

**Union County Board of Commissioners
March 19, 2008**

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

Call to Order

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

Public Comments & Concerns

Imbler Recycling Enclosure

Imbler City Council member Kaiger Braseth, 870 Newport, Imbler, discussed a request for financial support of an enclosure for the Imbler recycling bins. He explained that the recycling bins in Imbler are very useful and their obvious location helps increase their usage. However, there has been an issue with their location and Verizon, the adjacent property owner. They found that the bins were actually partially located on Verizon property. The bins have been moved over and are now off of their property and if an enclosure can be built as proposed, the bins won't be able to slide back onto the Verizon property. The fence enclosure will also help prevent debris from accumulating on the property. He has worked with the Verizon corporate office out of California and has secured written permission to construct the enclosure. They have designed an enclosure similar to the one located at the Elgin recycling facility. The cost for the enclosure is estimated at \$2,660 and he requested financial support from the Solid Waste District in the amount of \$1,330.

Commissioner McClure stated that the District has traditionally worked with communities and assisted in similar projects in Cove, Union and Elgin. He stated it is important to support the good work the community is doing to promote recycling.

Commissioner McClure moved approval of the request of \$1,330 to construct a fence around the recycling bins in Imbler as presented. Commissioner MacLeod seconded. Motion carried unanimously.

Elgin Cardboard Recycling Container

Scott Ludwig 72841 Highway 82, Elgin, was present to discuss cardboard recycling in Elgin.

Commissioner McClure declared a conflict of interest because Scott is his brother-in-law. He stated he would not participate in the discussion or any decision.

Scott stated there is a need to increase the cardboard recycling capabilities in the City of Elgin. On weekends the bin overflows even if it is emptied on Friday. He presented photos showing the full bin, the amount of cardboard accumulated in his store during the weekend, and excess cardboard left at the recycling center. He stated he would like to have another bin put at his store location at 15th & Division. This would be available for public use and would alleviate the overflow problem. It would be easily accessible to the public as it would be located right off of 15th Street.

Commissioner MacLeod stated that having had a restaurant she understands the volume of cardboard businesses deal with. She stated she is worried about funding a

bin at a private business. It would open the door to other businesses making the same request. She asked if there is a way of expanding the opportunities at the existing site.

Scott stated there is no way to add an additional bin at the current location because property on one side is owned by the railroad and the other is Opera House property.

Commissioner MacLeod stated that expending \$5,400 for a bin for a private business would open the door for more requests. She stated that most businesses must fund their own garbage and recycling containers or take items to the public facilities.

Scott stated that he has already spent \$30,000 on recycling machines out in front of his store. The City of Elgin did not take into account how much cardboard would be in the system after the burning ban was established.

Commissioner Hibbert stated that the concern is about placing the bin on private property. She asked if discussions have been held with the city regarding a city owned location. She stated that she is not opposed to assisting with another bin since the county has been encouraging cities to have clean up days and supporting recycling efforts. She asked Scott to explore the availability of public property for a bin.

Cove Clean Up Day

Doug Kruse, 1001 Conklin Lane, Cove, presented a request for support of the Cove Clean-up Day. Mr. Kruse explained that the annual clean up day in Cove has been a very rewarding project that brings the community together. They are seeking support from the Solid Waste District in the amount of \$400 to cover the cost of disposal. He explained that last year they incorporated a large community yard sale with their clean up effort which generated some funds and helped reduce the volume of material for disposal.

Commissioner MacLeod moved approval of the \$400 contribution to Cove Clean Up Day. Commissioner McClure seconded. Motion carried unanimously. The Commissioners congratulated Mr. Kruse and the City of Cove on their successful clean up efforts.

Herbicide Bid Award

Bob Kelly, Assistant Public Works Director, reported that the Public Works Department went out to bid for chemicals for the roadside vegetation management program. One bid was received from Wilber Ellis of Walla Walla in the amount of \$95,492 which is comparable to last year's bid. He recommended award of the bid. He stated the company provides good materials and help with consultation and test plots. They also bring the chemicals in bulk and provide pumps so the county does not have to recycle the containers, which is a great savings.

Commissioner McClure asked if the chemicals included in the bid are for the entire year. Bob stated that was correct and it also includes the contract work done for Baker County and Union Pacific Railroad.

