

Minutes for February 6, 2012

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072722 THE BOARD OF WHITMAN COUNTY COMMISSIONERS met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Monday, February 6, 2012 at 9:00 a.m.** Chairman Greg Partch, Patrick J. O'Neill and Michael Largent, Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

9:00 a.m. - Call to Order/Board Business/Workshop.

Present: Gary Petrovich, Joe Smillie, Kelli Hadley and Bill Spence.

072723 1. Items discussed included a financial update, Washington Trust Bank forecasting, Hawkins revised spreadsheet, Hawkins lawsuit, Pullman Chamber meeting request, Inland NW Partners dues request, Quarterly Regional meeting, Pat O'Neill's trip to Olympia, Pullman Visioning meeting and Robin Jones' reclassification. No action taken.

9:45 p.m. - Recess.

10:00 a.m. - Reconvene/Pledge of Allegiance.

Present: Kathy Lemon, Debbie Kilpatrick, Bob Lothspeich, Brett Myers, Denis Tracy, James Dawson, Joe Smillie, Kelli Hadley and 6 members of the general public.

D072723A 2. Motion by Commissioner O'Neill to accept the consent agenda. Motion **seconded** by Commissioner Largent and **carried**.

072724 3. Claims/Payroll warrants numbered **261279-261359** for **\$89,926.62** approved.

072725 4. January 30, 2012 minutes approved.

072726-072730 5. Personnel change orders approved.

072731 6. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to reappoint Bill Hickman, Mark Janowski, Scott Kruse, Randy Schmick and Chris Tennant to 3-year terms on the Emergency Communications Advisory Committee and appointing Mike Heston to an unexpired term. All reappointments expire 06/30/14 and Mr. Heston's term expires 06/30/13.

10:05 a.m. - Evan Ellis.

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072732 7. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to reappoint Neal McCall and Jill Pierson to 4-year terms on the Noxious Weed Control Board. All terms expire 12/31/14.

072768

072733 8. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to reappoint Nick Davis, Robert Davis, Brian Crow and Justin Heaton and appointing Steve Nelson to 1-year terms on the Property Management Team. All terms expire 12/31/12.

10:10 a.m. - Eunice Coker.

072734 9. The official 2011 tax collection report was presented by Auditor Coker noting a 97.14% collection rate and applauding Kathy Lemon of the Treasurer's office for her collection work. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to approve the report.

10:15 a.m. - David Ledbetter.

072735 10. Treasurer Bob Lothspeich reviewed the 2011 tax refunds totaling \$26,336.15.

10:20 a.m. - Joe Reynolds.

D072735A 11. Assessor Reynolds indicated that the property tax certification was not quite ready due to new levies being keyed into the system. Therefore certification of the property taxes was tabled to February 13th.

10:20 a.m. - **Special Attorney.**

Present: Denis Tracy, Eunice Coker, David Ledbetter, Evan Ellis, Joe Smillie, Kelli Hadley, James Dawson, Brett Myers, Gary Petrovich, Bob Lothspeich, Mrs. Norm Wilson, Karen Johnson, Michele Beckmann and 4 other county residents.

072735A 12. Chairman Partch indicated an executive session was held the previous week to discuss the OVIC lawsuit. He asked Denis Tracy if a report from him was necessary and Mr. Tracy said he was present to answer questions. If the Board would like information or have a particular question, he is available.

As a recap, Chairman Partch said the RCW states for any litigation, the County Prosecutor is our legal representative. It specifically spells out that the Board cannot go to anyone else without discussion with the Prosecutor and then should they decide to ask for outside representation,

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a petition would be submitted to the Superior Court Judge who would decide whether or not to allow it.

Denis Tracy interjected the judge has to approve any contracts to employ outside counsel and that is how the statute is worded.

The way they have it written up (on the agenda) is two different things; request for a special attorney followed by the mechanics for requesting a special attorney.

Commissioner O'Neill **moved** Commissioner Partch **seconded** the motion to request a special attorney (regarding the OVIC lawsuit).

Commissioner O'Neill said he thought the subject before them dealing with the Hawkins development and reading all the newspaper articles and executive sessions he has attended, he has a real tough time thinking our Prosecuting Attorney can keep his personal views away from/out of the mix of the legal side representing the county. He believed this is important enough that the county should obtain outside counsel. Denis Tracy has indicated that is not the case, but Commissioner O'Neill was not fully convinced of that.

Commissioner Largent had no comment and preferred to hear from those in attendance.

