



## BOARD OF COMMISSIONERS

1300 NW Wall Street, Bend, Oregon  
(541) 388-6570

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# BOCC MEETING MINUTES

1:00 PM

**MONDAY October 28, 2024**

Allen Room  
Live Streamed Video

Present were Commissioners Patti Adair, Tony DeBone and Phil Chang. Also present were County Administrator Nick Lelack; Deputy County Administrator Whitney Hale; Senior Assistant Legal Counsel Kim Riley; and BOCC Executive Assistant Brenda Fritsvold.

This meeting was audio and video recorded and can be accessed at the Deschutes County Meeting Portal webpage [www.deschutes.org/meetings](http://www.deschutes.org/meetings).

**CALL TO ORDER:** Chair Adair called the meeting to order at 1:00 pm.

**CITIZEN INPUT:** None

### **ACTION ITEMS:**

#### **1. Presentations of progress and ARPA-related funding requests for Terrebonne Sanitary District and Tumalo Basin Sewer District**

Chris Doty, Road Director, introduced presentations by representatives from the Terrebonne Sanitary District and Tumalo Basin Sewer District who will provide updates on progress made to develop sewer systems for their respective communities.

Tim Brown from the Terrebonne Sanitary District reported significant progress and said the district has received more requests for annexation into the system. Saying

the district is currently at a critical phase as it works on the system's final design, he shared the goal to take the project out to bid in conjunction with the City of Redmond's wastewater treatment facility expansion. He asked that the County allocate an additional \$75,000 in ARPA funds to facilitate the completion of several key activities.

Commissioner Adair said this request will be taken up by the Board in November in association with information from Finance regarding the return of some ARPA funds and new funding requests. She noted that the memo received from the Terrebonne Sanitary District identifies \$35,000 as critical to this project.

Responding to Commissioner Chang, Brown said the district would be interested to be loaned \$75,000 if it cannot otherwise be allocated.

Commissioner Chang said while the County wants to support the sanitary districts and their initiatives, it does not have \$100,000 in ARPA funds that is not already committed.

Ryan Rudnick from Parametrix said the Terrebonne district's ability to repay loans would be limited at the outset.

Linda Swearingen added that both districts have applied for grant funding that could be used to pay back loaned funds. She spoke to a concerted effort by some people to spread misinformation about the Terrebonne project and said the board for the Tumalo district will be sworn in in January.

Commissioner DeBone suggested allocating \$25,000 to \$35,000 and extending the remainder as a loan to assist getting to the next step.

In response to Commissioner DeBone, Doty said ODOT's US 97 / Lower Bridge Way project is proceeding and includes the installation of sewer lines. The County contributed \$11 million to this project.

Commissioner Adair asked about the contract with Murraysmith for the Tumalo wastewater feasibility study. Doty said although Murraysmith was bought out by another company, this contract was completed, and the information gleaned will be used to refine some of the presented concepts to determine if the system can be expanded.

Responding to Commissioner DeBone, Rudnick said system development charges in Terrebonne may be \$7500 and monthly rates approximately \$85.

Swearingen added that the more connections, the lower the monthly rates will be.

Robert Fish, representing the Tumalo Basin Sanitary District, reported a good amount of community support for this initiative and spoke to efforts to not alienate anyone as work proceeds.

**2. Public Hearing regarding Energy Wise Services Protest of the Notice of Intent to Award a Contract for the Deschutes County Fair and Expo Center Solar PV System to E2 Solar LLC**

Lee Randall, Facilities Director, reminded that after the Board accepted staff's recommendation to utilize the design-build procurement method for the Solar PV System project, a qualifications-based Request For Proposals (RFP) was issued.

Eric Nielsen, Capital Projects Manager, said the seven proposals received in response to the RFP were evaluated based on several criteria, including each responder's approach to provide the needed services and related project experience. E2 Solar received the highest score and was recommended for the contract award. After the Board approved the notice of intent to award the contract to E2 Solar, Energy Wise Services filed a protest.

Stephanie Marshall, Senior Assistant Legal Counsel, explained the provisions in ORS 279B which outline the necessary legal criteria for considering a protest. Marshall listed decision points for the Board to consider in this matter in accordance with ORS 279B, as follows:

1. Has the protestor demonstrated that all the higher ranked proposals are nonresponsive?
2. Has the protester demonstrated that the County failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials?
3. Has the protestor demonstrated that the County abused its discretion in rejecting the protestor's proposal, or has the protestor demonstrated that the County's evaluation of proposals or the County's subsequent determination of award is otherwise in violation of ORS 279B or ORS 279A?

Marshall concluded that State law grants discretion to the Board in evaluating proposals submitted in response to an RFP, and the Board based its evaluation of the proposals solely on their ranking, consistent with ORS 279B.

*The public hearing was opened at 1:36 pm.*

Peter Greenburg, representing Energy Wise Services, said the proposal submitted by E2 Solar includes a specific inverter which does not meet the requirements of

the project, and the proposed panels to be used are warranted by a company which is at risk of going out of business.

Speaking to what he viewed as many unusual components in the RFP, Greenburg said the method used to score the proposals was not well-explained and it is not clear why a certain number of points were assigned to each proposal component. He disputed that the proposal from Energy Wise Services deserved to score as low as it did, shared specifics of the proposed materials, and said that the system proposed by Energy Wise is 20% larger than the next-largest system and would produce 356KW instead of 310KW, which would result in a \$350,000 difference in energy value produced over 20 years. Greenburg stressed the value of using the right materials and said the scoring of the proposals was subjective and did not consider the overall value of the project.

