

Minutes for November 2, 2009

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070022 THE BOARD OF WHITMAN COUNTY COMMISSIONERS met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Monday, November 2, 2009 at 9:00 a.m.** Chairman Michael Largent, Patrick J. O'Neill and Greg Partch, Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

9:00 a.m. - Board Business Continued/Executive Session.

Present: Gary and Valerie Hunt and Kelli Campbell.

070023 1. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion and it **carried** to go into executive session with the above individuals until 10:00 a.m. in accordance with RCW 42.30.140(4)(a) for matters related to negotiations.

10:00 a.m. - Return to Open Session/Pledge of Allegiance.

Present: Debbie Hooper and Joe Smillie.

D070023A 2. Motion by Commissioner Partch to accept the consent agenda with the deletion of item #1E5. Motion **seconded** by Commissioner O'Neill and **carried**.

070024 3. Claims/Payroll warrants numbered **223230-233244, 233375-233384, 233447-233457** and **233483-233721** for **\$753,156.27** approved.

FUND	FUND NAME	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
001	Current Expense	48,851.38	5,012.80	36,476.19	2,140.29	86,954.88
101	Self Insurance					82.40
102	Building & Development	1,659.60				984.27
103	Countywide Planning	3,067.40				657.92
104	Developmental Services			82.33		17.17
110	County Roads	14,235.00	1,657.40			39,870.57
114	Bulk Purchasing-Paper					2,843.56
117	Boating Safety					242.51
122	Sheriff's K-9 Unit					465.07
123	Paths/Trails-Park 123.310.000				1,085.00	
123	Paths/Trails-BCPT 123.310.001			1,192.33		5,479.80
125	Donations-F/FM 125.300.000					100.00
126	Treasurer's O&M				264.11	256.50
127	Drug Enforcement-Quad City	400.00				17,423.71
128	Crime Victims/Witness-Pros. 000	350.00				
134	Elections Reserve 000					212.00
135	Prosecutor's Stop Grant	150.00				363.81
137	Web Site Development					51.50
144	Emerg. Communicat. 144.260.001	250.00			93.96	7,478.13
300	CIP Asset Acquisit. 300.010.001			173.71		176.52
400	Solid Waste	800.00				125,687.23

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501	Equipment Rental & Revolving		4,697.40	350.00			8,638.69
510	Photocopier Revolving						1,632.96
511	Unemployment Insurance						6,863.87
513	Communications Revolving						2,747.91
657	Parks & Recreation Districts				770.35		
660	Whitcom-General	660.911.000				65,412.65	19.88
660	Whitcom-Grant	660.911.001			38,161.04	3,130.64	32,081.14
690	Clearing Fund	690.004.000				51,614.10	
690	Clearing Fund	690.005.000					168,441.50

070025 4. October 19, 2009 minutes approved.

070026-070034 5. Personnel board orders approved.

070035 6. Information reviewed from Bob Reynolds concerning the need to declare an emergency for repairs to the Correctional Facility Building roof and utilizing the Harrison Building roof contractor (All Surface Roofing & Waterproofing) currently on site to perform these repairs up to \$7,500.

070036 Commissioner O'Neill **moved** Commissioner Partch **seconded** the motion and it **carried** to accept the recommendation as presented.

RESOLUTION NO. 070036
OF
THE BOARD OF COUNTY COMMISSIONERS
FOR WHITMAN COUNTY, STATE OF WASHINGTON

WHEREAS, the Board of County Commissioners for Whitman County, State of Washington, met in regular session on Monday, November 2nd, 2009; and

WHEREAS, the Board agrees that a state of emergency existed on Monday October 26th because of the breach in the Correctional Facility Roof; and

WHEREAS, immediate action was needed to protect the integrity of the structure of the facility and its amenities, before severe weather becomes a limiting factor; and

WHEREAS, it is agreed that the Director of Whitman County Fair/Facilities Management respond appropriately to this situation; and

WHEREAS, the Board agrees with the Director, in his memo attached dated October 26th, 2009, and incorporated the memo as part of this resolution.

NOW, THEREFORE BE IT RESOLVED AND IT IS ORDERED that an emergency existed and the competitive bid process be waived in pursuit of mitigation to damage and time factors involved in securing such bids causing delays in project starting dates, as provided for in RCW 36.32.270 Competitive bids-Emergency purchases.

PASSED, APPROVED AND ADOPTED this 2nd day of November 2009.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

Michael Largent, Chairman

Greg Partch, Commissioner

ATTEST:

Maribeth Becker, CMC
Clerk of the Board

Patrick J. O'Neill, Commiss.

ATTACHMENT

In our CIP plan we had made arrangements to do roof repairs on the Whitman County Correctional Facility. Bid methods have been approved by the Whitman County Prosecutor, to use the small works roster and we were prepared to go ahead with the aforementioned plan directly after the Harrison Building Re-Roof project was underway. Because of delays in the award of bid on the Harrison Project and the change in weather patterns we are at a critical point in the plan for the Correctional Facility Roof project. It is in this regard that I recommend we declare an emergency situation for the Correctional Facility project and utilize the bid winner of the Harrison project to take appropriate actions to mitigate any damage we expect from the delay of the Correctional Facility Roof Project up to \$7500.00 costs incurred until we can appropriately complete the project as intended. This will certainly help in limiting the damage that would most likely occur to the structure if no action is taken until spring on the project.

070037 7. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion to sign an agreement between Whitman County and E. Merrill Boyd Farms, Inc. (08/30/09). Motion **carried**; Commissioner O'Neill abstained.

070038 8. Commissioner O'Neill **moved** Commissioner Partch **seconded** the motion and it **carried** to appoint Nick VanArsdel and Shelly Quinton to 3-year unexpired terms on the Solid Waste Advisory Committee. Mr. VanArsdel's term will expire 12/31/10 and Ms. Quinton's term will expire 12/31/11.

070039 9. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion and it **carried** to sign a letter of appreciation to Marie Doak as presented for her 32 years of service to the Whitman County Rural Library District.

BOCC MINUTES-11/02/09

070040-0700041 10. Information pertaining to the request of Guardian Angel-St. Boniface School and St. John Community Building for special occasion liquor licenses was received from the Washington State Liquor Control Board. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion and it **carried** to approve the request and have the Chairman sign the same.

070042 11. Commissioners' pending list reviewed.

10:45 a.m. - Recess.

10:50 a.m. - Whitman County Budget Amendment #3.

Present: Sharron Cunningham, Debbie Kilpatrick, Esther Wilson, Marlynn Markley, Mark Storey, Kelli Campbell, Bob Reynolds, Kristina Cooper and Joe Smillie.

070043 Chairman Largent convened the hearing for budget amendment #3 Sharron Cunningham provided the following staff report.

DEPARTMENT	REVENUE	EXPENDI-TURES	PURPOSE
Current Expense/General Fund:			
General Fund Revenue	500		Increase in Communications/Pay Phone Revenue
General Fund Revenue	33,000		Transfer In-Public Defense Fund
General Fund Revenue	45,000		Transfer In-Electric Monitoring
General Fund Revenue	(27,980)		Decrease-Ind Fed Grant changing to ARRA
General Fund Revenue	27,980		Increase-ARRA Ind Fed Grant-VAW-PA
General Fund Revenue	15,000		Increase-ARRA Ind Fed Grant-Recovery/Byrne
General Fund Revenue	38,000		Increase-PA Court Cost Recoupments
General Fund Revenue	(30,000)		Decrease-Ind Fed Grant-Narcotic Task Force
General Fund Revenue	39,999		Increase-ARRA Ind Fed Grant-Recovery Act
General Fund Revenue	13,500		Increase Ind Fed Grant-Speed Emphasis
General Fund Revenue	3,000		Increase Ind Fed Grant-DUI Emphasis
General Fund Revenue	12,825		Overall Increase in State Grants
General Fund Revenue	478		Overall Increase in Federal and State Grants
General Fund Revenue	26,186		Zero net effect (see below)
General Fund Revenue	(26,186)		Changing to correct acct numbers
Commissioners		4,523	Increase in Advertising, Transfer In Doc Mgt.

BOCC MINUTES-11/02/09

Human Resources		(500)	Decrease in Office Furniture
Auditor		(32,035)	Decrease in Salaries, Benefits, VRS operating accounts
Assessor		(14,847)	Decrease in Salaries/Benefits, reduction in staff
Prosecuting Attorney		(7,537)	Decrease in Salaries/Benefits, waiting to fill position
Facilities Management		4,190	Increase due to taking on CETC expenditures
Sheriff		26,499	Increase Overtime, Small Tools & Equipment offset by revenue
Juvenile Services		(5,861)	Decrease In Salaries/Benefits, changes in operating expenditures
Weed		(500)	Decrease in Interfund Rentals-Vehicles
Public Health		478	Increase in operating Expenditures-offset by revenue
Information Technology		0	Zero net effect-reallocation of funds
Beginning Fund Balance	(196,892)		Decreasing Fund Balance Deficit
CE Totals	(25,590)	(25,590)	
Non Current Expense/General Fund:			
Homeless Housing Plan	14,118	14,118	Increase Charges for Services Revenue, Increase Professional Services-Housing Management
County Road	896,000	896,000	Increase for ARRA Grant for Wawawai Road, Increase expenditure for Capital Outlay
SO Drug Enforcement	3,000	3,000	Overall Increase in Revenue, increasing offsetting expenditures
Document Preservation	0	0	Zero net effect of changes in expenditures
District Court-Electronic Monitoring	0	0	Zero net effect of changes in expenditures
District Court-Public Defense	0	0	Zero net effect of changes in expenditures
Document Management	2,523	2,523	Increase in Transfer In from CE, Increase for operating expenditures
Communications Revolving	200,000	200,000	Increase Transfer Out, Beginning Fund Balance
Total Non-Current Expense Funds	1,115,641	1,115,641	
Total Budget Amendment #3 2009	1,090,051	1,090,051	

The Chairman opened the hearing to public comments and there being none adjourned the hearing. Commissioner Largent was very impressed and grateful to the department heads/elected officials for their efforts in reducing the deficit. Commissioner O'Neill thought this was truly remarkable accomplishment as opposed to where the deficit was previously. Commissioner Partch also thanked everyone noting the 2009 budget is a template for 2010. Commissioner O'Neill **moved** Commissioner Partch **seconded** the motion and it **carried** to approve budget amendment #3 as presented.

RESOLUTION NO. 070044
OF
THE BOARD OF WHITMAN COUNTY COMMISSIONERS
FOR WHITMAN COUNTY, STATE OF WASHINGTON

WHEREAS, the Board of County Commissioners for Whitman County, State of Washington, met in regular session on Monday, November 2, 2009; and

WHEREAS, any and all taxpayers appearing at the hearing held November 2, 2009, to be heard for or against any part of the budget amendment have been given the opportunity to be heard; and

WHEREAS, the Assistant Finance Director estimates that these amendments are necessary for the operation of the specified funds through the end of the fiscal year 2009.

BOCC MINUTES-11/02/09

NOW, THEREFORE, BE IT HEREBY RESOLVED that the authorized appropriations for these funds of Whitman County for fiscal year 2009 be amended by the amounts indicated as attached; and,

BE IT FURTHER RESOLVED that the appropriate entries to the accounting records be made to reflect the aforementioned budget amendment.

PASSED, APPROVED AND ADOPTED this 2nd day of November, 2009.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

Michael Largent, Chairman

Greg Partch, Commissioner

ATTEST:

Maribeth Becker, CMC
Clerk of the Board

Patrick J. O'Neill, Commiss.

