

Union County Board of Commissioners  
May 7, 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.

Appointment of City Council Members

On Monday April 28<sup>th</sup> the Commissioners appointed Mayors for North Powder and Summerville under the advice of legal council as well as enabling those Cities to conduct city business. The Commissioners now need to appoint quorums for North Powder, Summerville, and Elgin.

Court Order 2008-24, In the Matter of an Order Appointing a Mayor and City Council Members for the City of Elgin was presented for consideration. This would appoint Carmen Gentry as Mayor, John Stover, Pat McMullen, Suzanne Hanson, and Sue Moore as Councilors. **Commissioner McClure moved approval of Court Order 2008-24. Commissioner MacLeod seconded. Motion carried unanimously.**

Court Order 2008-25, In the Matter of an Order Appointing City Council Members for the City of North Powder was presented for consideration. This would appoint Ilene Davis, Michael Morse, Joyce Lawyer, and Lloyd Bigler as Councilors. **Commissioner MacLeod moved approval of Court Order 2008-25. Commissioner McClure seconded. Motion carried unanimously.**

Court Order 2008-26, In the Matter of an Order Appointing City Council Members for the City of Summerville was presented for consideration. This would appoint Robert Darrough and Ronald Caswell as Councilors. **Commissioner McClure moved approval of Court Order 2008-26. Commissioner MacLeod seconded. Motion carried unanimously.**

Center for Human Development CDBG Grant Sponsorship Request

Steve Ryman, Center for Human Development (CHD) explained to the Commissioners that CHD has been pursuing alternative office space. They are in the process of identifying a facility and making a contingent offer to purchase and remodel it. This will be a year long project to raise the funds and do the renovations. In the process of looking for funding alternatives they have contracted with Brian Cole to work with CHD.

Brian Cole, P.O. 1088, Baker City, OR, 97814, has a project in which Union County can be the eligible applicant on behalf of CHD for new and expanded facilities for their services. A good case can be made in terms of being competitive for a grant. At this point CHD is in very early conversations with Dale Little with the Oregon Economic and Community Development Department. Brian is not sure if they will be ready to apply by the June 30, 2008 deadline. CDBG operates on a quarterly basis and he believes that there will be some funding left if the application is in by June 30, 2008. It would be a grant request for approximately \$800,000. The purpose for the public hearing would be two-fold. There would be a public hearing specific to this project and the Commissioners are also required as a governmental body to hold a public hearing on general community developmental needs as well. If there are no objections to Union County being the sponsor he would recommend having the public hearing as part of a regular commission meeting in early June.

Commissioner McClure stated that Union County has sponsored CDBG grants before in the past. Shelter from the Storm was built with a CDBG grant and Union County was the sponsor as well as housing grants for Community Connections so it is not something that has not been done before. The relationship with CHD is one that they are County contractors so Commissioner McClure believes that it is appropriate for the County to be the sponsor since a government entity is required. **Commissioner McClure moved that Union County serve as the sponsor for the CDBG grant to help CHD acquire a new facility. Commissioner MacLeod seconded. Motion carried unanimously.**

Public Comments:

Anne Varth, Representative from Friends of La Grande Ice and Event Center Foundation came to talk to the Commissioners about raising funds to build a Hockey sized ice rink and events center in the La Grande area. She has been working with Colby at Greg Walden's office and with the Union County Chamber of Commerce who has suggested coming to the Board of Commission meetings to get letters of approval from the different groups in town and then having a round table meeting with the foundation and anyone who would like to support them.

Vehicle Bids

Boyd Rasmussen, Sheriff, reviewed the vehicle bids he obtained from Frontier Motors, Goss Motors, and Legacy Ford. Boyd recommended purchasing two Dodge pick-ups from Frontier motors as well as a Dodge Charger from Frontier Motors because they were the lowest bid on all three vehicles. The current three vehicles that are on the budget this year were a total of \$28,965. The thought was to try and get ahead of the curve and when the new fiscal year starts to have the new vehicles roll over into a new lease. Boyd explained that he tried to get as close as he could to the \$28,965 figure. The total between the two low bid pick-ups and the pursuit vehicle from Frontier Motors totals \$29,533. If the Commission

approves he would like to have those ordered and ready to go as close to July 1, 2008 to start the new cycle of leased vehicles.

