

**OFFICE OF THE BOARD OF COUNTY COMMISSIONERS
OF BLAINE COUNTY
REGULAR MEETING OF THE MARCH 2020 SESSION**

First Day

Tuesday, March 3, 2020

Pursuant to Statutory Provisions, the Board of Blaine County Commissioners (BCC) met this day at 9:00 a.m. Present were Vice-Chair Angenie McCleary and Commissioner Dick Fosbury; County Administrator Derek Voss; County Administrative Services Manager Mandy Pomeroy; and Recording Secretary Sunny Grant. County Clerk JoLynn Drage was present for part of the morning session.

Chairman Greenberg was absent.

Vice-Chair McCleary called the meeting to order at 9:01.

PUBLIC COMMENT:

- Kiki Tidwell commended the BCC for getting a grant for an electric vehicle charging station.
- Tidwell urged the BCC to consider live streaming all commissioner meetings.
- Lili Simpson said she watched a large band of deer behind her house, on what is an undesignated migration corridor, being chased by an off-leash dog. Simpson asked the hikers to leash the dog, which they did for awhile, but then released the dog as they climbed the hill. A Hailey Police Officer and Fish and Game officer came and were polite, but didn't cite the hikers. Simpson said she never heard from BLM; and said the new Administrative Guidelines weren't followed.
- Marcia Hart said the BCC was sent an email outlining what cities can legally do to object to the introduction of 5G. Hart said they were awaiting a ruling on a case taken to court by the Originators in Washington, D.C.. against the Federal Communications Commission.
- Lisa Lintner said changes were recently made in Federal Trade Commission (FTC) regulations that allow citizens to protect themselves through local ordinances. An FTC order exempted 4G and 5G facilities from previously-required historical preservation review under the National Preservation Act and environmental review under the National Environmental Policy Act (NEPA). On August 9, 2019, the US Court of Appeals vacated the FTC's rule, and reinstated the prior regulations, meaning "localities" can demand such facilities get NPA and NEPA review, even if the facilities have begun installation.
- Cheryl Hymas said they have an expert who can reiterate that it was illegal for the FTC to allow installations without NEPA and NPA review.
- Michelle Pabarcus said 22 cities have stopped 5G or have enforced moratoriums on 5G. Pabarcus said they are partnering with a group in Boise to schedule a Townhall Forum with a national expert speaker.
- Iny Day-Truppi said electromagnetic rays have been tested, but the pulsating magnetic field rays have not been tested.

BOARD OF EQUALIZATION - I.C. 63-501A

There were no Board of Equalization issues to address.

EXECUTIVE SESSION - Idaho Code 74-206 (1)(d) Indigent - Consideration of records that are exempt from disclosure as provided in Chapter 1, Title 74, Idaho Code

Also present: Blaine County Services Manager Brooke Baird.

Fosbury moved, seconded by McCleary, to go into Executive Session, under Idaho Code 74-206 (1)(d) to consider indigent matters. Motion carried 2/0.

OPEN SESSION RESUMED

Fosbury moved, seconded by McCleary, to accept the settlement offer as submitted of Request #2014-0030 for applicant #223, contingent upon Catastrophic Health Care Cost Board (CAT) approval. Motion carried 2/0.

TAX CANCELLATIONS

Also present: Blaine County Assessor Jim Williams; Appraiser / Mapping Clerk Joanne Freeman; and Blaine County Treasurer John David Davidson.

- **Goodrich-Patton Living Trust** - RP003870000010, RP003870000020, RP0038700000A0, RP02N200034300, RP03N20020614B, RP03N200276170, RP03N200336190, RP03N200336200 - Casualty Loss I.C. 63-711 - Sharps Fire

These parcels were affected by the Sharps Fire and BLM wouldn't allow them to be grazed for two or three years.

Fosbury moved, seconded by McCleary, to approve cancellation taxes for the Goodrich-Patton Living Trust on parcels RP003870000010, RP003870000020, RP0038700000A0, RP02N200034300, RP03N20020614B, RP03N200276170, RP03N200336190, RP03N200336200, in the amount of \$1,885.32 for 2019. Motion carried 2/0.

- **City of Bellevue - Bellevue, ID.** - RPB04190050000 - Tax Exempt I.C. 63-602A
Jim Williams said Bellevue is exempt, but was incorrectly charged taxes for a property.

Fosbury moved, seconded by McCleary, to cancel taxes for City of Bellevue on Strahorn Large Block Plat, Lot 5 parcel for 2016 and 2018 in the amount of \$1,990.71. Motion carried 2/0.

