

Morrow County Board of Commissioners Meeting Minutes
January 2, 2020
Bartholomew Building Upper Conference Room
Heppner, Oregon

Present

Chair Melissa Lindsay
Commissioner Don Russell
Commissioner Jim Doherty
Darrell J. Green, Administrator

Justin Nelson, County Counsel
Karmen Carlson, Human Resources Director
Roberta Lutcher, Executive Assistant

Call to Order & Pledge of Allegiance: 9:01 a.m.

City & Citizen Comments: None

Open Agenda: Commissioner Doherty requested a discussion on the timetable regarding the annual evaluation of the Administrator.

Chair Lindsay noted there were a number of staff members in the audience, as well as representatives from the Port of Morrow, and took the opportunity to thank them for their hard work in 2019 in helping the County grow, and said she was looking forward to 2020.

Consent Calendar

Commissioner Doherty moved to approve the following items in the Consent Calendar:

- 1. Accounts Payable, January 3rd, \$212,218.19.*
- 2. Minutes: November 6, 2019.*
- 3. Resolution No. R-2020-1: A Resolution Establishing the Compensation for Morrow Justice of the Peace Salary.*
- 4. Order No. OR-2020-1: In the Matter of Amending the Fee Schedule for Morrow County (approved on December 18, 2019 via Order No. OR-2019-16). OR-2020-1 updates the Public Works Department Airport Fee Schedule with an increase to the "Through the Fence" fee and removal of the "Airport Grounds Site Lease."*
- 5. Reappointment of Planning Commission members – Position 2 - Heppner, Brian Thompson; Position 7 – At-Large, Wayne Seitz; Position 8 - Ione, Stacie Eckstrom. All terms to be January 1, 2020 – December 31, 2023.*
- 6. Revised Budget Calendar for Fiscal Year 2020-2021 – changing the Long Range Planning Forecast Presentation from January 15th to January 22nd.*
- 7. Review of Resolution No. R-2017-2: Establishing a Rotating Cycle for the Chairmanship and Vice Chairmanship of the Morrow County Board of Commissioners.*

Commissioner Russell seconded. Unanimous approval.

Business Items

Administer Oath of Office to Justice of the Peace Appointee Glen Diehl

Clerk Bobbi Childers administered the oath of office to Glen Diehl. Judge Diehl was appointed by Governor Kate Brown to the remainder of Judge Ann Spicer's term upon her retirement, effective January 2020.

Suitable Space for the Circuit Court – Letter from Judge Brauer

The County received a letter dated December 24, 2019 from Sixth Judicial District Presiding Judge Christopher Brauer. It was noted he wrote the letter immediately prior to a new Presiding Judge taking over, Daniel J. Hill. The Commissioners expressed disappointment with the tone of the letter, calling it “heavy handed.” Chair Lindsay said she would let Judge Hill know the County’s plan moving forward would be to complete a space-use study of the Courthouse. She summed up the conversation surrounding the letter by saying the Board was united in its stance that Judge Brauer’s attempt to commandeer the space was not acceptable.

Planning Manager Interview Panel

Karmen Carlson, Human Resources Director

The Board agreed to the following people on the interview panel: Ms. Carlson; Darrell Green, Administrator; Commissioner Russell; Tamra Mabbott (Land Conservation & Development Department, Community Services Division, Eastern Oregon Regional Representative); and a representative determined by these four who compliments the process, either a former Planner or Planning Commission member.

The Loop Coordinator Interview Panel

Karmen Carlson, HR Director

The Board agreed to Commissioner Doherty being on the panel, and asked Ms. Carlson to reach out to current members of the STF (Special Transportation Fund) Advisory Board and the STIF (Statewide Transportation Improvement Fund) Advisory Board.

Parks Department Request to Purchase Excavator

Greg Close, Parks General Manager

Mr. Close said this would be a new piece of equipment and was already budgeted.

