

Union County Board of Commissioners
February 20, 2008

Present: Commissioner R. Nellie Hibbert
Commissioner Steve McClure
Commissioner Colleen MacLeod

Call to Order

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

Public Comments & Concerns

Mt. Emily Recreation Area Purchase

Ross Bingaman, 430 Second Street, Imbler, thanked the commissioners for allowing a presentation regarding the proposed purchase of the Mt. Emily Recreation area. He stated they desire to have a voice in the proposed purchase. In a very short time, they have collected 472 signatures of residents expressing their desire to be part of the decision process. They want the opportunity to vote on this issue. By allowing a vote, the Commissioners can feel confident that they are pursuing a vision shared by the majority of Union County residents. He stated they do not want to debate the pros or cons of the proposed purchase; they want it left to the voters.

Wes Williams, Attorney, 115 Elm Street, La Grande, asked if the Commissioners had received his brief which was delivered to the office on Friday. The Commissioners confirmed they had received a copy.

Mr. Williams stated he would like to present the legal analysis of the issue. He commented that it is first imperative to state the issue correctly. The issue is whether the County Commissioners can refer to the voters the question of whether property ought to be acquired on Mt. Emily. More simply, whether that is subject to the referendum procedure. He believes it is. There are two sub questions that answer that issue which he presented in his brief. The first question is whether or not the acquisition of property in and around Mt. Emily is a subject of local concern. He feels it clearly is. ORS 203.035 gives the county, as a general law county, broad legislative powers to legislate over any matter of local concern. The important language in subsection (1) of that statute states that the power is granted, in a general law county like Union County, to the governing body or its electors. Subsection (4) of that same statute pointed out that nothing in that section (.035) can be interpreted to limit or to deny the voters the right of initiative or referendum. They only refer to the word initiative but the courts have said that the right of initiative also includes the right of referendum so that would have to be read broadly. This is clearly a matter of local concern. He cited a case, Allison v. Washington County, where on page 581 of that case, the court drove home the principle by pointing out that under the Oregon initiative and referendum system, the citizens and

the legislative body have the same legislative authority. So, if the commissioners have the right to legislate over the property acquisition, the voters have the same power. He feels it is obvious this is a matter of local concern. Union County would be acquiring approximately 6000 acres, holding that property in fee simple, and then managing the property for the long term for whatever purpose.

The second question in his view is whether the act is legislative. If it is legislative it is subject to referendum. If it is an administrative act it is not. He believes the act is clearly a legislative act. He referred to a citation in the brief which discussed the language used since 1906 to determine whether or not an act is legislative. It said that adopting a policy and establishing procedures for implementing that policy are the essence of legislation. That is exactly what the Union County Board of Commissioners would be doing, adopting a policy to acquire over 6000 acres and then managing that acreage. He feels it is clearly a legislative act and he does not feel there would be a dispute on that.

Mr. Williams also stated that in case the Commissioners are receiving legal advice to put a narrow or technical interpretation on the constitution, he called attention Barber v. Johnson, which is a case in the 1920s and the language of the Constitution itself. Article 4, Section 1, subsection (5) which is the embodiment of the 1906 legislation that granted to municipalities, counties and voters, the right to have a direct role in legislation. That subsection says the rights are further reserved to the qualified voters of each municipality as to all local, special, and municipal legislation of every character. The operative language is of every character. The courts have held since Barber v. Johnson that the language of every character means that you can't put a narrow interpretation on the rights granted to citizens. It means you need to give a liberal construction to that constitutional right to grant people the right to have a direct say in legislation over any matter that is legislative or a matter of local concern. He believes the Commissioners clearly have the power and the right to refer to the voters by the referendum process the question of whether to acquire property on Mt. Emily. He does not believe there is a legal dispute of that right.

Commissioner Hibbert asked if any of the material provided relates directly to the use of general fund dollars. She asked if it still applies if general fund dollars are not being expended. Mr. Williams stated that he believes it still applies. He stated that in the Amalgamated Transit case the Court was determining whether or not the initiative process could be used. The Court pointed out in that case the question is not whether or not the local tax payers are going to be taxed at a higher rate or whether or not local funds are being used, but whether or not it is legislative. There is lots of legislation that does not pull money from the general fund.

