

Union County Board of Commissioners  
April 16, 2008

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

Call to Order

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

County Responsibility re: City Council Resignations

Brandon Erye, Attorney, Mautz Baum & O'Hanlon, explained to the Commissioners that he has been researching the County's responsibility in re-appointing a council for each City that no longer has a council due to resignations concerned with the Ethics reporting issue. Brandon stated that ORS 121.160 addresses this issue and states that if the issue is not addressed in the City's charter and there is a member or the Mayor left on the council than the remaining member(s) need to call a special election to fill the open seats. If there is no one left as Mayor or on the Council than it falls upon the Board of Commissioners to appoint a quorum and that quorum will fill the open seats under their charter or under statute if it is not addressed in the charter. The statute does not go into detail about the process that the Commissioners should use to appoint. Brandon's recommendation to the Commissioners is to do an advertisement for one week and pull people from those applicants. Brandon stated that there is nothing that prevents the Commissioners from re-appointing the ex-council members.

Commissioner MacLeod stated that the issue she has with just re-appointing the ex-council members is that the Commissioners do not want to keep re-visiting this issue.

Brandon explained that the law is very clear that if the elected official is not in office on April 15 they do not have to file the ethics reporting form. Brandon stated that the Ethics Enforcement Division defines it the same way. Brandon explained that when the advertisement is done it should be done with the understanding that the ex-council members are invited to apply with everyone else. If there are no applicants the Commissioners would be forced to go to direct recruitment by taking a more active role in finding people who are interested in these positions. In the very worst case scenario and no one wants to take the job the City will not have a forum and cannot function. Brandon explained that there is no statutory framework that gives the County powers of the City because they are separate entities. The Cities all operate under their own charters. The applicants must qualify under each City's charter in order to be considered. Brandon stated that the Commissioners need to consider the appointments they

make will take the existing position for the remainder of that term. Brandon suggested that the Commissioners have a discussion with Joe Garlitz, City Recorder, City of Elgin to determine which four positions should be filled first for Elgin.

Commissioner MacLeod asked Brandon whether the quarterly reporting should be addressed in the advertising for recruitment or not. Commissioner MacLeod explained that there is now a quarterly ethics report due that was not in place before. Brandon stated that this is not a situation the Commissioners want to revisit every quarter and the applicants should take the quarterly reporting into consideration when applying.

Joe Garlitz explained that the law states that if you are not required to fill out the annual reporting than you are also not required to fill out the quarterly reporting. Joe explained that he believes it would not be an issue until next year.

Brandon explained the circumstances in North Powder are a little different because the Mayor has not resigned and the Mayor sits on the City Council. This means that the Commissioners do not have the authority to appoint yet because there is still a party on the council. Bonita Hebert, Mayor of North Powder, has filed the ethics reporting forms and believes that by stepping down as Mayor it would save North Powder the large expense of a special election. She is willing to resign with the understanding that she will be re-appointed as Mayor when the Commissioners appoint City council members. Brandon recommended that Bonita turn in her resignation to expedite the process. Brandon explained that once the Commissioners have the authority to appoint a quorum they will have the authority until a quorum is filled.

Carmen Gentry, Mayor of Elgin, explained that in Elgin many of the councilors did not have a problem filling out the reporting form but their family members did not want them to publish their names and information so their hands were tied.

Commissioner MacLeod expressed that she hopes there will be something done about this requirement in the legislation in 2009, but if nothing changes it will be this way next year and the councilors will have to resign again, which is something the Commissioners want to avoid.

Bonita Hebert, Mayor of North Powder, called a number on the form and was told they would have to file a quarterly report this year.

Commissioner McClure suggested that legal council review what the rules on filing the quarterly ethics statement are. Brandon stated that he can get the information on whether the councilors would have to file a quarterly report so it can be put in the advertisement.

Commissioner McClure would like to expedite this as soon as possible. He believes the Commissioners owe it to the small communities to get them up and running as quickly as possible.