WHITMAN COUNTY BUDGET 2009

Fund	Budget Amendment #3	2009 #3 Amendment Balance	Inc/Dec	% of Change
<i>Beginning Fund Balance</i>	(196,892)	113,920	(196,892)	-63.35%
SUBTOTAL NEW REVENUE	171,302	11,619,276	171,302	1.50%
CURRENT EXPENSE REVENUE	(25,590)	11,733,196	(25,590)	-0.22%
COMMISSIONERS	4,523	1,310,460	4,523	0.35%
HUMAN RESOURCES	(500)	167,248	(500)	-0.30%
SUPERIOR COURT	-	347,128	-	0.00%
DISTRICT COURT	-	866,576	-	0.00%
CLERK	-	184,162	-	0.00%
TREASURER	-	298,059	-	0.00%
AUDITOR	(32,035)	609,029	(32,035)	-5.00%
ASSESSOR	(14,847)	374,699	(14,847)	-3.81%
PROSECUTING ATTORNEY	(7,537)	544,377	(7,537)	-1.37%
CHILD SUPPORT ENFORCEMENT	-	135,911	-	0.00%
FACILITIES MANAGEMENT	4,190	513,929	4,190	0.82%
SHERIFF	26,499	2,847,105	26,499	0.94%

BOCC MINUTES-11/02/09

JUVENILE SERVICES	(5,861)	647,267	(5,861)	-0.90%
WEED	(500)	88,672	(500)	-0.56%
CORONER	-	103,867	-	0.00%
COUNTY EXTENSION	-	120,178	-	0.00%
EMERGENCY MANAGEMENT	-	222,237	-	0.00%
PUBLIC HEALTH	478	1,277,574	478	0.04%
FAIR/FAIRGROUNDS	-	264,161	-	0.00%
PARKS & RECREATION	-	337,001	-	0.00%
INFORMATION TECHNOLOGY	-	203,236	-	0.00%
FINANCIAL SERVICES	-	270,320	-	0.00%
CURRENT EXPENSE EXPENDITURES	(25,590)	11,733,196	(25,590)	-0.22%
SELF INSURANCE REVENUE	-	98,903	-	0.00%
SELF INSURANCE EXPENDITURES	-	98,903	-	0.00%
BUILDING & DEVELOPMENT REVENUE	-	147,100	-	0.00%
BUILDING & DEVELOPMENT EXPENDITURES	-	147,100	-	0.00%
COUNTYWIDE PLANNING REVENUE	-	224,478	-	0.00%
COUNTYWIDE PLANNING EXPENDITURES	-	224,478	-	0.00%
DEVELOPMENTAL SERVICES REVENUE	-	685,281	-	0.00%
DEVELOPMENTAL SERVICES EXPENDITURES	-	684,981	-	0.00%
EXTENSION PUBLICATIONS REVENUE	-	798	-	0.00%
EXTENSION PUBLICATIONS EXPENDITURES	-	798	-	0.00%
VETERANS RELIEF REVENUE	-	27,430	-	0.00%
VETERANS RELIEF EXPENDITURES	-	27,430	-	0.00%
HOMELESS HOUSING PLAN REVENUE	14,118	134,118	14,118	11.77%
HOMELESS HOUSING PLAN EXPENDITURES	14,118	134,118	14,118	11.77%
COUNTY ROAD REVENUE	896,000	15,063,208	896,000	6.32%
COUNTY ROAD EXPENDITURES	896,000	15,063,208	896,000	6.32%
CETC REVENUE	-	15,500	-	0.00%
CETC EXPENDITURES	-	15,500	-	0.00%
PUBLIC FACILITIES IMPROV REVENUE	-	720,000	-	0.00%
PUBLIC FACILITIES IMPROV EXPENDITURES	-	720,000	-	0.00%
BULK PURCHASING PAPER REVENUE	-	10,000	-	0.00%
BULK PURCHASING PAPER EXPENDITURES	-	10,000	-	0.00%
BULK PURCHASING-SOFTWARE REVENUE	-	19,000	-	0.00%
BULK PURCHAS-SOFTWARE EXPENDITURES	-	19,000	-	0.00%

BOCC MINUTES-11/02/09

HOTEL/MOTEL TAX REVENUE	-	26,433	-	0.00%
HOTEL/MOTEL TAX EXPENDITURES	-	26,433	-	0.00%
DOMESTIC VIOLENCE SERVICES REVENUE	-	1,400	-	0.00%
DOMESTIC VIOLENCE SVCS EXPENDITURES	-	1,400	-	0.00%
BOATING SAFETY REVENUE	-	48,800	-	0.00%
BOATING SAFETY EXPENDITURES	-	48,800	-	0.00%
INMATE WELFARE REVENUE	-	13,800	-	0.00%
INMATE WELFARE EXPENDITURES	-	13,800	-	0.00%
HISTORICAL PRESERV PROGRAMS REVENUE	-	22,100	-	0.00%
HISTORICAL PRESERV PRGRM EXPENDITURES	-	22,100	-	0.00%
BULK PURCHASING PAPER REVENUE		14,000	-	0.00%
BULK PURCHASING PAPER EXPENDITURES		14,000	-	0.00%
SHERIFF'S K-9 UNIT REVENUE		4,000	-	0.00%
SHERIFF'S K-9 UNIT EXPENDITURES		4,000	-	0.00%
PATHS & TRAILS REVENUE	-	92,000	-	0.00%
PATHS & TRAILS EXPENDITURES	-	92,000	-	0.00%
CHIPMAN PATH REVENUE	-	202,165	-	0.00%
CHIPMAN PATH EXPENDITURES	-	202,165	-	0.00%
BCPT-SPECIAL DONATIONS REVENUE	-	10,000	-	0.00%
BCPT-SPECIAL DONATIONS EXPENDITURES	-	10,000	-	0.00%
REET TECHNOLOGY FUND REVENUE	-	124,600	-	0.00%
REET TECHNOLOGY FUND EXPENDITURES	-	124,600	-	0.00%
DONATIONS & PLANNED GIVING-FAIR	-	379	-	0.00%
DONATIONS/PLANNED GIVING EXP-FAIR	-	379	-	0.00%
DONATIONS & PLANNED GIVING-PARKS	-	60,500	-	0.00%
DONATIONS/PLANNED GIVING EXP-PARKS	-	60,500	-	0.00%
TREASURERS M & O REVENUE	-	30,436	-	0.00%
TREASURERS M & O EXPENDITURES	-	30,436	-	0.00%
DRUG ENFORCE/QUAD CITY REVENUE	3,000	189,763	3,000	1.61%
DRUG ENFORCE/QUAD CITY EXPENDITURES	3,000	189,763	3,000	1.61%
CRIME VICTIMS/WITNESSES REVENUE	-	50,000	-	0.00%
CRIME VICTIMS/WITNESSES EXPENDITURES	-	50,000	-	0.00%
HB 3900-CTED VICTIMS/ WITNESS REVENUE	-	41,660	-	0.00%
HB 3900-CTED VICTIMS/WIT EXPENDITURES	-	41,660	-	0.00%
JUVENILE- HB3900 REVENUE	-	22,426	-	0.00%
JUVENILE- HB3900 EXPENDITURES	-	22,426	-	0.00%
JUV SPECIAL REVENUE (CASA) REVENUE	-	4,122	-	0.00%
JUV SPECIAL REVENUE (CASA) EXPENDITURES	-	4,122	-	0.00%
INTER-LOCAL DRUG REVENUE	-	13,600	-	0.00%
INTER-LOCAL DRUG EXPENDITURES	-	13,600	-	0.00%

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DOCUMENT PRESERVATION REVENUE	-	169,800	-	0.00%
DOCUMENT PRESERVATION EXPENDITURES	-	169,800	-	0.00%
COMMISSIONERS SPECIAL REVENUE		43,500	-	0.00%
COMMISSIONERS SPEC REV EXPENDITURES		43,500	-	0.00%
JUVENILE JUSTICE REVENUE		62,000	-	0.00%
JUVENILE JUSTICE EXPENDITURES		62,000	-	0.00%
COMMISSIONERS RESERVE REVENUE		385,000	-	0.00%
COMMISSIONERS RESERVE EXPENDITURES		385,000	-	0.00%
ELECTIONS RESERVE REVENUE		28,500	-	0.00%
ELECTIONS RESERVE EXPENDITURES		28,500	-	0.00%
SPECIAL ELECTIONS PROJECT REVENUE		360,000	-	0.00%
SPECIAL ELECTIONS PROJECT EXPENDITURES		360,000	-	0.00%
PROSECUTORS STOP GRANT REVENUE	-	30,000	-	0.00%
PROSECUTORS STOP GRANT EXPENDITURES	-	30,000	-	0.00%
ELECTRIC MONITORING REVENUE	-	47,000	-	0.00%
ELECTRIC MONITORING EXPENDITURES	-	47,000	-	0.00%
PUBLIC DEFENSE IMPROVEMENT REVENUE	-	39,259	-	0.00%
PUBLIC DEFENSE IMPROV EXPENDITURES	-	39,259	-	0.00%
WEB SITE DEVELOPMENT REVENUE	-	5,000	-	0.00%
WEB SITE DEVELOPMENT EXPENDITURES	-	5,000	-	0.00%
FEDERAL EQUITABLE SHARING REVENUE	-	180,000	-	0.00%
FEDERAL EQUITABLE SHARING EXPENDITURES	-	180,000	-	0.00%
SHB 2060 REVENUE	-	66,000	-	0.00%
SHB 2060 EXPENDITURES	-	66,000	-	0.00%
TRIAL COURT IMPROVEMENTS REVENUE	-	47,656	-	0.00%
TRIAL COURT IMPROVEMENTS EXPENDITURES	-	47,656	-	0.00%
EMERGENCY COMMUNICATIONS SYS REVENUE	-	1,321,024	-	0.00%
EMERGENCY COMMUNIC SYS EXPENDITURES	-	1,321,024	-	0.00%
MARTIN HALL DEBT-REVENUE	-	44,010	-	0.00%
MARTIN HALL DEBT-EXPENDITURES	-	44,010	-	0.00%
LIMITED TAX GO BOND 2002 REVENUE	-	170,790	-	0.00%
LIMITED TAX GO BOND 2002 EXPENDITURES	-	170,790	-	0.00%
CAPITAL PROJECTS GENERAL REVENUE	-	313,761	-	0.00%
CAPITAL PROJECTS GENERAL EXPENDITURES	-	313,761	-	0.00%
CP-ASSET ACQUISITION REVENUE	-	55,900	-	0.00%
CP-ASSET ACQUISITION EXPENDITURES	-	55,900	-	0.00%
CP-INFRASTRUCTURE REVENUE	-	32,034	-	0.00%
CP-INFRASTRUCTURE EXPENDITURES	-	32,034	-	0.00%
CP-COMPUTER SYSTEMS REVENUES	-	290,000	-	0.00%