Commissioner MacLeod clarified that Union County has not gotten legal advice to look at this issue in a narrow way. The Secretary of State's Office has been contacted. The County did not go out and seek legal advice to try and avoid a vote. The Secretary of

State's Office has been contacted on two occasions and asked if the county can refer this matter to the voters. The county was told on both occasions that they could not refer it. Subsequently she believes Commissioner Hibbert has updated information. She does not want it to appear that Union County has been trying to do battle with county residents.

Commissioner Hibbert stated that she has had conversations with Brenda Bates, an Assistant at the Secretary of States Office. During the last conversation she advised that Union County seek legal counsel to make sure they have the right standing. She believes that is good advice and appreciates the legal research provided by Mr. Williams.

Mr. Williams stated he did not mean to imply that the county had done that. The point he wanted to make was that a narrow, technical construction cannot be placed on Article 4, Subsection 1.

Bruce Rynearson, 62289 Owsley Canyon Road, La Grande, stated he would like to know how the county would actually avoid indebtedness in this situation. He stated that Luke Shaw has been talking with the Road Department about some improvements on the road that would be necessary to put a campground in near the archery range site at this time. He wants to know if those plans were already in place prior to enjoining with the coalition on the proposed acquisition. Commissioner McClure stated he was not aware of any such plans.

Mr. Rynearson stated that he has not talked to Luke personally but it is his understanding that there would be some money from the Road Department on that project. He also commented that on the information handed out at the public meeting, it said specifically following purchases under Option Two the County would pursue subsequent outside funding opportunities to purchase commercial timber value for specified harvest units. He stated he is unclear how outside funding would be given to a coalition when it says specifically it is the county. He feels there is gray area on the timing on the grants and actually where money would be coming from to implement this proposal. He also thinks a very important factor has been left out and that is the actual volume of timber. He has talked with 4 different foresters and they are not in favor of this from a forest management standpoint. Also, under Proposal B if Forest Capital was to take two-thirds of the volume in an 8 year period, it could come off of up to 80% of the area and then someone would have to manage those acres to insure there was a proper rotation in crop and that could be up to 40 years before any more value could be realized off those acres. He also can't see how this could be managed properly without a licensed forester on a retainer.

Bob Clarke, 67311 Grays Corner Road, Imbler, stated that unfortunately due to a construction project at one of his buildings, an additional four sheets of signatures of people wishing to have this put up to a vote have been misplaced. He would simply like

to have a vote so it can be known how the community stands and those wishes would be respected. The system allows for people to agree to disagree but support decisions and move forward. He stated he is concerned that members of the community are presenting the idea that if the county does not buy the property and use it for recreation then bad things are going to happen. It was insinuated that this is an opportunity that if not taken advantage of will be lost. He stated that he does not think the county has studied the opportunities that would be available if the county did not acquire the proposed property. He is in the investment management business, and he can state with certainty that over a period of a number of years you would have no trouble finding people who had the means and interest to pay to develop those properties with homes including roads and other needs. We live in a very desirable area and there are many, many people with the means who would love to live here. An important feature of that is not that he wants to see a piece of property developed and turned into mega mansions and homes, but what he knows from his professional experience is that people who have the means to purchase property like that, improve property to build a home, and then build a suitable home, are generally folks who come bringing capital. Capital is what is used typically to improve an area or invest in an area. He knows from his own client base the number of dollars that come into the community when someone relocates. Many times they are relocating with a business, or a division of a business, and creating jobs. They are not creating minimum wage jobs, but are creating family wage jobs. That is an issue he believes has been pushed to the side. In a referendum or ballot initiative those kinds of issues can be presented as one of the options to consider for not turning the property into a recreation piece.

Marie Lester, 63831 Lester Road, La Grande, stated the reason she favors a vote from the people of the county would be to put the burden of whichever way it goes on the people of the county, not on the County Commissioners. Having been a Commissioner, she knows how hard it is to think things through and then take the heat on whatever happens. This way, if there were a vote, it would be the people who would be saying yes or no.

