

UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of Tuesday, August 3, 2010
1:30 p.m., Umatilla County Courthouse, 216 SE 4th
Pendleton, Oregon

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COMMISSIONERS PRESENT: Dennis Doherty, Bill Hansell.
ABSENT: Larry Givens.
COUNTY COUNSEL: Doug Olsen.
STAFF: Tamra Mabbott, Richard Jennings, Gina Miller.

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NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Chairman Doherty called the meeting to order at 1:36 p.m.

OLD BUSINESS:

Chairman Doherty called for a motion to approve the minutes from January 7, 2010 and June 7, 2010. Commissioner Hansell moved to accept as presented, and Commissioner Doherty seconded the motion. Motion carried.

Chairman Doherty read the opening statement.

NEW HEARING:

- The Federal Emergency Management Agency (FEMA) has updated the Flood Insurance Study (FIS) and adopted new Flood Insurance Rate Maps (FIRM) for Umatilla County, Oregon. Umatilla County proposes to adopt the new FIRMs and update the Flood Hazard Overlay Zone development regulations. The new FIRMs will be effective September 3, 2010. The FEMA Map Modernization Project developed computerized flood maps for Umatilla County, Oregon, and as a result of this project, the Special Flood Hazard Area (flood plain) may have changed.

Chairman Doherty called for abstentions, or declarations of bias or conflict, ex parte contact, or objection to the jurisdiction of the Board of Commissioners. There were none.

Commissioner Hansell moved to accept Exhibits #1-2 into the record. Chairman Doherty seconded. Motion carried.

Staff Report:

Richard Jennings, Senior Planner, summarized his memo to the Board of Commissioners. There was a previous hearing held on this update to the ordinance before the Planning Commission on June 24, 2010. This will be the same presentation given at that meeting. The Planning Commission voted to make a recommendation to the Board of Commissioners that the updates be approved.

FEMA (Federal Emergency Management Agency) is doing a map modernization project. They are updating the Flood Insurance Studies (FIS) and updating the Flood Insurance Rate Maps (FIRM). All studies are being done digitally so the updates can be utilized through Geographic Information Systems (GIS) and they are more accurate. All changes are effective September 3, 2010. The last date this county was mapped was June 1978. The FIS information details the engineered studies of all the water areas in Umatilla County to determine base elevation heights. From this study, FEMA created a map of the flood plain areas and their designations. Through this process, better data is now available with road information and GIS layers to more accurately determine if the parcels are in the flood plain. The county is divided into panels; the panels in green are in the flood plain. The new map areas follow the bodies of water in Umatilla County; Umatilla River, Walla Walla River, Wildhorse Creek, etc.

A notice was sent to property owners that were affected by the map modernization, roughly 1300 parcels. Residents within city limits were not notified by the county.

The results of the map modernization project; some parcels were added into the flood plain, but most remained just as they were before. Mr. Jennings explained the maps being displayed and what the colored area represent. The basic flood plain is still present; it is just better defined as a result of the improved technology now available. Maps of parcels are available to property owners at the Planning Department at no charge; nearly 50 maps have been created so far as a result of this process.

Mr. Jennings explained that the Board of Commissioners is now charged to update our ordinance with the new flood overlay zone. The overlay zone will coincide with the shape of the updated mapping information according to FEMA, and the county will have to administer the flood plain ordinance in that area. This process will be a zoning map amendment to update the development code. The last time our ordinance was updated was in 1999. A comparison was done of the local ordinance and the new proposed language. The state did provide a model ordinance to use as a basis to assist with this process. The new ordinance language includes how to regulate development in the flood plain and how to administer the ordinance.

Commissioner Hansell asked what will happen if the county does not adopt this new ordinance and maps. Mr. Jennings replied that FEMA will institute a fine to each property owner of \$50, their flood insurance policy will become void, and there will be no way possible for property owners to apply for assistance from FEMA if there is a flood event. Commissioner Hansell commented that he feels flood insurance is worthless, and wondered if it wasn't doing the county a service by not adopting the ordinance so property owners wouldn't have to pay flood insurance. Mrs. Mabbott commented that any person with a loan backed by the Federal Government, for a home in the flood zone, is required to have flood insurance. If the property owners don't have flood insurance, the loans would be recalled. The system is built around requiring local jurisdictions to adopt the federal ordinances.

Chairman Doherty asked about the content of the new text. Mr. Jennings explained that the new text describes how the county will administer the FEMA regulations in regard to development in the flood plain. Mr. Jennings confirmed that the ordinance being considered today will only apply to the unincorporated areas of the county; cities will need to adopt the updates to their own ordinances. Chairman Doherty commented that the Planning Commission voted 7:0 in favor to recommend that the ordinance be adopted by the county.

Commissioner Hansell asked if this ordinance addresses the question if a house in the flood plain were to burn down, what would be the replacement requirements. Mr. Jennings replied that it can be re-built. If it is found to be non-conforming for the new regulations and the cost of re-building exceeds the 50% substantial improvement threshold, then the new regulations would apply to reconstruction. Flood venting would have to be installed; base floor would have to meet the base flood elevation, etc. If only a portion of the home were damaged and the cost to repair did not exceed the 50% total value of the home in substantial improvements, then the new regulations would not apply. You can build in the flood way, but must show that development will not affect other property owners in the event of a flood.

Commissioner Hansell asked if it was known how many homes are now in the flood way? Mr. Jennings replied that we know approximately how many homes/structures are in the flood plain, but not how many are in the flood way. Commissioner Hansell then asked if this ordinance would impact the nearby reservation. Mr. Jennings replied no, it would only impact the unincorporated parts of Umatilla County. The reservation was included in the new study, but would not be affected by the changes today.

Chairman Doherty read a summary of the proposed ordinance update, and asked if there were any questions or comments from the audience. Hearing none, Chairman Doherty closed the hearing and moved to deliberation. Commissioner Hansell stated that he is ashamed that the Federal Government is requiring this of its citizens. It is one size fits all, and the Mississippi valley is a little different from Eastern Oregon. Commissioner Hansell appreciates the work done by planning staff on this project. He took an oath to

uphold the Constitution and the laws of the land. Chairman Doherty also appreciates the work done by planning staff. Commissioner Hansell commented that it weren't for the fact that the banks would recall the loans on affected properties, unfairly treating the citizens, he would seriously consider voting against this ordinance adoption.

