

**Morrow County Court  
February 4, 2015  
Heppner, Oregon**

**Present**

Judge Terry Tallman  
Commissioner Leann Rea  
Commissioner Don Russell  
Karen Wolff, Executive Secretary/Personnel Director  
Ryan Swinburnson, County Counsel  
Mike Gorman, Assessor/Tax Collector  
Gayle Gutierrez, Treasurer  
Roberta Lutcher, Court Executive Assistant

Judge Tallman called the meeting to order at 9:00 a.m.

**City and Citizen Comments – Heppner**

No comments

**Open Agenda**

Commissioner Russell said he received a call from Vern Frederickson, Hermiston, who is working with a group of other irrigated agriculture farmers on a self-imposed 50¢ per acre tax on themselves to benefit the Oregon State University, Hermiston Agricultural Research & Extension Center. Commissioner Rea asked if this would include both Umatilla and Morrow Counties. Commissioner Russell said yes, and the potential could be between \$100,000-\$150,000 and the group has also contacted farmers in Washington.

Judge Tallman said he met with OSU Regional Administrator, Mary Corp, and would cover the topic in greater depth during Commissioner Reports. He said he would also like to discuss the Forest Plan during that time as well.

**New Business**

Request Appraisal from Assessor

Ms. Wolff reviewed the documents for each of the five foreclosed properties now turned over to Morrow County. She said appraisals need to be requested of the Assessor, who will then return with the appraisals and ask the Court to set minimum bids. After discussion as to the status of the former Jacquez property (property in Boardman owned by the County with a privately owned manufactured home still on it), it was decided to request the Assessor perform an appraisal on this as well.

*Commissioner Rea moved to request appraisals be provided by the Assessor for the six identified properties - Property Number 1: Map Number 5N2730-BC, Tax Lot Number 03900. Property Number 2: Map Number 4N2720-D0, Tax Lot Number 00500. Property Number 3: 4N2520-A0, Tax Lot Number 02600. Property Number 4: Map Number 5N2623-D0, Tax Lot Number 02401. Property Number 5: Map Number 2S2634-AA, Tax Lot Number 01400. Property*

*Number 6: Map Number 4N2520-A0, Tax Lot Number 00300. Commissioner Russell seconded. Unanimous approval.*

Based on a suggestion by Assessor/Tax Collector, Mike Gorman, it was decided to also include any other tax foreclosed properties that have not yet been offered for sale. Mr. Gorman said he would do the necessary research to find these additional properties and return to Court next week.

The previous motion was amended (in bold):

*Commissioner Rea moved to approve the following addition to the previous motion:  
Commissioner Rea moved to request appraisals be provided by the Assessor for the six identified properties **or any other tax foreclosure properties identified by the Assessor.** Property Number 1: Map Number 5N2730-BC, Tax Lot Number 03900. Property Number 2: Map Number 4N2720-D0, Tax Lot Number 00500. Property Number 3: 4N2520-A0, Tax Lot Number 02600. Property Number 4: Map Number 5N2623-D0, Tax Lot Number 02401. Property Number 5: Map Number 2S2634-AA, Tax Lot Number 01400. Property Number 6: Map Number 4N2520-A0, Tax Lot Number 00300. Commissioner Russell seconded. Unanimous approval.*

## **Department Report**

### Road Report

Burke O'Brien, Public Works Director

Mr. O'Brien provided the following Road Report:

- Most of the crew has been working on shoulder widening on Bombing Range Road. A Trans-Canada inspector is on-site at all times when the crew is working near the buried gas line.
- When the fog was too thick to work on Bombing Range Road, the crew patched pot holes on Balm Fork Road.
- Three graders have been out working on the following roads: Clarks Canyon Road, Carlson Lane, Bergstrom Lane, Liberty School Road, Valby Road, Fuller Canyon Lane, Bert Peck Lane, Brenner Canyon Road and the Blake Ranch Road.
- Graders have also been working in the Ione and Lexington areas but this will probably end soon to work on other projects.
- De-icer applied as needed. No sanding or plowing has been necessary in the last two weeks.