Commissioner MacLeod stated that she appreciates that Boyd is thinking of this after July so the whole scope can be looked at.

Boyd explained that the vehicles are on a three year lease with a \$1.00 buy out at the end of the lease. Boyd would have to contact the companies if the Commissioners choose to wait on their decision because the companies are going to 2009 vehicle models and will stop making the 2008 models so the bids could change.

Commissioner McClure stated that the vehicles will not be getting any cheaper which is something that needs to be considered.

Commissioner Hibbert stated that the decision will be delayed until the next meeting, May 21, 2008 so the Commissioners can view the budget in their work session before a decision is made. Commissioner MacLeod stated that she would like to look at the vehicle figures compared to the rest of the budget.

#### Aggregate Bid

Bob Kelly, Assistant Director of Public Works, requested quotes for two materials that are used for road maintenance. Two quotes were returned from Royal Rock and R.D. Mac. Bob recommended Royal Rock be awarded the ¾" – 0 quote which was the low bid and R.D. Mac be awarded the ½" - ¼" chip rock quote which was the low bid. **Commissioner MacLeod moved approval of bid awards for ¾" – 0 and ½" – ¼" chip rock. Commissioner McClure seconded. Motion carried unanimously.**

#### Airport Industrial Park Land Sale Agreement

Dennis Spray, General Services Director, explained to the Commissioners that James Challis would like to purchase Lot 4 in the second addition of the Airport Industrial Park. He previously purchased Lot 5. Dennis asked him for verification of employment to meet the criteria for the first lot that he purchased which he has provided. He has met the obligations and fits within the zoning requirements. **Commissioner MacLeod moved approval of the Sales Agreement between Union County and James Challis. Commissioner McClure Seconded. Motion carried unanimously.**

#### Property Use Agreement

J. B. Brock, Emergency Services Officer, presented to the Commissioners a lease agreement between Union County and the La Grande Snow Drifters Snowmobilers Club as well as the Blue Mountain Nordic Ski Club. This was addressed before the Commissioners and was agreed to pursue a sight for them

to establish a building and has been agreed to by Commissioner McClure, the La Grande Snow Drifters Snowmobile Club, the Blue Mountain Nordic Club, and the Union County Public Works Director that they could build a sight at the Ladd Pit location on Pierce Road. There has been an agreement developed that has been reviewed by legal council. Commissioner McClure stated that the clubs will allow Union County to use their equipment in emergency situations for Search and Rescue. It is a thirty year lease which is what their granting agency required. J.B. stated that this use is strictly for storage and they will not hold their monthly meetings there. **Commissioner MacLeod moved approval of the Lease Agreement between Union County and the La Grande Snow Drifters Snowmobilers Club and the Blue Mountain Nordic Ski Club. Commissioner McClure seconded. Motion carried unanimously.**

Consent Agenda

**The March 19 and April 2 Board of Commissioners Minutes, April 10, 17, 24 and 30 claims journal and April 9, 16, and 29 public works claims journal were approved as presented on the consent agenda.**

Appointment to Farm Advisory Board

Court Order 2008-21, In the Matter of an Order Re-Appointing a Member to the Union County Farm Advisory Board was presented for consideration. A member's term has expired and they are willing to continue to serve on the board.

**Commissioner MacLeod moved approval of Court Order 2008-21. Commissioner McClure seconded. Motion carried unanimously.**

Surplus Property Resolution

Resolution 2008-09, In the Matter of a Resolution Declaring Property Surplus was presented for consideration. **Commissioner MacLeod moved approval of Resolution 2008-09. Commissioner McClure seconded. Motion carried unanimously.**