Commissioner Partch said he believed our Prosecutor is a very good criminal prosecutor along with his office. However, when getting into civil issues, he was not so sure and thought this raises to the level of importance that he would like to see outside counsel in on this. At the last meeting Commissioner Partch said he made it very clear that he felt this was maybe the most important thing he would ever act on in Whitman County as this one is long term. The most important thing he can do is go all the way on this and get outside representation. He does have complete faith in the Prosecutor as far as prosecution in the criminal area representing the county, but he thought they needed to do the best. This is a very serious allegation against the county and it needs to be met with all the certainty they can give it. He is also going to ask that the Board be able to approach the Superior Court Judge. He realized this is not without expense but reiterated the fact this issue raises to the level that they need to go at this the very best they can. Also, as the Prosecutor's office pointed out in a letter a couple of weeks ago, they are busy people too.

At this point the Board wouldn't normally go out and solicit information, but obviously from the last meeting, and he wanted to make it very clear, that was the Chair's choice. It had nothing to do with the other two commissioners. The reason he made the choice to not allow comments was for time and expediency purposes. When he went to Olympia after putting their name on the line that day, rather than delaying the decision for one more week, he thought it absolutely necessary for securing funding. As it was,

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when they walked into the offices, the legislators asked, "where were you guys they last week, you needed to be here last week." Therefore, time was of the essence. That was the only reason for not accepting public comment. It wasn't because he didn't want to hear from the public. Obviously, he probably made a mistake and has heard from many, but he did think it was in the best interest of the county that they needed the county's name on the line to be able to go to Olympia and ask for assistance. Now, did we come out with anything? Not yet. The County Administrative Director, Public Works Director and he met with the Governor's staff which were very sympathetic but said there was no funding. They too wondered why they weren't in Olympia the previous week because the funding list had already been made. Secondly, they suggested if we knew anyone with connections with the person that holds the purse strings for the Public Works Trust Fund to get them to Olympia. Commissioner Partch immediately contacted Commissioner O'Neill and asked him to drop everything and make a trip to Olympia to make those contacts which he graciously did. Now, time will tell.

The discussion was then opened to public comment.

Eunice Coker addressed the estimated \$50,000 for attorney fees and \$15 million for the Hawkins development and what else that money could be used for if the county had it today.

- Reclassification of county employees has been frozen for many years; the county has very few employees that are classed correctly and paid for what they actually do, some of which have high levels of responsibility.
- Job family adjustments for county employees. Every year or so the county reviews its employees and how they compare to their peers at WSU and other counties. A job family adjustment has been done once in 20-some years.
- If we continue with our current financial system it will need extensive and expensive revamping to comply with current needs.
- The Auditor did not understand why the money was spent to go to Olympia because the Board had to know Washington State is in dire straits and there wouldn't be any money.
- County vehicles are available and everyone could have traveled together. There are better things to spend any money the county has especially when Denis Tracy has done an excellent job for the county. She asked, why spend extra money for an outside attorney.

Dick Appel said he agrees with the Auditor in that we have an attorney hired, we pay him good money, and his individual thoughts should determine whether or not he thinks he can represent the mistakes that were made. Since mistakes were made and they were personally made by individuals, if they feel they have to have better representation than what we have in the county, than that should be at their own personal expense. Fifty thousand dollars or whatever the cost can go a long way for things like the previous speaker said. As far as he is concerned, it is not a matter of whether we

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want the development or not, it is a matter of the action taken by the commissioners, whether it is legal or not and that is the purpose of our organization (OVIC) and himself personally.

Brett Myers said as County Sheriff he had some concerns and the responsibility to look out for the general fund to some degree because it supplies the vast majority of money for public safety in the county. He has worked with Denis Tracy for almost 10 years and didn't know if he has ever worked with a finer attorney both in the criminal aspect as well as the civil aspect. If he had to hire an attorney tomorrow and Denis was available he would be the person he went to. Fortunately, he is his attorney when it comes to county matters. Had there been a little more foresight given and a little more heed given to the Board's attorney's counsel on the front-end we might not be here, even if the same decision had been made. Denis Tracy, as the county counsel and attorney has done a knock-out job for this county for almost a decade and that would have been his advice early on. He has some concerns where it is known this will cost \$50,000 and it may even be over \$100,000 - he didn't know but in a day where the rest of us at the county are doing everything we can to get the job done, this just seems like the prudent thing to do would be to go with the prosecuting attorney. He says he can do the job and Mr. Myers had full confidence in him.

Commissioner Partch indicated he wanted to respond to the Auditor's comments. As far as the trip cost, they go to Olympia on a regular basis for a lot of different things. Although the state is broke, there is \$700 million in the Public Works Trust Fund that cannot be tapped by the state. That is the fund the county is after. That money was put in a moratorium until 2014. The day they submitted their paperwork to Olympia, the moratorium was lifted. The money is there, but as they pointed out, Whitman County representatives should have been in Olympia the week prior because they had already made their list.