Continuing, Greenburg questioned how a proposal for a fixed price contract could be scored based on a billing rate schedule and said the winning proposal shows a less than prevailing wage for the installers.

Randall said in taking the design/build approach, the County was seeking proposals, not bids, and the RFP included information on how the proposals would be scored which is the standard approach for a qualifications-based selection. Randall explained why the substitution of materials and/or an alternate system approach is allowed and subject to negotiation.

In response to discussion regarding wage rates, Wayne Powderly from the Cummings Group said only the field technicians are subject to prevailing wage rates. Randall believed the inclusion of an incorrect prevailing wage schedule to be a clerical error in the winning proposal. Nielsen confirmed that all of the involved parties understand that prevailing wage rates will be applied to the project.

Commissioner Adair asked if other proposers besides E2 Solar indicated the use of the same Swiss product from a company that may go out of business. Randall said any issues of concern regarding materials or other items would be addressed and vetted in the design process—this would include determining and vetting each component and part of the design.

Nielson said although Energy Wise did not include Exhibit C in its proposal, its proposal was only deemed incomplete instead of non-responsive. Because the scores had already been tallied, the failure of Energy Wise to not include this exhibit did not affect how Energy Wise scored.

Commissioner Chang asked if the County's solicitation was sufficiently specific. Randall noted that proposers were given a two-week period to ask questions.



Greenburg said the RFP did not appear to be a true proposal for design services because responders proposed specific components that would be installed.

Commissioner Chang agreed that while the RFP did not ask for a design, every response provided one.

*The public hearing was closed at 2:24 pm.*

CHANG: Move to close the oral and written records and proceed with conducting deliberations on this matter

DEBONE: Second

VOTE: CHANG: Yes  
DEBONE: Yes  
ADAIR: Chair votes yes. Motion Carried

Commissioner DeBone stated his support of the RFP as issued and to deny the protest. He appreciated that this project will offset energy use and therefore be good for the environment.

Commissioner Chang agreed that the solicitation was not unnecessarily restrictive or flawed.

Commissioner Adair asked if the project was limited to two buildings due to the amount of funds available. She stated her preference to purchase American-made products, wanted the County to be transparent, and noted that Energy Wise Services has been in the business for 14 years.

Commissioner Chang reminded that E2 Solar can modify the conceptual design it proposed. He appreciated the explanation of the advantages of the alternate approach by Energy Wise.

DEBONE: Move to uphold Document No. 2024-811 which declared the Notice of Intent to Award a contract for the Deschutes County Fair and Expo Center Solar PV System to E2 Solar, and deny the protest submitted from Energy Wise Services

CHANG: Second

VOTE: CHANG: Yes  
DEBONE: Yes  
ADAIR: Chair votes yes. Motion Carried

### 3. Consideration of Letter of Support for City of Redmond Wetlands Complex

Road Director Chris Doty reported that the Bureau of Land Management (BLM) is soliciting comments on the City of Redmond's proposal to acquire 541.5 acres to accommodate expanding the City's wastewater treatment facility and associated wetland treatment complex. Doty presented a draft letter from the Board supporting this project.

In response to Commissioner Adair, Doty said the project is expected to be completed in 2027.

DEBONE: Move to approve a letter to the BLM supporting the City of Redmond's Wetlands Complex project

CHANG: Second

VOTE: CHANG: Yes

DEBONE: Yes

ADAIR: Chair votes yes. Motion Carried

#### OTHER ITEMS:

- Commissioner DeBone referenced a letter from the Department of State Lands regarding DSL's publication of new maps delineating sage grouse habitat, saying he will forward the letter to Peter Gutowsky, director of Community Development.

Commissioner Chang was interested to know how much the map has changed and wanted to see both layers on one map.

- Commissioner DeBone referred to an email from Redmond regarding the large lot technical advisory committee. Commissioner Adair indicated she will attend this meeting.
- Commissioner Chang attended the Bend-Redmond Habitat for Humanity ribbon-cutting for seven townhouses on Cedar Avenue.
- Commissioner Adair reported on the Local Government Advisory Committee for Health & Human Services meeting in Salem last Friday, which featured an excellent report on homeless outreach in Eugene. Sharing that she was surprised to hear OHA Deputy Director of Behavioral Health Jon Collins say that building beds is not always the solution, she said more beds are needed in Central Oregon, including for youth. She hoped that in the future, more State representatives to this committee will attend in person rather than remotely.

**EXECUTIVE SESSION:**

At 2:42 pm, the Board entered executive session under ORS 192.660 (2) (e) Real Property Negotiations.

At 3:31 pm, the executive session concluded and the public was invited to return to the room. The Board then directed staff to proceed as discussed during the executive session.

**ADJOURN:**


Being no further items to come before the Board, the meeting was adjourned at 3:31 pm.

DATED this 4<sup>th</sup> day of December 2024 for the Deschutes County Board of Commissioners.

  
PATTI ADAIR, CHAIR

**ATTEST:**

  
RECORDING SECRETARY

  
ANTHONY DEBONE, VICE CHAIR

  
PHIL CHANG, COMMISSIONER