Judge Tallman asked Mr. O'Brien the number of times County roads are graded each year. Mr. O'Brien said the goal is they all get attention two times per year. Judge Tallman said he's been questioned about this and could Mr. O'Brien provide documentation he could pass on to the person inquiring. Mr. O'Brien said the Road Crew documents their work very well and he would be happy to provide the information for Judge Tallman.

### **9:30 a.m. Bid Opening – Herbicides**

The following bids were received:

1. Morrow County Grain Growers - \$44,919.00

2. Wilbur-Ellis Company - \$39,502.70
3. Crop Production Services – Timberland Division - \$39,217.20

Mr. O'Brien said the bids would be reviewed prior to the request to award.

#### Permits – Bruce Young Logging

Mr. O'Brien said these permits are issued each year so Bruce Young Logging can haul logs off Coal Mine Hill and Shaw Grade Lane and be required to maintain the roads to County standards. He added it has been somewhat difficult getting the permits through the Forest Service process.

*On the recommendation of Public Works, Commissioner Rea moved to approve Permit #CM1 with Bruce Young Logging regarding maintenance of Coal Mine Hill. Commissioner Russell seconded. Unanimous approval.*

*On the recommendation of Public Works, Commissioner Rea moved to approve Permit #SC1 with Bruce Young Logging regarding maintenance of Shaw Grade Lane. Commissioner Russell seconded. Unanimous approval.*

#### Sheriff's Department Monthly Update

Undersheriff Steve Myren

Undersheriff Myren reviewed the items below:

North County -

- Four people were caught and arrested after breaking into storage units and vehicles at Christine's Mini Storage in Irrigon.
- A vehicle was taken in Irrigon after an individual left it unattended while the vehicle was warming up.
- Burglary on Fifth Street in Irrigon. Items taken included laptops, a flat screen TV and bags of recyclable cans and bottles.
- Theft on Third Street, Irrigon – six gallons of fuel taken from a boat.
- Suspicious Activity – Eighth Street, Irrigon – man going door to door handing out free samples of shampoo. The reporting party said the man was looking into houses as if to “case the place.” When the suspect was confronted, he left at a high rate of speed.

South County –

- Foot pursuit across Heppner – Josue Montano, 30, arrested and charged with Unauthorized Use of a Motor Vehicle, Criminal Trespass II. He also had four felony warrants out of Washington state.
- Theft – Court Street, Heppner – two four-wheelers and trailer were stolen.
- Theft – Center Street, Heppner – 24 foot ATV trailer stolen. The day before, a female had been seen looking in windows of vehicles and a nearby building.
- Suspicious Person – near the home of an employee of Community Counseling Solutions. Stalking order issued to Daniel A. Bozarth, 55.

Undersheriff Myren said the most recent deputy hired will be graduating from the academy, which will mean they will be fully staffed, plus one.

The Sheriff's Office has contracted with a company off Tower Road (Boardman) to monitor speed along that road.

The remodel is in progress at the Sheriff's Office and the contracted furniture vendor will be here in the near future to work on dispatch consoles designed specific to the space.

### **New Business- Contracts**

#### Community Counseling Solutions (CCS)

Ms. Wolff said a new contract is needed for CCS. Mr. Swinburnson said he would have it for next week, but they usually originate from the entity.

### **Miscellaneous**

Mr. Gorman mentioned he's tried multiple times to contact PGE at the new Carty plant about getting contractor information for personal property returns, but with no success. Judge Tallman offered to contact Jaisen Mody, PGE General Manager, Generation Projects. Mr. Gorman said he's tried him twice to no avail. Mr. Gorman said he had the same issue with W.C. Construction, Inc.

### **Minutes**

*Commissioner Rea moved to approve the minutes of January 21<sup>st</sup>, as presented. Commissioner Russell seconded. Unanimous approval.*

Judge Tallman discussed a change order regarding the abatement and removal of the tank at the construction site for the new Administration Building. He said the amount will be \$1,588, plus 10%, which is better than the estimate of \$2,500. This is for the tank only, not the environmental cleanup due to the asbestos pipe.