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CP-COMPUTER SYSTEMS EXPENDITURES	-	290,000	-	0.00%
CP PROJECTS-CIP REVENUE	-	219,000	-	0.00%
CP-CIP EXPENDITURES	-	219,000	-	0.00%
CP-DOCUMENT MANAGEMENT REVENUE	2,523	42,833	2,523	6.26%
CP-DOCUMENT MANAGEMENT EXPENDITURES	2,523	42,833	2,523	6.26%
CP-KLEMGARD PARK REVENUE	-	-	-	0.00%
CP-KLEMGARD PARK EXPENDITURES	-	-	-	0.00%
CP - WAWAWAI PARK REVENUE	-	-	-	0.00%
CP- WAWAWAI PARK EXPENDITURES	-	-	-	0.00%
CP-PARKING FEES REVENUE	-	-	-	0.00%
CP-PARKING FEES EXPENDITURES	-	-	-	0.00%
CP-MUSEUM CONSTRUCTION REVENUE	-	24,465	-	0.00%
CP-MUSEUM CONSTRUCTION EXPENDITURES	-	24,465	-	0.00%
CP-GO BOND 2002 REVENUE	-	607,000	-	0.00%
CP-GO BOND 2002 EXPENDITURES	-	607,000	-	0.00%
SOLID WASTE REVENUE	-	4,211,786	-	0.00%
SOLID WASTE EXPENDITURES	-	4,211,786	-	0.00%
SOLID WASTE RESERVE REVENUE	-	125,000	-	0.00%
SOLID WASTE RESERVE EXPENDITURES	-	125,000	-	0.00%
EQUIPMENT RENTAL & REVOLVING REVENUE	-	6,091,720	-	0.00%
EQUIP RENTAL & REVOLVING EXPENDITURES	-	6,091,720	-	0.00%
PHOTOCOPIER REVOLVING REVENUE	-	75,810	-	0.00%
PHOTOCOPIER REVOLVING EXPENSES	-	75,810	-	0.00%
UNEMPLOYMENT REVOLVING REVENUE	-	370,000	-	0.00%
UNEMPLOYMENT REVOLVING EXPENDITURES	-	370,000	-	0.00%
COMMUNICATIONS REVOLVING REVENUE	-	202,598	-	0.00%
COMMUNICATIONS REVOLV EXPENDITURES	-	202,598	-	0.00%
WHITCOM GENERAL OPERATIONS REVENUE	200,000	1,662,000	200,000	13.68%
WHITCOM GENERAL OPERAT EXPENDITURES	200,000	1,662,000	200,000	13.68%
WHITCOM 911 TAX/GRANT FUND REVENUE	-	1,198,000	-	0.00%
WHITCOM 911 TAX/GRANT EXPENDITURES	-	1,198,000	-	0.00%
WHITCOM CAPITAL PROJECTS REVENUE	-	60,000	-	0.00%
WHITCOM CAPITAL PROJECTS EXPENDITURES	-	60,000	-	0.00%
ERNIE DIPPEL MEMORIAL FUND REVENUE	-	5,632	-	0.00%
ERNIE DIPPEL MEMORIAL FUND EXPENDITURES	-	5,632	-	0.00%
ZAIDEE PARVIN MEMORIAL FUND REVENUE	-	11,843	-	0.00%
ZAIDEE PARVIN MEMORIAL EXPENDITURES	-	11,843	-	0.00%
PALOUSE EMPIRE FAIR BUILDING REVENUE	-	1,696	-	0.00%
PALOUSE EMPIRE FAIR BLDG EXPENDITURES	-	1,696	-	0.00%
CAC SERVICES REVENUE	-	190,000	-	0.00%

BOCC MINUTES-11/02/09

CAC SERVICES EXPENDITURES	-	190,000	-	0.00%
CURRENT EXPENSE REVENUE	(25,590)	11,733,196	(25,590)	-0.22%
OTHER REVENUE	1,115,641	36,908,617	1,115,641	3.12%
TOTAL REVENUE	1,090,051	48,641,813	1,090,051	2.29%
CURRENT EXPENSE EXPENDITURES	(25,590)	11,733,196	(25,590)	-0.22%
OTHER EXPENDITURES	1,115,641	36,908,317	1,115,641	3.12%
TOTAL EXPENDITURES	1,090,051	48,641,513	1,090,051	2.29%

11:05 a.m. - Mark Storey, Public Works Director.

Present: Joe Smillie.

ACTION ITEMS

Engineering Division:

070045 1. Commissioner O'Neill moved Commissioner Partch seconded the motion and it carried that the Fox Stockpile lease be signed as presented.

070046 2. Commissioner Partch moved Commissioner O'Neill seconded the motion and it carried that the resolution to temporarily close Ed Hamilton Road be signed as presented.

RESOLUTION NO. 070046

BEFORE THE BOARD OF COUNTY COMMISSIONERS of Whitman County, Washington in the matter of closing a certain county road/bridge pursuant to R.C.W. 47.48.010;

IT IS HEREBY RESOLVED that the following road/bridge will be closed to vehicular traffic: County Road No. 6210, the Ed Hamilton Road at milepost 0.02±, beginning November 11, 2009 through November 13, 2009 or until completion of the railroad crossing repair.

ADOPTED this 2nd day of November, 2009.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

Michael Largent, Chairman

Greg Partch, Commissioner

ATTEST:

Maribeth Becker, CMC

Patrick J. O'Neill, Commiss.

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Clerk of the Board

070047 3. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion and it **carried** to publish the notice of road closure for the Ed Hamilton Road.

11:10 a.m. - Alan Thomson and Debbie Hooper.

Solid Waste Division:

070048 4. A schedule of Transfer Station holiday closure days received.

070049 5. Whitman County is partnering with KHTR/KQQQ to host a "Shred for Hunger" day benefitting local food banks after the Thanksgiving holiday. A food or cash donation will be provided to local area food banks for every box or bag shredded.

Planning Division:

D070049A 6. A general discussion on the process for tonight's Commercial Wind Energy Facility hearing reviewed.

11:30 a.m. - **Board Business Continued.**

Present: Debbie Hooper and Joe Smillie.

070050 12. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion that the 1.5% growth factor to the 2010 restricted fund balance and correlating restricted cash as provided in Resolution #068366 be suspended for 2010.

Commissioner O'Neill read the following statement: "The question at hand is do we leave the money in the General Fund instead of using 1.5% to be added to the dedicated reserves that was passed by resolution on July, 7, 2008 for the year 2010. For budget dollar figures, will be done at budget amendment #4 in early December. I believe we need to make a decision now and not wait, a show of good faith effort sends a clear signal. I'm willing to do my part and I understand the economics of such a move. Let it be noted, at a later date we as commissioners have several options that we can choose from in terms of our dedicated reserves. Always remember when dealing with departments, elected officials or in negotiations, everyone has to move towards a common goal, in order to have an agreement that everyone can live with. The only way I know how to do this is through positive actions."

Chairman Largent disagreed with the timing because there are outstanding issues that would require review at a later date; cash to contributions to reserve and dealing with deficit. The motivation is good and honorable and there is a time and place to make good budget decisions and after consulting with other elected officials for any gap they may want to

contribute to. The Chairman moved to table this issue which died for the lack of a second. The original motion **carried**.

RESOLUTION NO. 070051
OF
THE BOARD OF WHITMAN COUNTY COMMISSIONERS
FOR WHITMAN COUNTY, STATE OF WASHINGTON

WHEREAS, the Board of County Commissioners for Whitman County, State of Washington, met in regular session on Monday, November 2, 2009; and,

WHEREAS, on July 7, 2008, the Board of County Commissioners adopted Resolution #068366 designating 7.5% of the prior year's General Fund/Current Expense budget to be designated each year as restricted fund balance and restricted cash with a growth factor of 1.5% each year after the 2008 base year to accomplish a 15% restricted fund balance and restricted cash balance by 2013. Once the year 2013 is reached, the methodology is to be reviewed and updated; and,

WHEREAS, the restricted cash and restricted fund balance is only to be used for extraordinary, unbudgeted expenses agreed upon by the Board of County Commissioners such as unexpected adjudication, Public Works contingencies, emergencies that threaten public safety and county infrastructure, or a cash flow crisis; and,

WHEREAS, based on economic conditions and declining revenues the Whitman County Commissioners wish to suspend the 1.5% growth factor for 2010.

NOW THEREFORE, BE IT HEREBY RESOLVED that the 1.5% growth factor to the 2010 restricted fund balance and correlating restricted cash as provided in Resolution #068366 be suspended for 2010.

PASSED, APPROVED AND ADOPTED this 2nd day of November 2009.

BOARD OF COUNTY COMMISSIONERS
OF WHITMAN COUNTY, WASHINGTON

Michael Largent, Chairman

Greg Partch, Commissioner

ATTEST:

Maribeth Becker, CMC
Clerk of the Board

Patrick J. O'Neill, Commiss.

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070051A 13. Items discussed included ALTCEW request, Planning Commission appointment, 2010 holiday schedule and an article on junior taxing district consolidation for accounting purposes. No action taken.

12:00 p.m. - Recess.

1:30 p.m. - Mike Berney, Greater Columbia Behavioral Health (GCBH).

Present: Ann Demikis and Zoe Cooley.

070052 1. Three policies are being presented to the Board on November 5th for approval. The Reserve policy needs to be changed in order to meet new contract language from the State. The Travel and Credit Card policies relate to Regional Office operation. The Funding and Fiscal Operations Committee unanimously recommends approval of these policies by the Board of Directors. The final business plans from Columbia, Garfield, and Skamania Counties will be presented to the Board. These plans were a condition for the additional funds, over what they are receiving by formula. Whitman County supports approval of these policies.

D070052A 2. There has been change since the commissioners October briefing on the GCBH amended interlocal agreement.

D070052B 3. GCBH has been searching for a new Director for the Regional Office. Two of the four candidates selected for interviews withdrew. Since that time, the candidate the Committee was most interested in withdrew. Mr. Berney anticipates the Board will discuss and authorize direction at the November meeting.

D070052C 4. The sub-committee authorized by the GCBH Board will meet with Yakima and Benton Counties after the 11/5/09 meeting to discuss Yakima County charging per involuntary detention costs to help cover their court costs.

D070052D 5. Mr. Berney mentioned that the meeting with the Court System officials went very well.

2:00 p.m. - Board Business Continued/BOCC Executive Session.

Present: Bob Reynolds.

070053 14. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion and it **carried** to go into executive session with the above individuals until 3:00 p.m. in accordance with RCW 42.30.110(1)(g) for matters related to performance evaluation.

3:00 p.m. - Return to Open Session/BOCC Workshop (Port Office).

Present: John Love, Bob Gronholz, Dan Boone and Joe Poire.

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070054 15. Items discussed included the ADO program, SEWEDA and the Port's rail, telecommunications and IPZ projects. No action taken.

4:45 p.m. - Recess.

6:30 p.m. - Commercial Wind Energy Facilities (Public Service Building).

070055 Present: Mark Storey, Alan Thomson, Denis Tracy, and approximately 40 residents including members of the media.

070056 Commissioners' hearing procedures.

070057 Chairman Largent convened the hearing for amendment to Chapters 19.03-Definitions; 19.10-Agricultural District; 19.58-Communication and Utility Facilities, the Comprehensive Plan and adoption of a new zoning Chapter 19.61-Commercial Wind Energy Facilities.

The Chairman reviewed the format and provided instructions for the hearing. The comment period will remain open until 5 p.m., Friday, November 6th.

The record from the Planning Commission's hearing is incorporated into the record for this hearing and is being considered.

All written comments received by the county commissioners prior to tonight's hearing will be noted in the public record. (Written comments were received from:

- 070057A** Carolyn Kiesz
- 070057B** Scott Stevens
- 070057C** Rick Kiesz
- 070057D** Roger Whitten
- 070057E** Robert Kahn
- 070057F** Brian Bannan
- 070057G** Linda Peppel
- 070057H** Dale Miller
- 070057I** Dan Moser)

Chairman Largent stated comments received during the extended comment period ending 5:00 p.m., Friday, November 6, 2009 will also be included in the official record. Two individuals representing the county who will be providing a general overview is the County Planner, Alan Thomson and Prosecuting Attorney, Denis Tracy.