Healthy Start – Medicaid Amendment

Vicky Brogotti, Director of Commission on Children and Families, presented the Amendment number 1 to the Medicaid Administrative Activities Intergovernmental Agreement UNI0709. The amendment allows the increase of the maximum earning up to \$59,000. **Commissioner McClure moved approval of the Amendment 1 to Oregon Commission on Children and Families 2007-2009 County Healthy Start – Medicaid Administrative Activities Intergovernmental Agreement UNI0709 document. Commissioner MacLeod seconded. Motion carried unanimously.**

Deadly physical force plan

Tim Thompson, District Attorney, explained to the Commissioners that the last legislature passed a law that requires each County to designate a planning authority consisting of the District Attorney and the Sheriff as co-chairs as well as a member of the Oregon State police, a police chief, a line police officer, and a citizen member. This planning authority put together the Union County Deadly Physical Force Plan. The law requires the planning authority to develop a comprehensive plan to deal with the deadly physical force incident in which a police officer uses deadly physical force. Also, as part of the plan the committee must develop a way to deal with the immediate aftermath of the use of deadly physical force by a police officer. The committee must also investigate a deadly physical force incident. There is an outdated major crime team plan that the committee would update and utilize. Included with the investigation would be a member of a non-involved agency. The approval process is that the committee must provide the plan to all of the governing bodies of the County and that two-thirds of them must approve of the plan before they can submit it to the attorney general. The Attorney General then has thirty days to approve the plan.

Boyd Rasmussen, Union County Sheriff, added that he believes this a good comprehensive plan on how to deal with this situation so the citizens can have faith that there is an objective look at a situation and that nothing is being overlooked. He stated that they need to have the confidence of the citizens and this plan does that in terms of having outside views of something as serious as deadly physical force.

Commissioner McClure stated that the plan is not complicated but is very clear on how the process is followed. He stated that it is important to have a plan in place before an incident occurs. **Commissioner McClure moved approval of**

**the Deadly Physical Force Plan SB111. Commissioner MacLeod seconded. Motion carried unanimously.**

Assessment and Taxation Grant

Resolution 2008-07, In the Matter of a Resolution Authorizing Participation in the Assessment and Taxation Grant was presented for consideration. Linda Hill, Assessor/Tax Collector, explained to the Commissioners that she plans on having their tax statements printed and folded by Chaves consulting. This would save ten cents (\$.10) a statement. The machines that are used now to print the forms are old and need work. If the Assessors office goes with Chaves consulting they will not have to replace any of the old machines that will not last much longer, and it will also free up staff time at a busy time of year. Linda explained that by the Commissioners approving her grant document they are also approving the expenditures in her budget. Linda stated that she has to have the grant application in by May 1<sup>st</sup>. **Commissioner MacLeod moved approval of Resolution 2008-07. Commissioner McClure seconded. Motion carried unanimously.**

Consent Agenda

**The March 27 April 3 and 7 claims journal and April 2 public works claims journal were approved as presented on the consent agenda.**

Transportation Enhancement Grant

Resolution 2008-06, In the Matter of Authorizing the Union County Board of Commissioners to Apply for a Transportation Enhancement Grant from the Oregon Department of Transportation for the Construction of a Bikeway/Pedestrian Bridge & Delegating Authority to the Chair to Sign the Application was presented for consideration. This is an application for the Grande Ronde River Green Project for a bicycling pedestrian bridge. Hanley Jenkins, Planning Director, explained that because there has not been a specific location selected than it would be best for the County to sign the application because a major portion of the property that's within the corridor is outside of the city limits of La Grande and Island City. Hanley stated that this is a long term grant process but the application is due May 2<sup>nd</sup> that requires a resolution from the jurisdiction that is submitting the request. The construction will not start until 2012 if the grant is approved. **Commissioner MacLeod moved approval of Resolution 2008-06. Commissioner McClure seconded. Roll call: Commissioner MacLeod – yes, Commissioner McClure – yes, Commissioner Hibbert – abstain. Motion carried.**