Commissioner Russell moved to approve the purchase of a Bobcat E63 T4 with flail mower and hydraulic breaker from Bobcat of Pasco; amount \$81,471.66. Commissioner Doherty seconded. Discussion: Commissioner Doherty asked Mr. Close to reiterate where these funds come from. Mr. Close said it’s all grant-funded. He said everything with the Parks is either grant-funded or from what is made during the year. Unanimous approval.

Request from District Attorney to be Authorized to Sign Grant Award Documents & Reporting Forms

Justin Nelson, District Attorney

At the September 11, 2019 BOC Meeting, the Administrator was authorized to sign the Victims of Crime Act (VOCA)/Criminal Fine Account (CFA) grant award documents and reporting forms. The current request is to authorize someone to sign the same type of documents related to the Child Abuse Multidisciplinary Intervention (CAMI) grant. Mr. Nelson said he thought there would be some benefit in authorizing him to sign but was also comfortable with that remaining with the Administrator. Discussion.

Commissioner Russell moved to authorize the Administrator to sign the CAMI and VOCA/CFA grant award documents and reporting forms on behalf of the County. Commissioner Doherty seconded. Unanimous approval.

Community Development Director Candidate Schedule

Darrell Green, Administrator

Mr. Green said Gregg Zody has been invited to visit Morrow County for a tour and second interview. Mr. Green reviewed the tentative schedule and each Commissioner chose a time to take Mr. Zody on a tour of different areas of the County.

Treasurer Salary Discussion

Chair Lindsay said the item came forward from the Budget Committee meeting of December 11, 2019.

Commissioner Doherty said at the Budget Committee meeting, the members were sent home with some “homework” and he didn’t want to undo what occurred at that meeting. Ultimately, the Budget Committee has to weigh-in on making that budget adjustment, he said. He added he’d be happy to consider reconvening the Budget Committee at an earlier date for their thoughts but this Board would be working outside the Budget Committee if it were to make a decision today; Commissioner Russell agreed.

Chair Lindsay said the County needs to make sure the Budget Committee members have any information they might want in advance of the next meeting, which should take place in the near future.

Department Reports

Treasurer’s Monthly Report

The written report submitted by Treasurer Gayle Gutierrez was reviewed.

County Counsel/District Attorney Quarterly Report

Justin Nelson, County Counsel/D.A.

Mr. Nelson reviewed his report.

Break: 10:07-10:13 a.m.

Public Hearing

Applicant: Port of Morrow; Landowner: Kaizen Holdings, LLC – Rezone 89.6 acres on Paterson Ferry Road from Exclusive Farm Use (EFU) to Port Industrial

Applicant: Port of Morrow; Landowner: Windy River – Rezone 89.6 acres on Bombing Range Road from General Industrial to EFU

Chair Lindsay: This public hearing was continued from the public hearing of December 11, 2019 in which the public testimony portion of the hearing was closed but the record was left open until December 20, 2019, allowing the applicant until December 27, 2019 for submission of a rebuttal. With the record now closed, this hearing is set for deliberations of the Board. I clarified with Counsel regarding the opening and closing of a public hearing and received clarification that we will ask for any conflicts of interest or abstentions, as it relates to the new information provided, or the time between the last hearing and today.

Mr. Nelson: That's correct...to be clear, it's if anything has come up since that last time that would change anybody's mind or are there any conflicts or issues.

Chair Lindsay called for conflicts or abstentions.

Commissioner Doherty: I don't believe I have any. I mentioned before and in between but it's worth mentioning again, we do a lot of interfacing with the Port of Morrow on various and sundry things and over the last 12 or so years, I've run some livestock and paid them for grazing on some property. It's never weighed into any decisions. It's more a placeholder, I suppose, but I wanted it on the record.

Commissioner Russell: I have a potential conflict of interest. I'm a director with a financial interest in a company called Windwave Communications. If the ultimate user of this ground is Amazon, there's the potential they would request services that Windwave would have an opportunity to compete with to provide those service with multiple other entities. I talked to Lisa at the State Ethics Division on multiple occasions, she tells me it's a potential conflict, not an actual conflict and under advice from State Ethics, I'll continue to participate and vote.