Renewable Energy Committee Grant Process Recommendation

Commissioner McClure explained that the Renewable Energy Advisory Committee has been meeting throughout the winter and has come up with the recommended criteria for the grant selection process that came out of a resolution. Arthur Bingam, 1412 Jackson, La Grande, OR 97850 explained that Resolution 2005-30 requested that the Renewable Energy Committee put a draft together for the funding that came from the Horizon Wind Project. The philosophy that they came up with was how to take the money and make it most effective. A draft of the application process was presented to the Commissioners. The committee wants the money that is given to be beneficial for five years. Commissioner Hibbert asked why there was no match required. Commissioner McClure explained that the committee did not require a specific amount of match but if you look under criteria the projects that maximize the leverage of funds are going to be the ones

considered. The projects that ask for 100% are very unlikely to be funded. The issue is that there are so many different types of renewable energy opportunities that they weren't sure how to put all of the possible considerations into some kind of criteria. The way the project would be funded would be based on the output of the project. Commissioner MacLeod stated that she liked that it is a simple application but it does make people think about the process. It is similar to the Discretionary Fund Application which has been very successful. **Commissioner MacLeod moved approval of the Renewable Energy Grant Application Form. Commissioner McClure seconded. Motion carried unanimously.**

#### Elgin Health District

Court Order 2008-23, In the Matter of an Order Approving the Petition for Formation of an Elgin Health District was presented for consideration. Commissioner Hibbert opened the public hearing for testimony. Carmen Gentry, Mayor of Elgin, P.O. Box 384 Elgin, OR, 97827, explained that the City of Elgin has been working for a long time to get the pieces together for the Elgin Health District. Carmen had a meeting with the president of OHSU regarding some of the issues they are facing, thanked them for the extension, and informed them that they were now trying to put the next step into place which would be to take the boundaries to the tax office to get them set. If the resolution is approved there will be a lot of community outreach done to inform the community of what the health district will mean for them. The proposed district will net about \$55,000 which should be sufficient to support the health clinic.

Commissioner McClure asked if their intent was to take this money and use it as a base and to contract with a private individual or another organization and the City will not be the ones hiring the doctors or nurses. Carmen stated that the health district will have its own Board of Directors that will govern it which will all be elected positions.

Commissioner McClure asked if there is any equipment in the building that the health district will retain. Carmen explained that there is equipment that was donated by Grande Ronde Hospital in the clinic now. Carmen has written letters requesting that the equipment stay at the clinic and was told that it will most likely stay.

Commissioner MacLeod stated that she admires them for doing this. These are long range things and it is brave to go out and levy. They are thinking of the healthier community and what is being done is terrific. There is still a lot of hard work ahead.

Commissioner Hibbert stated that Union County is working behind the scenes and side by side with different organizations as well as the Elgin Health District. The Commissioners are aware of the need in the community for health care.

Commissioner McClure stated to let the Commissioners know if they can do anything, politically, that would help.

**Commissioner MacLeod moved approval of Court Order 2008-23.  
Commissioner McClure seconded. Motion carried unanimously.**

Vesting Determination – Swartz Measure 37 Claim

Hanley Jenkins, Planning Director, explained the staff report on the Swartz Measure 37 vesting claim to the Commissioners. This application was submitted by Loren and Anita Swartz. It is a vesting determination on two Measure 37 claims. The Measure 37 applications that were reviewed by the Commissioners were not land use decision and vesting determinations are not land use decisions either but the process that is followed for the vesting requests are similar to the land use process that would normally be used for a land use decision. Testimony will be taken in favor of the vesting as well as in opposition of the vesting. If there has been adequate evidence presented the hearing can be closed or the record can be left open and be continued at another meeting which is at the Commissioner's discretion. This request stems from two Measure 37 requests that were submitted in the early part of 2007. Those two requests were to divide their property based on the land use regulations that existed on the date of their acquisition of the property. At that time the land use regulations allowed for the creation of parcels down to eighty acres in size. The Swartz submitted two requests because they own two properties that are adjacent to each other. Because of the size of the property they had the opportunity to create and actually requested the opportunity to create four parcels from each of those claims. They received approval from Union County and the State on both of the Measure 37 claims. They were then required to follow up with land use applications to pursue the partitioning of the property. Because Oregon law both on the day of the acquisition as well as today only allows the creation of parcels through partitioning up to three parcels in the calendar year they could only pursue the division of three parcels on each property in 2007. They did pursue two major partition requests and created two about eighty acre size parcels and had a remaining parcel. Hanley explained that he will refer to the eighty acre parcels as parcels one and two in both of the partitions and parcel three as the larger parcel in both of the major partitions. They received approval from the County for the major partitions and then proceeded with the development with the property. They received approval and recorded the plats so the plats for the major partitions are recorded in the Clerks office which then formally created those parcels as legal parcels. They pursued development on the parcels and received a substantial construction determination in the form of a letter from the County Planning Department on the construction of residences on the property. This approval was for residences on parcel one and two for each of the major partitions. The eighty acre parcels received a substantial construction determination under the County's definition