Surplus property disposal

Scott Hartell, Associate Planner, working from Resolution 2008-01 where property in the County was declared surplus, has been reviewing and evaluating properties trying to establish the value of the properties. Scott found that three of

the properties that the County declared surplus would qualify for lot of record dwelling opportunities. Scott requested that three applications be signed by the Commissioners for the lot of record dwellings and that the processing fee for each application be waived. **Commissioner McClure moved approval of having the three applications signed and the fees waived. Commissioner MacLeod seconded. Motion carried unanimously.**

Elkhorn Wildlife Monitoring Plan Technical Advisory Committee

Court Order 2008-20, In the Matter of Appointment to the Elkhorn Wildlife Monitoring Plan Technical Advisory Committee, was presented for consideration. There needs to be a County representative to the Elkhorn Wildlife Monitoring Committee. The Horizon Wind Energy Elkhorn Monitoring Plan calls for the formation of this Committee so it is requested that Cody Vavra, Assistant Planner, be appointed to this committee. **Commissioner McClure moved approval of Court Order 2008-20. Commissioner MacLeod seconded. Motion carried unanimously.**

ORS 244.050

Resolution 2008-08, In the Matter of a Resolution Seeking Changes to ORS 244.050 to Save Local Leadership was presented for consideration. This is concerned with the ethics forms that elected officials are required to fill out. It is asking the legislature to review and hear testimony from entities drastically affected and take action to amend the ORS that is described above. **Commissioner MacLeod moved approval of Resolution 2008-08. Commissioner McClure seconded. Motion carried unanimously.**

Renewable Energy

Court Order 2008-22, In the Matter of Appointment to the Union County Renewable Energy Committee was presented for consideration. There is a need to appoint members to the Renewable Energy Committee and the members whose terms are up are willing to be re-appointed. **Commissioner McClure moves approval of Court Order 2008-22. Commissioner MacLeod seconded. Motion carried unanimously.**

Conditional Use Appeal – Faye & Rod Swanson

Hanley Jenkins, Planning Director, explained that the Commissioners need to decide if the applicants have the right to appeal the Conditional Use decision for the Elkhorn Wind Project. If they are found to have standing the Commissioners will precede to the appeal itself of the original Conditional Use decision. If they find that the Swansons do not have standing the appeal will not go any further. Hanley explained that the Swanson's appealed the Planning Commission's decision that was on March 6, 2007 which was the final Conditional Use decision authorizing the Elkhorn Wind Farm to put up the wind towers from 104 up to 104.5 megawatts of power generated from those towers. The project is located in

the Telecaset area. Hanley explained to the County Commissioners that the requirements for having the opportunity to appeal are identified in a zoning partition and subdivision ordinance under article 34.00 and in section 34.01B which states that any appeal of a Planning Commission decision must be made to the Board of Commissioners within 10 days of such decision in writing. In addition in section 34.01 sub 2 identifies the appeal procedures. Essentially, the applicants are required to submit an appeal form and the Commissioners are required to conduct a hearing on that appeal through a hearings process. Hanley cited the statutes in ORS 197.830 sub 3 which are specific to the local government requirements of notice. If a local government makes a land use decision without providing a hearing or the local government makes a local land use decision that is different from the proposal described in the notice of the hearing a person adversely effected by the decision may appeal the decision to the Land Use Board of Appeals (LUBA) under this section either a). Within 21 days of actual notice where notice is required or b). Within 21 days of the date a person knew or should have known of the decision where no notice was required or given. Legal Council has researched what happens when a hearing is held but notice was not provided. The court cases state that if the person that should have received notice did not have the opportunity for a hearing the 21 days of actual notice or the 21 days of constructive notice apply for that person. Hanley explained that this definition is for an appeal to LUBA but this has been treated as if the applicants have the opportunity to appeal the Planning Commission's decision to LUBA. The reason Hanley went to the state statute is because Union County's ordinance does not address the issue of what happens when notice was not given when notice was required. In Oregon's land use program the State law requires 21 days from the date actual notice was received or 21 days from when constructive notice was received or the applicant knew about the decision. The Planning Department has gone to great length to describe in their staff comments why they believe the appellants had both actual notice from the County as well as constructive notice.