Chair Lindsay: We failed to ask if the public had any problems with those disclosures at the last Public Hearing, so I want to do that correctly today. Does the public have any concerns? Hearing none, we'll move on to deliberations.

Stephanie Case, Interim Planning Director: I listed all the attachments in the Agenda Coversheet so you can see everything as it was in order. At the last hearing on December 11th, you received the letter from 1000 Friends of Oregon and the map from the applicant. On December 20th, we received a letter from the attorney on behalf of the applicant and a letter from 1000 Friends of Oregon. On December 27th we received a rebuttal from the attorney on behalf of the applicant. The applicant has also provided proposed findings of fact and conclusions of law in support of approval of the application that I've included at the end. A couple of weeks ago, the applicant talked with me and County Counsel about providing proposed findings so at the conclusion of this hearing, should you choose to approve, one of the options would be either to adopt that or direct staff to draft findings.

Chair Lindsay: To clarify, the only findings that staff has prepared are the original ones from the Planning Commission?

Ms. Case: Correct. Typically, we don't do that, we rely on Planning Commission findings unless you tell me to modify them. That would be an option but we have received a substantial amount of information since Planning Commission, so I'd recommend a new set of findings and then, at your direction, how to draft that.

Chair Lindsay: So traditionally, you'd build off their original findings - from the Planning Commission?

Ms. Case: Correct.

Chair Lindsay: I'd asked for the emails or the application or whatever evidence in your record of the landowner change, the different landowner not being on the application. I don't see any of that provided and the deed restriction.

Ms. Case: We have a copy of the sales agreement, which was initially...

Chair Lindsay: In here?

Ms. Case: No, it's not in here. Initially, what they had provided and since then I've had email communications with the current owner because it was listed incorrectly on our Planning Commission findings as Farmland Reserve. Since then, I've had communications with Bob Levy with Windy River.

Chair Lindsay: I asked for that communication, the sales agreement and the deed that made this so, be part of the record and it's still not. Do you have that here today?

Ms. Case: I don't have that with me. I thought I sent it to you, I'm sorry.

Chair Lindsay: I didn't receive it. Are you able to provide it today?

Ms. Case: Yes.

Chair Lindsay: A question for staff - do we allow the submitter or applicant to speak to those items?

Mr. Nelson: Probably not. I'd suggest...we take a break to allow Ms. Case to use my laptop and print off the information.

Break: 10:21-10:40 a.m.

Mr. Nelson distributed copies of the email between J.R. Cook and Bob Levy, and the Purchase and Sale Agreement.

Chair Lindsay: This appears to be after the Planning Commission meeting, when the confirmation of the agreement took place.

Ms. Case: Correct. This Purchase and Sale Agreement is what previous staff had in the record. I confirmed with the applicant that Bob Levy is the owner, so my understanding is he is ownership in both of these and I have an email on that.

Chair Lindsay: Mr. Levy is the owner of Westland Enterprises, LLC?

Ms. Case: At the time, from my understanding.

Chair Lindsay: In 2003?

Ms. Case: Right, but I don't know if he still is, and then it went over to Windy River in 2011 according to Assessor records.

Chair Lindsay: And Mr. Levy is the owner of Windy River?

Ms. Case: Yes.

Chair Lindsay: Was the Planning Commission of the understanding of the inaccurate owner when they made their decision?

Ms. Case: I didn't discover the inaccurate owner until after the Planning Commission, on the findings.

Commissioner Russell: The principal's always been the same, Bob Levy. Bob was the original purchaser and he held it under one corporate umbrella and then changed corporate umbrellas but it's always been Bob Levy.

Chair Lindsay: And Bob Levy's company was listed as the owner at the Planning Commission, I just want to be clear.

Commissioner Doherty: No, that's the mistake that Ms. Case found.

Chair Lindsay: Ms. Case, it's your understanding this purchase agreement became some form of a recorded deed or of record within the County Clerk. There is something that says if I was to buy this property I would know there's a deed restriction, is that correct?