CONSENT CALENDAR

- **Resolution 2020-09 Destruction of Assessor's Records** Record #667530
- **Junior College Certificate of Residency forms**

Fosbury moved, seconded by McCleary, to approve the Commissioners' Consent Calendar for Tuesday, March 3, 2020, as presented. Motion carried 2/0.

BOARD of COUNTY COMMISSIONERS REPORTS

2020 Blaine County Complete Committee – McCleary

The Census hopes to have as many people as possible complete their Census by April 1. The Committee proposes sending postcards to boxholders with information on how to fill out their census online or at locations around the Valley.

Cardno Presentation – Fosbury

Also present: County Certified Floodplain Manager Kristine Hilt.

Fosbury said the atlas presentation will be a valuable resource for decisionmakers and the public. Suggestions to give Cardno:

- Include more language about riparian areas and setbacks outside the stream channel.
- Discussion about the value of wood and logs within the stream system.
- Sediment transport is an ongoing issue, especially with recent wildfires debris.
- More history of the river, including lessons learned.
- Recommendations for the future of the river and floodplain.
- Collaborations among jurisdictions, organizations and state and federal agencies to find common goals.

Other

Local organizations that deal with groups of people—St. Luke’s Hospital, Rec District, School District, YMCA, Senior Connection—are preparing for possible Coronavirus pandemic emergency. The Local Emergency Planning Committee (LEPC) will review infectious disease plan.

Southern Idaho Solid Waste District (SISWD) Board Meeting – Fosbury

- Received largest revenue to date from Idaho Power on SISWD Landfill Gas to Energy program.
- SISWD Chief Financial Officer Stephanie Thompson will visit the Blaine County transfer station and make recommendations for the Recycle Center and the cost of handling green waste.
- SISWD signed one-year contract with Warm Springs Consulting to survey the waste stream going into Milner Butte dump, in anticipation of private company collecting and recycling waste products.

Blaine County Housing Authority (BCHA) Board Meeting – Fosbury

- BCHA has developed new planning and zoning guidelines sent to local cities and county planning departments.
- BCHA has received four letters of proposals for the Lift Tower Inn. Fosbury encouraged BCHA to focus on developing more units for that site in Ketchum.
- BCHA independent bi-audit for 2018 showed a small loss.

Idaho State Behavioral Health Planning Council Meeting – McCleary

Received updates from state juvenile corrections, health and welfare on behavioral health issues, and Medicaid expansion.

Public Comment:

- Kiki Tidwell suggested the County have a “sustainability” booth at local events, along with the high school W.A.T.E.R. Club and Hailey’s Climate Action Committee.
- Tidwell said she hadn’t seen a recent annual report from BCHA on how many applications they had and how many people had been placed in affordable housing.

COUNTY DEPARTMENT REPORTS

• **Road and Bridge** - Steve Thompson

Also present: Blaine County Grants and Procurement Specialist Lyn Drewien; and County Operations Support Specialist Kay Draper.

Steve Thompson presented Road and Bridge FY20 budget overview.

- Post winter, Road & Bridge crews are evaluating and maintaining their equipment.
- Reviewed previously presented numbers with the County Engineer for accuracy.
- County roads are getting older. Residents are complaining about poor condition of some roads.
- Five bridges need to be replaced. The BCC will budget for matches for bridges that have received grant awards.
- Crews are beginning to grade and patch roads in the County.

The BCC discussed a two-year levy to fund getting roads and bridges back up to standard.

Public Comment:

- Kristine Hilt, citizen, reminded the BCC that many people driving on Blaine County roads are tourists from out of the area, or commuters from out of county. She asked the BCC to consider creative alternatives that target users and incentivize carpooling.
- Kristine Hilt, Blaine County staff, encouraged the BCC to work with staff on bridge design that protects riparian and floodplain areas.
- Kiki Tidwell suggested the BCC look into developing the Glendale gravel pit for profit. Tidwell suggested the BCC consider user-based “Easy Pass” toll collection, which photographs license plates while vehicles are moving and automatically invoices the drivers.

County Clerk Drage reminded the BCC that a levy could only be approved in May and November, and the funds wouldn't be available immediately.

Thompson said statewide highway district superintendents and road managers are meeting with Idaho legislators to discuss funding issues and road and bridge deficiencies.

County Administrator - Derek Voss

- Highway 75 Spur transfer from ITD to Sun Valley and Ketchum is going forward. Important that the transfer from ITD to Blaine County to Sun Valley and Ketchum happens simultaneously. The County does not want to own Sun Valley Road. County Clerk is point person.
- Emergency Communications lease-purchase contract, with non-appropriations clause, is \$500,000 over five years payment schedule at 3.75%.
- Sustainability et al position has at least four good candidates. BCC will meet individually with HR to be sure the job description conveys their hopes and intents for this person.