*Commissioner Rea moved to approve the January 28<sup>th</sup> minutes, with corrections. Commissioner Russell seconded. Unanimous approval.*

### **Claims**

Commissioner Rea questioned a late fee for the District Attorney's Office and why they are purchasing two parkas for \$572. Ms. Wolff reviewed the invoice. Judge Tallman said it could be these are for use during investigations at crime scenes, but he would inquire.

*Commissioner Rea moved to approve the February 2015 Retirement Taxes, dated February 5<sup>th</sup>; Fourth Quarter SUTA/WBF, dated January 30<sup>th</sup>; Payroll Payables, Immediate & Electronic, dated January 29<sup>th</sup>; and Accounts Payable, dated February 5<sup>th</sup>, in the amount of \$226,898.80. Commissioner Russell seconded. Unanimous approval.*

### **Department Report**

#### Planning Update

Carla McLane, Planning Director

Kim Cutsforth, Manager, City of Heppner

Louis Carlson, President, Valby Lutheran Church

Ms. McLane said there are two Special District Fee Reduction requests for consideration and in both cases, Planning Staff recommends the County Court authorize the reductions.

1. A letter from Valby Lutheran Church President, Louis Carlson, explains, “It is the desire of Valby Lutheran Church to plan for the future of the church and for perpetual care of the cemetery. Therefore, we wish to deed the Cemetery to the Ione/Lexington Cemetery District. The District has agreed to accept the Cemetery. It will be necessary to subdivide the Church from the Cemetery to accomplish this transition...”
2. The second request is from the Heppner Fire District and the City of Heppner regarding the Land Partition and Conditional Use Permit for the construction of a new fire hall.

Ms. Cutsforth said surveyors have not been able to locate any records indicating Felton Road was ever vacated, however, the plat shows it had been vacated. We may want to do the whole street, from Highway 207 to Riverside... it would be a nice way to clean it up.

*On the recommendation of the Morrow County Planning Department, Commissioner Rea moved to approve In the Matter of the Ione/Lexington Cemetery District assuming the responsibility for the Valby Lutheran Church Cemetery within their existing Cemetery District and reduce the fee not to exceed \$300. Commissioner Russell seconded. Unanimous approval.*

*On the recommendation of the Morrow County Planning Department, Commissioner Rea moved to approve a reduction in Morrow County Planning Department fees (Land Partition and Conditional Use Permit) to an amount not to exceed \$300 for the City of Heppner and the Heppner Fire District for construction of a new Fire Hall. Commissioner Russell seconded. Unanimous approval.*

*On the recommendation of the Morrow County Planning Department, Commissioner Rea moved to approve the fee reduction for the City of Heppner for the Road Vacation of Felton Road to an amount not to exceed \$300. Commissioner Russell seconded. Unanimous approval.*

Both Mr. Carlson and Ms. Cutsforth thanked the Court for the fee reductions.

Ms. McLane provided the following update:

- County Court approval is needed on the Statement of Work to be submitted by the Morrow County Special Transportation Advisory Committee (MC-STF) to the Oregon Department of Transportation (ODOT) Rail and Public Transit Divisions in order for them to provide the funding mechanism for MC-STF to update and create a new Coordinated Human Services Public Transportation Plan. This also moved the County to the 5311 Program, which is a more transit-based program. The other piece is to integrate this into our Transportation System Plan, so with your approval I'd make the change and add the 5311 Program and send this to ODOT. Discussion, which resulted in the Court's approval by consensus. Ms. McLane said ODOT will then enter into a work agreement with a consultant and then Morrow County will work with ODOT and the consultant to create the Coordinated Plan.
- Measure 91 – Recreational Marijuana Measure – Oregon Liquor Control Commission recently added staff and is trying to catch up. Rob Bovett with the Association of Oregon

Counties, Legal Counsel, is doing a good job representing our needs. I've heard there are 30 bills being presented this legislative session.