Commissioner Hansell moved to adopt the code update for a flood hazard overlay zone ordinance, Board Ordinance 2010-05; Chairman Doherty seconded; motion carried 2:0. Doug Olsen, County Counsel, asked Mr. Jennings about adopting the maps. Mr. Jennings replied that there is a section in the ordinance that adopts the maps by reference.

NEW HEARING:

- **APPEAL - CONDITIONAL USE REQUEST, #C-1161-10**, application submitted by Phil and Lora Sharkey. Landowner is Community Bank. The applicants have appealed the Planning Commission decision and request approval to allow the operation of a farm commodity trucking business as a Commercial Use in Conjunction with Farm Use. The property is described as tax lot 800 of Assessor's Map 4N 28 31, and is located at 29689 Noble Road, south of Interstate 84, approximately one mile east of Colonel Jordan Road. Criteria of approval are found in UCDO Section 152.617 (I) (B).

Staff Report:

Tamra Mabbott, Planning Director, presented the staff report for this hearing. This hearing is an appeal of the Conditional Use Permit #C-1161-10 denial. The packet of information has been made available to the public. Commissioner Hansell moved to accept the Exhibits #1 through #15 into the record. Chairman Doherty seconded. Motion carried.

Mrs. Mabbott presented a brief history of the application and summarized the initial decision of the Planning Commission to deny the Conditional Use Permit application. Both applicant and opposition parties are represented by attorneys at today's hearing. The structure was initially approved as a farm office, but the Planning Commission approved converting this structure into a non-farm dwelling in a Land Use Decision (LUD). There is also a storage shed/shop on the property. The LUD is not being appealed at this hearing, only the denial of the Conditional Use Permit. Mrs. Mabbott distributed a color aerial showing the subject property. Commissioner Hansell moved to accept this aerial map into the record as Exhibit #16. Chairman Doherty seconded the motion. Motion passed.

Mrs. Mabbott noted that the previous owner had secured a permit to build a farm office, but instead the previous owner built a single family dwelling, from outward appearance.

This property went through foreclosure and was briefly owned by Community Bank. The applicant, Mr. Phil Sharkey, now owns the property. The existing structure is now permitted as a dwelling. The only way to comply with the state land use statutes was to permit it as a non-farm dwelling, by converting an existing structure. There were several precedent conditions placed on this permit; they have complied with these and have their Zoning Permit, and are living in the home now.

The subject is a Conditional Use Permit to operate a farm commodity trucking business. The Planning Commission heard public testimony at the public hearing. Their denial was based on the applicant's inability to comply with the noise, odor and detrimental effects to adjoining properties. They also noted that the road serving the subject property was already overloaded and well traveled.

Commissioner Hansell asked about the findings from the first hearing. Mrs. Mabbott explained that the bold print is the standard that must be applied, and the fine print below is the findings adopted by the Planning Commission. The words in italics are the alternative findings if the Board of Commissioners chooses to approve the application. The two documents submitted by the attorneys center on the following arguments; whether or not the farm commodity business meets the Umatilla County Development Code ordinance definition, and state statute definition of "commercial use in conjunction with farm use". Both sides reference a Land Use Board of Appeals (LUBA) decision from 1994. Commissioner Hansell asked if the Planning Commission discussed this precedent case. Mrs. Mabbott advised that they did not discuss it at the first public hearing. The decision from the Planning Commission was based on the fact that there was some other noise, odor and dust impacts that they didn't think could be abated. The other discussion will be on the capacity and condition of Noble Road, a county road. Mrs. Mabbott introduced Exhibit #17, a memo from Tom Fellows, County Road Master. He could not be present at today's hearing. Commissioner Hansell moved to accept Exhibit#17 into the record. Chairman Doherty seconded the motion. Motion carried. Chairman Doherty commented that there is no reference in Mr. Fellow's memo to the number or size of the trucks, or the number of trips on the road.

Mrs. Mabbott concluded her staff report. She advised that she included draft findings, should the Board of Commissioners choose to overturn the decision of the Planning Commission.

Chairman Doherty asked about the initial application being divided up. Mrs. Mabbott confirmed that the Planning Commission approved the Land Use Decision for the non-farm dwelling and denied the Conditional Use Permit application for the trucking business and that the hearing today is solely about the Conditional Use Permit. Chairman Doherty asked for a show of hands from the audience of who was present to testify in favor of the appeal, and who was present to testify against the appeal.

Applicant Testimony:

Bob Mautz represented the applicant. He handed out a color aerial map of the subject property and surrounding area. Mr. Mautz discussed how farmers are specializing these

days, due to the economy. They can no longer afford to purchase all the equipment needed in their operations. In response to this, farmers are turning to small businesses that are performing specific farm functions. The Sharkeys' business is an example of this; they own Platinum Transportation LLC. The business fits a niche and performs a farm function; hauling exclusively farm crops such as wheat, corn, beans and onions for local farmers from the field to storage or to market. They also haul for the farmers' local cooperative, Pendleton Grain Growers, from storage to market at different times during the year. Because of specialization and economics, this business performs a farm function that farmers used to do themselves.

Mr. Mautz stated that the unemployment rate is high in this county, and that many small businesses have gone out of business. This business makes this application to be more efficient, in order to survive. The business supports up to 10 employees, and makes local farmers more efficient. The business purchases fuel, parts, tires and supplies from community businesses. The Sharkeys seek to operate this business from the subject property on Noble Road. They want to park, dispatch and repair vehicles from this location and run their business office as well. The vehicles are narrower than 8 feet wide and can pass easily on Noble Road, and are narrower than the farm machinery that also uses this road. The business will only have a few, 2 or 3, power units on the property at one time. The rest of them will be on the road or parked at employee's homes. They own specialized trailers for hauling farm crops. The business intends to use only a small portion of Noble Road, per Exhibit #18. The Sharkeys have 7-10 power units, so they estimate they will only use Noble Road approximately 20 minutes out of a 24 hour day.

Mr. Mautz stated that the Sharkeys have no intent to change the nature of the business, or to increase the size of the business. They only seek to make their business more efficient. Mr. Mautz commented on the nature of the business under the previous owner, Jerry Christianson. The property has a large graveled area for storing trucks, and there is a barn large enough to service and take care of vehicles. There is adequate non-farm land for storage of the power rigs and trailers that will be there, and the barn for service and repair of trucks. The farm land will not change, and they will continue to farm there. They want to operate the business all in one place, to be more efficient and close to the highway access. Mr. Mautz stated that this use clearly qualifies under UCDO 152.617 (I) (B) in conjunction with farm use. He contends that this business qualifies as performing a farm function by taking crops from the local fields. This business is compatible with farm use. Mr. Mautz commented that this business is designed to reduce odor, noise and other detrimental effects, which was the area of concern for the Planning Commission. He went on to state that the Planning Commission decision was based on an improper, faulty understanding of the facts. He states that the proposed business meets this element because it reduces the detrimental effects such as dust, congestion on the road by reducing the number of trucks on the road compared to the previous owner, Jerry Christianson.