prior to the effective date of Ballot Measure 49. The effective date for the substantial construction determination was November 6, 2007 and the Ballot Measure 49 became effective on December 6, 2007. There is a court decision that says that Measure 37 is no longer effective after December 6, 2007 and would then be referred to identify what the opportunities are under Measure 37 claims. The applicant has submitted a request to vest the partitioning of the property into four parcels. The issue that is before the Commissioners is whether or not the applicants can pursue the vesting to partition property. What makes this different than the other vesting requests that have come to the Commissioners is this is for the ability to divide property not for the ability to continue a use that was initiated on the property. On the previous vesting requests the parcels were already created and the issue was whether or not lots that had not been built on by December 6, 2007 could be built on based on the amount of development activity that had occurred previously within the development. Hanley explained that the applicants can only vest what they asked for. Here the applicants have not yet asked for the partitioning of parcel three. Hanley believes that the complication for the Commissioners is that there is no direction from court cases or prior decisions that were made at the County level on this issue. There has been a determination that local governments will make vesting determinations rather than the State. There is no time frame for making a decision since this is not a land use decision by State law so there is adequate time to consider the claim before a decision is made.

Commissioner Hibbert asked Hanley if he stated that only what was asked for can be vested regarding parcel three. Hanley explained that the interpretation that he has received from the State is that only what was requested can be vested. The issue is that the portioning of lot three has not been asked for because under the law that existed on the applicants date of acquisition and the current land use law they could not pursue a subdivision by creating four or more parcels in a calendar year so, they could not pursue the creation of all four parcels in 2007. The applicants would have come in 2008 and create the other two parcels. Because Measure 49 was passed and was effective on December 6, 2007 what it did was make the Measure 37 decisions no longer effective and all of the Measure 37 claims have to either be found to be vested or converted to a Measure 49 claim. The applicants have requested the Commissioners find that they are vested and have the opportunity to complete the partitioning.

Commissioner McClure stated that this is not a land use case so how does ex parte contact apply? Hanley explained that there are no rules guiding the Commissioners there but the process that is being used is a process like a land use hearing but it is not a land use hearing. It is strictly up to the Commissioners. The public hearings process is being used so there is some kind of format for receiving the application and testimony. Commissioner McClure stated that he has not had any discussions in depth about the process or the application.

Commissioner McClure asked why the Measure 37 claims are not part of the record so the Commissioners can go back and review the claims as part of the decision? Hanley stated that they are part of the record and they were processed before. There is reference to the Measure 37 claims in the staff report and the Commissioners were given the dates of when the Measure 37 claims were authorized. Commissioner McClure stated that it would be interested in seeing what they did ask for specifically in those claims. He would like to see those claims before he goes forward in this process.

Commissioner MacLeod stated that she is unclear about what the remainder is being asked to be divided into. Hanley stated that they created two eighty acre parcels and there is a remainder of one hundred sixty acres or larger that could be made into two more parcels. They asked for four eighty acre parcels.

Commissioner McClure stated that the reason why the applicant did it the way that they did was because that was the requirements when they made their Measure 37 claim, and it was the rule when they acquired the property.

Loren and Anita Swartz, 51967 Hwy 203, Union, OR, 97883, came before the Commissioners and explained what they have done in the process. They explained that they met with the Commissioners in February of 2007 and were approved for a Measure 37 claim to make eight parcels at that time, four on each property. Loren stated that when they purchased their land it was purchased because it was a large track and it could be sub divided into eighty acre parcels. They had other property across the road that wasn't particularly productive and it could be sub divided as well. They explained that since they have four children they thought they could have a family ranch or other possibilities. Loren told the Commissioners that they have been dealing with what they are allowed to do by law and they have done everything in their power to go through the process outlined by the Union County Planning Department to do it right. The applicants received approval for all eight parcels from the State in April of 2007 and approval from Union County to build on those eight parcels. Loren explained that the reason why they have not finished the partitions is because they were following the law and could not divide any more that four parcels in a calendar year. During that time there has been a change in the law with Measure 49 coming into effect, but they were originally approved for all eight parcels. The surveying that was submitted originally was for all eight parcels.