Mr. Thomson - This process began October 2007 when the department received an application to put up a meteorological tower a wind energy company. The Planning staff looked at the ordinance in place at that time. We still do have an ordinance on the books right now that would allow wind

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farms to be built. That was done in 2001, but the county never had a serious application. They began thinking about what they did have on the books if they did receive an application do we submit it for permitting a wind farm. They came to the conclusion that the ordinance was not sufficient as it written. The ordinance had a 350 foot height limitation at the time and the setback was 1500 to a residence. That was basically it as far as the standards were concerned. When reviewing other ordinances in the state that had wind farms already up and running, our ordinance was very lacking. They decided to go through a review and figure out how to make our ordinance a little better. The Planning Commission spent almost 1-1/2 years meeting to determine how best to put this ordinance together. They began by looking Adams County's ordinance that was in place at the time as a starting point and molded Whitman County's draft ordinance to that. The State Environmental Policy Act (SEPA) checklist followed and in June 2009, a determination of non-significance (DNS) was issued stating the proposed ordinance would not impact the environment, health, welfare or safety. At that time, the SEPA was challenged with 3 comments on the DNS decision. As the responsible official, the Planner responded to the comments and decided not to change his determination. Shortly thereafter, the county was informed they were going to be sued. Two lawsuits were lodged challenging the Planner's SEPA decision. It was agreed to continue with the process of completing the ordinance. The Planning Commission's next step was to send the proposed ordinance to the County Commissioners and that was done October 7th. Tonight's hearing is the first part of the County Commissioner's process followed by the task of making a decision on the proposed ordinance.

The ordinance would allow commercial wind turbines in the agricultural district of the county. The agricultural district is most of Whitman County (96-97%). There would be no restrictions on height limitations and they thought hard about the setback distance because that was one of the biggest controversies. The Planning Commission reviewed a lot of information, both pro and con and did a stellar job of getting us to this point.

Mr. Tracy gave a brief overview of the law that applies to the zoning question before the county commissioners tonight. There are strongly held beliefs and opinions about wind energy and windmills, but the process of local government in developing zoning codes isn't just about opinions and beliefs, it is governed by laws and what he will talk about.

First and foremost are our federal and state constitutions. They both provide that it is a fundamental right of every citizen to own property and part of the right to own property means, of course, to do with your property what you decide is best, not what the government or your neighbor decides is best. That fundamental right cannot be infringed on without a clear need to protect the public's health safety and welfare.

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A clear example of that is the building code which requires a landowner to build things to certain standards for everybody's safety. In determining whether a regulation is needed they (the county commissioners) have to balance the government's interest in the regulation. As an example, the amount of setback required from a resident in which someone couldn't build a windmill. The commissioners will have to balance the public and government interest against item #1-the landowners' fundamental right to do with what they want with their property.

In this case there are other things on the same side of the ledger with the landowners' right. We have a policy the State of Washington has enacted into law, the Energy Independence Act of 2007 which requires utilities to pursue renewable sources of energy such as wind power.

Again on the same side of the ledger, the ability for the State of Washington to step in and impose a setback 4 times the tower height for instance, which was done in Kittitas County under the State's Energy Facility Site Locations Act. This gives the Governor the power to do this regardless of what the local people want.

And, in this case again, on the same side of the ledger as the property owners right to do with their property what they please, we have the country's interest in being energy independent of foreign oil.

And, in this case on the same side of the ledger, we have the fundamental fact that wind farms fit squarely within the purposes of the Act and the fact that wheat is around \$4/bushel now and that windmills may make a difference to families being able to stay on the family farm. Sticking with this example, in the case of windmills, the large setback is proposed to protect against the harms of people. That potential harm has to be a demonstrable harm, not just speculative. If harm is not clearly demonstrable, then the regulation, setback for example, does not outweigh all these other interests. Especially, the interest of the landowner to develop his property. If it doesn't outweigh all these other interests then it is clearly unconstitutional and unlawful.

Again sticking with the setback from occupied buildings example, the constitution and statutes imposed now, the outer limits of the county commissioners' authority here. It is the commissioners' job within those outer limits of what the constitution will allow to strike the best balance between the rights of property owners and the means to protect health, safety and welfare. This public hearing is for you to voice your opinions about where that balance ought to be struck.

The Planner has described the process this ordinance has gone through beginning with the Planning Commission and hearings where they too listened to the public. If the Board of County Commissioners adopts the ordinance, then it becomes law. There is one other separate process going on at the same time called the SEPA review process. Alan Thomson is the

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initial decider that this particular ordinance would not have a significant environmental impact which is being appealed. That appeal will be heard through the courts if the county commissioners decide to pass this ordinance.

If it is worth noting that one of the reasons Mr. Thomson indicated or decides that this ordinance would not have a significant environmental impact is that this ordinance creates a floor of what every wind project will have to comply with in this county in the future. But it does not set the ceiling, it doesn't establish everything that the project will perhaps be required to comply with. It establishes minimums every project would have to comply with. The next step is, anyone that wants to develop a wind farm has to make an application to the Board of Adjustment. They then issue a conditional use permit (CUP). The Board of Adjustment is the place that hears all the specifics. About specific projects that might be located to nearly specific houses. The Board of Adjustment then takes into account all the particulars of a case and they then issue their permit with necessary restrictions. All this ordinance does is tell the Board of Adjustment they can't go below these certain standards. The Board of Adjustment will always be free to impose more stringent standards or restrictions on a wind farm if they think it is needed in a particular case.

The Chairman provided instructions for the public comment portion of the hearing, he provided public comment instructions.

Jesse Davis - I farm west of Johnson on Union Flat Creek. I am in favor of the ordinance but I think the setback should be 4 times instead of the setback already established by the State Supreme Court. I think if it is anymore than that it's probably going to go to court. Thank you.

Richard Jutte (1) - In favor of the changes but did not wish to speak.

Richard Jutte (2) - I'm in favor of the 300 foot setback.

Shirlene Jutte - We're landowners and farmers in the Colton area. We have farmed for 39 years. What I want to say is that when we started negotiating the idea of a wind farm we didn't take it lightly. I think you as all know farmers love to ranch, it's in their gut. It took us about a year for us to negotiate it with the land developer, the landowners, the lawyer and about 30 farmers that are part of the wind project. What we negotiated of course, was price. But more than that, we negotiated a lot of other things. We negotiated what they were going to do to our land, how they were going to keep our land the way it is, and what they would do if it came to the point that the turbines were no longer used and how they would remove them. We negotiated for a year to be able to protect the land for not only the landowners but for the people who live in the area because it's important. I am in favor of the ordinances but I favor 400 foot from residences. I liked to say we looked

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into a lot of these things and I feel the benefit(s) for the farmer is important because there are a lot of farmers just holding on. This will really benefit them, as far as that goes. It will benefit the area because it will bring in a lot of jobs, it is going to benefit the county because it will bring in tax revenue to the county, we know that and another way it is going to benefit is we are going to be doing our part for renewable energy and that is important as far as I'm concerned. Just my own observation and I've studied a lot and spent a lot of time on this project, what I want to say is that it's part of the solution. I stood under the tower at Hawkins Ridge and of course, I don't hear very well, but it didn't lose my hearing and I didn't lose my sight. I think it is beautiful. I think they are beautiful. I know there are people that feel it does. They feel like they hear and that they will lose their hearing or their sight. That is the difference in our opinion of how we feel about them. We don't want anything that will ruin our agricultural area. We love our land.

Greg Partch asked if he could assume that Mrs. Jutte has been to the Planning Commission meetings and shared this information with them.

Shirlene Jutte - I have, we have come to all those meetings, but I have not spoken. But I thought it was necessary to speak at this meeting to let you know when we didn't go into this lightly. One of the things that I am concerned about is the fact our energy developer has voiced the opinion that if the setback is 5 we may not have wind farms in our area. This concerns me because I feel looked into this thoroughly as we were bringing this about to make our decision and I would hate to see that happen.

Greg Partch confirmed this has been shared with the Planning Commission in some form, not necessarily from you but through others.

Shirlene Jutte - right.

Greg Partch - Okay, thank you.

Alan Thomson - just for clarification, Dick Jutte when you were testifying I thought I heard you say 300 feet.

Richard (Dick) Jutte (2) - That's correct.

Alan Thomson - I wanted to make sure that is what you meant and not 3 times the tip height because there is a difference here.

Richard Jutte (2) - 3 times.

Alan Thomson - Okay, I heard Mrs. Jutte say 400 feet.

Shirlene Jutte - Clarified 4 times.

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Alan Thomson - Okay, so I just wanted the record to be clear that it wasn't feet you meant, it was 3 times tip height of the tower and 4 times tip height rather than feet.

Richard Jutte (2) - Will you settle for 3-1/2?

Shirlene Jutte - Thank you for clarifying that.

Chairman Largent - You're very welcome. Thank you Alan.

James Druffel of Uniontown said he was in favor of this but would like to see the setback changed back to 4 times.

070058 Debbie Strand - Good evening. My name is Debbie Strand. I am from Ellensburg, WA in Kittitas County. I served for 10 years there as the Executive Director of the Economic Development Group and I learned a lot about wind energy during my tenure there. I am here to speak on behalf of WindWorks? Northwest, an advocacy group that supports wind power development. We present facts about wind farms and the economic and environmental benefits they provide. The ordinance that the Planning Commission has forwarded to you for approval has been thoroughly discussed as Mr. Thomson has told you, and volumes of information has been submitted both in favor of and opposed to. Your job is to sift through all this information and determine what is credible and what is not. I would like to give you a couple of real life examples of what wind farms have done in Kittitas County. The Wild Horse Wind Power project went on the tax rolls in 2007. In 2008 the taxpayers in the very small Kittitas School District found that the taxes on every \$100,000 of valuation on a house decreased their tax burden in the Kittitas School District by \$100. This was great news as taxpayer, we certainly liked that. This occurs because when you have a voter approved bond or levy they are set for a certain amount so a taxing entity can't charge more than that is amount. Consequently, more assessed value means there are more people that are going to be paying for that rate. Also, wind farming can contribute to the economic diversification in a county. Kittitas County recently received Innovation Partnership Zone status from Washington state for their Central Washington Resource Energy Collaborative which is a partnership between Kittitas County government, Central Washington University, the Economic Development Group of Kittitas County, Puget Sound Energy and enXco Development Company who is in the process of permitting the Desert Claim Wind Power Project. This partnership was created to capitalize on the renewable energy sector that is developing in Kittitas County. Finally, I would like to talk about the copy of the Appraisal Group One Wind Turbine Economic Impact Study that has been submitted to you and put in the record. It concludes that turbines appear to have a "negative impact on property values, health and quality of life of residents in close proximity to the turbines". It is important you know that the sponsor of the study was a group that has fought wind farms in Wisconsin. I am submitting for the record, a copy of

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the expert testimony before the Public Service Commission of Wisconsin. Richard S. Larkin of Larkin Appraisals points out "numerous errors of flawed methodology and analysis, in this study that would significantly impact the validity of this study. Finally, based on my experiences in Kittitas County, I urge you to keep in mind the many benefits that this burgeoning industry will bring to Whitman County. Any genuine concerns of opponents are likely overstated and/or easily mitigated during the process that you have set up for permitting and remember that passing this ordinance is just the beginning.

Steve Silkworm of Avista is in favor of the 4 times the tip height in the ordinance. Remember that the closer you can put these things together the more economical they tend to be.

Ken Hanson, a landowner in the Oakesdale area and is in favor of the ordinance with some changes, a shorter setback. I am originally from Canada with 20 years experience in the gas industry, setbacks, dealing with oil companies and everything to work on farmland there. It is very clear in all those areas that when you talk about coal and methane or talk about oil, you have to put a close enough concentration of wells in one area to make it economically viable. I would say just to the commissioners, if you don't make that decision at this point, it will have to be made at another point. That is what happened in Canada. Originally there was a setback of one well per 40 acres; actually, originally it was one well for every 160 acres, then they went down to one well for every 40 acres. Now they are down to one well of coal bed methane per 16 acres if they have the resources under there. To take adequate advantage of the resources that are there we all need, we want to turn the lights on and we want to be able to have power when needed so I think there does need to be some computation or some consideration rather for how we made this an economically viable project. The key issue here is that a wind farm can only be located where there is good wind. I think most farmers would agree with me that they paid the price for the wind for a long enough time and want to get a little benefit out of it. The other point is that people say the turbines are ugly and we can argue about that later until we are blue in the face, but the point is whether you think they are ugly today or not, they do produce energy, a clean form of energy. I imagine you could go back a couple hundred years to Holland and find people that say the windmills there were ugly too but now you have tourist going there to look at them. That is all a relative point. I think another issue is this height restriction. In a lot of cases, we have already addressed this with high tension wires. We have known for a long time that the community good with the high tension power line is again, we need power. So we put power lines in and they have iced it and the setbacks on them, I don't think are as unrealistic in my view than what you are talking about here. The biggest concern I have about this is the slippery slope and getting on from here. If we can have some individuals come in and say that we want a higher setback because this particular thing annoys us, whether it is a windmill, oil well or whatever? How long before someone

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comes in and says well gee, I don't want you planting canola in the middle of my place because I have allergies, or grass seed or whatever. I mean if I want to operate my farm, are the commissioners actually going to take the position that they are going to consider and canvas the area and decide whose got allergies and then set setbacks for what proper operations can be in that area? I think if you go this direction you actually run the risk of coming down to something like that in the future.