Mr. Mautz went on to state that this business meets the element of access to roads, and does not create a traffic hazard. This business will not take any agricultural land out of production, and they understand they will have to comply with air, noise and water quality regulations. He pointed out that members of the Planning Commission were not unanimous in their decision, with two members voting to approve this application. The objections were to dust and safety on the road. He noted that if the business were moved to Barton's property, which is industrial, that would cause the Platinum Trucking company to drive all the way around from the east, the entire length of Noble Road. Mr. Mautz went on to comment that dust is not a problem anyway, and that Platinum reduces the dust from the previous owner. He stated that dust will only be a problem for a small part of the year; during winter, spring and fall there is no dust problem because the roads are wet. The houses to the east of the Sharkey property are not affected by dust because the trucks don't go that way. The houses to the west are also not affected because, most of the time, the prevailing winds are from the southwest. Mr. Mautz referenced Exhibit #18, a picture, and spoke about the wind patterns in the area and how they will affect the dust and the surrounding land owners.

Mr. Mautz closed by saying that this application should be approved, with certain conditions. The planning staff had written a condition of not more than 10 power units, and the Sharkeys are willing to have a condition to limit them to not more than 7 power units at any given time on the property. They are also willing to limit access on Noble Road to the west, as long as the road is open from Col. Jordon Road. Mr. Mautz commented that if dust abatement is required, they would like it to be seasonal and only extend from the ends of the subject property west to Col. Jordon Road. The Sharkeys would agree to the annual review and fee, but want it waived after the first five (5) years if it is found to be in compliance.

Mr. Mautz asked if he could hold back a witness, until after the opposition has spoken. Mr. Livingston objected to this procedure, so Chairman Doherty instructed the applicant to present all their witnesses. Mr. Mautz identified himself: Robert T. Mautz of Mautz & O'Hanlon, representing the applicants.

Chairman Doherty asked if they had a copy of the ordinance cited (UCDO 152.617) in their packets, and Mrs. Mabbott confirmed that they did have this information. There was a brief discussion on the difference between UCDO 152.616 (N) and UCDO 152.617. County Counsel Doug Olsen advised that it had to do with farm use and land use.

Applicant Testimony: continued.

Phil Sharkey spoke on behalf of his application. He stated that he has been around farming and trucking all his life. He used to farm up to 1500 acres in partnership with Steve Mills. They sold that operation. The trucks they currently have were part of that operation. They did a lot of trading with local neighbors to stay competitive in the market place, considering the cost of equipment and assets and what it takes to run a farm. They traded harvesting and combining and trucking, because they can't all afford

to have multiple equipment and trucks. People cannot afford to have the equipment sitting around, so they haul commercially for PGG.

Mr. Sharkey stated they chose the Noble Road property for several reasons; security to run their business and stay competitive in the market. The economy is tough right now for a small business owner. The location provides close freeway access and reduces his reliance on other county roads. They can get on the state highways quicker, and he can get off to go to PGG or wherever they are going. The location is also close to repair locations; Eagle Freightliner, Western Express or their repair facility. Mr. Sharkey currently has 8 employees. All the money he spends goes back into the local economy. Mr. Sharkey stated that he was told that the previous owner averaged 30-50 vehicles in and out of the subject property. He believes that his business will have much less impact on the county road.

Mr. Sharkey went over the letter from Mr. Livingston and spoke about the points made; the time the trucks spend on the property, where, what and who they haul for, etc. He stated that his business is a niche market, helping farmers get their crops to market or to storage to help them out. Mr. Sharkey went on to speak about dust and Mr. Gellison's house. He states that the prevailing wind comes from the southwest, so the dust will actually be carried onto his property.

Mr. Sharkey spoke about the road and the steep shoulders. He stated that he drove his wife's Caravan onto the side of the road and the vehicle remained fairly level. He also spoke about the hours of operation for his business, noting that the opposition did not have any issues with this. He then discussed the standards of roadways in Umatilla County, per Tom Fellows, County Road Master. Mr. Sharkey indicated that Mr. Fellows said that the standard for a new gravel road is 22 feet of roadway, with a 1-3 ratio of shoulder slope up or down. The county also has standards for older roadways, allowing a 40 foot right of way all the way down to a 16 foot roadway. Mr. Sharkey commented that Mr. Fellows said that they measured the apron from Col. Jordon Road onto Noble Road, and it was not less than 24 feet wide.

Mr. Sharkey spoke about dust abatement on Noble Road. He states he is willing to do dust abatement but not for the length of road all the way to Col. Jordon Road, which is 7/10's of a mile. He feels that some people were opposed to dust abatement at the Planning Commission hearing.

Mr. Mautz asked Mr. Sharkey to confirm the intensity of use, and how many units would be on the property. Mr. Sharkey confirmed that he will not average more than 2 power units in and out from the property per day. Commissioner Hansell asked Mr. Sharkey to explain what a power unit is. He replied that this term refers to a tractor unit that pulls a trailer. A ten (10) wheeler is a power unit with a flat bed.

Mr. Mautz asked Mr. Sharkey to confirm that his business was legally hauling farm crops and commodities. Mr. Sharkey confirmed that he runs a bulk line business. Mr. Sharkey explained that he plans to stay small and provide for his family.

Chairman Doherty asked about problems with odor. Mrs. Mabbott explained that this word was included in the category of the standard. Odor was not a part of the decision for this application, the word was just included in the sentence of the standard.

Mr. Mautz asked to enter a written statement from Mr. Sharkey into the record. Commissioner Hansell moved to have this be Exhibit #19.