- Medical Marijuana Dispensaries – the Planning Commission met to discuss this (County Court hearing will be February 18<sup>th</sup>). Several people testified and the Planning Commission decided dispensaries are not wanted in Morrow County. Ms. McLane said the Planning Commission did a good job deliberating and came up with sound findings to support their decision.
- Ms. McLane said during a December work session with the Planning Commission, she discussed the County's airport regulations and how they are out of date. The Court agreed we should move forward, so I am pulling together a work group. I have five items to address and am ready to contact 10 people to participate in this Airport Work Group. I'd like your approval to get this process started. Judge Tallman told Ms. McLane to begin the process as outlined today.
- Measure 37 & Measure 49 – we had two Measure 37 claims in Morrow County, both of which were denied – no development rights came out of the Morrow County process. Rules are out now to create a program to take those rights and it involves the Department of Land Conservation and Development. When I first heard about them I was encouraged, particularly for adjacent owners wanting to divide in areas like Blake Ranch, Cutsforth and Penland Lake. Right now we have no mechanism to do this. I hope this program would provide an opportunity for property immediately adjacent to pre-existing non-conforming developed areas, but the draft rules don't get us there. I'll have a conference call with DLCDC about this but want to make sure you're comfortable with this opportunity. Judge Tallman said it meets a number of criteria for families who don't want to fight with other family members about a piece of property...we think it's a worthwhile discussion.
- Senate Bill 258 – Energy Facility Siting Council process – applies to us as well. I'm comfortable with it but the wording is horrible. I know what they're trying to get to; the intent is not to disqualify us or keep us out of the process. Judge Tallman said people think it's taking it out of our arena. Ms. McLane agreed that's what people think, but they are actually moving toward more involvement of local government, not less.

Commissioner Rea said she's received feedback about our status regarding the Forest Plan, especially cooperator versus coordinator status. Cooperator status gives us more participation or say, in the Plan's outcome. Ms. McLane said when the County signs a memorandum of understanding, identify someone on staff to participate. If an entity chooses coordinator status, they have to go through their own process to create a plan which would be co-adopted with the agency. Judge Tallman said we told the Forest Service we want to be at the table with all the other agencies as a cooperator. Commissioner Rea said that's also what she's been telling people.

## **New Business**

### Budget Calendar Discussion

Rick Worden, Finance Director

Mr. Worden said he is looking for input on dates for the upcoming Budget Committee Hearings. He also said Committee member Linda LaRue's Committee seat is up for reappointment and she

is interested in still serving. After a brief discussion, two options for dates were put forth: April 14<sup>th</sup>-16<sup>th</sup> or April 28<sup>th</sup> – 30<sup>th</sup>. Mr. Worden said he would contact other departments for input on dates, as well.

*Commissioner Russell moved to appoint Linda LaRue to another term on the Budget Committee, February 2015 through February 2018. Commissioner Rea seconded. Unanimous approval.*

#### Eastern Oregon Counties Association (EOCA) Invoice

Judge Tallman said it's in our best interest to pay the invoice for the PILT (Payments in Lieu of Taxes) process EOCA is trying to establish, with the assistance of lobbyist Jay Sullivan. Discussion. The other Commissioners agreed. Total invoice amount - \$11,317.

#### Long Range Planning

Next meeting tentatively scheduled for Wednesday, March 4<sup>th</sup>, 1:30 p.m., Finance Office Conference Room. Ms. Wolff asked the Commissioners to notify her of topics they would like discussed during this meeting. Commissioner Rea said she would like to discuss the status of vehicles in the County but we need to know which departments are in the greatest need.

Miscellaneous calendar items were discussed.

#### **County Counsel Report**

Commissioner Russell said, "I have a question before we go into Executive Session. Since we're going into Executive Session under *ORS 192.660(2)(h) – To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed*, does this concern current litigation?" Judge Tallman said, "Yes." Commissioner Russell asked, "Litigation has already been filed in some case?" Mr. Swinburnson said, "There's one issue, yes." Commissioner Russell, "It seems to me 'litigation likely to be filed' is a gray area and allows governing bodies to hide behind the cloak of Executive Session to do what may or may not qualify as Executive Session because anything could be construed as a likely lawsuit. If you act really poorly, you're going to end up in a likely lawsuit." Judge Tallman said, "The matter I know about is something we have ongoing now."