Lee Insko, 76984 Palmer Junction Road, Elgin, stated some issues have not come up that he has concerns about, which he hopes the county would investigate legally. In his mind as soon as it becomes a property owned by government, the door is opened to a tremendous number of lawsuits that may prevent grazing, timber harvest, and other things that typically don't happen to a private person. Will environmental impact statements be required if an unusual plant is found? These things tend to happen a lot on public land. His second concern is that he understands that the coalition is made up of a wide variety of supportive groups. In his opinion many of those groups are at odds when dealing with federal land, motorized vehicle users vs. horse back riders vs. hikers, etc. He believes it will become a management nightmare. He urged the Commissioners to find the legal answers to some of the questions and call for a vote. He has hated to see the kind of acrimony that has developed over the golf course and

railroad and would hate to see it continue and make the Commissioners' jobs that much tougher. If it is decided by vote, as suggested by Mrs. Lester, it takes it off their plate.

Bob Morgan, 63445 Owsley Canyon Road, stated he has heard there will be no county funds used in this. His concerns as an adjoining property owner would be with the road and dust, noxious weed control, and fire danger. As property owners, they maintain the trees and brush but with more people in the area he has concern for fire exposure. They currently go on those trails and they find many cigarette butts. They believe the fire danger will be significantly increased. He also wonders where funding would come from for management of concerns.

Commissioner Hibbert thanked those in attendance for their comments and stated that the Commissioners will take the matter under advisement.

Commissioner MacLeod stated that the current Board of Commissioners inherited the idea from a previous County Commissioner who was very excited about the project and was working with the coalition. They got Planning staff attending meetings and involved in the process. The proposal is following a model of forest land ownership that is already in place with Clackamas County and Hood River County who manage forest land for their road departments. The County has been staring down the barrel for 12 years, because of the lack of activity on federal lands, of not having funding for the road department. When the populas of Union County calls it is generally about road issues. Union County is looking at having no money from federal government next year for the road department, so are looking at all issues. That is one of the things the county has been trying to look at. She wrote legislation last year, which the environmental community fought, where the county would do road work for the federal government in exchange for land to manage. The comment was made that there would not be any return for 40 years. The Commissioners must look ahead at what will happen in 40 years. A return in the future is a good investment. There is probably not enough timber to keep the road department going, but it is certainly a piece. What has been talked about from the very beginning is keeping it in the same model as Boise Cascade always had it, which was multiple use managed land. It saddens her every time a political season comes around because all of the efforts of the county get tied back to the golf course and the railroad, which are examples of no good deed going unpunished. The Commissioners have not tried to stop a vote on this matter. The county does want to know how people feel about this project.

Commissioner McClure suggested the Commissioners obtain a legal review as suggested by the Secretary of State's Office and discuss that opinion at the next commission meeting. The timeline for referring the matter will also need to be reviewed. He certainly hears Mr. Williams' argument and clearly knows that the Legislature can forward things to the vote of the people and the Commissioners have that same authority in the state constitution, so he would not argue that. The question of whether it is legislative should be clarified by legal counsel. It is reasonable for the

Commissioners to consider referring the matter to the voters. The golf course and the railroad have caused some controversy in the community and asking people what they want may be the way to go.

Commissioner Hibbert stated that the filing deadline for measures is March 20 so the Commission will have to move quickly on getting an opinion and moving forward. She agrees it is important to follow the advice of the Secretary of State's Office. Commissioner Hibbert also stated that for her, the process of acquiring the Mt. Emily Recreation Area needs to have three components. The first is that general fund needs to be insulated and there are ways of doing that. The second is that the mountain would be managed property. There would be timber harvest and grazing. She comes from a ranching background and understands that timber and grazing is an important use of that land. The third is to continue the multiple use. As indicated earlier that might be a challenge but can be done. Those are the criteria she uses in evaluating the project. If any of those elements are gone, she will not support the project.

Commissioner MacLeod stated that the reason it works for Clackamas and Hood River Counties is that they are not subject to NEPA and other regulations that federal government is. If Clackamas County can manage forests in the Portland metropolitan area, it is not subject to the same federal regulations.

Mr. Clarke feels the Commissioners are correct in saying there is some validity to people bringing up issues like the railroad and the golf course, but an awful lot of it is spin. People follow their emotions and don't look at the facts. They pick and chose things that fit their criteria. He feels the process so far has been a series of relatively private meetings between a motivated and enthusiastic group of people attempting to pursue this option. The general meeting that was held was not a meeting to find out people's concerns. It was marketed and managed as an informational meeting only. Many of the legitimate questions that were raised on specific technical points were not addressed.