Greg Partch asked Mr. Hanson if mentioned the setback he was in favor of.

Ken Hanson said no, he did not. He kind of likes the 3.5 just to keep piece in the family.

Karen Hanson was in favor of the 4 times height.

Bruce Becker of Spokane was in favor of the amendment for the setback.

Aaron Anderson will speak later.

070058D Roger Whitten of Oakesdale said he has 10 pounds of information he would like put on the public record. Will you accept this information as part of the public record?

Chairman Largent replied yes.

Roger Whitten - These reports and testimony provided support my position that there is a noise pollution problem associated with industrial wind turbines. For those who disagree with this position, can we not agree that dumping high levels of low frequency noise pollution onto a neighbor's property is wrong and out to be outlawed? Where is the harm in outlawing noise pollution that the wind turbines purportedly do not make? The ordinance before us relies on state law to protect the public from noise pollution. Unfortunately, the state noise control law, which is designed to protect people from hearing loss, does nothing to protect the public from low frequency noise pollution. We know this because state law relies solely on the A scale. According to the federal government, the C scale must be used in order to determine if low frequency noise is present. It is the responsibility of the county commissioners to recognize that state law does not protect the people from low frequency noise pollution. Low frequency noise pollution from industrial wind turbines is a new form of pollution that deprives people of sleep and therefore creates ill health. If the county commissioners introduce an ordinance that sanctions the use of industrial machines that pose a potential hard to the public health, then the ordinance must include a corresponding provision which protects the public. What is wrong with limiting noise pollution to 50 dB C daytime and 40dB C nighttime? We know that noise pollution over these levels creates an unhealthful environment. The county commissioners are obligated to set a new standard of protection for a new form of pollution. This ordinance's current referencing of a state noise control law that

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does not offer any protection from low frequency noise pollution is a sham. The real reason this ordinance does not use the C scale to outlaw high levels of low frequency noise pollution is because a provision that limits noise levels to 50 dB C scale daytime, 40 dB C scale nighttime would push the turbines further away from the unsuspecting residents of the Ag District. A larger buffer zone means fewer turbines and therefore fewer pieces of silver. The choice is between protecting the public health or financial gain for a few. High levels of low frequency noise pollution should be outlawed.

7:15 p.m. - Recess.

Michael Largent - We are also considering the testimony and record that has been entered in the delivery and process of the planning commission. All that record has been forwarded to us and we have reviewed most of that record if not all of it so that will be as much a part of the process here with us as the testimony here this evening.

070058A Paul Kimmel - Thank you on behalf of Avista Corporation, thank you for considering the draft ordinance tonight. I'm at 107 South Grand in Pullman, is my Avista office and I have submitted written comments for you as well as a copy of our recently released integrated resource plan for electricity within the Avista footprint. So, I think in that and in our testimony you will find a call for renewable, including wind generation that we recognize as something that we will need to and have been starting to address within our preferred resource strategy and so I won't even delve into that.

I just want to make a few general comments. We support this ordinance; of course, four times the tip height would be the preferred setback as well. But I want to just comment briefly about the process to date and I just want to commend your planning staff and your planning commission for a very transparent and a very thorough and robust and a very engaging and open process. I find it very heartening that you have taken the time and the planning commission painfully almost two years and I've been very pleased to participate in many of those meetings. Again, thank you for tonight and for your services as well. I am open for any questions and abuse from Mr. Chairman.

Michael Largent - The chairman will reserve his abuse for a more opportune moment. We may have questions further down the road.

070058B Carolyn Kiesz - I'm from Thornton. I want to start out by saying that I am in favor of the five times the turbine height. I was there when the engineering calculations were used and it was not an arbitrary figure. I would also like to say that I don't have anything to gain by opposing this zoning ordinance. Unlike those who have come to support the zoning, I am not paid by nor will I ever be paid by Iberdrola, First Wind, Avista or Wind Works.

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I am opposing the ordinance because I feel it is the right thing to do; the right thing to protect the environment and the health of Whitman County rural residents. I put together a packet of information that I turned in earlier to be entered into the record and have you review before you vote on this.

What I want to emphasize tonight is just one aspect of the zoning. You already, I'm assuming have seen the four categories that I do disagree with in the zoning, but tonight I would just like to hit on this one area. And that is that in 2007 the County Commissioners voted to include the following in the agricultural zoning.

"Buildings and structures located on hills or ridges shall be sited and/or constructed to minimize the appearance of a silhouette against the sky. Construction of residences on unusual and highly visible geological features is not allowed within what shall be known as the butte protection areas."

And the buttes and ridges to be protected are specifically named in the zoning. If you approve this zoning as it is written, not only will you have contradictory zoning in the agricultural zone you will be discriminating against one group of private landowners and you will be discriminating for another group of private landowners. That would appear to me to be unconstitutional. If I were you, I really would not be afraid of being sued by the wind companies I'd be concerned about law suits coming from constituents. I know it is not an easy issue to sort through and I do appreciate your taking into consideration everything we present to you. Thank you.

Mike Carlton - No comment

070058C Chris Schultheis - I'm a farmer in the Colton area, a fifth generation farmer in the Colton area. I am very much in favor of the proposed wind ordinance but I feel the setbacks are too large. I don't own a lot of land and while the large setbacks may result in no wind turbine ever being constructed on my property, I think the more important issue is that the increased setbacks dramatically decrease the likelihood that any proposed wind project will ever be found viable or economically feasible.

I ran some numbers on this and while it changed from 3.5 to five times tip height as a setback from structures sounds like not a large change. I can give each of you a copy of this so you can submit it into the record. If you look at the acreage that is removed from possible use under the different scenarios that I have put here on my chart, if we use a 350 foot tip height, a 3.5 times setback removes 108 acres from possible development around existing structures. Four times tip height removes from possible use 141 acres and a five times tip height removes 220 acres

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from possible use. That would be a 220 acre bubble around existing structures. That is the difference from four times to five times tip height as a setback represents more than a 50% increase in unusable acreage. The numbers for 400 foot towers would be very similar; with 184 acres being unusable on a four times tip height and 288 acres on a five times tip height. One hundred acres is a lot of land and the smallest number that we have here is more than one hundred acres on this chart.

The reason the planning commission chose the five times tip height and one and a half times tip height for proper line setback was to attempt to satisfy the very local opponents of wind energy and by choosing those larger setbacks you would be exchanging my fundamental rights as a private property owner for the satisfaction of those local opponents, and only for their satisfaction because there is no sound science for peer review journals that show the demonstrable harm that would support the choice of the larger setbacks.

While I am in favor of the ordinance if it is adopted as written we would feel compelled to challenge it and I think because science and State Supreme Court precedence is on our side, we would prevail. But we would have to challenge it.

One serious error that I think that,

Michael Largent - I'm sorry, Chris. Thank you very much.

Greg Partch - Chris do you have any preference in the height, or the setback?

Chris Schultheis - I would choose 3.5 if it were my choice. I can show you the, this is related to that question. If we would use the five times tip height and the 1.5 times property line setback, on my 220 acre farm in Colton, only the unshaded area would be possible for a development. So it would almost wipe out a 280 acre farm from possible use. You can keep that copy.

James Meyer - I am in favor of the wind power ordinance and I would like to see the distance set at four or less, three and a half would be better. Thank you.

Michael Largent - Mr. Meyer stated that he supported the ordinance and would be supportive of a setback of four times the tower height or less.

Michael Largent - I will summarize Karen Neuman's comments by saying she is supportive of the ordinance with the change of 3.5-4 times the tower height or less.

Alvin Neuman - I concur with my sister.

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Michael Largent - Good plan; I have sisters too.

Dale Miller - I am from Uniontown. I am strongly in support of renewable energy. I just have one question which hasn't been the type of debate. That is since you have decided that occupied residential buildings should be protected I think there should be a setback from where communities have decided that they want to have residential development. I think the county has even designated some areas for rural residential development and we want and expect houses to be built there so the setback should be from those zoned properties and then people like myself who have invested a lot of money in trying to make some of that residential development happen can have some assurance that our property will be attracted to potential homeowners. So just on the section 19.61.060 I would like to see something added on a setback standard from residential zoned property.

Michael Largent - Thank you, Dale and we did get your communication on that so we won't attempt to answer that here but we will let Alan at a later date answer that for you.

Michael Largent - To summarize Frank Ankersen's comments he is supportive of the ordinance and supports a four times tower height setback.

Kipp Meyer - I am a farmer in the Colton area. I am in favor of the ordinance; however, I disagree with the setback. I believe it should be 3.5 or less and the reason for that is I would like to agree with Mr. Schultheis. I own property, its 180 acres and I had the same scenario that Mr. Schultheis already said to you. Under the five times, I'm out; I have no opportunity at all. The 3.5 times will give me some opportunity because there is a homestead on the place and so I would just like you to consider that for the small property owner. A lot has been said about the large property owner but there are a lot of us out there that are next to the big projects that have small areas that have nice areas for wind. Thank you.

Art Schultheis - I'm a fifth generation farmer from Colton; I also own a land development company and a house building company. So I have several vested interests in this along with Whitman County. I am in support of this ordinance; I believe that we should be welcoming any sort of economic activity here in Whitman County although I believe the setback should be at the 3.5-4 times tip height. Anything that Whitman County does that restricts or discourages new business is not good for Whitman County.

I read the paper just as well as everybody else and the revenue problems we have in Whitman County can help to be solved by bringing in new businesses. It is also going to help our business in Colton. We have a struggling school district in the fact that our enrollment is declining and the property taxes not only would help our school district it would also bring some good paying jobs to our town. If we bring good paying

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jobs to town, we bring homeowners, we bring kids and that helps our rural community.

I'm just struggling with the fact that it seems that in Whitman County we have a certain segment that is opposed to everything. We've been opposed to Wal-Mart, opposed to Hawkins, and now we are opposed to wind farms and we need economic development in this county. Whatever we can do to attract new businesses we need to do and restrictions is not what we need at this point.

Ben Fairbanks - I'm the Northwest Business Development Manager for First Wind, a leading wind energy developer and operator. Thank you for the opportunity to participate in tonight's meeting. Over the past two years, I have attended the county's workshops, assisted the planning commission and the county staff in researching and understanding the nuances of wind. I believe the county commissioners should be proud of the body of work that Whitman County has a whole has produced.

Whitman County's ordinance currently complies with state regulations and in some cases exceeds conditions established in neighboring counties with operating wind farms. As a wind developer, I acknowledge the conditions of the ordinance, understand that numerous environmental studies would need to be completed and that several layers of county permit review process would take place before any such facility would be developed. The ordinance is an outstanding example of community based legislation that balances the public health, safety and welfare with the interest of property owners that seek to develop the renewable resources on their land.