BOARD of COUNTY COMMISSIONERS REPORTS CONTINUED FROM MORNING SESSION

Other

• **Current Building Code Legislation**

Also present: Blaine County Land Use Administrator Tom Bergin; County Certified Building Official Jeff Giese.

Jeff Giese suggested the BCC write a letter to Idaho Legislators to encourage them to leave Energy Code in the State Building Code; and the Commissioners could write individual letters. Giese said members of the Building Contractors of the Wood River [Valley] agreed to write letters.

ANNUAL JUVENILE JUSTICE DATA UPDATE

Also present: Blaine County Chief Probation Officer Teresa Espedal; Idaho Department of Juvenile Corrections District 5 Liaison Renee Waite; and *Idaho Mountain Express* reporter Gretel Kauffman.

Renee Waite presented the Annual Juvenile Justice Data report. Although Idaho's population is increasing, juvenile arrests and juvenile petitions are trending down in Blaine County and across the state. 92% of Blaine County youth are being diverted, which saves them from having a record that can hurt them for the rest of their lives.

FRIEDMAN MEMORIAL AIRPORT AUTHORITY MEETING PREVIEW

Airport Manager Chris Pomeroy

Friedman Airport Manager Chris Pomeroy reviewed tonight's FMAA meeting agenda with the BCC.

- Tonight's main action item will be parking lot improvement project on the west side of airport Operations building and its budgetary impacts.
- Discussion of a facility user fee tacked on to rental cars – rental car agencies support it.

BREAK

LAND USE and BUILDING SERVICES HEARINGS

- **Llama Ranch Short Plat Subdivision. Public hearing and consideration of an application by Paul Kenny and Kimberly Rogers to reconfigure Lot 2, Block 1, Llama Ranch Subdivision located at 3661 Buttercup Road (4.29 acres) into two lots: Lot 2A (2.07 acres) and Lot 2B (2.22 acres). The property is zoned Planned Residential Development (R-2), Scenic Highway Overlay District (SHO) and is located within the Wellhead Protection Area.**

Also present: Blaine County Land Use Administrator Tom Bergin; County Planner Allison Marks; applicant Paul Kenny; and neighbor Kiki Tidwell.

Marks read public notice.

Fosbury moved, seconded by McCleary, that notice is in compliance with applicable regulations of the Subdivision Ordinance. Motion carried 2/0.

Disclosures: Fosbury said he was surveyor of record on the original subdivision of Llama Ranch.

New Materials: None

Co-applicant Paul Kenny said they had no plans for the property, but want to get subdivision in process.

- Kenny confirmed that the south access across the ITD right-of-way was abandoned in favor of the northern access.

- The BCC discussed Plat Note 11 regarding a Scenic Highway Overlay District located on all land within 100ft east of the roadway. Fosbury said a plat note provides notice of restrictions to a future buyer.
- The BCC doesn't anticipate the highway needs additional right-of-way on the east side.
- The east side of the highway has a railroad easement, Buttercup Road and the bikepath, all of which are under snow right now. The applicant has been in touch with County Road and Bridge Manager Steve Thompson and will get what permit(s) are necessary when the snow melts.

Fosbury suggested three years for final plat approval is a long time, and suggested Land Use consider reducing final plat approval to one year, starting with this application.

Public Comment:

- Kiki Tidwell, neighbor to the south, is in favor of the application.

Fosbury moved, seconded by McCleary, to approve application by Kimberly Rodgers and Paul Kenny to subdivide Lot 2 Block 1 Llama Ranch Subdivision into two lots, finding the application does comply with applicable criteria set forth under Title 10 Subdivision Regulations and Title 9 Zoning Regulations, subject to eight conditions in the Staff Report: with Condition #1 modified that final plat will be recorded within one year of final approval; and add possible Plat Notes 9, 10, 11, finding them to be applicable on this property. Motion carried 2/0.

- **Smiley Peak Short Plat Subdivision.** Public hearing and consideration of an application by Thomas and Aimee Smiley and Gilbert and Linda Layshock, to subdivide Tax Lot 1966, consisting of approximately 46 acres. Two lots (2.04 and 2.56 acres in size) and one non-residential parcel (41.37 acres) are proposed. The property is zoned Planned Residential Development (R-2) and Rural Remote (RR-40) with areas of Mountain Overlay District (MOD), Avalanche Overlay (A), and Elk Winter Range (W). It is located within Section 17, T3N, R18E, BM, Blaine County.