Commissioner Hibbert stated the Commissioners did receive a number of comments about the last meeting being one of information and not comments. It is her understanding that if this goes forward there will be another meeting in which comments will be welcomed. Then there will be another meeting to present more information.

Patricia Bingaman, 65883 McKennon Lane, Imbler, stated she attend the first meeting in May of 2006. It was an information meeting. It was the coalition talking to the Commissioners about the property. At that time there was not a comment period where citizens could object to the process. She was under the understanding that the group was going to try and get the funding to purchase the property. Two months later she checked out the Mt. Emily Recreation web site and it indicated the Commissioners voted to pursue purchasing the property. She also went to the last meeting which was supposed to be informational. It turned out to be questions only. She asked a question

that was never really answered. She feels the public needs to be able to have meetings where opinions are accepted. There has not been one meeting allowing input.

Ross Bingaman stated it was very easy to collect the signatures presented in a short amount of time. They certainly did not reach a lot of folks who would have liked to have signed them. They did not make it to the North Powder or Union areas. A significant number of people spoke out in a very short amount of time and a limited area.

Sharon Beck, 64841 Imbler Road, Cove, apologized for arriving late. She stated she will have comments at a public hearing which she understands will be held. She also wanted to make sure the letter from the Union County Cattlemans Association has been received. She asked that it be made a part of public record. It was confirmed that the letter has been received and made part of the file.

Marie Lester commented that she would like to have the letter she submitted earlier to the Commissioners also made a part of the record. The request was noted.

Commissioner Hibbert thanked those in attendance for their input.

Elected Official, Department Head & Employee Comments

Computer Purchase

Kathie Powell, Computer Services Manger, reported that she had obtained quotes for the purchase of four PCs. Prices were obtained from Beaver State Computers - \$885; Eastern Oregon Net - \$1069; and Dell - \$1200.08. The required specs were met by Beaver State and Eastern Oregon Net. Dell proposed a different virus protection software and a home edition of Windows XP instead of the Windows Pro edition. Beaver State is the least cost option and she requested authorization to purchase from them. One computer is for the Emergency Services Office and three are for the Assessment & Taxation Office. Funds for the purchases are included in the approved budget.

Commissioner MacLeod moved approval of purchase of four PCs from Beaver State Computers as requested. Commissioner McClure seconded. Motion carried unanimously.

Consent Agenda

The January 23 and February 6 Board of Commissioners minutes; February 7 and February 14 claims journals; and February 7 and February 14 public works claims journals were approved as presented on the consent agenda.

Appointment to Weed Control Advisory Committee.

Court Order 2008-11, In the Matter of Re-appointment to the Union County Weed Control Advisory Committee, was presented for consideration. The term of Nancy Dake

had expired and she is active and reapplied to serve. **Commissioner McClure moved approval of Court Order 2008-11. Commissioner MacLeod seconded. Motion carried unanimously.**

Dry Creek Water Diversion

Commissioner McClure reported that he has been working with the Grande Ronde Model Watershed on a water diversion project for property on Dry Creek. The project would remove the existing structure and put in a new one that is more fish friendly. A permit application has been prepared which describes the project. Approval is needed to submit the permit application. Submission of the application does not commit the county since funding for the project has not yet been obtained. The permit process is lengthy so it is important to submit it now while the Model Watershed Program continues to work on funding sources. **Commissioner MacLeod moved approval of the submission of the permit application for the Dry Creek water diversion project. Commissioner McClure seconded. Motion carried unanimously.**

Elgin Rural Fire District Annexation Petition - Edmondson

Scott Hartell, Associate Planner, reported that a petition was received from Don and Rachel Edmondson for annexation of property into the Elgin Rural Fire Protection District Boundary. He stated there was initially some discussion about whether the property would be in the Elgin or Imbler Rural Fire District. That matter was resolved and the Elgin Rural Fire District has agreed to accept the property. A map identifying the property location was reviewed.

A public hearing was opened for testimony. No public was present so the hearing was closed.

Commissioner MacLeod moved approval of Court Order 2008-10, In the Matter of Adopting An Amendment to the Elgin Rural Fire Protection District Boundary. Commissioner McClure seconded. Motion carried unanimously.

Adjournment

The meeting was then adjourned at 10:08 a.m.

Respectfully submitted,

Shelley Burgess
Executive Secretary