That said, I do have one suggestion; the justification for the setback of five times is unclear and could infringe upon the rights of landowners who wish to diversify their agricultural practices with a reliable and consistent income from wind energy. It is vital that there be objective criteria in establishing this requirement. Adopting this setback would be out of sync with county ordinances, other county ordinances and run counter to the state energy facility siting council and Washington Supreme Court's determination that four times the height of a turbine is an objectively valid setback.

I believe a more flexible ordinance would be a more effective tool for the county and its landowners. Wind energy is no longer a novelty. Washington ranks fifth nationally in install capacity and thirty-eight states have operating wind farms. Wind energy comprises almost 50% of all new generation installed, creating hundreds of thousands of new jobs. The passage of this ordinance would position Whitman County to take advantage of this wind fall.

Wind farms can significantly contribute to the community, the economy by providing income to landowners, preserving agricultural practices,

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increasing tax revenue and creating jobs. First Wind is current evaluating the wind resource in the county and while it is too early to reach a definitive conclusion we are impressed with what the research has shown so far. We strongly suggest the Commissioners adopt this ordinance. The reasons are simple, the cost of wind turbines and construction materials are currently at low prices. The Federal and State governments are currently offering important incentives to encourage development of renewable energy that will ultimately translate to cheaper energy for customers.

Finally, given the numerous economic benefits that Whitman County and its special districts will see from wind energy there is no reason to delay the investment any longer. Thank you.

Bobbie Ryder - I'm from Pullman, and I just wanted to comment on the one comment that was made about, first I would like to say I am in favor of the ordinance, I support the four times the tip height, or less and but I wanted to comment on what was stated about the ordinance that was passed on housing and buildings on hilltops. I think that the distinction that needs to be very clear on that is that when one person is putting up their piece of architecture we are really not certain what we are getting. We know what we are getting with these wind farms; they all look the same, they are all poles, they have a standard and we know what they are going to look like.

But when someone is putting up their own piece of architecture it is their taste, there architecture and at that point we are not sure what we are getting and they think it is beautiful but there is some pretty crazy architecture out there, as we all know. So, I think the other thing that is important with that is that when we are putting up a wind farm it is to benefit many and when one person is putting up their own house, it is just to benefit them; it benefits one. I think it becomes really important to look at the greater good. Thank you.

Hollis Jamison - Thank you. What has been said here, I agree with most all of it. I am for the wind farm and the setback at about 400 or 350 as was already mentioned. I've got a little different story, I told it last time. To begin with, I farmed in Whitman County for 40 years and in 1998 when I was commissioner, we talked a lot about bringing wind power into Whitman County. Unfortunately some of the companies that we were dealing with were unable to come up with the funding to put the wind mills in.

At that time, most people felt the same as we have said already, that we needed more industry and businesses in Whitman County. We are still looking for them and here's our opportunity to get one. I feel that wind power for the future will be very important, from the standpoint if you even look at some of the advertisements on TV, Ford just came out with one, whereby they are going to be manufacturing a car that will run on electricity along with the gas engine to run the generator, so I think we

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will be going more to industrial things, we will be using more electrical motors and stuff along as the population increases, there will be more air conditioning, TV's, computers everything else that runs a household.

I am now a property manager along with partial farming with my son. I have land that I control between Albion and Rosalia. I have several farmers that farm the land and the money that is derived from the land will go for indigent people who are in need of help for one reason or another. Health and other problems that they may have had with their financial situation and Frank Ryder Trust that I work with give these people financial help.

Our land is being considered near the Oakesdale area for wind power. If these generators were put on the hilltops in our area, definitely it would help people that I mentioned that are getting the benefits from the Ryder Trust. It would help in many ways. I think it would be a good thing for Whitman County to go into this. I think as it has already been mentioned, we know that funds are tight and this would generate more money for you. I would encourage you to take a good strong look at it and consider it very positive. Thank you.

Michael Largent - Duane Grubb supports the ordinance with closer setbacks, 3.5 times closer, in your bedroom window? He wants them so the blades will barely pass.

Brian Bannan - I'm from Uniontown. I favor the ordinances with modifications. Specifically, the setback is in relationship to occupied residence. I think it should be referenced to the town's boundaries. If you have the setback five times, four times, three and a half, whatever, that allows the wind turbines to be placed right at the town boundaries. When you do that, I believe, you are going to find very few developers that are willing to develop our town properties that are adjacent to those wind turbines. I think you are going to find very few people willing to purchase homes that are adjacent to those wind developments. So, again, with referencing those houses occupied property rather than the town property you could have wind turbines right up to the town boundary.

I'd like to give you an example. Dale, here had residential development, a 50-lot development just south of town. If you apply this current setback ordinance to that area before his development, that would permit turbines 1,000 feet from our town boundary at Uniontown. I don't know, I can ask Dale, but I think he would have had second thoughts about buying that property for residential with turbines 1,000 feet from that town boundary.

I urge you to please consider setting back the setbacks while referencing the town boundaries. I think you are really going to curtail development of our towns and lower our property values by putting the turbines right up to our town boundaries and that is what the current ordinance allows.

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I prefer there are clear economic benefits to wind turbine development and I am all for those with the taxes and the leases for property owners but I think there are clear economic losses also as far as our towns with curtailed development and loss of property value.

I know the setbacks the examples of the setbacks can clearly demonstrate how a large setback around residences can squash any possibility of wind developments. For example, I have a setback around all our towns would look like. Eighty-eight percent of the people live in the sixteen incorporated towns. A mile setback around those towns that's what it would look like. That takes up 2,000 square miles of agricultural district and if you had a mile setback around 88% of the population that would represent 7% of that agricultural district. That is with a mile setback. Right now we have no setbacks around our towns except what is referencing the occupied homes.

Anyway, I wish you would consider that. I think it is really important for our towns to continue to grow to have an adequate setback from our boundaries. Thank you.

Michael Largent - I'm not sure all the statements of fact are correct but I'll give our staff a chance to respond if necessary when we get to the discussion among ourselves. Thank you very much for your testimony.

Rick Kiesz - I'm from Thornton. At the previous public meeting with the planners Alan Thomson said, "*These turbines, these utility scale commercial turbines have been on the American landscape for almost 30 years. The first projects were in California. Altamont Pass and another area in 1980 or 81, somewhere around there and we won't talk about them because that was probably a bad example of location of wind turbines.*" I say, the Palouse would be a worse location for wind turbines. I was in California for those 30 years and there was a good reason they don't want to discuss it.

Those of us who were there considered the turbines a joke at first until thousands of businesses fled that state because of high electric breaks caused by those 13,000 turbines; my business was one of them. That was long before Obama said the rates would sky rocket. You should do some serious research as to unintended consequences since the wind industry is one of the big reasons the California economy collapsed.

As the negatives about commercial wind energy keep arising week after week, you can count on my opposition to only increase. Putting it in current terms, it is a bubble that will burst and now even wind developers are getting bail outs. The wind energy hoax has always been and will always be a massive transfer of money from tax payers and rate payers to the few who are in on the scheme. That is not right; in fact, it is immoral and should be a major consideration in your decision.

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Jerry Webley - Thank you, Mr. Chairman. I'm here on behalf of Snake River Ranches, near Lacrosse. I'm here today in favor of the ordinance with the four times setback. I'd like to just echo what the rest have been saying. I'd like to see some additional funding come into our economy because as you know traveling through the district, we have a lot of CRP land and when that CRP land comes up there is going to need to be a new source of income coming in for a lot of those families that aren't going to have that next generation coming back. I'm part of the fifth generation farm and we are going to be looking for ways to help our farm to continue into the sixth generation as well. I'd just like to state for the record that I am for this ordinance with the four times setback. Thank you.

Michael Largent - Carl Long is in favor with reduced setbacks. Craig Dillard is in favor with reduced setbacks.

Jana Schultheis - Thank you. I'll finish with, I am married to Chris Schultheis; we are fifth generation, as well, working on the sixth generation in the Colton area. The comment that he did not get a chance to finish and I think it is really valid is different than what we heard tonight. There is we believe an omission within the written ordinance as it stands today. There is not the ability for a consortium of farmers to be able to work together and waive the setback from the existing boundaries lines of the properties, making their consortium of grounds much more viable. So, I would ask you to please consider that point of allowing farmers to work together to and get these turbines where they are the most productive and the least disturbing to the neighborhoods.

I also am a property manager, I work through the permitting process, and I would ask you if you work through this as written it is excessive and onerous. Not only are the Washington State requirements for permitting difficult, we've had to hire experts in several different areas to be able to manage the storm water pollution prevention plan, the State Environmental Policy Act check list, the aviation, the Fish and Wildlife, all of these different agencies are making production of our grounds more and more restrictive and more and more difficult. What I see here is perpetuating that problem rather than reducing it and streamlining our permitting process. And I would ask you to look at one more time at this to see if all those regulations are really necessary. They are difficult to get through and I don't know if any one of you three have done this but work through that process in your own mind before you pass it tonight.

I am in favor of this legislation, I would again agree with the crowd asking for a reduced setback, 3.5 times would also be applicable because and only because there is the conditional use permitting process that can really pick up issues like setbacks from communities that really would have a detrimental land value. So, I think that those issues that we really need to take into consideration will help mitigate and allow these different developments to flourish as well.

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We also, as landowners want to be able to have the ability to choose what is the highest and best use for our ground. We do not appreciate more and more restrictive use of our ground that we own that we have paid for with our hard-earned dollars. So, please be considerate of more restrictive uses than really is absolutely necessary. I think this is a landowner right in addition to a wind generation right and I appreciate all the work that has gone into this process and I thank you for the chance to comment.

Greg Partch - Chris, your testimony would you like to submit that; you didn't have a chance to finish it. Did you hit every point or did Jana hit the high points?

Michael Largent - On that note, we will accept written testimony until Friday at 5:00 p.m. so everyone who wants to expand what you said this evening or add to it so you have that additional testimony.

Chris Schultheis - If you are asking me a question would it be allowable to answer it right now, would it not?

Michael Largent - Well, I think we will hold on that. I believe, Jana, you articulated what Chris didn't have a chance to finish, are you satisfied with that?

Chris Schultheis - I am.

Denise Culbertson - I'd like to say that also my husband and I also own a farm right above the Snake River, up there along Long Hollow ridge. I was very interested in wind energy making lots of money until I looked into it further and realized that it wasn't for the better good of my state or my nation. I'm having to charge more energy for the people who are going to be there, going to have to pay for the energy. And then the neighbors that have a flicker or have a noise, and they aren't going to get paid so if you want to have it near, I guess I don't even know why you should just even make it as close as you want, because nobody seems to care about the next door neighbor. They want it as close as they want compared to what I've heard today.

My biggest thing is what Caroline said about families being able to stay on the farm. If I have a farm and you are right above me and you are flickering and you have all these lights right in front of my house and looking at them and I can hear them. Then what is my constitutional right to be able to stay on my farm? Because if, how can I sell that? How can I sell the house to someone who is not going to make any money on it and they are going to have to now just look at that and you say that maybe the house is, I think that maybe houses on the ridge they are not going to be 400 feet.

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So, on your zoning that you have now which is supposed to be fair for everybody, and everybody's rights, right now if I wanted to add onto my house, it would be an accessory, I could only do two bedrooms, I could only do one and a half times my house that I have right now, how big it is, or under 1100 square feet and two bedrooms. So, these are the rules that you have now.

So, I think if you want to take care of the constitutional rights of everybody, then you should throw out the whole zoning because throughout this zoning for the residential, you can't even have lights that flicker in the residential or that are too bright. You cannot have a house that you can see your neighbor's house by 1500 feet if you are standing up and looking. If you can see your house, then you cannot have it there if it is within 1500 feet.