Commissioner Partch said he combined this trip with a state committee paid Transportation Improvement Board meeting in Olympia. It cost the county only one night's lodging.

The whole thing about this gets right back to the Auditor's point about not being able to give our employees raises. We have not given our employees raises for 3 years. Yes, we have only done one job classification and yes our employees are underpaid. This year our proposed budget was \$1.5 million out of balance. The way the budget was balanced was by using the one-time sales tax money of \$500,000 from the windmills and \$500,000 was removed from department requests. The chiller for the jail must be replaced at the cost of \$600,000 and the air conditioner for the Information Technology building must be replaced for \$203,000. The county will be borrowing \$1 million from the Solid Waste Reserve fund. The loan will be repaid with the property tax revenue received from the windmills beginning in 2014 for 10 years. Had

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they not done this, the county would have begun layoffs this year, cutting non-mandated services to the people, probably closing parks, Extension, Fair (mostly self-supportive) but the non-mandated services only amount to \$270,000 and the rest are mandated services. The county will again go into the 2013 budget process with a \$1-\$1.5 million deficit. They have to look at the longer term and the longer term is solution is in the Corridor. The county has a one-time opportunity and if it doesn't happen here the retailers will locate in the City of Moscow because their infrastructure is already in place.

The county does not have the infrastructure that includes waste water treatment, wells (will be given to the county), water lines, roads, etc. which is the \$15 million cost we are talking about. Originally, it was estimated at \$18 million for public infrastructure - water, sewer, roads, sidewalks, etc., the same things available in the city. This is the same thing the Port does with the property taxes they receive. They buy land and put in the infrastructure so people can build buildings. The only difference is the timeframe. The retailers wanted to know by the end of the year (2011) and we said no, but we would look at the first of January 2012. This was all driven by time. It was unfortunate but he truly felt time was of a critical essence and needed to be done. If we didn't have our name on the line that day they could not have gone to Olympia the next week to find out they were already one week late. The other thing to know is that none of this money comes out of current property tax money. This is only funded by the sales and property tax money generated by the new stores. They will generate over a course of 20 years, above and beyond all expenses a conservative estimate of \$19 million. Therefore, no tax money is at risk. What is at risk is if the development didn't get going and didn't live up to its expectations. If they don't meet those expectations, they may not be able to meet the payment schedule. Obviously the money spent in the first 3 years is for infrastructure. The first payment would be due in July, 2013. Hawkins said if the county can't make the full payment, they will make up the difference for the first 6 years of payments.

Unfortunately, they didn't get the word out to everyone. They had an agreement in 2008 that said the county would spend up to \$18 million (in total) for infrastructure. Hawkins was going to spend \$9 million for public infrastructure, the wells, waste water treatment plant as their half and the county's half would be \$9.1 million. Unfortunately, that grew to \$19 million and Hawkins was going to spend \$4 million of their own money for public infrastructure, they had already paid for the wells that they will be given to the county along with the water rights. There is always risk and the risk is if they don't get full build out which is over 600,000 square feet, they would not be able to make the payments if they bonded. The bond was never the county's first choice in 2011. In 2008 it was the county's first choice. They said they would look at every opportunity including going to the state. To say the state is broke, yes they are broke, but they do have \$700 million in Public Works Trust funds that the state cannot tap

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into that is earmarked for county/city infrastructure and that is the reason they went to Olympia.

Commissioner Partch wanted to make sure the people in this room and the people out there know they have done their due diligence. They understand the risks. In getting back to the Sheriff and Auditor's comments, they are going to be making cuts next year. Commissioner Partch said he didn't want to make cuts, he wanted to preserve services. This project is based on sales tax that will generate funding and keep the county afloat until property taxes from the development come in and those are going to be fast tracked allowing the county to become self-sustaining in two years. That's what this is all about. He wanted to be able to give the employees raises, but there is nothing else on the horizon that will allow them to do so at this time. There is no funding available that will even allow the county to continue at the current service level beginning in 2013. They will know at the end of this legislative session if the county is going to lose one-half of its Public Health. If that happens, they could more than likely shut down the Public Health services in Pullman. District Court has an office in Pullman as well and they may have to close that office. That is the explanation for this development. This is the only game in town and if we don't go this way, mark my words, whomever is sitting up here in 2013 will be saying, "I'm sorry, we don't have the money, we are going to have to cut this and this and this and our employees won't get anything. By looking at this long-term project we will be able to raise employee wages.

If the state passes their version of doing away with their participation in the schools equalization it would be devastating. The Pullman School District stands to gain approximately \$265,000 for general maintenance, another \$100,000+ bond per year and another \$30,000-\$60,000 from property taxes generated by the Hawkins project. Hawkins would make a huge positive impact on the school district, library and fire district.