Ms. Case: I don't know for sure. I'm not familiar with how deed restrictions work.

Chair Lindsay: Is this the only thing you know of that's in existence?

Ms. Case: Yes, that's all I know of. I've never seen anything like this and I don't know that there's a document that attaches to the deed separate than this.

Chair Lindsay: To me, it looks like a mineral right reservation where you would reserve a right, which I didn't realize you could reserve a right to zoning, that became a restriction, am I interpreting it correctly?

Justin Nelson: It's a unique one and I haven't seen any documents like it myself.

Chair Lindsay: But we don't know if this travelled into a document that actually made a reservation. Does the applicant know?

Ryan Neal, Executive Director, Port of Morrow: I didn't do a title search.

Commissioner Doherty: Chair Lindsay brought these things up at the last meeting and Ms. Case had a lot on her plate and probably would have gotten these things to her. I visited with her

myself and got some of these things at the office. Ms. Case suggested that in the past, this was something we had done – an application comes in and says they have permission and so we built a history of doing that. I'd say in the future we should hold closer to the Comprehensive Plan and have a signed affidavit or have the owner sign...to button things down, that would be my recommendation.

I don't know that I have any questions now for staff but perhaps Mr. Nelson can tell me if it's better to make a motion, move forward to discussion, or to get questions answered for me to get clarity to work on some findings or such.

Mr. Nelson: The next step...if there's a consensus for a certain motion, you can make that...the Board has several options after deliberations. You can move denial of the application; approval of the application; but also, there are findings of fact that go along with it that are very important. Right now, it appears the findings of fact were done by the Planning Commission. That's the normal process, I want to be clear...what's different here is that there have been additional, substantial arguments both ways. This is a lot of information that was not before the Planning Commission – the objections from 1000 Friends of Oregon and the responses from the applicant. So, there is a substantial amount of documentation there that I believe should be in an updated findings of fact. If the Board was willing to approve the application, then the options would be 1.) Accept the findings of fact right now that went before the Planning Commission, I would hesitate against that...it hasn't been fully formed or updated. 2.) The applicant also submitted a findings of fact. There are a few spots where dates need to be updated...fill in those blanks and use those findings of fact. 3.) You can ask for specific changes to those findings of fact. Change them now and get it done during this hearing. 4.) Staff can go back and create fuller findings of fact and order, we can do that also. Ms. Case would go through the information submitted, taking into account the comments from the Board – that gets into the findings of fact. This wouldn't just be a continuation...they'd be your findings of fact. The Board could review the draft and individually send comments, even on the applicant's findings of fact...because they are your findings.

Commissioner Doherty: We're moving into year two on one of these we didn't get right on the front-end and the challenges we face. Both findings suggested different timelines on the applicant or the vendor or Amazon getting in and doing road work, getting easements, utility lines, etc. Those are good, we want to get this one right. Maybe we say you've got 90 days as opposed to some arbitrary language in there before you're fully moved in. Maybe this is going to be four buildings, I don't know. "Fully moved in" to me means before you walk on the place but to them it might mean eight years down the road when they get the last building done. I don't know, I want to be clear what we can build into there.

Mr. Nelson: A building permit aspect.

Commissioner Doherty: Sure. Some of these suggestions, actually, I had a long discussion with Public Works relative to the utilities meeting and how all of these things were going to come together and what he needed to see and what he'd prefer. Some of those were suggestions directly from him.

Mr. Nelson: I have a question for Ms. Case if we can step we could have a discussion outside the room.

Mr. Nelson: For my own clarity, during the Planning Commission there were two actions, the partition and the application for the zone change. One action was decided at the Planning Commission but the partition or plat can't be signed unless this gets approved also. I needed to get those clear in my mind.

Ms. Case: Correct, the decision was made but it can't be completed unless this one is completed. If this one were to fail...we would basically have to throw that one out.