So, we are not even talking four times, we are talking 1500 feet, so I guess that would be three times of a windmill. So I think you have to be fair about this and I also think you have to do a lot of studying and hopefully you are studying; you are not just taking what the wind people say is not going to happen. That is not their prevue and how much research have you done to know what the actual problems if there are any real problems that people are talking about, that I've read about. Or you say, oh that's just a bunch of people who don't like wind mills. I don't have a problem with wind mills; I have a problem with rights; I have a problem with, they are thinking

Michael Largent - Thank you, Denise. Kay Grubb is in favor of this ordinance and she would like to modify it so the setbacks would be 3.5 times the tower height or less.

William Clark - I don't have any testimony tonight.

Michael Largent - Is there anybody else who would like to testify right now? Okay, Erin Anderson.

There being no further comments, hearing was adjourned.

Comments from commissioners

Erin Anderson - Thank you for the opportunity to be here. I live at 360 Willow Brook Lane near the Wild Horse Wind Farm in Kittitas County. I am in support of the ordinance that you have tonight before you. I do support the four times tip height. I will try to confine my comments to a few areas and at times I will be referencing a document called The Draft Volume I, Draft Volume II of the Lower Snake River Wind Energy Project in Columbia and Garfield Counties, drafts dated August 2009 final dated October 2009. I believe they are in your record, thanks to your Planning Director and asked that you take notice of that and incorporate that in

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your record so that to the extent if I reference it at all you have it available at your fingertips.

In regard to the comments on the, I should also explain, I am an attorney; I represent municipalities, jurisdictions, councils, commissions, that type of thing in drafting ordinances such as yours, land use ordinances such as yours. I also represent the land industry which sometimes puts me on the other side of that conversation; that's the role that I am in tonight although not in regard to a particular project.

Regarding to the, and I do a lot of wind work and I live near a wind farm. I've lived in Eastern Washington since the seventies. C scale, low frequency that you heard about tonight is measured by a C scale rather than by the dBA scale. C scale is the inaudible, sometimes vibratory sound emission from a facility. Washington does not use a C scale to regulate noise. Most states do not use a C scale to regulate noise and those that do, do not apply it to wind turbines. You must be asking yourself, why is that and the answer is because wind turbines do not generate significant amounts of low frequency noise.

The studies that you'll find in here, and I know you have a white paper by Mark Bastasch, the studies that test this use in wind tunnels. What scientists do is they measure the low frequency in the wind tunnel with nothing else in it; just wind and they come out with a certain amount of hertz. Frequently that is below 20 hertz for the record. When they superimpose wind turbines, commercial wind turbines, the hertz is the same. We get low frequency; we get it from wind. We all hear that every day; adding wind turbines into the wind does not generate low frequency noise and that is what the C scale is addressed to.

Where you will find low frequency noise are things like compressor pumps, diesel engine pumps, those types of things; not wind tunnels. To the extent you're concerned about that I will direct your attention to our recently published and peer reviewed studies done by Hessler et al, 2008 as well as Hessler in 2009. Professor Hessler was, by the way, was the independent consultant of choice for a wind opponent related to the Hopkins Ridge Project. Had a complaint about the wind, Mr. Hessler was the consultant chosen by the opponent. Mr. Hessler is the same Hessler, ironically that is doing most of the studies on low frequency noise right now on wind turbines. Thank you. I'm happy to answer any of your questions.

Michael Largent - I think we will have questions. We have studied noise until we are blind and we have been reading plenty about that. If you don't mind, with the permission of Board, here, I'd like to question you on some of the liability issues that trouble me somewhat.

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Erin Anderson - Certainly, I would also point you to your prosecuting attorney relative to his counsel to you, but because I do represent jurisdictions, I'm happy to answer in general.

Michael Largent - I am the county risk manager and I hear a lot of testimony in regards to four times versus five times versus three and a half times and one of my jobs being a risk manager is to protect the county's interest in regards to county liability. I'm aware of the Kittitas county case that was settled in Washington State Supreme Court,

Erin Anderson - That was my case; I can speak to it.

Michael Largent - That's why I am asking you. I guess I would like for you to speak on the liability issue, not a safety issue, with regards to the defensibility of an ordinance with something less than five times, say four or something greater than five times as has been suggested here. I don't want to put you in a difficult position but as risk manager I would be looking for the position that is the most defensible in a court challenge. Mr. Schultheis has mentioned that he felt it would be challenged if an ordinance because it infringes on his rights. I understand that is a fair enough answer, but could you address the more or less that what is called for in the ordinance in a generalized way?

Erin Anderson - Certainly, I would like to concur with your prosecuting attorney, Mr. Tracy, regarding the appropriate factors to take into consideration. It is your duty to protect the public health, safety, and welfare; when a jurisdiction does so they need to demonstrate the reason or the basis for that regulation because they are depriving someone of the ability to maximize the use of their property.

There are many reasons for doing so. When you don't have a basis in your record whether this is your record, I'm guessing your record is about that five times square in terms of weight and volume. You're likely to have that kind of information in there that supports some finding as to the appropriateness of a setback. That is really what an entity is looking, a reviewing body, whether it is risk management, a court, what was the basis for your decision?

I can speak to at least the four times tip height because I was involved in that case from the start through the Supreme Court's unanimous decision to uphold the four times tip height and what the Supreme Court had before it and this does go to liability in terms of is there information that supports landing at a certain point. If you don't have any information to support a decision, you just throw a dart at the dart board. If it gets reversed you will probably get some complaints about a taking without basis.

When you get into the four times tip height, there is a scientific basis for that measurement. Not to bore you, I'll be very quick. There are

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three common methodologies to measure aesthetic, visual impact. That tip height was established to measure at what point does the visual impact of an object in your view scape diminish below dominant? Scientifically the Federal Highway Department has measured what you can see, a 56 degree range you can see with the human eye looking forward and you can tell how far things start to diminish in the view scape. You can see the detail and the foliage and the shapes and it finally runs into background.

They've determined that when you put an object in your view scape and you run it out four times its height, it ceases to be dominant within that 56 degree. I don't know what it is vertically, but it ceases to be dominant and because of that, setting these things back four times tip height allayed the EFSEC council from its concern that that setback was going to cause probable significant adverse impacts to either the built or natural environment under State Environmental Policy Act.

That's not adopted by regulation in the State of Washington; that is limited to that case. The Kittitas Valley wind project is located in an area that does have lots of hills. It is on the north base of Kittitas County, as you drive through I-90 looking to your right as you head towards Seattle. Relative to liability, I heard a lot of those same comments tonight about unconstitutional takings.

And as your attorney will counsel you, there are only certain protected classes that are entitled, there were two different kinds of claims to my, one was a you are discriminating against me claim and that is an equal protection claim that I am being treated or singled out differently than another protected class. As Mr. Tracy will also counsel you, protected classes under the constitution are certain special classes. We are all homeowners, or property owners; that doesn't rise to the level of a protected class.

A protected class is going to be somebody who could be discriminated against on the basis of gender, or physical disability. I need this ramp here to access this facility and you won't put it here. That was a special class so when you are encouraged to consider that, you may be discriminating, please consult with your counsel what is and what is not a protected class.

Michael Largent - Pardon me for interrupting; we will ask him to comment when we close the hearing on the issue.

Erin Anderson - And then you have concerns about the taking and in order for a jurisdiction to commit a taking they have to deprive somebody of the benefit of their land without (inaudible) and purpose. If you don't have any demonstrated information that says, yes, we need it ten times setback to prevent this harm to people and you know that at four times tip height the harm goes away but you push it out to ten, do you have a legitimate basis? If not, therein lays the genesis of somebody's claim for a

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taking. I'm not a judge; I have litigated takings claims both ways, but that's what they would be looking at. What justifies that additional, additional and that additional, etc. Do you have that in record? Is that a reasonable exercise of our ability to regulate for the public health, safety and welfare if you don't have a demonstrated benefit that you extract from that larger setback.

Michael Largent - Four times tip height was based upon the aesthetic value as opposed to the health, safety, noise anything like that.

Erin Anderson - That is correct and you've got my testimony on C scale in the State of Washington.

Michael Largent - The Commissioners here on this board may wish to question the staff on the noise question further when we close the hearing but I just wanted to take this quick opportunity to discuss some of the liability issues. Thank you for your comments on that.

Erin Anderson - Any questions from your other commissioners?

Michael Largent - That will then conclude the public testimony of this public hearing and I'm going to close this public hearing, however, the Board of County Commissioners is still in session and I'm going to open it up to this particular Board whether they have any comments or questions they would like to pursue from anyone here.

I know for myself I would like to hear Denis's comments he might have with regards to liability and if there is any obvious misstatements of fact, I would like to give Alan a chance to address that and the noise question may also bear further consideration. So I will ask the two commissioners, do you have any questions? When we finish tonight I will ask you if you are ready to make a decision tonight and if not, when do you want to make a decision.

I've heard a lot of things about flicker and noise, too and I was wondering if Alan or your designee would like to comment on any of that.

Alan Thomson - You specifically want to talk about shadow flicker?

Michael Largent - Those are two things that have been brought up as a health concern. We have been reading testimony both supportive and opposing the recorded health detriments of those two issues and I was wondering if you had any comments to make or designate to somebody who would be more appropriate to answer that question.

Alan Thomson - I'm not an expert on shadow flicker but I have been kind of schooled in it in the last two years. Shadow flicker happens at specific times of the day and it lasts for a very short period of time and it is essentially the sun shining or the moonlight shining through the blades

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and it casts a shadow down to the ground and if it is pointing at somebody's window potentially the theory goes that that could affect that person.

The setback that we have established right now at five times tip height, the data tells us that shadow flicker is not an issue. So, further away it goes, the less it becomes a problem and from what the established peer reviewed data is telling us is that at least at four times, five times tip height it is not an issue and it is for a short period of time.

It can be mitigated by simply moving the position of the turbine so it is not something that is a deal breaker. If it becomes a problem, if someone complains about it, it is something that can be mitigated, plus the conditional use process and the State Environmental Policy Act process when we actually have a project, will study that and at that time we would be able to figure out if there is going to be an issue with a potential location of a turbine and then the Board of Adjustment can mitigate that.

Michael Largent - Will that same logic hold true about the acoustics low frequency on that topic?

Alan Thomson - I am one for peer reviewed data not data from the internet that is not established in the scientific community and the data that has been peer reviewed that Erin talked about tonight, Hessler and Jeff Levonthaal all say that there is no problem or there is very little low frequency noise coming from commercial size wind turbines. To me, that is a very, very critical point that we can back up by science and as far as I am concerned, there is no problem with low frequency noise. There is no reason to have the C scale put in our ordinance. I think the peer review data establishes it very clearly.

Michael Largent - There is a mountain of data that has been submitted to the board all of which,

Denise Culbertson - Is that peer review data, is that something that we can get so we can see what you are reading?

Michael Largent - Well, the public record is available and it is submitted. I'll have to ask Maribeth how you can get a hold of it. All this stuff is available to the public.

Denise Culbertson - So I can come and get it tomorrow?

Maribeth Becker - You have to pay for it.

Greg Partch - One of the things that we hear a little bit about today that when you first started your presentation you talked about the baseline, this zoning ordinance is the baseline. We've heard little bits and pieces

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about the Board of Adjustment and I think that will come into play for the towns and cities. Would you like to talk a little bit about that?

Alan Thomson - As far as the setback to city property lines is concerned, I think that we and we can maybe make this clear in the ordinance that we are treating that as if it is housing. It is property there that could potentially have housing. So, the setback would be the setback to occupied structures to city limits, not treated as a property line and it would be 1.5 times tip height as it is written in the ordinance right now.

The minimum distance to city properties would be five times as the ordinance is written at the moment. However, when we get into a project, when a project is proposed then we have a process to go through. We have the State Environmental Policy Act process and the conditional use process and than that have to go to the Board of Adjustment. This is just a minimum. If detail arises that tells us that perhaps it is a bad idea to have a wind turbine that close to a city property line, then our Board of Adjustment can set it back further. But it has to be premised on information that is supportable.