The big game management plan through the Oregon Department of Wildlife was in fact set up on doing eight parcels. The Oregon Department Of Transportation approval they received for entries into the properties included roads that were up to County recommendation and standards for two residences for one drive-way. Oregon Department of Fish and Wildlife and the Planning Department suggested

grouping the residences. They can do the other four in the second calendar year which they are now approaching. They went to the Planning Department and ask them what they were legally able to apply for and were told that they were constrained by the law to ask for more than they could do in one calendar year. Anita explained that they are seeking the vesting of the entire Measure 37 claim.

Commissioner McClure asked the Swartz's how they met the substantial construction qualification from the Planning Department. Anita answered by stating that they put in roads and put manufactured homes on each of the eighty acre parcels. They are on cinderblock foundations which meets code for manufactured homes. They have been inspected and have passed the inspections.

Bill Harvey, 14529 S. Rock Creek Lane, Haines, OR, 97833, came to talk to the Commissioners on the Swartz's behalf. He stated that he is familiar with the efforts of the Swartz's throughout this process. They did, with the work of the Planning Department, go through all of the hoops they were asked to do. Measure 37 passed because the citizens of Oregon requested that some fairness be put back in the system that was taken away. When they bought the property they were allowed to break up the property into eighty acres. They had that right and were free and clear to do so. It was taken away from them by a change in laws. It was granted back by the vote of the citizens of Oregon and in the process at that point in time it was fully legal to do what they did. The only reason they were not allowed to do all eight at that time was another law. It was not their fault that it was hindering their time table. No one had the knowledge what Measure 49 would do. They were acting under Measure 37 which was the law at the time. What they are asking now it to continue what they started because they are only half way through. They have not been allowed to finish it in the time they had to work with. This is not going to be a detriment to the surrounding land because basically they are only asking for three more dwellings compared to what has already been established. The ground up there is grazing ground and not farm ground. Breaking it up into 80 acres can still continue that use by leasing or by managing on a smaller level.

Janie Burcart, Attorney, 1407 Washington Ave, La Grande, OR, 97850, representing the neighbors of the Swartz spoke to the Commissioner in opposition. She submitted a letter into the record and wanted the neighbors to introduce themselves and tell the Commissioners the effect that this has on them. Janie brought a copy of a photograph of a manufactured home that has been placed on the property. Janie explained that at the time that the Swartz purchased the property in 1991 they were under the same limitation that they have now and could only develop three parcels in a calendar year. Measure 49 is a correction of what the people thought they were voting for when Measure 37 was put in place. They have not vesting in the other two larger lots in which they live on one of them. They have no claim to subdivide that again. They have invested no funds and

done no planning. The Supreme Court has set forth what needs to be done to be vested and the Planning Department determined that they had done that on the four lots. Nothing has been done on the two large lots. The opinion from the State is that they cannot vest in what they did not ask for. The Swartz's are allowed to do what they have done. Janie suggests to the Commissioners that the Swartz's claim be denied. The impact on the neighborhood is felt by the neighbors but it is a fair division between what one is allowed to do with their own property and an impact on the neighbors. They have no monetary investment in the two larger lots so they cannot be vested in sub dividing them. On their original Measure 37 claim they envisioned four parcels on each property but there was no request to partition which is a requirement nor was there anything that was vested.

Commissioner McClure asked who made the opinion that Hanley gave about the applicants not being able to vest what they didn't ask for. Is there anything in writing of the opinion so they can find out who made the opinion? Janie stated that it would be a good idea to see where the opinion came from but she does not have that information.

Commissioner MacLeod asked if they asked for eight does it not mean that they should be given that? Limiting the applicants to a percentage a year and punishing the applicants because they could not exceed that is the nonsense of public law.

Janie stated that what needs to be looked at is why the law changed and what vesting means. The Swartz's have four eighty acre parcels and two larger ones which is a big impact on the neighborhood. The neighbors are saying that it should be left at six instead of eight. Land use law shouldn't look at just what can be done with my land but what impact it has on the neighbors and perhaps the whole valley. The County Commissioners should look at the impact it has on the neighborhood and not just the applicants. They knew they were restricted to three per calendar year when they made their initial Measure 37 claim, but their original partition request asked for two eighty acre parcels on each and the remaining.