Commissioner Doherty: Before I tender a motion, I see Mr. Patton is in the room. I talked to Mr. Scrivner (Public Works Director) and got all his thoughts and suggestions, etc. He was talking about, and we've had this discussion over the last year, when are our rights-of-way full and what does that mean, etc. Do we start charging, I don't know what the answer is, do we have to treat every company the same? Blake Lawrence (General Manager, Windwave Communications) might have gotten out over his skis because he was more direct in that they have a commitment to service this Amazon and he said they'd come in on the 730 side and Frontage Road with two-to-four 24 run packages. My question is, I know there are some gas lines there and if we put these bulk packages in, it's different than going from Boardman to Umatilla with a single run as you start building these in and you've got restrictions on gas easements...

Mark Patton (Chief Operations Officer, Port of Morrow): Or have someone there supervising.

Commissioner Doherty: Right...I think we have to be cognizant of that a bit because UEC said for them to get to this site, they have to get some private easements. As we do these things, it's good economic development, etc., but we have to also know who we're affecting and how we're affecting. If we're swapping 89 acres of ag for 89 acres of industry, but additionally we're taking out a couple half-circles, then that's problematic so I want to be on the front-end. My question is, on these utility runs in the rights-of-way as you engineer these things, is there any challenge where you run out of right-of-way or you do bulk packages, as opposed to single runs, what will it do to us down the road?

Mr. Patton: On the water utilities that we're going to be bringing out to the site, we already have existing easement from the Port all the way to Paterson Ferry Road. In the partition agreement, in that partition, we put a 20' easement along Paterson Ferry Road down to the new Amazon site to take care of any issues with bringing utilities in. As far as water or things like that, I don't see an issue with the fiber being involved, we made it big enough...

Commissioner Doherty: Mr. Scrivner said he talked to Mr. Lawrence and Amazon likes independent lines and redundancy. Likely, one of them could go in the right-of-way but potentially maybe one of them would exit out the back and go across the parent parcel.

Mr. Patton: They like really good separation in case one line goes down.

Commissioner Doherty: It's something we need to be cognizant of as we move forward.

Mr. Patton: But there's another route, they haven't talked to us, nobody has, because the project's not happening yet. There's room for fiber down through our easement also, if that's something that needs to happen. So, there's another route in that direction too. I don't know how they're all bringing stuff in, at this point, because we haven't sat down with them and talked.

Commissioner Doherty: The Port, relative to power, needs 115 but doesn't want to isolate a site without redundancy of a separate line, correct?

Mr. Patton: Yes, they always feed from two directions...more likely they'd feed it from the west and feed it from the east.

Commissioner Doherty: I don't know, I don't want to suggest the Commissioner misspoke earlier but I think there might be a remedy for my comfort, it's that we consider on this project a different fiber utility services it, and/or we don't use that one or its parent company, and/or I'm comfortable if RFPs are there because I don't want to get between a local company and the ability to do what they do. I'd prefer these Wheatridges and all these folks use the local utilities and facilities. But I think we need to tread carefully.

Mr. Patton: One thing I can add - we did the project in Boardman, we kind of brokered that deal and then stepped away. We will not step away at all this time. We will see it all the way through.

Commissioner Doherty: I sat with UEC the other day and had a great discussion with them, by the way, we probably talked for two hours. But one of the questions is, and you hear it a lot when you're up here, are you business friendly and are you open for business. I like to think I'm as open as the next guy but it can't be haphazard. It's got to be in an orderly fashion.

Commissioner Doherty moved to tentatively approve the application and directed staff to prepare final findings of fact and conclusions of law in support of this decision for Board review and approval on January 15, 2020 at the Board of Commissioners meeting. Commissioner Russell seconded. Unanimous approval.

Mr. Nelson: To review the proposed findings of fact from the applicant, that's not the base, ours is the base. If the Board disagrees with any findings of fact, please notify Ms. Case and me.

Chair Lindsay: Is there anything you'd remove from that, Ms. Case?