Commissioner Partch said he didn't want himself or someone else sitting on the Board next year saying "I wish I would have." He wasn't going to look backwards because he truly believed he did the right thing.

Eunice Coker commented everything you just said underlines the reason to not spend \$50,000+ for an attorney when we have one that is perfectly capable and ready to go.

Commissioner Partch said for that same reason is why they have to do everything possible to make sure we defend ourselves in the best way. He disagreed with the Auditor noting it will cost money but it is one they can't afford to lose.

Dick Appel said he agreed whole heartedly that the county should use the present attorney hired. He is a proficient and very effective person and we need to use him. One thing that hasn't been considered in this whole

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program since you opened a whole can of worms and went beyond the attorney issue and that is if the people in Whitman County drive all the way to the Idaho border, why would they stop at the border and go to the Hawkins development when they can go across the line and pick up 2% savings on sales tax.

Commissioner Partch responded the report they used 4 years ago is currently being updated. In 2008 there was a study done for the Port by Dr. Peterson, regional economist and he is looking at \$180 million of what he refers to as leakage. Because of no services in Whitman County, you and I and everyone else are going to the City of Moscow, Lewiston, Clarkston and Spokane. If we could only encapsulate half of that. In answer to Mr. Appel's question, those big companies Lowe's and another that will not allow to use their name at the moment but it is a very large retail store, is fast tracking this project. As a condition of the contract, it is null and void if two large retailers don't sign.

At the same point, Mr. Appel said if in fact the retailers do sign and he drives to the Hawkins development for something, it doesn't mean that he will stop at any of the other little strip malls in the Hawkins development, he will still drive into Moscow for the rest of his business. Commissioner Partch didn't disagree with Mr. Appel about shopping in both locations.

Mr. Appel also thought the projection of profits is skewed a bit. Commissioner Partch said Dr. Peterson is the individual that prepared the information and that is his conservative projection. One of the good things in Washington is the fact there is no sales tax on food. There are some incentives if there is a food retailer in the development.

By building in an unincorporated area of the county, the county will receive the full 1% sales tax. Development in an incorporated city only brings 15 hundredths of 1% to the county. Pullman Wal-Mart has been the county's largest sales tax source over the past year. The opening of Wal-Mart in Moscow will probably reduce the county's sales tax revenue from the Pullman Wal-Mart by up to 50%.

The City of Moscow is preparing and doing everything they can to allow for big box store. Four hours after the commissioners made their decision on January 3rd, Moscow City Council approved rezoning the property behind Winco for retail in the event Hawkins doesn't develop in Whitman County another option will be available to those same retailers. Is Whitman County and the City of Moscow vying against each other - yes. Do they have some advantages - yes.

Mr. Appel said about the only people the project will pick up are the people that normally go to Rosauers, Ace Hardware, other than the two big items that Lowe's handles. Commissioner Partch disagreed based on Dr. Peterson's study that says people are already going there we are just trying to keep

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them here. He didn't think it would impact Rosauers in Colfax. It will also create 1,400 new jobs and keep the tax dollars here making the difference for Whitman County and Mr. Appel added, as long as the businesses here don't go out of business. Commissioner Partch said if the new businesses can be retained, the other businesses around them also flourish. The bottom line is to keep Whitman County sales tax dollars in Whitman County.

Commissioner O'Neill wanted to make it very clear that for his trip to Olympia, if he had taken a county vehicle it would have cost the same because ER&R rates are the same as the county's mileage reimbursement rate for using his personal vehicle. Therefore, there is no savings as far as mileage. As far as hotel fees they were under \$100. The last time he was in Olympia was 3 years ago. His only other travel is to Medical Lake for the monthly Martin Hall meeting usually \$87/month. On top of that he wanted everyone to know that he has waived his health insurance coverage through Whitman County. As of December 31, 2011 he has saved the county \$19,537 in medical insurance premiums. Therefore he didn't believe he has been costing the county money while trying to do his job and has been watching the dollars and cents. He didn't feel the cost of his trip to Olympia was outlandish.

Eunice Coker asked Commissioner O'Neill if he had medical insurance from another source and he replied, yes. Ms. Coker said county employees don't, they have no other medical insurance and have to take medical insurance through the county. Commissioner O'Neill asked if it mattered because that is his choice. Ms. Coker agreed it is his choice but she wanted it to be clear that he has said in many other meetings he doesn't use the county's medical insurance plan, but he does have medical insurance that he is covered under from a previous position. Commissioner O'Neill said he could take the county's medical insurance too, but he is saving the county the money and that was his point.