Mr. Swinburnson, "We can start without one and go out and discuss the other ones." Ms. Wolff, "What we did learn recently is if you're going to come out of Executive Session to make a decision or to continue your Court meeting, you need to announce that prior to going into Executive Session." Commissioner Russell, "Right, we haven't closed our regular session yet." Ms. Wolff, "We have not, but I'm just advising when we go into Executive Session we have to make that statement prior to going into Executive Session."

Mr. Swinburnson, "I don't expect to request any action or ask for a continuance, it's just informative on one issue." Judge Tallman said, "It's highly likely there will be further discussions." Ms. Wolff, "Right, and we haven't had Commissioner Reports yet. We'll be coming out of Executive Session to continue our regular meeting." Judge Tallman, "We'll do that then." Mr. Swinburnson, "What we may do is table the other two and I'll do some more digging and address the other concerns you have."

**11:52 a.m. - Executive Session**

*ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.*

**11:58 a.m. – Closed Executive Session – No Decisions**

Invoice from the Port of Morrow (POM)

County Counsel, Ryan Swinburnson, said the other two issues, with Commissioner Russell's earlier comments, it's probably best to continue for another day in general session or Executive Session. I'm not prepared to address those concerns.

Commissioner Russell said he is still a POM Commissioner and a Morrow County Commissioner and as far as the disputed invoice, my only concern is, and I don't feel I have a conflict of interest – there's nothing to gain from it. If the invoice is legitimately owed, the County needs to pay it. If not, POM needs to withdraw it. It's what we all want, we can't find an answer until we talk to the POM and see what they think. Judge Tallman said, what about what the County thinks? Commissioner Russell said you've talked about it and met in Executive Session without legal counsel.

Mr. Swinburnson said I appreciate you've sought legal counsel Commissioner Russell, but I don't see how you can...

Commissioner Russell said we've all gotten invoices from vendors we thought were in error and we call them up and ask. Judge Tallman said this is quite a bit different...I don't think the same principles apply. Commissioner Russell said at our next County Court meeting in Boardman have them (POM) come talk to us to explain. Judge Tallman said he'd like County Counsel to investigate.

Mr. Swinburnson said whatever action we conduct here needs to be done procedurally correct, regardless of the topic. He asked Commissioner Russell - if a joint POM/County Court meeting were held, where would you sit if decisions were being made by both entities on a single issue? Commissioner Russell said decisions at the POM level would be made by management, by the time it would come to the (POM) Commission, I'd be off the (POM) Commission, I expect a replacement by April 1<sup>st</sup>. Judge Tallman said we could wait until April 1<sup>st</sup>. Commissioner Russell suggested at the next meeting, with Mr. O'Brien present, have Gary Neal (General Manager) or Ron McKinnis (Engineer) explain to us why we owe the bill, no action, just gather information. Maybe after we hear the information, we'll agree or disagree. Judge Tallman said we're already in disagreement. Commissioner Russell asked if he's talked to the POM. Judge Tallman said no...I already know what the POM thinks because we got the bill. Commissioner Russell asked if anyone from the County has talked to the POM. Mr. O'Brien said he and Mr. McKinnis have talked a great deal on this topic.

Commissioner Russell said what I know, and I've seen the bill, is the bill originally arose out of the same time the County hit a water pipe and the Ayletts...



Judge Tallman said I'm not sure that's the case either, that's why I'd like more time, so I know the parameters.

Mr. Swinburnson said my concern is - is Commissioner Russell as a Morrow County Commissioner, navigating it correctly. Commissioner Russell said, I was elected by the same group of people and I've already turned in a notice of resignation to the POM. My only goal is to find out do we owe the bill or don't we owe the bill. Judge Tallman said until you show you are only on one board, I don't think it's appropriate to have decision making ability while sitting on both boards. Mr. Swinburnson said there needs to be an advisement from County Counsel on the issue.