Commissioner MacLeod moved approval of the herbicide bid award to Wilber Ellis in the amount of \$95,492. Commissioner McClure seconded. Motion carried unanimously.

Sheriff Vehicle Rotation

Sheriff Boyd Rasmussen discussed vehicles for the Sheriff's Office. He explained that leases are up on two tahoes and one sedan at the end of this fiscal year. If no replacement process is started until the leases expire, they run into a time problem with rotation. He would like to start the bid process now so there is no lag time but the leases would not begin until next fiscal year. He would like to go out to bid like they did earlier this year for a pursuit sedan, a utility vehicle, and a pickup and see where they fit into the budget and make a decision on which vehicles to lease.

Commissioner MacLeod asked for clarification on the vehicles to be replaced. Boyd explained that three leases expire at the end of the fiscal year. They would determine which three vehicles to lease based on the bid prices.

Commissioner Hibbert stated that discussions have been held regarding utilizing existing police equipment on the new vehicles to reduce the cost of outfitting. She understands the budget request will include renewal of three leases with a marginal increase but not any additional vehicles.

Commissioner MacLeod moved approval of the exploration of prices for Sheriff Office vehicles. Commissioner McClure seconded.

Commissioner McClure requested that the bids include an escape clause so if budget issues arise, the bidders will understand. He asked what will happen with the current vehicles at the expiration of the lease. Boyd stated they will be purchased with the \$1 buy out and utilized until the end of their service life either by the Sheriff's Office, the reserves, or other appropriate departments.

Richard Comstock, Union County Public Works Director, reported that when they are looking to purchase vehicles, they check the state bid and sometimes those prices are better.

Motion carried unanimously.

Consent Agenda

The February 28 and March 6 claims journals and February 27 and March 6 public works claims journals were approved as presented on the consent agenda.

Discretionary Fund Grant Recommendations

Recommendations for grant awards from the Transient Tax Discretionary Fund Committee were presented. The committee reviewed six applications for funding and recommended the following: \$3,500 for the EOU Student Recruitment Project; Up to \$2,500 for the Union County Leadership Program's Union County promotional video; \$1,000 for the La Grande Lions Birnie Park restroom project; and \$3,500 for the Union County Tourism visitor information sign project.

The committee did not recommend funding of the Elgin Rural Health clinic application at this time but agreed to review an application once it is refined and actual needs are identified.

The committee recommended no funding for the Eagle Cap Sled Race because it was proposed to come into Union County but did not.

Commissioner MacLeod moved approval of the transient tax discretionary fund grants as recommended. Commissioner MacLeod seconded. Motion carried unanimously.

Refund of Real or Personal Property Tax

Court Order 2008-16, In the Matter of Refunding Real or Personal Property Tax, was presented for consideration. The order approves refunds of \$1,008.53 for tax year 2005/06 and \$1,037.41 for tax year 2006/07 to Paul L. & Joyce J. Fothergill under an Oregon Active Duty Military Service Member's Exemption. **Commissioner MacLeod moved approval of Court Order 2008-16. Commissioner McClure seconded. Motion carried unanimously.**

Appointment to Hospital Facility Authority of Union County

Commissioner McClure moved approval of Court Order 2008-17, In the Matter of Appointment to the Hospital Facility Authority of Union County. The order appoints Burr Betts to replace Dixie Lund as the Grande Ronde Hospital Board's representative on the Authority. **Commissioner MacLeod seconded. Motion carried unanimously.**

Appointment to Union County Extension Advisory Board

Commissioner MacLeod moved approval of Court Order 2008-18, In the Matter of Appointment to the Union County Extension Advisory Board. The order appoints Valerie Stockhoff and Ken Patterson to serve on the Board, replacing Teresa Stratton and Sallie Parsons. **Commissioner McClure seconded. Motion carried unanimously.**

Community Connection Subrecipient Agreement (Housing Rehab Project)

A Subrecipient Agreement between Union County and Community Connection of Northeast Oregon, Inc., for the 2007 Housing Rehab Program was presented for consideration. The agreement provides for Community Connection to assume all the requirements under the CDBG grant contract on behalf of Union County. **Commissioner McClure moved approval of the Subrecipient Agreement as presented. Commissioner MacLeod seconded. Motion carried unanimously.**