The staff report includes two letters, one from Council Janie Burcart, Attorney, Moffet & Burcart Attorneys, dated Oct. 15, 2007 and a letter from Elaine Albrich, Attorney, Stoel Rives LLP, addressing the standing issue as well as court cases. There is an additional letter included from Elaine Albrich dated April 15, 2008 submitted via fax that includes explanations as to why Elaine believes the applicants do not have standing to appeal this decision, because in the staff report there are various contacts to Union County Planning Department notated. Those contacts have been included into the file of correspondence from the appellants, specifically Fay Swanson. The file includes a table of contents and the correspondence has all been numbered based on chronological order in which they were received. The file is sited in the staff report under the staff comments in a number of places as to why they believe the appellants do not have standing and why the appellants had actual notice and constructive notice

long before the 21 day appeal period. The appeal period would count back from the date that they received the appeal application which was Feb. 14, 2008.

Commissioner Hibbert wanted the definition of constructive notice to be very clear, which is when there is an awareness or knowledge that something is happening. Hanley explained that the statute specifically says that within 21 days of the date the person knew or should have known of a decision where no notice was required and in this case it is where notice was required but it was not given. The Planning Department gave notice to land owners in the area, but the Tax Assessors map for the Telecaset area that included four land owners was not included on the Tax Assessors index map for that township so when the list of adjacent land owners was identified for notification those four land owners were not included in the notice. The Planning Department does admit that the error occurred.

Commissioner McClure asked if the appeal is for the Planning Commission's approval of the wind energy project in Telecaset. Hanley explained that the appeal is on the original Conditional Use application for the wind tower project. There were subsequent applications that included a concrete batch plant. The appellants were given notice of that and testified at that hearing. There were applications for partitioning and other uses associated with the project that were subsequent to the original application, but the appeal is for the original application that the Planning Commission made on March 6, 2007.

Commissioner MacLeod asked Hanley if the actual awareness that he is portraying the appellants had occurred at the batch plant hearing where there was testimony given by the applicants. Hanley acknowledged that the earliest record they have of the applicant's knowledge of the decision was at the batch plant hearing on Feb. 26, 2007.

Commissioner McClure asked Hanley who was notified of the final decision. Hanley stated that the Planning Department notified everyone that had participated in the process on the original Conditional Use application. Notice of the final decision was not given to the original property owners that were notified because they would have only been given notice if the land owners participated in written or oral form.

Rod Swanson, 68562 Telecaset Lane, Union, OR 97883, Fay Stein-Swanson, 68562 Telecaset Lane Union, OR 97883, came to testify before the Board of Commissioners. Rod stated that the reason for this appeal is for the simple fact that Oregon Land Use Regulations were not followed. They were not sent a letter of the original meeting so therefore they were left out of the original voice as well as never receiving notice of the final decision which they were left out of too. As far as the final decision goes it seems that things weren't quite followed the way

they should be as stated in the County code so they feel the final decision does not exist. Also, the people that were notified on the original decision, it seems like from the minutes, were only the people profiting from the wind generators or people who are just pro wind generators. The four land owners who this affected the most were left out of the process. Leaving the people most affected by the wind generators out of the whole process caused concern that there wasn't a voice of opposition given.

Rod stated that there is constant noise and the lights disturb their sleep, The Swansons claim they are left sandwiched between the whole project and were never given a voice. Rod explained that people tell them to move but they feel that the land values are worthless now. Rod stated that Candy Bowen, Realtor, who is selling the Blankenship's house and ended up selling it to Horizon, had it on the market for two years. She informed them that the Blankenships would be lucky to get what they had in the house out of the property if they ever sold it at all. Rod explained that in the end they feel that this beautiful, historic, and scenic landscape has been totally ruined and turned into an industrial wasteland. Rod explained that they have heard from the people that do the maintenance on the wind generators, from a man that was in the accidental deaths that happened in Washington, that the clutches from these wind generators go out frequently which is supposed to be an industry secret. The clutches go out quite often because they have to feather down the wind when it blows a lot, but when they go out 40 gallons of PCB spills on the ground and possibly if they are not taken care of enter the aquifer.