Chairman Doherty asked about expansion of the trucking business. Mr. Sharkey replied that he had intends to keep the operation small. He went on to explain that he only owns 7 power units at this time, and the number 10 cited in the application was an arbitrary number for the paperwork. Chairman Doherty asked Mr. Sharkey to what extent had he considered alternative locations for this business. Mr. Sharkey replied that he has looked at alternative sites, but finding a site that fit his requirements for size and location is difficult. He feels that if he has to go to industrial property he will be forced out of business because of the cost of that type of property. He stated he is not an interstate trucker or transporter, and that is not his type of business. He wants to stay small and continue to support the farmers of Umatilla County. He may possibly get back into farming himself. Chairman Doherty seconded the motion to admit Exhibit #19 into the record. Motion carried.

Applicant Testimony: continued.

David Belyea, 29206 Noble Road, Hermiston, Oregon. Mr. Belyea rents land from Mr. Harry Noble, and he is Mr. Noble's son-in-law. Mr. Starkey asked him to testify, and if he had any problems with his trucking business. Mr. Belyea commented he wanted Mr. Sharkey to keep the speed of the trucks down, and the number of trucks to 2 or 3 a day. Mr. Belyea also owns a trucking company, and hauls livestock. His employees keep their trucks at their homes. He asked Mr. Sharkey to be cautious of his livestock that may get out on the road, specifically bulls. He states that trucks are quieter and cause less dust and noise than combines. He has no opposition to Mr. Sharkey.

Kayla Sharkey, oldest daughter of the applicants. She works for Dan McCarty. Mr. Mautz asked her if she had looked at the pictures submitted by Mr. Livingston. She stated that she had seen the Exhibit, page 7, and that she is the driver of the tractor in the picture. Kayla stated that she does not have any problems operating large equipment on Noble Road, and avoiding cars and other trucks. Commissioner Hansell asked if the seed bed maker was on Noble Road. Kayla explained that the equipment in the picture was an airway, not a seed bed maker.

Mr. Mautz presented some letters of testimony from individuals not present at this hearing. He preferred to read them aloud into the record.

Letter from Dan McCarty: Chairman Doherty stated that this will be Exhibit #20.

Letter from David Shockman, Les Schwab manager: Exhibit #21.

Letter from Milan Rencken, PGG: Exhibit #22.

Letter from Ray Thompson: Exhibit #23.

Letter from Bill Levy, Pacific Ag Solutions: Exhibit #24.

Letter from Mike Heller, Heller & Sons Distributing: Exhibit #25.

Commissioner Hansell moved to accept the above listed letters into the record. Chairman Doherty seconded the motion. Motion carried.

Chairman Doherty asked if the Conditional Use Permit was for the property; County Counsel Doug Olson replied that the property could be sold, but the business would have to be the exact same to qualify for the continuing permit. Mrs. Mabbott advised they can write the permit to be for a specific owner only as well.

Chairman Doherty called for a break at 3:28 p.m.

The hearing was reconvened at 3:38 p.m.

Opposition Testimony:

Paul Gelissen, 29592 Noble Road, Hermiston, Oregon. Mr. Gelissen stated that Noble Road is approximately 2 miles long and is south of I-84; it is mostly gravel and dirt. In some places, the road is 2 feet lower than the adjoining farm fields. Some places in the road are level with the adjoining fields. During the spring, the road is very soft. In the summer time, the roads are very dusty. A one (1) ton truck with dual wheels throws a lot of dust. A car driving over 35 miles per hour (mph) also creates a lot of dust, more later in the day.

Mr. Gelissen spoke about the farm equipment that uses Noble Road, and how the large sizes cause problems using the road. There are also two bridges on this road that are having problems due to the high usage. Mr. Livingston asked to submit pictures that were relevant to Mr. Gelissen's testimony. Chairman Doherty advised that the 17 pictures would be Exhibit #26. Mr. Gelissen spoke about the dust problem. He states that the prevailing wind can change several times in a day.

Mr. Gelissen stated that typically when you see farm equipment coming down the road, you pull into a neighbor's driveway and wait until the farm machinery passes by. The large tractor/trailer rigs will not be able to do this; someone will have to back up. He contended that it will be a health hazard, and an environmental hazard. He stated that the county maintenance crews try to maintain Noble Road when they can. Mr. Gelissen went on to speak about the previous owner and his operation.

Mr. Gelissen stated that the Sharkeys have 40 foot box vans on the property, that are set up for pallet loading on a dock or forklift loading. He has only seen one pea truck. He contended that they do not haul farm products, but they do haul over the highway from Idaho. He stated that this is a highway operation, and he feels that they should not get a farm commodity product permit, it doesn't belong there. No one forced him to buy this property. Mr. Gelissen advised that the adjoining property west of the subject property is owned by Zion Bank, and has earnest money on it from another company that does trucking. He is concerned that if Mr. Sharkey gets this permit approved, that this other company will also apply for a similar permit to do the same business in this area.

Mr. Gelissen spoke about the width of the road and the problems that exist already. There is a problem with visibility when coming up the road from the east. He contended that safety is also an issue for the road, in addition to the dust problem. There are no speed limit signs posted for Noble Road. He feels that the Sharkey business belongs in a commercial zone, like all the other trucking businesses in the area. He cited several other businesses and their locations on the north side of I-84 that are more appropriately located. As it is now, the road must be graded every 6-8 weeks to maintain the condition.

Mr. Gelissen believes that the Sharkey's business is not a farm commodity trucking business; it is a highway trucking business and that is how they are licensed. The placement of this business should not be at the expense of the road and the people who live there.

Commissioner Hansell asked about Mr. Gelissen's testimony challenging the Sharkeys' contention that they haul farm commodities. Mr. Gelissen explained that they have box trailers. He said you cannot haul commodities with this type of container. They are designed to haul pallets of materials. Mr. Sharkey testified at the Planning Commission that he hauls materials from Idaho for PGG. Discussion followed with Commissioner Hansell about the difference between the former owner's business and the proposed business. In closing, Mr. Gelissen feels that this is a commercial trucking company and it should not be allowed in a farm zone.

Chairman Doherty asked about the term, "farm commodity trucking business". Mrs. Mabbott replied that this is not a legal term defined in our code, but was used to describe the applicant's proposed use.

Opponent Testimony: continued.

Salem G. Salem, 29831 Noble Road, Hermiston, Oregon. Mr. Salem submitted a letter of testimony and it was marked as Exhibit #27. He has lived there for three (3) years in October. Mr. Salem commented that there is a lot of traffic and farm equipment that travels Noble Road. He went on to say that the bridge is an issue. Mr. Salem is concerned that if Mr. Sharkey sells the business, the new owner will run more than the 2 trucks a day specified by Mr. Sharkey.