Blue Mountain Nordic Club Ground Use Agreement

Commissioner McClure reported that previously the Commissioners had discussed a request from the Blue Mountain Nordic Ski Club and Snow Drifters Snowmobile Club to site a building at the Public Works Department shop complex. The Commissioners had given tentative approval pending negotiation with the Public Works Department and a successful grant by the agencies. They have been notified of tentative approval of their grant application. During internal discussion with the public works management, some issues regarding the project have arisen. Originally when it was just the Nordic Ski Club they were looking to construct a storage facility. The snowmobile club is interested in a maintenance type facility which creates a problem with access. The public works staff has concerns about access because of equipment and fuel storage within the locked area. A suggestion that has come forward following additional discussion and exploration is to allow them to locate the building on the Ladd pit property. This is a bit farther out but does not pose access issues for the county. The Nordic Ski Club is comfortable with this as a reasonable solution. The snowmobile club is interested in

pursuing other options and will approach the Fair Board for consideration about locating the facility on the fairgrounds property.

Richard Comstock, Director of Public Works, explained that the concern with the shop complex location is access in and out during weekends and after hours. At the time of the first discussion it was thought that Search and Rescue would be involved. They have since found another way to address their needs. Fuel access and security have been identified as concerns in the recent audit so providing unsupervised access would be a problem. Additionally, he is not sure it is appropriate for a private organization to utilize or have access to the county yard. In the past, they have stored the ski club's snow groomer and moved it for them. He stated that the Ladd pit may be a solution because the state has a sand shed located at the site. It has access off a county road and the freeway.

JB Brock, Emergency Services Officer, stated that as directed by Commissioner McClure he has talked with attorney Brandon Eyre regarding the matter. He has stated that the county is within legal rights to allow them the use of county property since they are non profit organizations. The structure of an agreement would allow county use of their snow cats under emergency circumstances as the value exchanged for use of the property. He stated it is very possible that use of the equipment could be needed for emergency access to communication equipment.

A further update will be provided once a location decision has been made.

Mt. Emily Recreation Public Information Meetings

Public information meetings regarding the Mt. Emily Recreation Area were scheduled for April 15 at 6:30 at the La Grande High School and April 29 at 6:30 at the Imbler High School.

Airport Ground Use Agreement

An Airport Ground Lease between Union County and James R. Kopp was presented for consideration. The lease is for the period of April 1, 2008 thru March 31, 2028 at the rate of \$120 per year. This twenty year lease replaces the current twenty-five year lease with Brad Payne for the same property. Mr. Kopp has purchased the building located on the property from Mr. Payne and requested to assume the ground lease as well. **Commissioner MacLeod moved approval of the Airport Ground Lease as presented. Commissioner McClure seconded. Motion carried unanimously.**

Grande Ronde River Corridor Project

Robert Strobe, La Grande City Manager, 1000 Adams, La Grande, was present to discuss the Grande Ronde River Corridor Greenway Project.

Commissioner Hibbert stated that she would not participate in the discussion or decision because of a conflict of interest.

Mr. Strobe discussed a March 12 letter requesting \$10,000 toward the \$40,000 purchase price of 5.69 acres of the Lovely Estate adjacent to the Grande Ronde River. He explained the property is part of an overall project they hope will connect Riverside Park with an Island City recreation trail. The City of La Grande has entered into a purchase agreement that will close on April 1. They have additional funding for the overall project pending in the form of a fisheries grant. The success of that grant

application will not be known until May. There are additional properties they will be looking to procure in the future.

Commissioner MacLeod commented that the Planning Department has been working on this project for the last decade and it is developing in stages. There have been conflicts that are being resolved along the way.

Commissioner McClure asked for clarification of the funding sources for the purchase. Mr. Strobe explained that ODFW access management funds would provide \$15,000 and if the county will provide \$10,000, the City of La Grande will provide the remaining \$15,000. **Commissioner McClure moved approval of the funding request in the amount of \$10,000 from the economic development fund to assist the City of La Grande in purchasing the property. Commissioner MacLeod seconded.**

Commissioner McClure stated that the county has participated with communities throughout Union County. An industrial property was purchased in the City of Elgin, and assistance has been provided in Union with the golf course. Video lottery funds come to the county and have traditionally been used to assist with projects such as this. Commissioner MacLeod stated that she believes ODFW is helping because the fishing brings a recreational component to the greenway project. **Roll call on motion: Commissioner MacLeod – yes, Commissioner McClure – yes, Commissioner Hibbert – abstain. Motion carried.** Mr. Strobe thanked the Commissioners for their support and also for all the efforts of Planning Director Hanley Jenkins on the project.