Talking about Pullman, in particular, we have an arrangement with Pullman through a joint planning process and they really are the only serious potential for growth in this county for annexation. So, we have areas that we are agreeing upon are going to be potentially annexed into Pullman in the next 25-40 years.

Pullman would have a say in any proposals in any development proposals that comes our way and if they thought that having commercial wind turbines that close to the city limits would be a problem especially if it is in those areas that we are going to agree to protect, I don't think we would have any turbines there. We don't have that same agreement with any other towns, incorporated in Whitman County.

But the process that we would go through the State Environmental Policy Act process and the conditional use process would identify those issues and therefore keep them further back. Just as a personal point, if I were a wind development company I don't think I would even go there, proposing to have wind turbines that close to towns would probably receive an immense amount of resistance. That is just a personal opinion.

Pat O'Neill - One question back to the shadow flicker. Does it also have to do with the frequency, how fast a windmill turns, or is it strictly on distance?

Alan Thomson - I'm not an expert on that so I don't really know the answer. Erin, do you have an answer to that one?

Erin Anderson - Certainly, the matter of shadow flicker and its impact on human health does absolutely have something to do with the alternation

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between light and dark. Envision if you will, a television, we don't have these analog TV's anymore, but it used to go like this all the time. But that rapid alternation between light and dark is called hertz. And a hertz measures how frequently there is that alternation. There is a reason why we measure that. Rapid fluctuations between light and dark can trigger health effects.

Now what we are talking about is epilepsy; I'll get it right out on the table. Epilepsy is a condition that does affect Americans and within the constellation of health effects, if you have epileptic tendencies, not everybody is photo sensitive. There are other types of events that can trigger an epileptic seizure, so it is not "that all people with epilepsy will have this reaction." But in the 1% of the American population that does have photo sensitivity as an element of their epileptic condition, 3-5% of that 1% is photo sensitive. So that 3-5% of that 1% could have an adverse reaction to the rapid fluctuation of light and dark, light and dark etc.

The American Epilepsy Association has published its research and findings on this and what they have found is that it requires between 5 and 20 hertz of alternation, the speed of the flicker of light to trigger a photo sensitive epileptic reaction. Commercial wind turbines turn at less one hertz; its .621 hertz which is 20-40 times lower than the hertz required to trigger a photo sensitive affect so.

When you layer that on to what Mr. Thomson has already told you about the very narrow circumstances of year when you even have the opportunity to have a shadow flicker event and the reason for that is the sun has to be extremely low in the sky to come through those turbines because we are at such a high latitude here, it has to be extremely low on the horizon; which mean dawn or dusk and the sun has to be shining brightly.

The sun doesn't shine very brightly at dawn and dusk; you have to have no obstruction between your house and the turbine. The distance of course, diminishes the distinction of the edges of the shadow. Your house has to be oriented in that direction; the turbines have to be perpendicular to the sun and the wind has to be coming in that same direction.

So, if those planets all line up and you have those twenty or thirty hours per year where the shadow, and you are that close where you might be a receptor or a receiver, they still are not going to turn fast enough to cause any health effects. The references to that you can look to the Epilepsy Foundation; they have fairly recent findings on this, I am happy to provide the documentation; it is in this document although I can't put my finger on it right now. At your request, I will provide it to your county attorney if you need it.

Alan Thomson - Thank you.

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Greg Partch - I just want to mention Alan referred to the Joint Planning Committee that we work with the City of Pullman, that is an agreement that we have been working on for some time but that is not something that we decide. That is something we are getting close to but it is not fact or something that is in place at the moment.

Michael Largent - Are there any other questions from the commissioners at this point? The only thing I have left, we have been following the testimony, we don't want to rehash what the planning commission has done I would particular like to hear and ask our attorney prosecutor, Denis Tracy to comment on some of the issues that have been raised here.

Denis Tracy - I can do that and I will try and be a little more brief than I was earlier. Erin Anderson talked to you a little bit about constitutional takings and that is what I started talking about as well. The constitution limits your authority; you can only act to protect the public's health, safety and welfare and only if there is a legitimate demonstrable basis for need for that.

The other aspect for that, though, is your action has to be limited to what is reasonably necessary. You can't go overboard to protect against a need, even if it is a demonstrable need. So, I talked earlier about how a classic example of using the police power is the building code. Everybody accepts that you can establish certain minimum standards in buildings to protect the public health, safety and welfare.

So, for instance, our building code might require the distance between studs in a wall to be sixteen inches and there is a good reason for that so that the wall doesn't fall down or create an undue risk of falling down. But, the building code could say six inches. You could say you don't want the wall to fall down so we are going to require six inch on center studs. That would provide some extra insurance.

And that wall would be certainly a lot more sturdy but according to the peer review journals of the building engineer, it is not actually necessary to protect against that harm of the wall falling down so that would be overkill and it would be unconstitutional. Such a rigid restriction would not be necessary to prevent the harm that you are trying to prevent. So, not only, do you have to have this demonstrable harm but your fix to that harm or that prevention of that harm has to be reasonably necessary. It has to be limited.

In regards to that, I want to mention or refer to comments of Jana Schultheis and Chris Schultheis who talked about a setback from a property line so this is not the setback in regards to an occupied structure; the setback from a property line which in the code as I understand it is 1.5 times the tip height.

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The Schultheis' bring up the point that ought to be able to waiver; in other words if you have both property owners agreeing that they don't want any extra protection one from the other that they actually want to be able to have a windmill facility closer than 1.5 times to their property line, that should be allowed. Both property owners if they are in agreement should be allowed to have that and I'll give you my legal opinion is that I agree.

I think indisputably if you did not allow for that that would be an example of overkill. That would be an example of six-inch on center stud. If both property owners, you have the line down here, are in agreement there is no harm that you are protecting against, you're not protecting anybody's health, safety and welfare in not allowing that tower to be close to the property line.

In reading through the code, what I suggest is the other staff and I work on this issue just a little bit because I think the code may already allow that but since it may not be crystal clear, maybe we and Mr. Thomson thinks it does, too. We got this crazy idea from Mr. Storey earlier; but I think maybe staff needs to confer and maybe have a bit of clarifying language in there to make sure that point is clear. Because again, that would be an indisputable error if you didn't allow that.

I'll agree with the comments regarding shadow flicker and just emphasize again that issue to the extent that there could be any harm to an adjacent property owner that issue in the current code is addressed under the conditional use permit process. What these developers do is they create some very detailed and advanced computer modeling and they'll be able to tell the Board of Adjustment precisely what if any, sort of flickering there might be. That is exactly the sort of review that needs to happen to protect the other property owners and that is exact the sort of review that does happen in the ordinance that is before you.

It is not the sort of review that is appropriate for a county wide ordinance because you don't know where, if hopefully maybe these windmills will come in but you don't where they will be exactly and you have to know that before you can decide how far back a particular thing needs to be in order to prevent a shadow flicker issue. That's exactly the sort of issue the Board of Adjustment needs to deal with and is required to deal with in this ordinance. I think that is all I have.

Michael Largent - Mr. Thomson?

Alan Thomson - I think the zoning residential/wind turbines needs to be talked about and clarified. There is misinformation regarding that that has been spoken tonight. The planning commission actually addressed this very issue because it is not the first time it has been raised. It is a false premise to compare putting a house up on the landscape versus a turbine or a transmission tower or a cell tower is incorrect.

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The history of zoning allows any jurisdiction to distinguish between zones. Residential zones and the standards applied do not mix with commercial or industrial, retail or agricultural. They can but we can separate them and there is a hundred years of history and legal precedent in that, so to compare putting a house on a hill versus a turbine in a hill is an incorrect thing to do.

We are not reviewing houses on hilltops with this ordinance right now. It's just the wrong thing to do; a house on a hilltop is, we debated that for a long time; can we restrict that? Legal counsel came up with the opinion that yes, we can. We are not denying the landowner the ability to build a house on a hilltop on their land. We are just telling them that maybe they should come down off the top a little bit.

When you put a tower which has a specific purpose on the landscape it has to be where the wind is, for instance, or it has to be where it is operable. You're not going to put a cell tower down in the valley; it won't achieve its purpose. We don't apply the same rules for placing a house on the landscape as we would a turbine or a cell tower, or a transmission line; its apples and oranges.

Denise Culbertson - Alan are you saying,

Michael Largent gaveled down Ms. Culbertson stating this is not an opportunity to have a debate.

Denise Culbertson - I was just going to ask..

Michael Largent - Denise, not now; afterwards. Commissioners, do you have any additional questions?

Pat O'Neill - No.

Michael Largent -With that, we're going to close this particular session. We are adjourning, well, first of all, one thing we haven't determined is when the Board would like to make a decision.

Greg Partch - I think as pointed out, we have basically three different options; we can accept the Findings as presented today, we could decide that we want to defer this until future date or send it back to the planning commission. So, I think at this time, my preference would be to,

Mark Storey -Just to point out, you have already extended the written comments until the end of the week so I'm not sure you have the option unless you retract that.

Michael Largent - I don't the commissioners are in favor of making a decision tonight. There has been some new information submitted that we

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would like to consider carefully but also like people who would like to submit additional clarifying comments or seek additional information, have an opportunity to do so. We have extended that period of time until this Friday at 5:00 p.m.

So, I would suggest that we schedule a decision for this for November 16th at 10:45 a.m. in our Chambers.

Folks, I realize it is frustrating when you would like to say things and the emotions are high but this is how this particular process works. So, we are going to stand in recess, not adjournment, until Monday. So, thank you very much for coming.

8:55 p.m. - Recess.

Commercial Wind Energy Facilities comments received after public hearing:

070058E Roger Whitten
070058F Harold Schultheis
070058G Jeffrey Igielski
070058H Brian Bannan
070058I Carolyn Kiesz
070058J Erin Anderson
070058K Denise Culbertson
070058L Joseph & Susan Semler
070058M Colfax Mayor Norma Becker

D070058N THE BOARD OF WHITMAN COUNTY COMMISSIONERS met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **Monday, November 9, 2009 at 9:00 a.m.** Chairman Michael Largent, Greg Partch and Patrick J. O'Neill, Commissioners and Maribeth Becker, CMC, Clerk of the Board attended.

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

Present: Joe Smillie, Kelli Campbell, Susan Nelson and Maribeth Becker (9:00 a.m.) and Mark Storey, Alan Thomson, Denis Tracy and Joe Smillie (10:00 a.m.).

070059 16. Items discussed included LEOFF I members medical coverage, commercial wind energy facilities and Planning agenda topics. No action taken.

12:00 p.m. - Recess.

12:45 p.m. - Board Business Continued/BOCC Executive Session.

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Present: Denis Tracy, Brett Meyer, Eunice Coker, Shirley Bafus and Bob Lothspeich (12:45 p.m.) and Gary and Valerie Hunt, Kelli Campbell, Bob Reynolds and Sharron Cunningham (1:00 p.m.).

070060 17. Commissioner Partch **moved** Commissioner O'Neill **seconded** the motion and it **carried** to go into executive session with the above individuals until 3:00 p.m. in accordance with RCW 42.30.140(4)(a) for matters related to negotiations.

3:00 p.m. - Return to Open Session/Adjourn.

D070060A Commissioner O'Neill **moved** to adjourn the **November 2 and 9, 2009** meeting. Motion **seconded** by Commissioner Partch and **carried**. The Board will meet in regular session, in their Chambers', in the Whitman County Courthouse, Colfax, Washington, on **November 16, 2009**. The foregoing action made this **9th** day of **November 2009**.

ss/ GREG PARTCH, COMMISSIONER
ss/ PATRICK J. O'NEILL, COMMISSIONER

MARIBETH BECKER, CMC
Clerk of the Board

MICHAEL LARGENT, CHAIRMAN
Board of County Commissioners