Commissioner Partch said he gave up his travel allowance of \$600/month 4 years ago. He hasn't taken any in-county travel since that time and has saved the county a lot of money. His trip to Olympia was combined with another trip that paid for the majority of the expenses.

There being no other comments, the vote was held as to whether or not the county should seek outside counsel. Commissioners O'Neill and Partch voted **aye** and Commissioner Largent voted **nay**.

13. The next step was to decide the best way to approach the Superior Court Judge. Since the statute is not specific Commissioner Partch suggested each of the commissioners write a letter to the judge stating the reasons why they are asking for an outside attorney and to get back to them as soon as possible.

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Denis Tracy said it can be done that way. The statute is not specific to what, if any criteria the Superior Court should use in deciding the commission's request. The court may interpret the statute as just imposing on the court the responsibility to review a contract with outside counsel for any potential flaws and not imposing on the court or even authorizing the court to review the validity of the commission's decision. You can approach the court however you like.

Commissioner O'Neill confirmed if the court does not approve the request then Denis Tracy will represent the commission and Denis Tracy responded yes. If the court does not approve the contract for outside counsel then he will represent the county.

Commissioner Partch thought the Prosecutor had been more than fair in pointing out that it is his obligation by the statute and he intends to fulfill that obligation to the best of his ability and he had no reason to not suspect that he would accordingly.

Dick Appel asked if he could also contact the judge. Commissioner Partch thought Mr. Appel could do whatever he wanted. He didn't know about the legality of that. Denis Tracy believed that would be up to the judge as to how to handle that and whether or not to take comment on the issue or not. The statute is not specific about whether the judge even has the discretion to review the propriety of this decision. As the Prosecutor, Mr. Appel said Mr. Tracy also represents him and Mr. Tracy clarified the county and Mr. Appel added and me as a tax payer. He asked Mr. Tracy if he could tell the judge there are people on the outside, if the judge is open to comment, that would like to submit something. Mr. Tracy said it is not clear if the judge will handle this issue in open or closed session. He understands or thinks Judge Frazier has or intends to recuse himself from hearing the lawsuit. He might choose to recuse himself from hearing this request too.

Commissioner Partch said one of the things the Prosecutor pointed out is that time is of the essence due to the response timeframes. He did get an extension from the firm of Esser & Sandberg to allow the county more time to move through this process and that does help.

Commissioner Largent asked the Prosecutor if he would be amiable to a motion based on his offer in executive session for service to the Board. Commissioner Largent **moved** to appoint the Chief Deputy Prosecuting Attorney to represent the county in front of the Superior Court judge (with a request for outside counsel). Commissioner O'Neill **seconded** the motion.

Commissioner Largent expressed concern from his perspective because he is not licensed to practice law in the State of Washington; not knowing the exact nature of the hearing, but knowing it is not a suit against individuals it is a suit against the county so he could not represent the county in court.

Commissioner Partch thought there is definitely a gray area. The statute doesn't say how the request gets to the judge. He thought it would be appropriate for all 3 commissioners to submit their reasoning. He wasn't sure a Deputy Prosecutor could do that. Most directly each commissioner could just say why they voted the way they did and let the judge decide.

Commissioner O'Neill said on the legal side, because it is such a gray area, he was at a quandary. From a legal standpoint, Commissioner O'Neill said he too was not an attorney. Maybe the commissioners can tell him exactly how they feel and he should be able to relay that information legally to the judge.

There being no further discussion the vote was held; Commissioners Partch voted **nay** and Commissioner Largent voted **aye**, Commissioner O'Neill **abstained, motion failed.**

Denis Tracy offered the suggestion that the Board did not necessarily have to do this in a two-stage process if they have counsel in mind. They can contact that firm or individual attorney. To be clear, Superior Court is not going to identify who will represent the county if the Board hires outside counsel. It is the Board's choice as to who that counsel would be. As an alternative, they can contact that counsel and have them make the presentation to the judge along with the contract they are asking the judge to approve which would state the hourly rate, etc.

Commissioner Partch thanked Mr. Tracy for his suggestion and added that he thought the County's Prosecutor is a good prosecutor and trying to do what is best for the long-term of the county. He just didn't believe the county could afford to lose this case because it is very, very important.

Commissioner O'Neill fully agreed with Commissioner Partch and that Denis Tracy is a fabulous prosecutor and has done a good job from everything he has heard. His staff and he with the high workload get the job done and he has never heard anything negative.

Commissioner Partch recapped, the Prosecutor's thoughts are to talk with outside counsel and ask them to present to the Superior Court Judge the case of allowing for outside counsel along with a proposed contract.