Vesting Determination – Cochran Measure 37 Claim (Tentative Decision)

Scott Hartell, Associate Planner, reported that the Commissioners are reviewing a Measure 37 vesting determination. Ladd Creek Estates subdivision is a final platted subdivision that was created through a Measure 37 claim process. The question presented is whether the 12 lots created in the subdivision are vested under a Measure 37 claim, or are the 6 lots that meet the Union County Zoning Partition and Subdivision Ordinance definition of substantial construction vested and the six others that do not meet that definition not vested.

Commissioner McClure moved to make a tentative decision to approve the lots as being vested. Commissioner MacLeod seconded.

Commissioner McClure explained his reasoning for the motion. He feels they have met the requirements for a common law vesting claim. The one issue that has come up is about whether the entire subdivision is vested or the individual lots. In reviewing the record, he finds that the Cochran went through the county process. In his opinion it was very clear and everyone knew they were doing that subdivision to build houses on. Even the staff report states that the Cochran Measure 37 claim with the county and the state requested to create twelve lots less than 160 acre minimum parcel size on an A-1 exclusive farm use zone and develop a dwelling on each of the twelve lots. The record is clear that was the intent and it is acknowledged in the county staff report.

The next discussion is of substantial construction. The definition of substantial construction is not about a development, it is about a house. He does not believe you can take a standard that applies to a house and apply that to a subdivision. He would argue that even if you use that standard, and look at the fact that half of the houses have foundations, that would vest the entire subdivision based on that fact alone. The Cochran did the survey and what was requested by the county. They went through the

entire process required. No place in the record discusses the process used. The process used was simply a convenience to address a question that came up because of Ballot Measure 37, that of transferability. The letter written by Planning Director Hanley Jenkins was dated April 10. The final plat was approved in January. The Cochrans had some choices. This process was to take care of an unadjudicated opinion. He asked Hanley if that had been adjudicated by the state and it had not been, so in Union County that was still an unclear issue. In the April 10 letter, Hanley admits there are a couple of ways they could have implemented that. They could have built the buildings and sold the completed house. They chose to do the other method. He believes there was even a third method. The Cochrans could have said they believed the lots were transferable and that they did not have to ask anyone's permission. That would have clouded the title and the whole issue would have remained. The process they used was to try and circumvent that question and eliminate any cloud. He believes even though the county has adopted the process, it has not been adjudicated. He feels if someone wants to challenge it in Court, they may be able to do so and have it set aside. The driver for him is the very fact that the condition was never put in any of the conditions when the plats were adopted. If it had been, in his opinion it would have been different and you could have argued that it had precedence because it was adopted when the plats were done. He wants to grant that the lots are vested. He wants it made very clear to the owners that the only final decision is the Courts. The decisions are common law and they have been told that the Circuit Court is the final arbiter of these decisions. He also feels that people need to be aware that if they continue with it as a vested Measure 37 claim, all of the issues that hang out there with Measure 37 still set on the property. The fact that the transfer has not been adjudicated and other unknowns cannot be taken away. The argument that the desired outcome can be achieved with a non-farm dwelling might have some validity which the property owners might want to consider. He believes the subdivision is vested based on the points he previously made.