Commissioner Russell said my personal opinion would be if I listen to the facts, I'm independent enough to make the right decision, in either's favor. I think we'll all come to the same conclusion once we hear both sides it will be apparent – the POM needs to withdraw or the County needs to pay. Judge Tallman said, I don't fully agree with your point. Commissioner Russell said I understand that. Mr. Swinburnson said I suggest you decide how to proceed. I'd like to give an advisory opinion on the record. Commissioner Russell said, I appreciate that. Judge Tallman said that's what I'd like to see then move forward factually based on what we hear. Maybe it will be moot, but I don't know at this point.

#### Cistern

Mr. Swinburnson said the other matter is related to the cistern – it could lead to litigation, but more appropriately, it could be under Executive Session for an ongoing negotiation because we've had multiple negotiations. I'll look at that issue too, but advise you table it today. In talking with Mr. O'Brien, it may be appropriate to have more people involved too. Judge Tallman said as I understand it, the facility is not on the proper property, correct? Mr. Swinburnson said it's part of the question and why the surveyor should be here. The last decision made was to fence it, that's what was done. The question about whether it's in the proper location...

Commissioner Russell asked it may be on the neighbor's property and not the County's? Mr. Swinburnson asked is there a prescriptive easement or different possibilities to figure out how to proceed? Commissioner Rea asked Mr. O'Brien the date the cistern may have been constructed. He said in the early 1970s but we can't find any record of who built it or the engineer who designed it. We need to find that information to do the demolition.

#### **Photo Books of the Courthouse Clock Tower Restoration**

Ms. Wolff said 10 books were ordered at a total cost of \$503.54. What would the Commissioners like to do with the books? It was agreed one should be given to Gary Kopperud, Master Clock Maker, who volunteered his time on the project. Both Judge Tallman and Commissioner Rea said they would like to purchase a book at \$50 each. One book will be placed in the lobby of the Courthouse and another in the Heppner Branch of the Oregon Trail Library District. The Commissioners requested more time to think about this. Commissioner Rea asked about the cost of ordering another 10-20 books and could Sandi Putman, Public Works Management Assistant, who compiled the books, look into it.

**Correspondence Reviewed:**

- Thank you letter from Wheeler County Sheriff Chris Humphreys and Judge Patrick C. Perry to the Morrow County Court for the 2011 Dodge Charger sold to Wheeler County at a reduced rate.
- Notice of Boardman to Hemingway (B2H) Transmission Line Project Cooperating Agencies Conference Calls, February 10<sup>th</sup>, March 10<sup>th</sup> and April 14<sup>th</sup>, 1:30-2:30 p.m.

**Courthouse Re-Mortaring**

Mr. O'Brien said someone came to perform a preliminary inspection of the deteriorating mortar on the Courthouse, retaining wall and front steps. Mr. O'Brien listed some of the problems identified and said he asked the person to put together a few scenarios to get an idea of what we're looking at, which could be \$300,00-400,000.

**Commissioner Reports**

Commissioner Rea said the County received notice it can apply for the next round of grants for Wolf Depredation Advisory Committees.

Judge Tallman said the following items were discussed during his meeting with Ms. Corp, OSU Extension:

- Master Gardner Program will start March 1<sup>st</sup>.
- Randy Mills, Livestock Agent, will be retiring from the Pendleton Office in the fall.
- Ms. Corp requested the Court write a letter to OSU stating why the livestock industry is important to the County.
- There will be a new position responsible for small farms, horticulture, the wine industry, etc.
- Ms. Corp asked Judge Tallman if the building lease will be renewed with POM for the Morrow County/OSU Extension Office. Commissioner Russell suggested the question be directed to the POM.

**Morrow County Court Board and Committee Appointments 2015**

The updated list was reviewed and Ms. Wolff said this will be a working document as we determine what committees and boards to stay on or possibly delete from the list.

**Adjourned: 12:35 p.m.**