Mr. Salem testified that the road is also an issue. After the road is graded, it lasts about a month. He lives on the east side between the two canals. Going west, the road is narrower and one must pull off the road if equipment is on the road. He used to drive large trucks for 19 + years. The truck is 8 feet wide, plus the width of the side mirrors that add 1-2 feet.

Mr. Salem stated that he believes the Sharkey business to consist of hauling from location to location on asphalt, and not much of commodities. He asked who will be monitoring the roads and the number of trucks on the road. The family is welcome to the neighborhood, but the trucking business is an issue. He went on to speak about the dust issue and the wind directions, as well as a letter he received about burning restrictions. He feels that there is no more traffic needed on this road.

Chairman Doherty asked Mr. Salem if he lives to the east from the subject property, and he confirmed that he did. Chairman Doherty asked if there were any bridges to the west of the subject property, and Mr. Salem advised him that there are none. Mr. Salem stated that the roads ice over in the winter time. Chairman Doherty asked Mr. Salem if he had any reservations about Umatilla County being able to control the conditions of the business. Mr. Salem replied that it is not fair to the neighbors already there; allowing the business would only add to the dust, congestion and environment problems.

Opponent Testimony: continued.

Tresia Frederickson, 29330 Noble Road, Hermiston, Oregon. Mrs. Frederickson lives on the west side, so dust is an issue for her. She is concerned about the safety of the road, as her son walks from their home to Col. Jordon Road to catch a school bus and there is no sidewalk. Due to the lack of sidewalks, her son has had to stand sideways against the hot fence to let two vehicles pass by each other. She lives approximately 100 feet off Noble Road, so they do get dust in their yard. She has seen trucks, tractors and vehicles come onto their property to avoid the farm equipment on Noble Road. Once someone hit and killed their dog to avoid a tractor that was passing on the road. Due to the narrow width of the road, she feels that the road is not wide enough to allow the proposed business of trucks to pass the farm equipment already on the road.

Chairman Doherty asked if it was 7/10's of a mile from the subject property to Col. Jordan Road, and Mrs. Frederickson confirmed that was correct. Chairman Doherty went on to state they have heard a lot about dust from this group and the Planning Commission hearing. He asked if anyone in their area had ever discussed forming an LID to pave the road. Mrs. Frederickson would be in favor of paving Noble Road and putting sidewalks on it.

Opponent Testimony: continued.

Eric Frederickson, 29330 Noble Road, Hermiston, Oregon. Mr. Frederickson states that he has a driver's license now since the last hearing, but he still prefers riding the school bus. Everyone is friendly and the neighbors are nice there. He measured the road with his grandmother, and they measured it at 18 feet from Col. Jordon Road east past the

subject property. He stated that there is simply not enough room on the road to maneuver past farm implements; you have to back up into someone's driveway and let the farm equipment past. Chairman Doherty asked if there were any other children that walked to the school bus with him. Mr. Frederickson replied that he is the only one at the west end. There is another child that walks on the east end that is picked up by a different bus. Mr. Frederickson's main issue with this application is the safety of people on the road.

Opponent Testimony: continued.

Cindy Goff, 29308 Noble Road, Hermiston, Oregon. Mrs. Goff states that her letter is similar to the other testimony already given regarding the dust issue. She read aloud a letter from neighbor Burt Curtis, 29416 Noble Road, Hermiston, Oregon. Commissioner Hansell moved to accept Mr. Curtis's letter into the record as Exhibit #28 and Mrs. Goff's letter as Exhibit #29. Chairman Doherty seconded the motion. Motion carried.

Chairman Doherty explained paving county roads. Adjacent property owners are encouraged to form Local Improvement Districts (LID) to help pay for the cost of the paving of the road. The county then performs the subsequent maintenance for that road. The problem with this stretch of road is there are not many property owners to share the cost of paving Noble Road.

Opponent Testimony: continued.

Mr. Livingston, representing the opposition to the application. Mr. Livingston apologized for a jumpy presentation, as he will first be responding to the previous comments. In his letter, he sets forth the criteria and how the application does not meet the criteria. He is trying to figure out exactly what the proposal is about. The first task that has to be met is to determine whether this is a commercial activity in conjunction with farm use. Mr. Livingston cited the Craven case, considered to be the standard for cases such as this. The non agricultural activity that is supposed to be in conjunction with farm use has to be scaled according to the farm use. The court made its decision for the Craven case because they were asked to decide if a winery (the sale of wine and associated items) could be allowed as "in conjunction with farm use". The court defined that the commercial activity must enhance the farming enterprises of the local agricultural community, with which the EFU land hosting that commercial activity relates. The agricultural and commercial activity must occur together in the local community to satisfy the statute. Mr. Livingston commented that the county is being asked to apply a state law. The court was emphasizing the close connection between a winery and the vineyard where the winery was situated. This is a far cry from what the Board is being asked to consider with the Sharkey application; a trucking business that travels 9-15 miles to pick up supplies and then carries them a hundred miles away.

Mr. Livingston commented that this is how he understands the business. It was described differently at the Planning Commission hearing and today, so Mr. Livingston is not sure that anyone has a firm grip on what this business actually is. This is the applicant's responsibility to demonstrate, and what they have demonstrated so far is that

they are going to be sending trucks miles and miles away, to transport farm commodities. There is no reason that this business cannot be located elsewhere. The applicant is seeking to make this location suit his finances and the convenience of his family. These are personal circumstances and should not be considered in making land use decisions.

Most of the regional trucking businesses are located near the freeway. The subject property is on land zoned for farm use. It is inexpensive to acquire and cheaper than property zoned more appropriately for this business. This is the same problem that state land use law has been trying to address for decades; housing developed on farm land because it is less expensive. The whole purpose of the regulations is to confine high intensity uses to zones where they are appropriate and don't create conflict or displace the farm use. The fact that this is a regional business is a reason to find that it is not in conjunction with farm use; in the same way that the court accepted that in the vineyard case. These are totally separate kinds of businesses.

Mr. Livingston wanted to cover the conditions, as there has been much confusion over what is being permitted. The staff conditions are not specific enough to restrict the number of trucks that can be serviced on this property. The applicant has made a promise that it will be no more than 2 trucks per day leaving and coming to the property, but this is unenforceable. No one can stand there and count the number of trucks every day.

