

1-31-2018

Judge Shaffer called a special session of the Gilliam County Court to order at 9:30 a.m. The meeting was held at the Gilliam County Courthouse in Condon, Oregon. The purpose of the meeting was to take action on the Arlington to Condon Fiber Build with consideration of a Notice of Intent to Reward.

Present were Judge Steve Shaffer, Commissioner Michael Weimar, Commissioner Leslie Wetherell and Recorder Mary Dyer of High Desert Writing Services. County Legal Counsel Will Carey was present via speaker phone.

IN THE MATTER OF NOTICE OF INTENT TO AWARD

County Legal Counsel Will Carey recommended that the County Court wait to issue a Notice of Intent until attorney Dan Olsen delivers his opinion. He explained that entities who may wish to offer a protest have seven days to do so, beginning when the Notice of Intent is issued. The opinion is expected tomorrow, after Olsen has an opportunity to talk with Fiber Consultant Joe Franell, who has been away due to an illness in the family.

Carey also noted that Joe Franell's change in a second review of RFPs resulted in Inland Development Corporation's placement above Home Telephone. (Inland prevailed on both rounds of scoring with the City and no changes were made.) Carey explained that there could potentially be problems if the change is deemed a modification rather than a clarification. He said that the County isn't required to issue an Intent to Award even if the City has already done so, and urged the Court to be patient.

Additionally, he advised that the Court has an obligation to "weave a trail with the least amount of exposure possible," and also commented that the decision to attain an outside opinion was initiated by the County. Commissioner Weimar clarified that the decision to seek a third opinion was initiated jointly by the City and County.

Commissioner Wetherell commented that in a previous meeting, Franell indicated that the inclusion of 12 additional fiber pairs had no impact on the scoring, and that he viewed the change as a clarification, not a modification. Carey said that might be one thing that Olsen will want to consider in his opinion.

Judge Shaffer explained that Inland Development Corporation's RFP offered more endpoints, which Franell considered to be in their favor. He said that Inland's proposal for 24 pairs was approved by the City, and that Inland dropped the price when their bid considered 12 pairs instead of 24. He commented that it becomes more difficult to get an "apples to apples" comparison with other RFPs.

Commissioner Weimar said that if the County doesn't issue a Notice of Intent to Award, "we're just starting over." Carey explained that is not necessarily the case, and that once the Notice is issued, everything becomes public record. Again, he recommended that the Court not move forward until the outside opinion is received, advising the Court to "get an answer from the person hired to give the opinion". He said that because the

City has already signed the Notice, its records are now a matter of Public Record, which doesn't affect the County.

At this point, Judge Shaffer requested input from the audience, and Commissioner Weimar commented that it would be good to hear why the City is in such a rush to move forward.

Condon City Administrator Kathryn Greiner explained that the City has watched the process drag on, and that she has seen Olsen's preliminary findings, which indicate that things look okay. She said there may not be a protest, but a protest may occur in spite of a third legal opinion. If there is a protest, legal counsel will have information that will help in formation of a response. Greiner said that a Notice of Intent provides Inland Development with official notice that we're serious and ready to move with negotiations. Judge Shaffer commented that it isn't true that the County has dragged the matter on, and said that if the City and County had worked together, the project would already be finished. Commissioner Weimar said that the County Court never received anything in a form that would be useful in terms of making the kind of decisions that have been made recently, and questioned whether what happened three years ago makes any difference.

Judge Shaffer provided brief background on the fiber project, noting that discussions began three years ago with Windwave's fiber build across the north end of the County. He said that Frontier Telenet had a conversation with Windwave about fulfilling their obligations, and at that point, it was necessary for the County to step back and involve other entities. Commissioner Weimar responded, "that doesn't have anything to do with it," and Judge Shaffer countered that "It has a lot to do with it."

Judge Shaffer said he is comfortable issuing the Notice of Intent to Award, but he's concerned about going against legal counsel's advice.

Lori Anderson of Columbia Basin Electric Cooperative said that waiting another day only extends the period of time for somebody to file a protest, and that if a protest is filed, the next step would be unchanged regardless.

Commissioner Wetherell said she was hoping to move forward today, and that the County and City would finally come together and get the project going. Commissioner Weimar said there is no question that the City is pushing the County to move forward, but he thinks it makes sense to issue the Notice of Intent to Award based on information received and let the chips fall where they may. Judge Shaffer agreed, but again expressed concern about acting against the advice of legal counsel. Will Carey said that his suggestion to wait was based on his conversation with Olsen yesterday, but the "world won't come to an end" if the County moves forward today.

Judge Shaffer noted that he received two documents, one sent by legal counsel, and a shorter, more general document similar to the City's, and that either one is okay with him. Commissioner Wetherell said she thinks the shorter document is adequate.

Les Ruark of Rock Creek asked if Olsen will issue an opinion regardless of the outcome of today's discussions, and Will Carey responded that Olsen will provide an opinion regardless. Ruark also asked if the Court sees a responsibility to wait and consider the

third opinion based on the cost involved, and Judge Shaffer said he does think the County has a responsibility to consider the opinion as the Court opted to make a decision after receiving information from a third party. Ruark asked Judge Shaffer if he has an idea of overall cost of the third legal opinion, to which Judge Shaffer responded that he does not. He said that the County will have to pay for legal counsel whether a decision is made today or tomorrow.

MOTION by Commissioner Weimar, second by Commissioner Wetherell, to issue a Notice of Intent to award a contract for Dark Fiber Indefeasible Right of Use (IRU) and Maintenance Service, jointly by City of Condon and Gilliam County, awarding the contract to Inland Development Corporation. Shaffer – Yes; Weimar – Yes; Wetherell – Yes; **Motion Carried.**

IN THE MATTER OF THE NEXT COURT MEETING

The next Gilliam County Court meeting will be held on Wednesday, Feb. 7, 2018 beginning at 10:00 a.m. at Gilliam County Courthouse in Condon, Oregon.

It appearing to the Court that there was no further business to be conducted at this time and no additional matters to be considered, Judge Shaffer adjourned the special meeting at 10:15 a.m.

GILLIAM COUNTY COURT

By _____

Steve Shaffer, Judge

By _____

Michael Weimar, Commissioner

By _____

Leslie Wetherell, Commissioner

Mary H. Dyer/Recorder