Commissioner Hibbert stated that an argument that was made by attorney Mr. Trompke on behalf of the Cochrans, was that the goal post had been changed. She believes that truly the goal post was changed from Measure 37 by the voters in approving Measure 49. That is a state goal post that was changed. However, Union County's goal post did not change as to what the requirements are in the county zoning ordinances. The definition of substantial construction is "the completion of a structure's supporting foundation excluding all minor improvements such as access roads, developed water sources, sewage disposal systems, and electrical utilities". The foundation represents substantial construction. That definition has been in place and enforced since 1983. It has been a basis for decisions made in the past. Mr. Trompke also made a point that the vesting of lots has not been determined in the Courts so the County must make a decision. He also pointed out that vesting is a fairness doctrine. She has taken that to heart and considered what is fair and then what is in conformance with what Union County has established throughout the years as part of zoning ordinances. According to her notes the Cochrans did inquire when the substantial construction needed to be completed so they were aware of the requirement and that there was a deadline. Regarding fairness, Commissioner McClure mentioned that perhaps one way of taking care of this is to go to the non-farm use dwelling. It is her opinion that is the way the county should go, because if the county vests the non developed lots they are in violation of their own local ordinances. If the county is going to approve, maybe they should go back and amend what is on the books as an ordinance. It is her recommendation that the county not vest those six lots as things stand now with local ordinances and that the applicants be encouraged to go forward with non-farm use

applications, or table the matter and go back and take a look at the county zoning ordinances and make sure those are in conformance with the decisions that are to be made.

Commissioner MacLeod stated she feels there is a real danger in going back. That would put the applicants in a position that they might somehow be subject from the state to the limitations that Measure 49 has placed on people. She agrees with Commissioner McClure, and stated that Union County has always attempted to get the residents of Union County the greatest and best use of their land. The county did change the rules on the applicants by changing the requirements after the fact. There was nothing in their original documents that said you have to get this done before the voters make a change. The applicants have proceeded as if they could do this and made an incredible investment in that property to proceed as they were instructed by Union County. She believes the county needs to approve the lots as vested and allow them to go forward.

Commissioner McClure stated that his argument is that the vesting question has never been resolved. The county added that solution to the vesting question after the subdivision had been approved. The county clearly knew when they approved the subdivision that the intention was to build houses. He believes the county definition is about a house, not a subdivision. He does not think you can apply a foundation requirement to a subdivision. If you had a subdivision in which you were putting in streets and sewer and water, when those were in then the subdivision would be completed. Even with Commissioner Hibbert's argument, the fact that six of those lots do have foundations to him vests the entire subdivision based on that fact. If the condition that Hanley puts in his April 10 letter had been put in when they did the plat, it would have made a difference in his mind. It was not. It was added later on to try and solve the unresolved issue as it relates to Ballot Measure 37. That is a change of the rules, and he does not feel it is fair to take that solution that the county crafted for a potential problem and use that for the criteria and require that each house had to be vested. He believes the Cochrans need to be aware that if they go forward under this process it can still be challenged in Circuit Court and still carries all of the uncertainty that comes out of Ballot Measure 37.

Commissioner Hibbert stated the question of fairness is answered by the ability of the applicants to build on the lots through another application. She feels the creation of the lots is vested, not the right to build. Pursuing the application for a non-farm use dwelling then answers the question of fairness. They are not impeded from going forward to develop the lots as they fully intended. That would then keep the county from being in violation of its own ordinance.

Roll call on motion: Commissioner MacLeod – yes; Commissioner McClure – yes; Commissioner Hibbert – no. Motion carried. A final decision with adoption of findings was scheduled for April 2 at 10:00 a.m.

Elgin Health District

City of Elgin Mayor Carmen Gentry, P.O. Box 384, Elgin, and Susan Hansen, Elgin City Councilor, P.O. Box 12, Elgin, were present to discuss the formation of an Elgin Health District. Carmen reviewed a packet of information previously provided for commission review. She explained that she has been working with County Clerk Robin Church and the Secretary of State's office on the process to form a health district. She stated that

they desire to create a district to support the Elgin Health Clinic and propose a tax base rate of \$.50 per thousand which would generate about \$54,000 per year.

The Commissioners discussed the process and their role in referring the matter to the voters. Staff suggested a process that would include acceptance of the petition at this meeting and adoption of a proposed resolution which would set a public hearing for May 7 to accept testimony on the proposal. At that hearing, following testimony a hearing could be set for final consideration on June 18. A second hearing would be held and if favorable an order adopted calling for an election in November.

Commissioner McClure moved approval of Resolution 2008-04, In the Matter of a Resolution Setting a Public Hearing on the Formation of an Elgin Health District. Commissioner Hibbert seconded. Motion carried unanimously. A hearing was by the resolution for May 7 at 10:00 a.m.

Adjournment

The meeting was then adjourned at 10:41 a.m.

Respectfully submitted,

Shelley Burgess
Executive Secretary