditions the Planning staff elevated the application to a Planning Commission hearing. The Planning Commission gave notice for the hearing and they took testimony, deliberated and made a final decision with findings approving the application. That decision was then appealed to the Commissioners. The Planning Commission’s decision is dated January 4, 2011. Their decision was appealed on February 7, 2011. The Commissioners accepted written and oral testimony and allowed time for additional written testimony from all parties. There was no additional testimony received from all parties. The process is to allow the appellants to rebut. They did submit rebuttal testimony but it is not rebuttal testimony to written testimony that was received. That testimony should be accepted into the record because the way it was submitted was unusual and there could be arguments made that the rebuttal testimony includes new evidence and testimony as well. The property is in an A-1 exclusive farm use zone and in the County’s staff report the review requirements for the application were identified for this application. Utility facilities are recognized in the A-1 farm exclusive zone as a use that is permitted outright where the applicant can meet specific conditions. That is a part of the State Statutes and Oregon Administrative Rules specifically ORS 215 and 283 which are the exclusive farm use zone statutes. Sub (1) includes utility facilities as a

use that is permitted outright. The Administrative Rules that implement those statutes Oregon Administrative Rule 660-33-130(16) also includes the requirements for review as a part of the utility facility. Under (16)(a) it states that a utility facility is necessary for a public service if a facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary an applicant must show that reasonable alternatives have been considered and a facility must be sited in an exclusive farm use zone due to one or more of the following factors: technical and engineering feasibility, the proposed facility is locationally dependent; a utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct or to meet unique geographic needs that cannot be satisfied on other lands. The emphasis of these rules and statutes and the County's Ordinance is to find why the facility would need to be on good agricultural land for these uses. The application is asking the applicant to demonstrate why they need to be in an exclusive farm use zone and not locate somewhere where the land is not as productive. The next requirement that can be met is (c) lack of available urban non-resource lands, (d) availability of existing rights of way, (e) public health and safety, and (f) other requirements of State and Federal agencies. There are no other requirements identified as far as the County's Ordinance is concerned the applicant has identified that there are FAA standards and Federal communication standards that they have to meet in siting a radio tower. They provided the evidence in the record. The County's Ordinance and the Statutes and Rules also provide that the Commissioners can consider costs but they cannot consider cost alone as the primary factor for analyzing alternative sites. The Commissioners cannot include the cost of land as a part of the alternatives analysis. The applicant is responsible for restoration of the site on termination or the use. The Ordinance authorizes the Commissioners as the decision makers to adopt clear and objective conditions associated with making a decision. Hanley stated that the Commissioners can deny the application if the conditions cannot be met.

Commissioner McClure asked that when it says it must be sited in an exclusive farm use zone due to one or more of the requirements so does that mean they have to meet just one or all of the requirements. Hanley stated that they only have to meet one of the requirements.

Commissioner McClure asked that when it states that an applicant must show that reasonable alternatives have been considered what does it mean by reasonable alternatives. Hanley stated that is something that the Commissioners are going to have to measure as a part of the process. The applicant has testified that they have to be on the North side of town. They also testified during the same oral testimony that the FAA requirements would not allow them to site on the South side of La Grande because of the proximity of the airport. They have also testified that they cannot site near the KLBM radio towers because of interference with KLBM and that they need to be on flat ground for the grounding system.

Commissioner Rosholt asked if the applicant has to identify the alternative property or they do not have to identify them. Hanley asked if he meant whether the applicant has to identify site specific properties in order to do the analysis. Commissioner Rosholt stated that was his question. Hanley stated that there is nothing in the Statute or the Rules that say it has to be site specific location but they must look at alternative sites. The applicant has looked at the surrounding area and they have gone through a process of elimination.

Commissioner Davidson moved to accept Mr. Jellum's testimony into the record. Commissioner Rosholt seconded. Motion carried unanimously.

Commissioner Davidson moved to give judicial notice that the zoning map and inserts from the Union County Zoning and Partitioning Ordinance is accepted into the record. Commissioner Rosholt seconded. Motion carried unanimously.

Commissioner Rosholt stated that it seems that the applicants have fulfilled the requirements they were asked to fulfill.

Commissioner Davidson agreed and stated that when he reads the staff report and reviews the Statutes it appears to him that they have met the criteria.

Commissioner McClure stated that is true is you accept the fact that reasonable alternatives means that they don't have to go out and examine every piece of property but they looked at the area as a whole.

Commissioner Davidson stated that if someone would interpret it in a way that it needed to be a site specific analysis that would seem that it would be spelled out in the Statutes.

Commissioner McClure asked Hanley that if the application meets one of the requirements than the Commissioners must approve the application. Hanley stated that if they meet one of the requirements then yes they must approve the applications.

Commissioner McClure asked if the Commissioners can require a bond for decommissioning. Hanley stated that the Commissioners cannot require a bond but the owner of the utility facility is responsible for restoring as nearly as possible. They can condition the approval that if the use is discontinued it is the responsibility of the utility owners to restore the land. Commissioner McClure stated that he would hope it would be in the lease of whose responsibility it is to restore the land. Commissioner Davidson stated that if they put conditions on the application the conditions would go with the land owner and not the utility owners.

Commissioner Davidson stated that when the statutes and the rules are applied it is clear that they have no choice but to approve the application. Commissioner McClure agreed and he would like to condition the recovery and the property should have to address the restoration of the land after the use is completed. Commissioner Davidson stated that if the towers are removed and the transmission usage is ceased the land owner would have a year to find another user before the land would need to be restored. If they were not able to find another user within that year the land owner could petition for an extension.

Commissioner Davidson moved to tentatively approve the application denying the appeal and direct staff to prepare preliminary findings of fact for adoption. Commissioner Rosholt seconded. Motion carried unanimously.

The Commissioners will meet on April 20th to adopt the findings.

Executive Session

An executive session was held under ORS 192.660(b) and (f)

Adjournment

The meeting was adjourned at

Respectfully Submitted,

Ashley Wilhelm
Department Specialist