Commissioner MacLeod stated that there is a potential that given the time frames people were given to vest their property by the State that some things were put in temporarily. Janie stated that if it were true that the Swartz's just wanted a nice house or two the neighbors wouldn't be in opposition.

Laurie Sutherland, speaking on behalf of her mother in-law, Grace Sutherland, and her husband, Jim Sutherland. They own the ranch that is next to the property that the Swartz want to sub divide. They moved there in 1998 to help her mother in-law. Most of the people that live in that area try to keep the land in the families. They would like to see that the lots are kept large because that's why most of them moved up there for a nice quiet area and to see the wildlife in the area.

Alex Brown, son of Ted and Mary Brown, who lives a few miles down the road from the Swartz's explained that he grew up on the ranch and supports small family farms. What needs to be considered is where the water will come from for these homes and where the septic tank will be. This land is not a wonderful place to raise a family. The only way to support a lifestyle out there is to work from the land. It is not for the common good to have people doing that commute and it is not going to be good for wildlife despite what ODFW says. When a piece of land gets cut like that it becomes very difficult to even run cattle and that is the only thing that this land is good for. These kind of parcels bring drug growers and anything but families. He urged the Commissioners not to allow the Swartz's to divide the land any further.

Allison Valerio, 52843 Hwy 203, Union, OR, 97833, live next to the Suthereds and have lived in the area since 1992. She explained that Measure 37 was passed in 2004 which meant that the law was not preventing them to do this request. They chose to start in 2007 but they had plenty of time if they had really wanted to sub divide. She thinks they had enough time to finish what they wanted if they had applied when Measure 37 passed. They would still be unhappy as neighbors but it wouldn't be a discussion if they acted in 2006. It almost doubles the population in the area. She feels that the six parcels are more than adequate and the law has been satisfied but she doesn't feel that the law should be bent for them. Some people put these buildings on the property for temporary placement but they stay there for much longer. A lot of people cannot afford to put a new home on the property. The wildlife is a big part of why they all live there and why they sacrifice to live there both for their kids by shuttling them to certain activities or they don't get to participate in some of the activities or make choices where they don't get to have certain jobs and make certain amounts of money because they choose to live there.

Judy Lay, 52040 Hwy 203, Union, OR, 97833, wanted to go on record as opposing this measure. Outside of her kitchen window she can see one of the trailers that the Swartz's have put on their property. They have granted the Swartz easement to run electrical underground to these homes. She stated that she feels like the six parcels are plenty. Commissioner Hibbert asked if there are families living in the trailers. Judy stated that no one is living in them and that they were just pulled on the properties last fall.

Mary Brown, 53313 Hwy 203, Union, OR, 97833, has owned their property for 50 years. It is worth the sacrifice for the beauty they have in that Valley that they have had to work so hard. They are living in a highly fragile valley, the water is limited and with six more wells she is a frightened. Three new residents have come in the past fifty years. She wanted to voice her opposition to the further development of this sub division.

Judy Whitley, 50378 hwy 203, Union, OR, 97833, stated that this was sold to them as a ranch so in her way of thinking it is kind of accidental that it is in two parcels and they have six parcels instead of two. They are part of the small volunteer fire department in medical springs and all that is out there is a volunteer department. With the limited personnel and resources that putting that much more human impact and human chances for causes of fires it would stretch them even further. Measure 49 was passed because Measure 37 was too extreme and sub divisions were popping up that people didn't want.

Elaine Heckberg 50358 Bennett Lane, Union, OR, 97833 she is concerned about the impact on the water, air, and country out there.

Ron Lay, 74619 Telecaset Lane, Baker City, OR, 97814, he stated that he lived on his farm his whole life and the Swartz's have been very good neighbors. He is scared what kind of problems will come in the future because of who might move in.

Laurie Worth, 2779 Medical Springs, Union, OR, 97833, are ranchers and believe that the Swartz's have enough places. She is afraid that their kids will not have the experiences that their parents and they had.