Commissioner O'Neill **moved** to talk with outside counsel and ask them to present to the Superior Court Judge the case of allowing for outside counsel along with a proposed contract and Commissioner Partch **seconded** the motion. Commissioners O'Neill and Partch voted **aye** and Commissioner Largent voted **nay**.

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The Chairman will contact outside counsel to see if they are willing to approach the Superior Court Judge for representing the commissioners in this case along with a contract proposal.

072736 14. Executed copies of Department of Enterprise Services for the McKinstry project received as follows:

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| Project #2011-189 | Amendment #1 to Interagency Agreement |
| Project #2011-189 A(1) | Amendment #2 Funding Approval |
| Project #2011-189 A(1) | Authorization for Amendment #2 |
| Project #2011-189 B(2) | Funding Approval-Corrections Building Phase I |
| Project #2011-189 B(2) | Authorization for Corrections Building Phase I |
| Project #2011-189 B(2) | Authorization to Proceed |
| Project #2011-189 G(2-1) | Funding Approval for Corrections Building Phase I |
| Project #2011-189 G(2-1) | ESCO Approval for Corrections Building Phase I |

072737 15. Commissioners' pending list reviewed.

11:00 a.m. - Mark Storey, Public Works Director.

Present: Phil Meyer, Dan Gladwill, Gary Petrovich, 2 visitors, Joe Smillie and Kelli Hadley and James Dawson.

ACTION ITEMS

Building Division:

072738 16. Commissioner Largent **moved** Commissioner O'Neill **seconded** the motion and it **carried** that the resolution to set fees for commercial and residential wind turbines be signed as presented.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON**

| | | |
|--|---|---|
| In the Matter of Adopting Revised |) | RESOLUTION NO. <u>072738</u> |
| Fees for Issuing Permits for |) | |
| Construction of Wind Turbines |) | ORDER ESTABLISHING FEES |
| Whitman County, Washington |) | BUILDING DEPARTMENT FEE SCHEDULE |

BEFORE THE BOARD OF COUNTY COMMISSIONERS of Whitman County, Washington in the matter of assessing reasonable fees for the issuance of construction permits for both private and commercial wind turbines, to be used in the generation of electricity,

WHEREAS, the Whitman County Building Department has seen an increase in both residential and commercial wind turbine construction over the last few years,

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AND, WHEREAS, the Building Department has been tracking the cost for Whitman County to provide the necessary review and inspection services, and has also reviewed the permitting costs imposed by other counties in the region,

AND, WHEREAS, Whitman County feels it is important to establish a specific fee schedule for permitting and inspecting wind turbines,

IT IS HEREBY RESOLVED that Whitman County accepts and adopts the following fees for residential and commercial wind turbines:

Residential: 50 feet or less - \$100

Residential: Greater than 50 feet - \$200

Commercial: Fees are to be based on the construction valuation for placement of the foundation system plus a one-time plan review fee based on the valuation of each different style of wind turbine.

ADOPTED this 6th day of February, 2012.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

Greg Partch, Chairman

ATTEST:

Patrick J. O'Neill, Commiss.

Maribeth Becker, CMC
Clerk of the Board

Michael Largent, Commissioner

072739 17. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** that the resolution to establish a new direct cost based permitting and inspection fee schedule for agricultural structures be signed as presented.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON**

In the Matter of Establishing a)
Revised Direct Cost Fee Schedule) **RESOLUTION NO. 072739**
For Agricultural Structures as)
Required by Washington State Law) **ESTABLISHING FEES**

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BEFORE THE BOARD OF COUNTY COMMISSIONERS of Whitman County, Washington in the matter of establishing a new direct cost fee schedule for Agricultural Structures;

WHEREAS, the legislature finds that permit and inspection fees for new Agricultural Structures should not exceed the direct and indirect costs associated with reviewing permit applications, plan review, conducting inspections, and preparing specific environmental documents,

AND, WHEREAS, the legislature defines "Agricultural Structure" as a structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products, which may not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor may it be a place used by the public,

AND, WHEREAS, the Board recognizes that since 2009, the Whitman County Building Department has been tracking direct and indirect costs affiliated with the permitting and inspections of agricultural structures, and found that a revision of the fee schedule is now warranted,

IT IS HEREBY RESOLVED that Whitman County will establish a new direct cost based permitting and inspection fee schedule for Agricultural Structures, based on a \$7.50 per square foot valuation, effective immediately.

ADOPTED this 6th day of February, 2012.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

Greg Partch, Chairman

Patrick J. O'Neill, Commiss.

ATTEST:

Maribeth Becker, CMC
Clerk of the Board

Michael Largent, Commissioner

072740 18. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to publish the notice of call for bids for one new 2012 model 3500 gallon asphalt distributor installed on Whitman County truck and delivered.

11:30 a.m. - Sean Moss of Rosalia Schools.