Mr. Livingston commented that if the Board allows this change in use for this Conditional Use Permit, it will apply to anyone from now until eternity or the property is re-zoned. He also spoke about the nursery down the road in regard to discrimination. Discrimination is not the issue; the rational basis test in the U.S. Constitution is extremely liberal. There is a rational basis for drawing the line and not allowing this to move any further. If Mr. Sharkey gets a permit for this business, then the guy next door will want the same permit too, and so on until the whole thing is trucking. The nursery getting a permit is not justification to give Mr. Sharkey a permit. This should make the Board think harder on this. If two people are doing it, they are continually impacting the residents who are doing what they are supposed to be doing in the farm zone. If they keep chipping away at this, it will eventually become a trucking road and those people will be driven away because it will be intolerable.

Mr. Livingston spoke about the previous owner, Jerry Christianson. There is conflict on how the prior business compared to what is being applied for now, and how much traffic was generated by that prior business. People living in a farm zone must expect dust and farm equipment in that farm zone. Mr. Livingston explained that what is being proposed here is a Conditional Use Permit that has to meet standards that a farm use doesn't have to meet. It is not appropriate to say that those prior uses were worse, so they are going to make it better by bringing in a trucking business. This is incorrect reasoning to consider this application.

Mr. Livingston commented about the dust issue, as there has been much testimony about this issue. He saw the property for the first time today, and stated that the dust is beyond description. He urges the Commissions to make a site visit to the subject property and drive their own vehicle down Noble Road to see what it is really like. It is impossible to see if a truck goes by, you must stop the vehicle until the dust clears. He estimated it took 10-15 seconds for the dust to clear enough to be able to move again.

Mr. Livingston spoke further about the conflict of farm use and non farm use. A combine must stop for another combine, but they shouldn't have to stop for someone driving a truck that is not a permitted use in this zone.

There was testimony about the width of the road and the sloped shoulder. Mr. Livingston stated that the width is just 18 feet, with a vegetative shoulder that is no refuge for passing traffic.

Mr. Livingston stated that this permit will alter the material stability of the area. Farm residents will feel uncomfortable in their own communities and will sell out, possibly to other trucking companies, if there was already one permitted there. It will have the effect of destabilizing the area.

Mr. Livingston spoke about the quality of the road. Page 7 of his packet is a page out of the county road manual. He spoke with Tom Fellows and asked him what was the county road standard for Noble Road. The criterion states, "is improved to an acceptable county standard". Mr. Fellows advised him that this information was on the county planning website. He went to the website and found the link; a number of different standards depending on the type of road. Mr. Livingston asked for this to be put into the record. Commissioner Hansell moved to enter this as Exhibit #30. Chairman Doherty seconded the motion. Motion carried.

Mr. Livingston explained that Exhibit #30 shows six county road standards. Mr. Fellows explained that they don't require people to have a 26 foot road. This is the only standard available to measure an application against. There was testimony from Mr. Mautz about what Mr. Fellows said to him. The letter from Mr. Fellow's talks about maintenance, it does not say anything about conflicts with traffic or anything about the width of the road. Mr. Livingston stated that this is the county road standard and that Noble Road does not meet the standard. The criterion requires that the standard be applied when approving a Conditional Use. Chairman Doherty asked which road standard he was referring to. Mr. Livingston replied that the only standard to apply in this instance was the industrial agriculture standard. Chairman Doherty agreed with this. Mr. Livingston stated that the county standard is not met in this case.

Mr. Livingston commented on the last criterion; to not produce noise, odor or other detrimental effects. Mr. Sharkey is a very sympathetic applicant, who is opposed by all the people making this their home for years. Why should those people have to give up their neighborhood in order to make Mr. Sharkey happy? Mr. Sharkey wants a cheap

place to put to industrial use, instead of paying the premium that other businesses have to pay in order to situate the same kind of use.

Mr. Livingston requested that the record be left open, so they have an opportunity to respond.

Mr. Livingston commented on the previous testimony from Mr. Mautz. The fundamental issue is where this business would be situated. It may be there is a need for a small trucking business, but it doesn't have anything to do with putting it in a farm zone. The applicant's testimony minimized the impacts. They don't seem to notice that farm uses are privileged when it comes to having impacts associated with farm uses. Non farm uses are not, they are a conditional use. There is no way to ensure that the trucks do not travel east on Noble Road.

Mr. Livingston would like to see a full listing from the applicant of all the business he services, and how far they are from this location. If they are more than half a mile, it becomes irrelevant where this business is because he is not able to provide better service from this location than he would be from any other point. The only reason that this application should be considered in conjunction with farm use if is this location is better for farms. There is nothing in the application to show this.

Mr. Livingston went on to comment on the LID mentioned by Chairman Doherty. An LID might work, but it could cost millions of dollars for these farm residents to cover that road. It also goes toward subsidizing a non farm use in a farm zone.

Mr. Livingston commented on Mr. Sharkey's testimony. He is a sympathetic applicant, but his personal circumstances are completely irrelevant to the criteria that must apply. References to unemployment rates in Umatilla County are irrelevant to the application. There is nothing in the record to justify that putting a trucking business in a farm zone versus a light industrial zone would lower the unemployment rate.

There has been testimony of serious concerns from the neighbors about what it would mean if there was a trucking business on this road and how that would influence the next land use decision. In Mr. Livingston's experience, the bad economy had made a lot of industrial land available for this use, thus reducing the cost of situating this business to a more appropriately zoned area.

Mr. Livingston commented on the letters submitted in support of the application. The letter from Mr. Dan McCarty states that he hired Mr. Sharkey to haul farm commodities from Echo and Hermiston, neither of which requires the trucking business to be located on Noble Road. The letter from Mike Heller states that Mr. Sharkey purchases over \$100,000 worth of fuel from him. This suggests that Mr. Sharkey's business is not local or farm related. The other letters speak about how Mr. Sharkey takes good care of his property and equipment, and this is not relevant.

The opposition testimony made the point that this is a regional business, not a local business and is not in conjunction with any of the farm uses that are on this road or in this neighborhood. The general testimony from the opposition is that they just want this, and in this case, the law is on their side. The law is on their side because this is a business that serves a wide area, and is not in conjunction with a farm business that is located on Noble Road. The business is not farm related. It does ship farm products, but there are other businesses that have similar activities in respect to farming that are not farm related. The application is creating conflicts within the neighborhood, and will have a destabilizing effect. The only reason the applicant wants to locate to Noble Road is because it is cheap and convenient. There is no reason the business could not be moved to a more suitable location. For all these reasons, Mr. Livingston asked that the application be denied.