Also present: Blaine County Land Use Administrator Tom Bergin; County Land Use and Building Services Deputy Director Kathy Grotto; applicant Tom Smiley and his representative Bruce Smith; Chris Woodby and Michelle Reddick; Kathleen Magee; Heatherlands Homeowners Association Board member Sean Flynn; Dick and Julia Couch; Bob Dittmer; Jennifer Dye; John Buck; HOA Manager (Sun County Management) Laura Gvozdaz; Pete Stephenson; Barbara Woless, and Arnold Marz.

Grotto read public notice.

Fosbury moved, seconded by McCleary that notice is in compliance with applicable regulations of our Subdivision Ordinance. Motion carried 2/0.

Disclosures: None.

New materials: Public comment letters received yesterday and today and an additional Exhibit A from the applicant—USGS topo map, were all given to BCC

Kathy Grotto said Blaine County Code did not allow building in the red avalanche zone. The Code does allow building in the blue avalanche zone, but many applicants have been willing to restrict building of any residential structure to outside avalanche zone. The applicants are fine with a suggested plat note that states: "No habitable buildings shall be constructed within the red or blue avalanche area."

Bruce Smith said only about four of the 46 acres are buildable. With setbacks and avalanche restrictions, they request two building envelopes, one almost 12,500sf and the other one is 9,700sf. Smith explained his avalanche maps, made with the help of 2ft LiDAR. Construction is out of the Mountain Overlay, which is at the toe of the hill. Parcel A is non-buildable for residential purposes and may someday be given to the Land Trust or other organization.

On the plat, Syringa Lane is a public road not maintained by County, so they will bring it up to County standards for a driveway.

There is a bikepath easement across the property. Idaho Fish and Game provided recommendations for deer, elk, Pronghorn, etc. They asked that the property not be fenced; and that children be confined to a small area and pets be kenneled or leashed at all times.

Conditions of Approval and all Plat Notes are acceptable.

The BCC and Smith discussed roads and access; and emergency vehicle access. Syringa Lane is a public road, but, unlike the other roads, is not maintained by Blaine County; and won't be until it extends into adjacent properties and is brought up to County standards.

Smith said he had carefully evaluated avalanche potential for his report, and then rechecked the slopes. He was pleased to find that four acres were relatively safe from avalanche hazard.

Public Comment:

- Kathleen Magee said she and her husband own Lot 5 and will be impacted by this proposal to add two expanded residential lots in a clearly-designated avalanche zone, which was against Blaine County policy that no structures would be allowed in a clearly-designated avalanche zone. Magee said this exposes the County and the landowner to significant liability.

Magee added that their house on Lot 5 flooded two years ago from snow and runoff from the mountain; and additional structures would divert runoff even more. She said their Lot 5 had been impacted by an avalanche in the past.

Magee said the applicants had not contacted Heatherlands Homeowners Association concerning the impact of current Covenants and Restrictions in converting the property to more than one parcel; or water use in the event of fire, or privatization of Syringa Lane; or done any other outreach at all.

- Bruce Smith displayed a USGS map from 1968, showing an intermittent stream that once went through Heatherlands. He suggested this was a naturally-occurring drainage channel that carried runoff, and that houses were built in the drainage channel. He suspects some of Heatherlands' problems came from filling in drainage ditches.

Magee requested more time to address these highly sensitive issues.

- Dick Couch and Julia Couch, Lot 1, are the only residents on Syringa Lane at this time. He would like to see more details from the applicant, who says they will maintain the roadway themselves.
- Barbara and George Noel own Lot 7 and concur with concerns previously expressed in public comment. They particularly support continuing the hearing so other unbiased witnesses can be brought in. She asked if the RR-40 zoning on the remaining 41 acres that see daily migratory elk and deer will change; and how a plat note designating the acreage as "Non-Residential" affects zoning.
 - Smith said his primary purpose is always health, safety and welfare, and he would never want someone to get hurt because of something he did. He thought this development would mitigate avalanche hazard more than deflect it onto another property.
 - Arnold Marz agreed that the County should have an independent avalanche expert produce an Avalanche Report.

Kathy Grotto said most of the 46 acres is zoned RR-40 and would not change. The application form shows that this subdivision now maxes out the number of allowable resident lots that can be platted. The non-residential notation for this property could also be "unbuildable". The applicant said they might want to place a small storage shed in the bikepath area, but it could not be a residential unit; i.e., non-habitable.

- Arnold Marz, a contiguous lot owner and representing eight long-time homeowners contiguous to this proposed subdivision, requested enough time to present arguments against this subdivision. He said they had all lived there for up to 40 years, and were sensitive to the benefits, as well as the fragility, of the property.