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Present: Patty Mills of Oakesdale Schools and Cheryl Lothspeich of Colfax Schools, Kelli Hadley, James Dawson and Joe Smillie.

D072740A 19. Patty Mills said she would like to initiate a Whitman County spring art show in the Courthouse. Some issues that would need to be worked out are overseeing and safeguarding the artwork. This would be a strong method of teaching students outside of the classroom and into the public about critical thinking. Ms. Lothspeich explained in this way others would be adjudicating the artwork and not the teachers. Ms. Mills suggested the possibility of a "commissioners' choice" and evening reception. Commissioner Largent **moved** Commissioner O'Neill **seconded** the motion and it **carried** that the Board supports the efforts of Whitman County school art teachers to promote and honor the efforts of the art students in Whitman County and facilitate this project at the Courthouse with Bob Reynolds.

11:45 a.m. - Recess.

1:00 p.m. - Board Business Continued/BOCC Workshop.

Present: Fran Martin.

072741 20. Items discussed included Public Health/Emergency Management staffing and wages and the Public Works Director wages. No action taken.

1:20 p.m. - Recess.

2:00 p.m. - 2012 Loader Bids.

Present: Mark Storey, Phil Meyer, David Nails, Kelli Hadley and 4 bidders.

072742 21. The following bids were received.

| BIDDER | AMOUNT |
|---|---------------|
| Triad Machinery, Spokane, WA | \$134,790.00 |
| Rowand Machinery Co, Spokane, WA | \$ 97,650.00 |
| Clyde West, Spokane, WA | \$101,999.00 |
| Central Machinery Sales, Pasco, WA | \$112,370.00 |
| Western States Equipment Co, Lewiston, ID | \$112,235.00 |

The commissioners will make an award February 13th.

2:15 p.m. - Recess.

3:00 p.m. - Board Business Continued/BOCC Workshop.

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Present: John Love, Dan Boone, Tom Kammerzell, Joe Poire, Dick Watters, Marshall Doak, Gary Petrovich, Joe Smillie, Kelli Hadley. Commissioner O'Neill was unavailable.

072743 22. Items discussed included fiber optics, Hawkins Development, SEWEDA update, Port's 2012 study, rail loading facility, and FAA/Pullman Regional Airport. No action taken.

4:00 p.m. - Recess.

D072743A THE BOARD OF WHITMAN COUNTY COMMISSIONERS met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Monday, February 13, 2012 at 9:00 a.m.** Chairman Greg Partch, Patrick J. O'Neill and Michael Largent Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

9:00 a.m. - Meeting Reconvened/Board Business Continued/Workshop.

Present: Gary Petrovich, Joe Smillie and Kelli Hadley.

072744 23. Items discussed included Administrative Services Director schedule, county bank RFP, cash v accrual, Finance Committee meeting, Dr Moody's letter, WRCIP v WRCP and possible special attorney. No action taken.

9:25 a.m. - Recess.

10:00 a.m. - Reconvene/Board Business Continued.

Present: Mark Storey, Phil Meyer, Gary Petrovich, Karen Johnson, Joe Smillie and Kelli Hadley.

072745 24. Claims/Payroll warrants numbered **261387-261530** for **\$232,010.00** approved.

072746 25. Veteran relief claim approved.

072747-072752 26. Personnel change orders approved.

10:05 a.m. - Denis Tracy, Joe Reynolds and Milton Rowland.

072753 27. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to certify 2012 taxes as presented.

072754-072755 28. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to award the bid for one new 2012 diesel powered

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articulated four wheel drive loader and trade-in to Rowand Machinery Company for a total bid amount of \$97,650.00.

072755A 29. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to enter into an interlocal cooperation agreement with Fire District #2 regarding small works rosters.

10:10 a.m. - Fran Martin and David Ledbetter.

072755B 30. The revised Washington Counties Insurance Fund trust agreement and bylaws was tabled to February 21st.

072756 31. Commissioner O'Neill **moved** Commissioner Largent **seconded** the motion and it **carried** to approve the 2012 Road bargaining agreement (12/31/12).

072757 32. Commissioner Largent **moved** Commissioner O'Neill **seconded** the motion and it **carried** to authorize submission of update for the Local Revitalization Financing Program report.

072758 33. Commissioner Largent **moved** Commissioner O'Neill **seconded** the motion and it **carried** to appoint Gary Petrovich and Chris Nelson as Health Information Portability and Accounting Act (HIPAA) compliance officers. No term expirations.

072759 34. Commissioner Largent **moved** Commissioner O'Neill **seconded** the motion and it **carried** to send a letter of appreciation to John Aune for his 14+ years of service and appointment of Charles Petras to the Whitman County Rural Library Board of Trustees. Mr. Petras' term will expire 12/31/16.