Fay stated that they are all very emotional about this because their quality of life is gone. Every time she sees a bird her heart stops because she is thinking that this bird is going to get killed. Fay gave the Commissioners papers on the federal law, Migratory Bird Act Treaty of 1918 in which the Oregon Department of Fish and Wildlife and Horizon Wind Energy knew there was going to be migratory bird kill and have approved this project which is in direct violation of federal law that protects the birds and wildlife. Fay stated that if the Commissioners were not in their own comfortable homes with their own comfortable jobs but living in their place for the past 25 years thinking that this was heaven, this is where their grandkids, their kids, everyone can come together and be a family and have this beautiful land around, this wildlife around them they would be upset too. Fay stated that they could walk up the hill which they can not do now because it is a federal offense. Their whole way of life has changed. Fay explained that the Commissioners have the power to stop these wind generators from destroying their lives, and ensure their health and well being, and make sure that they have a place to live. Fay stated that her family sent her away for five weeks because they were worried that she was going to die. She was hardly breathing at all, wasn't getting any sleep, and she had nose bleeds constantly from being there. Fay stated that it affects Rod too because he has nose bleeds as well. Fay

expressed that the Commissioners have the right to ensure they have life, liberty, and the pursuit of happiness and that they are not homeless, because they have no money to buy a new home some place else to get away from the wind generators.

Elaine Albrich, Stoel Rives, 900 SW 5<sup>th</sup> Ave. Suite 2600, Portland, OR 97204, representing Horizon Wind explained that she submitted into the record a letter that describes Horizon's view on the Swanson appeal and how it relates to the appellant standing. She wanted to reiterate that there is an umbrella of State statutes that apply when there has been a situation at a local level when notice should have been given and wasn't. There is an available remedy at the State level with an appeal to LUBA. The remedy must be exercised in the statutory time period which is 21 days from receiving actual notice. The section that applies is 197. 833A notice was required but wasn't given so the determination is whether the appellants have received actual notice of the decision; the appeal time period triggers and the 21 days run. As she explained in her letter at the very latest actual notice was given as of November 13, 2007 so 21 days from that period the appeal period has run and has terminated. From a local perspective the land use decision has become final and therefore it is only reviewable under the Oregon State statutes.

Commissioner McClure asked if November 13, 2007 was when the applicants received formal notice of the decision. Elaine stated that in the record there are notes from the planning staff on the interactions with the Swansons and there is documentation in the record from planning staff that the appellants received copies of the land use decision pertaining to the Elkhorn project in addition the staff confirmed with Fay Swanson that the March 6, 2007 letter was the final land use decision for the Elkhorn Project.

Commissioner McClure asked Hanley if when the letter goes out does it address the appeal rights. Hanley stated that it is the decision to the applicants and only if the applicants received a negative decision would they be notified of their appeal rights.

Commissioner MacLeod stated that the easement documents were given to Fay Swanson before the meeting and way before the wind generators were passed by the planning commission. That was her testimony to the Commissioners in October 2007. Hanley explained that her statement was referring to her initial contact that she received from the company prior to them even initiating the application.

Commissioner McClure stated that even if they had constructive notice if they didn't know that there was a 21 day time period to appeal how can they be expected to appeal. They weren't told those were the rules. Now the planning

department is saying they have 21 days but did anyone tell them in the process that they had 21 days. Hanley stated that the planning department sent them an entire copy of the County zoning ordinance on November 13, 2007 and what is being referred to is not only the zoning ordinance but State statute.