Commission Hansell asked if the annual review of conditions make the access from the west enforceable. Mr. Livingston replied by speaking about the anti-barking ordinance in Portland. When he is home at 5 a.m. and the neighbor's dog is barking, does he want to call the enforcement agency on his friend and neighbor? How does he prove the dog is barking? Does he have to record it or take a picture? His point is that even though something is a law, does not mean it is always enforced. Commissioner Hansell asked if pictures would not prove the access from the east. Mr. Livingston replied that, according to testimony, the trucks would be leaving at 4 a.m. A person would not be able to take a picture at this time of day. These conditions are difficult to enforce and it puts the burden on the neighbors to monitor and complain to the county, and for the county to enforce. Mr. Livingston commented that the house on the subject property was being used as a dwelling against the rules. Commissioner Hansell asked about the combines having to stop for trucks that shouldn't be there; what about the trucks that should be there? Mr. Livingston stated that some of these uses are authorized, and it is required to be compatible.

Commissioner Hansell stated that the decision will hinge on the statement of farm use in a farm zone. Mr. Livingston stated that this business is not in conjunction with a farm use. Even though it concerns farm products, it isn't a business that supports the farm use in the same way the vineyard cited in the Craven case supported the winery. Commissioner Hansell stated that Umatilla County has more road miles than any other county in the state. Most of them are farm to market roads. Umatilla County is number one in food production in the state. Commissioner Hansell asked how a producer gets their product to market; it is done by trucks. This is why the roads were developed; to take the product from the farms to the marketplace. Mr. Livingston stated that this is a business centrally located in a farm zone, as opposed to being located in a more appropriate zone and sending out emissaries into the farm zone. This is about a yard doing maintenance work on trucks as opposed to sending a truck to a farmer's property to pick up watermelons; there is a difference.

Commissioner Hansell spoke about outright uses and conditional uses. Mr. Livingston responded that conditional uses are intended to render them compatible in the zone. He stated that by saying something will have no more impact than a permitted use is the

wrong place to start; you have to start by saying will this have more impact than nothing. This is how analysis goes. The conditions are meant to lessen the impact.

Chairman Doherty asked to hear more about the Craven case. Mr. Livingston stated that this was a case from the 1980's, but the laws have changed since then. Wineries are now an outright use in the farm zone. He stated that we will never see a statute that says you can have trucking businesses in a farm zone. Since 1989, there have been no other court of appeals decisions that address the Craven case. LUBA (Land Use Board of Appeals) has issued a couple of opinions that re-state the standard; it must enhance the farming enterprises to the EFU activity and the enterprise and commercial activities must occur together to satisfy the statute.

Opposition Testimony: continued.

Jeff Compton, 29616 Noble Road, Hermiston, Oregon. Mr. Compton's biggest concern is the number of trucks that may accumulate over the years. He is worried that this business will turn into a yard for trucking, going from the proposed 2 trucks to many more trucks. He is worried about being able to sell his property with this business on the same road.

Applicant Rebuttal: 5:09:02

Mr. Mautz once again spoke for the applicant. He referenced the pictures submitted by Mr. Sharkey. These pictures show measurements of the road of 22 feet wide or larger in most areas. The concerns about the bridges are not applicable because the access will be from the west, where there are no bridges. There were complaints that the road is sub-standard, but there is no evidence, only opinions. There is evidence that the road is not sub-standard from the letters submitted from several businesses; PGG, Les Schwab, Heller, McCarty, Levy. All these businesses use this road for their businesses.

The issue of whether or not this business enhances a farm community is grasping at straws. The products have to be taken to storage or market. To say that the business of hauling these products for farmers is not in conjunction with farm use is blowing smoke.

Mr. Mautz commented that not all the neighbors oppose this application; Mr. Belyea and his father-in-law do not oppose the application. Mr. Mautz commented on Mr. Compton's testimony, stating that Mr. Compton testified that he did not object to one or two trucks. Mr. Mautz went on to talk about enforcement of the standards, and that will be done by the county. Mr. Mautz stated that the agreement to come in from the west is enforced by economics. Who would want to bring trucks over 2.7 miles as opposed to 6/10's of a mile from Col. Jordon Road. Mr. Sharkey has agreed to have a maximum of 7 operational units at any one time; how can they have 7 units in there at one time when they are hauling product for PGG or hauling to the river. This is a physical limitation besides the legal one. They believe that they have proven that this is a business that enhances farming and it enhances their community, and it can be legally enforced, and should be approved.

Commissioner Hansell commented that there was testimony that 80-90% of the business is not farm related. Mr. Mautz responded that at least 20% are crops of farmers coming out like McCarty, Hale and other names that Mr. Sharkey testified to. The rest of the business is hauling for only PGG. PGG is a co-op of farmers; farmers got together to create PGG for storage. How can a farmer sell and get money for product if it's only in storage. The farmer must haul it to the river to put on barges, or hauling to Boise to put on the rail. This is a farm function; you have to sell your crop and get it to market.

Commissioner Hansell asked about the accusation of the big box. Mr. Sharkey replied that they only have one, and it's a storage van and not on the road. It's a van trailer. Commissioner Hansell asked what percentage they would classify as being non-farm related hauling. Mr. Sharkey replied that everything they haul is farm/ag related; peas, beans, wheat, potatoes, onions, or grass seed. He hauls other commodities too. Commissioner Hansell asked if he was primarily in Umatilla County. Mr. Sharkey replied that this insurance radius is 500 miles. When PGG calls, he will haul for them to Boise, Idaho, and then hauls wheat back for a farmer from Ontario.

Chairman Doherty asked Mr. Mautz what his opinion was of how the Craven case related to this application. It was Chairman Doherty's understanding that this trucking business would have to be servicing farms in the general vicinity of this location, and hauling for people in Ontario doesn't pass the test. Mr. Mautz replied by asking Mr. Sharkey who else he hauled for in that area. Mr. Sharkey replied that he hauls for L & L, Bob and Bill Levy, River Point Farms, McCarty Ranches, and his own products under Sharkey Farming. He split off the trucks a couple of years ago from the farming for liability and risk purposes.

Mr. Mautz commented that the Craven case is not helpful to this situation at all. The Craven case was in an area growing grapes, and could they put a winery there. It's hard to see a winery as agricultural or something within a farm use. The Craven case decided that since that is the end use for grapes, they would allow a commercial winery to be situated in a farm use area where they grow grapes. The Craven case is so far away from this situation, because in this case we are hauling and doing the same thing that farmers do for the farmers. It's not just the local ones. PGG is a cooperative made up of farmer owners, and it has to truck their crops further than their elevators, to barges and rail to get them to market. It is more direct than the Craven case.