10:20 a.m. - **Outside Counsel.**

Present: Denis Tracy, Gary Petrovich, David Ledbetter, Fran Martin, Milton Rowland, Karen Johnson, one member of the public, Joe Smillie and Kelli Hadley.

072760 35. At the last board meeting, Commissioner Partch as Chair was directed to contact counsel for representing the county on the OVIC lawsuit. He contacted Brian Werst of K&L Gates but the firm had a conflict. Mr. Werst recommended Milton Rowland with Foster Pepper to approach the Superior Court Judge requesting an outside attorney along with a contract for services. He met with Mr. Rowland who offered to petition the judge for outside counsel along with a proposed contract pro bono.

Mr. Rowland said he just met Mr. Tracy a moment ago. Denis Tracy has an excellent reputation and is a great county prosecutor his name however is all the over the complaint. Mr. Rowland as litigation counsel for the

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City of Spokane for 14 years and sometimes what plaintiffs would do to try to keep him off the case was to name him in the lawsuit and make him a witness, that sort of thing.

The statute Commissioner Partch was referring is not entirely clearly written but the next step that has to be done and he hoped it is with Mr. Tracy's blessing, is to go to the Superior Court Judge with a proposed contract. He would simply propose the standard contract form that that Foster Pepper uses. They represent literally over 1,000 government agencies in the State of Washington, if not currently, at least over time. He has represented mainly the City of Spokane but many other government agencies for the last 20 years and for 22 years he has been teaching local government law at Gonzaga Law School and the University of Idaho Law School.

Mr. Rowland has read the complaint and has a lot of ideas but until the contract is approved all he can do is offer his services pro bono to that point. He offered to answer any questions the Board might have to satisfy themselves to determine if they thought he could do a good job for them. The next step would be to work with the Board's designee, Commissioner Partch or whomever else the commissioners choose as a group then he would submit the proposed contract to the Superior Court along with a proposed order approving that contract. If Judge Frazier has any questions he can schedule a hearing at which time they could talk about the contract. That is not typical. Typically the judge would want to hear from Mr. Tracy's office if there were any concerns or questions that Mr. Tracy had, otherwise the court would as a matter of course simply approve the contract and move forward with the defense.

Denis Tracy indicated he was only present because Mr. Petrovich suggested or asked him to be in attendance. He is in the Courthouse if the Board has some questions for him he would be glad to try to answer.

Commissioner O'Neill **moved** Commissioner Partch **seconded** the motion to select Milton Rowland, Attorney At Law, with the firm of Foster Pepper to submit a petition pro bono to the Superior Court Judge David Frazier for outside counsel.

Commissioners Partch and O'Neill voted **aye** and Commissioner Largent **abstained**. Motion **carried**.

Commissioner Partch suggested Mr. Rowland meet with Gary Petrovich, lead on the Hawkins development and then individually with the commissioners later in the day.

D072760A 36. A letter was received from Dr. Timothy Moody regarding his current Public Health Officer contract and Fran Martin's letter

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terminating the contract. This item tabled to February 21st Board of Health meeting.

072760B 37. An email was received from Kristie Kirkpatrick regarding the proposed artwork in the Courthouse. Commissioner Largent suggested the coordination of the art teachers, library staff and Bob Reynolds.

072761 38. An email was received from Bob Reynolds concerning the Colfax Chamber of Commerce request to advertise community events on the CETC electronic reader board. The commissioners had no problem with the request.

072762 39. An email was received from the McNamara's opposing the Hawkins Development.

072763 40. An email was received from Margaret Prentice of Colorado regarding the seizing of our Nation and global resources and the extinction of our commerce.

10:35 a.m. - Recess.

10:40 a.m. - BOCC Workshop.

Present: Esther Wilson, Gary Petrovich, Kim Donahue, Amy Robbins, Eunice Coker, David Ledbetter, Karen Johnson, Kelli Hadley and Joe Smillie.

072768 41. The issue discussed was Community Action Center grants/financial processes. No action taken.

11:00 a.m. - Adjournment.

D072768A Commissioner O'Neill **moved** to adjourn the **February 6 and 13, 2012** meeting. Motion **seconded** by Commissioner Largent and **carried**. The Board will meet in regular session, in their Chambers', in the Whitman County Courthouse, Colfax, Washington, on **February 21, 2012**. The foregoing action made this **13th** day of **February 2012**.

ss/ PATRICK J. O'NEILL, COMMISSIONER

ss/ MICHAEL LARGENT, COMMISSIONER

MARIBETH BECKER, CMC
Clerk of the Board

GREG PARTCH, CHAIRMAN
Board of County Commissioners