Ms. Case: I'd have to add today's action. From the first hearing on December 11th, I'd alter page 4 - November 13th - the hearing wasn't continued, it was never opened. After opening the hearing on December 11th, they talked about ex parte communication, I'd change that a bit to identify Commissioner Russell had a conversation with the state. The part about no one challenged the jurisdiction of the Board, I don't know if the opportunity was ever opened up, so I don't know if that needs to be changed or removed.

Chair Lindsay: After signing the findings on the 15th, is that the final step?

Mr. Nelson: I believe it is the final step. If I'm mistaken, I'll let you know.

Ms. Case: I'd like clarity on if you plan for me to have the ordinance in front of you or do that later on?

Chair Lindsay: I don't care if it's at the same time. That's the completion of the public hearing.

She then asked if we've used professional assistance with a packet of findings based on the complexity of the process.

Mr. Nelson said he wasn't a part of the Love's Truck Stops appeal and that's the only one that might have had that assistance.

Commissioner Lindsay: I know Commissioner Russell mentioned this is most likely a Land Use Board of Appeals (LUBA) process from here, but I want to make sure that we, to the best of our ability, and Planning Commissioner Sue Oliver often mentioned concerns with findings and I agree with a lot of her concerns. I want to make sure you have the ability to reach out as you feel is warranted to do these as accurately as possible but I don't personally always think an applicant should write the findings. It should be a staff job with their input as appropriate. I find some of these findings not only inaccurate but a little one-sided and so how do we make sure they're LUBA ready, as best we can.

Mr. Nelson: The applicant becomes a party of the LUBA decision...how we've done it in the past.

Chair Lindsay: I don't have a problem incorporating the hard work of an attorney on behalf of the applicant into the findings.

Mr. Nelson: Yes, only incorporating it. Our plan now is to incorporate those and push parts out that we disagree with and you as individuals disagree with. They're your findings of fact...it's important to remove those things in disagreement. I'd encourage you to go through it and let us know.

Chair Lindsay: ...I want staff to incorporate the unbiased information that shows how we got to the decision...

Department Reports

Sheriff's Office Monthly Report

Sheriff Ken Matlack

Sheriff Matlack reviewed the statistics for December. Discussions took place on code enforcement, in particular unpermitted businesses on Kunze Lane and in the West Glen area.

Chair Lindsay requested that the subject of creating a code enforcement working group be brought to an agenda in February.

Road Department Monthly Report

Eric Imes, Assistant Road Master

Mr. Imes reviewed the Road Report. After a brief discussion, Chair Lindsay requested that seasonal closures and the priority list for snow removal (feeder and snow routes) be listed on our website. Mr. Imes said he would pass the information on to Public Works Director Matt Scrivner.

Administrator's Monthly Report

Darrell Green, Administrator

Mr. Green reviewed his report.

Break: 12:13-12:19 p.m.

Correspondence

- Current job openings at the Oregon Department of Veterans Affairs

Commissioner Reports

- Commissioner Russell reported on meetings with Fortis, the company awarded the contract to build the new facility in Irrigon. He also discussed a tour of the Umatilla Depot next week with a representative from Business Oregon magazine.
- The Commissioners decided to schedule Mr. Green's evaluation on January 15th.
- Chair Lindsay discussed meetings that are taking place about a behavioral health facility in eastern Oregon. Kimberly Lindsay, Executive Director of Community Counseling Solutions has attended one of these meetings and Chair Lindsay said she would not support CCS spreading itself too thin by taking on two more counties. Different ideas and options continue to be discussed.
- Commissioner Doherty said commissioners from Multnomah County would like to tour the behavioral health facility in Morrow County. He suggested it could turn into a broader meeting on several topics.

12:30 p.m. Executive Session: Pursuant to ORS 192.660(2)(d) – To conduct deliberations with persons designated by the governing body to carry on labor negotiations

12:41 p.m. Closed Executive Session

12:41 p.m. Executive Session: Pursuant to ORS 192.660(2)(e) – To conduct deliberations with persons designated by the governing body to negotiate real property transactions

12:54 p.m. Closed Executive Session

Sign documents

Adjourned: 1:00 p.m.