Chairman Doherty asked if the more direct the proximity to the people who see the benefit of the hauling that the stronger the argument is. Mr. Mautz replied yes. His clients' business is exclusively limited to the farms in this county and in this area. Our local community is Umatilla and Morrow County, and to some extent up in Milton-Freewater. Mr. Sharkey commented on the meaning of vicinity; a half mile radius doesn't get him off Noble Road. He considers Umatilla County as receiving the vast majority of his business and revenue, and benefits farmers locally; whether it's hauling from a field out past Echo to a field out near Ione.

Chairman Doherty asked Mr. Sharkey how long he has had this trucking business. Mr. Sharkey replied that he switched to Platinum in 2004. He still has his operating authority under Sharkey Farming, and never relinquished it with the state. He used to farm and truck under Sharkey Farming. His trucks were on his farm at that point and time. Chairman Doherty commented about Mr. Sharkey's deal with Community Bank to buy this foreclosed property. Where was Mr. Sharkey keeping the trucks before. Mr. Sharkey replied that he was keeping them on the farm on South Edwards Road up until 2004. Since then they have been operating from East Punkin Center. He has never had any complaints about his trucks where they were.

Chairman Doherty asked if it was true or not that Mr. Sharkey had this opportunity to buy this property due to the bankruptcy of the previous owner. Mr. Sharkey replied that they are trying to get a better location, a more economical location, and easier access.

Chairman Doherty asked what percent of their business emanates from growers within a five mile radius of the subject property. Mr. Sharkey replied that 5% of his business comes from within the 5 mile radius. Mr. Sharkey asked how he was supposed to survive in a 5 mile radius, and how many businesses in Hermiston survive with the population radius of only 5 miles. He drives more than that to buy a half gallon of milk. Chairman Doherty asked why his business shouldn't be in a Light Industrial zone, some place that is zoned for this type of business. Mr. Sharkey commented that the price for the piece of land next to him that is commercially zoned is millions of dollars. For his size of business it's virtually impossible to afford that. Mr. Sharkey is looking to farm his ground as well; he has kids, horses and a daughter on the rodeo court. He totally supports the ag industry and is president of the Hermiston FFA Alumni and is very pro kids and 100% ag.

Chairman Doherty asked, if the county grants a Conditional Use Permit, would Mr. Sharkey be willing to consider a provision about selling the permit with the property. Mr. Sharkey stated that if the county wanted to make the Conditional Use Permit subject to him alone, he would have no problem with that. If he were to sell the property, the Conditional Use Permit would expire.

Kayla Sharkey asked to make one last statement. She commented that the testimony was given that the road is only 18 feet wide. She advised that if the road was only 18 feet wide, then the farmers would not be allowed to haul their implements behind the tractors down this road. She has hauled things down that road that were over 20 feet wide. Chairman Doherty commented that there was testimony given that the road was sub-standard. He stated that it's hard to know what to make of that term. Sub-standard does not rise to the standards that are currently in place for county roads. Some of the roads that were built 50 years ago were not built to current standards. Mr. Sharkey stated that he not opposed to the formation of an LID.

Chairman Doherty asked if there were any other people who wanted to testify; there was one. Harry Noble, 29206 Noble Road, Hermiston, Oregon. Mr. Noble commented that since he lived on the end of Noble Road nearest Col. Jordon Road, he did not have any

objections. Mr. Salem commented that he is retired, and consequently home much of the time. They do not see many trucks on this road, it is mostly farm equipment.

Chairman Doherty asked if anyone wanted to request a continuance. Mr. Peter Livingston, 1211 SW 5th Ave., Suite 1900, Portland, Oregon, identified himself as representing the opposition. He requested a continuance on this hearing. Mrs. Mabbott advised that he had previously requested to keep the record open. Mr. Livingston replied that he does not need any more hearing time, but wants to be able to submit additional information. Discussion followed on what would be required to keep the record open and what the time frame would be for rebuttal. Mr. Mautz stated that if the opposition presented new evidence, he would want an opportunity for rebuttal or if new matters are raised that haven't been addressed. Mr. Livingston requested an accurate description of this business. He would like to see an itemized list of where deliveries are being made, where the pick ups are being made and what percentage of the business is allocated to these activities. This is not in the record.

Mrs. Mabbott advised that there is a 150 day deadline to exhaust all local remedies that expires August 26, 2010. There must be a final decision made by that date, unless the applicant waives this condition. There was further discussion on what can be submitted as rebuttal and new evidence. There was also discussion on time frames and when the Commissioners will be available for the next hearing. All parties agreed on the date of August 10, 2010 for final submission from the opposition, the date of August 13, 2010 for Mr. Mautz to enter final comments, and the next hearing date on August 16, 2010 at 10:30 a.m.

Commissioner Hansell moved to keep the record open for the statutory 7 days until August 10th for Mr. Livingston to submit additional evidence, and the evidentiary record will close at that time. Mr. Mautz would have until the close of business on August 13th to argue the new material and the hearing will be continued at 10:30 a.m. on August 16, 2010 in Room 114 of the Umatilla County Courthouse. Mr. Mautz objected to this motion. If Mr. Livingston brings in new evidence, how can he argue against that without bringing in his own evidence? Chairman Doherty commented that if this happens, they can make that motion by the 13th of August for a waiver of the deadline to exhaust all local remedies.

Commissioner Hansell made the motion to keep the record open for the statutory 7 days, close of business on August 10th. The applicant will have until August 13th, close of business, to respond. The hearing will be at 10:30 a.m. on August 16th in Room 114 of the Umatilla County Courthouse. Mr. Livingston commented that the statute allows Mr. Mautz to make a final argument without evidence, he cannot respond. Commissioner Hansell amended his motion to read as follows: the record will remain open until close of business on August 10, 2010 for new evidence submittal from the opposition. The applicant has until August 13, close of business, to make final argument. The continued hearing will be on August 16, 10:30 a.m. in Room 114 of the Umatilla County Courthouse. Chairman Doherty seconded the motion and clarified that they understand

that there is an issue to keep in mind about the deadline of August 26 to exhaust all local remedies. Motion carried.

ADJOURNMENT:

The meeting was adjourned at 5:58 p.m.

Respectfully submitted,

Gina Miller
Secretary