Loren and Anita Swartz stated that they appreciate the comments and concerns of their neighbors. Loren did talk to their two closest neighbors and they were told about their plans for their property. They were even shown some pictures of the houses they would like to put on the parcels. There are manufacture homes on the lots. He would be glad to inform the Commissioners of where they were purchased and how much they were purchased for. They are not long term housing but were brought in to fulfill the letter of the law by having substantial construction. It was explained at first to anyone who would listen that they were there only temporarily to fulfill the law that said they had to have substantial construction but those sites would be protected through covenants and restrictions that have already been explained in the Planning Commission meetings. They are planning on having quality houses and if they do not build them themselves when the parcels are sold they will be protected by covenants, conditions, and restrictions that state the temporary housing are by County law mandated to be off the property three months after a stick house is built. The manufactured homes were put on the properties seven months ago. When the property is sold there would be a contract that says that the person that buys the property would have a certain length of time to build a house on the property and remove the manufactured home from the property. They would not be smart to take the land that they have worked at for the past seventeen years and depreciate it by making a junk yard out of it by bringing in three mobile homes. There was an issue raised about fire being more prominent if there are more people but Loren believes that there will be more resources if

there are more people in the area. He is concerned about the same things that the neighbors are and they are working on dealing with those concerns.

Commissioner MacLeod asked to see the copies of the deed restrictions. Commissioner McClure asked if Hanley received copies of the ODFW plan that was referenced in the hearing. The Commissioners asked for the two Measure 37 decisions, the Oregon Supreme Court Holmes decision, and the DOJ opinion on vesting and would like to see everything in the record. The Commissioners would like to allow additional testimony for another week until May 14 at 5 p.m. The applicants have until May 21 at 5 p.m. for rebuttal and all additional testimony must be in written form. The final decision after reviewing the additional testimony will be held on June 11<sup>th</sup> at 10:00 a.m.

#### Conditional Use Appeal – Fay & Rod Swanson

Hanley Jenkins explained that the staff report states that the Commissioners accepted written and oral testimony on April 16, 2007 regarding the Conditional Use appeal and made a continuance to review the oral and written testimony given at the last hearing. The Commissioners will deliberate and make a tentative or final decision with findings upon the opportunity to appeal only so it will not be on the appeal itself but if the applicants have standing. The staff report did an analysis on whether or not the applicant had the opportunity to appeal the decision on the date the applicant filed the appeal. The applicant filed the appeal on February 14, 2008 and the issue then was because the final decision of the wind farm was made on March 6, 2007 the applicant argued that they did not know of the final decision and therefore they have an opportunity to pursue the appeal. The staff report contained a record of the correspondence between the applicants, specifically Fay Swanson, and the Planning Department staff. These correspondences indicate that Fay Swanson had received the final decision more than the 21 day period prior to the filing of the actual appeal. The final decision on whether or not the Swansons have a right to appeal should be based on the 21 day appeal period that is identified in the statutes.

Commissioner McClure stated that it is clear that the Swansons did not originally receive the notification they were entitled to. He believes that there has been an explanation as to why that happened. There is a clear indication on what the process is if that does not happen in the statute. The record indicates they knew about the decision and participated in other pieces of that decision. The Swanson's obtained the advice of council in November of 2007 and the council should have known that they had 21 days to appeal. Even if the Swansons didn't know themselves when they obtained council that council should have given them advice. It is clear that an error was made but it was addressed appropriately. He does not believe they have standing after reviewing the record carefully.

Commissioner MacLeod stated that not receiving original notification was not good but by the Swansons participation in subsequent meetings and hearings indicates that they knew what was going on. She believes that there is no reason for standing.

Commissioner Hibbert stated that everything that she has read indicates that if a local government makes a land use decision there is 21 days to appeal from the date of notice but if they don't have notice they have 21 days to appeal from actual knowledge. She believes that there was knowledge prior to the time the appeal was made. Commissioner Hibbert stated that they have to follow the law and after studying this information she is sorry but the law has to be followed.

**Commissioner McClure made a motion to deny standing and asked staff to develop findings that support that specifically on information in the record and the final decision is made at the next Commission meeting on May 21, 2008. Commissioner MacLeod Seconded. Motion carried unanimously.**

Heath Appeal of Forest Related Dwelling Approval

This appeal has been withdrawn.

Adjournment

The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

Ashley Wilhelm  
Department Specialist