Commissioner McClure stated that he sits on the Board of Property Tax Appeal and they let everyone know of their appeal rights. When a decision is made they know what their appeal rights are. Hanley stated that they typically include a persons appeal rights in a letter of denial to the applicant but they do not send a separate letter that is different than the letter that is sent to the applicant to the participating parties. Typically, people will come to the Planning Department and state that they do not agree with the decision and they are then notified at the counter that they have an appeal right within a certain number of days. The planning ordinance says that they have 10 days to appeal from the Planning Commission to the Board of Commissioners. Hanley explained that if you go by constructive notice when the appellants received the County zoning ordinance it clearly states that you have 10 days from the Planning Commission's decision. At that point they have a 10 day period in which to file that appeal and it wasn't until almost 6 months later that the appeal was filed. Commissioner McClure asked Hanley if they were notified that they had 10 days to appeal. Hanley explained that they were given a copy of the County zoning ordinance which they requested.

Elaine Albrich asked that the hearing be limited to the issue of standing and if the Commissioners should decide to go to the substance of the matter she would like to ask for a continuance, but she believes there is enough evidence to demonstrate that proper notice was given and the statutory period has run.

Fay Swanson explained that she never opened up or looked at any of the paperwork she received in November because she gave it to her lawyer. Her lawyer was on vacation and she didn't open it up until she was back. Fay did not look at any of the paperwork at all; it went immediately into an envelope and sent that day to her lawyer. Fay stated that she had no knowledge at all about anything and when she tried to get a lawyer around this area no one would take their case because of a conflict of interest. She had to wait until she went down to Corvallis and found a lawyer. Fay stated they were the only ones out of the four families that took their case to a lawyer because they are not a rich community. Fay expressed that is one of the reasons why they are picked on. Fay did not understand if they have been paying taxes for 25 years why they would be omitted from the Tax Assessors index map. She had no knowledge of what would take place. When she received notice of the \$32,000 offered, by horizon, over a 30 year period she didn't believe it was a fair amount.

Fay stated she thought she had to sign and agree to the project, and she didn't agree to it. Fay thought that the towers were going to be across the road, but now they have a tower behind their house which has lacing that has red lights. She explained that she is concerned not only for her well being but for the environment as well. She had no way of knowing what would take place when she got the piece of paper to sign that asked her to grant full access to her property for 30 years so they could lease it for 30 years.

Commissioner McClure asked if she did get a copy of the zoning ordinance. She answered no, the Planning Department gave her a packet in November of all the different things that they did throughout the process and she put them in an envelope and sent it that day to her lawyer in the Corvallis area. Fay put all of the papers in the envelope and had her lawyer research it because she doesn't know about the legal field. Fay explained that it wasn't written that she had a right to appeal. Fay said she wasn't happy when she went to the March 6<sup>th</sup> batch plant meeting. She explained that they wouldn't let her use the word wind generator because it was a batch plant meeting. She told them there that she wasn't happy about the wind generators and no one told her to come into the office and submit an appeal. Fay was talking to the planning department constantly about all of the different intrusions into their lives, all of the headaches of constant traffic. Fay explained that her dog was killed by the trucks traveling at high speeds on their road. Fay apologized but said she is upset at the whole situation.

Commissioner Hibbert asked Fay if she received the paperwork as notated in the file in September. Fay explained that she didn't receive anything from the Planning Department until she requested it in November. Commissioner Hibbert than asked Hanley if anything was sent back as undeliverable and Hanley replied that nothing had come back to their office. Fay explained that when she went in to get the paperwork for her lawyer she also got a disk with the information on it. Fay asked her lawyer to send the disk back because she couldn't afford her lawyer anymore but the disk has all of the documents on it. She didn't get any of the emails that were supposed to be sent to her, but she received the disk when she received the other paperwork in November.

Commissioner McClure stated that he would like to have some time to read the letter they received from Elaine Albrich and review the extensive record so he asked for a continuance to the next meeting to make a decision.

Commissioner McClure asked Hanley if their decision was appealable to LUBA. Hanley stated that it can be appealed but it has to be within the guidelines of 21 days of actual notice or 21 days of constructive notice. Here the issue is whether or not notice was within those guidelines which is the way LUBA would review a standings issue. If the Board of Commissioners deny standing than it is also deniable by LUBA.

**Commissioner McClure moved to be continued to the next meeting, May 7 at 11:30 a.m. at this location on the standing only and there will not be any more testimony on the standing at that time. Commissioner MacLeod seconded. Motion carried unanimously.**

Recycle Bin in Elgin

Scott Ludwig came to talk to the Commissioners to inform them that he went to the City of Elgin to ask if a recycle bin that was previously discussed with the Commissioners could be put on city property to resolve any issues. The City Manager of the City of Elgin told Scott that there was no additional property available to put another bin on. Scott put a petition together asking the public if they would have a problem with the bin being put on private property and also went to the City of Elgin City Council and asked for their support. The City Council unanimously decided they would like to have another bin and it could be placed on the Elgin Foodtown property. Hanley Jenkins explained to the Commissioners that the request Scott is bringing before them is that the Union County Solid Waste District would be responsible for purchasing the cardboard bin. The property owner would be responsible for maintaining the clean up around that container and it would have to be accessible to the public. The Solid Waste District would own the container and there would be an agreement signed that outlines each entities responsibilities as it relates to the container's maintenance and service. Hanley stated that the last container that was purchased was around \$6000. **Commissioner MacLeod moved approval of the Solid Waste District purchasing another cardboard container for the City of Elgin to be housed at Elgin Foodtown and complete an agreement. Commissioner Hibbert seconded. Roll Call: Commissioner MacLeod – yes, Commissioner McClure – abstain, Commissioner Hibbert – yes. Motion carried.**

Road Vacation Petition Hearing – Ludwig

Court Order 2008-19, In the Matter of Vacating Unit "H" of Old Oregon Highway 82 was presented for consideration. The Commissioners received a petition to vacate a portion of HWY 82 on March 12, 2008. Hanley Jenkins explained that the application was submitted by Scott and Kathleen Ludwig. Along with the application are the maps, original resolution from the State that gave the right of way to Union County, and the notice given to adjacent land owners. The Commissioners were given a letter from Richard Comstock, Public Works Director, stating that he does not object of the proposed road vacation. The statutes identify a process in which a public hearing is held and notice is given of that public hearing in order for testimony to be heard. Once that is complete a Court Order can be adopted. Hanley stated that there were no objections received about vacating this property. **Commissioner MacLeod moved approval of Court Order 2008-19. Commissioner Hibbert Seconded. Roll**

**Call: Commissioner MacLeod – yes, Commissioner McClure – abstain, Commissioner Hibbert – yes. Motion Carried.**

Vesting Determination – Needles/Varney

Hanley Jenkins presented the Commissioners with a vesting application on a Measure 37 claim from Judy Needles and Dean Varney. The petitioners received both County and State claims approval under Measure 37 which is one of the requirements for being able to pursue a vesting claim. In the County's ordinance the definition of substantial construction reads: the completion of a structure supporting foundation excluding all minor improvements such as access roads, developed water sources, sewage disposal systems, and electrical utilities. There are seven lots in the subdivision and all of them had foundations reviewed and approved by the building department. The board is asking that the Commissioners find the entire subdivision is common law vested because all of the lots have met the County's substantial construction definition.

Dean Varney, 65328 Crescent Road, Imbler, 97841, stated that his intention has been to meet the requirements because he did not want this to become a problem. Dean understood that the residential home foundations were the requirement for vesting. He stated that he is living in this development and he wanted it to be an improvement as much as he could by making it blend from urban to rural.

Chris Wilson, 800 Crescent Road, Imbler, 97841, came to the hearing to state her support of what has been done so far.

**Commissioner MacLeod moved approval. Commissioner McClure seconded. Motion carried unanimously.**

Adjournment

The meeting was adjourned at 11:40 p.m.

Respectfully submitted,

Ashley Wilhelm  
Department Specialist