Marz expressed four major concerns:

Blaine County Zoning Specialist Nancy Cooley wrote a letter dated June, 2007, to Robert Bacon that said the County classifies this 45.5 acres as one contiguous parcel because its warranty deed was recorded in 1973, four years before the Subdivision Ordinance was changed to allowed partial subdivisions.

On July 14, 2008, Marz and others, and Bruce Smith, met with former County Assessor Valdi Pace, who confirmed Cooley's letter. At the time, Bruce Smith confirmed the contents of Cooley's letter that Mr. Bacon is fully aware of the zoning limitations.

- Marz asked why the County had reversed itself on this property from 2007. Marz suggested Mr. Smiley might have a conflict of interest.
- Marz, a past ski area designer, said the difference between the blue and red avalanche lines on this map is about 30 yards. Marz said avalanches (including one that ended up on his property, Lot 2) have gone across the highway and come straight through Lot 1.
- Heavy winds come down the chute from East Fork.
- Marz read from the 2014 Blaine County Comprehensive Plan, "Development in hazardous areas, such as avalanche zones, floodplains, mudplains or wildlife-occurring interface locations lead to higher public cost and greater risk to human safety, including the difficulty of providing emergency services and potential loss of property or life. Development in sensitive areas like wildlife habitat and movement corridors, wetlands and riparian zones threatens natural and environmental assets, and weakening of related regulations would be in conflict with this principle."
- Marz said he's watched a herd of about 50 elk come down onto his property for 40 years. They, encircle his house, cross the highway into Hidden Hollow, go into Greenhorn for the day, and return in the evening, back up and over the hill, and bed down for the night.

Mars said design standards include preservation of natural features and states, "where found practical and appropriate, the following specific areas, regardless of location, shall be left undeveloped and undisturbed. But Idaho Fish and Game told him they weren't interested in 70 to 90 elk.

Marz ended by saying that Syringa Road is a public road, not a private road, and must be maintained.

Marz, on behalf of the lot owners, asked the County to halve the scope of the proposal to one house for 46.5 acres; and keep Syringa Road public.

Sean Flynn, Heatherlands Homeowners Association Board member, said they received the mailing; and were aware of the proposed development before that. The property is outside Heatherlands, and does not fall under Heatherlands CC&Rs. The Board reviewed the plans and had no comment, because it appears to follow County Code. Flynn said the road is a public road, maintained by the HOA, and plowed just past the Couch property, which he expected to continue. The applicant can be in charge of anything past there.

Flynn said he knows Bruce Smith takes his avalanche mapping seriously and is known in the industry for being conservative.

Grotto said this property can legally be subdivided, but this proposal is for the maximum number of units and it cannot be further subdivided. She explained a “parcel determination” and the short plat process. She said there is no proposal at this time that the road become private.

Fosbury opposed any structures in Parcel A. He felt the project was in compliance, as long as suggested plat notes are included. The proposed development must use their own water. Fosbury said the applicant should submit a plan for the curvature on the endpoint at Syringa Lane and extension of the shared driveway for turning radius for fire vehicles.

Fosbury moved, seconded by McCleary, to approve this short plat application by Thomas and Aimee Smiley and Gilbert and Linda Layshock to subdivide Tax Lot 1966 into two lots with one non-residential, non-buildable parcel, finding the application does comply with applicable criteria set forth under Title 10 Subdivision Regulations and applicable criteria of Title 9 Zoning Regulations, subject to nine Conditions of Approval, plus Condition 10 that the applicant will submit a driveway plan to insure compliance with fire access turning radii at the intersection of the end of Serenade Lane and the extension of the private driveway, and the additional plat notes and note changes listed 10 through 18, and wildlife plat notes 19 through 26. In addition to added conditions, plat notes will be added stating there would be no building in red or blue zones. Motion carried 2/0.

LAND USE and BUILDING SERVICES

• Findings of Fact: Picabo Fly-In Subdivision; The Cliffs Short Plat Subdivision

These Findings were continued to next week when there will be a three Commissioners present.

• P & Z Discussion: Beck Home Occupation Appeal Update

Also present: Blaine County Chief Deputy Prosecuting Attorney Tim Graves; Blaine County Land Use Administrator Tom Bergin; and County Code Compliance Specialist Kristine Hilt.

The BCC previously reversed the Hearing Examiner’s decision. Tom Bergin asked the BCC if he should complete the Findings of Fact for BCC approval; or if the BCC wanted to notice the neighbors and give them an opportunity to dispute the decision. Bergin said three notice letters were returned, including one from the neighbor who initiated the complaint process.

Tim Graves said the appeal is usually limited to the record, which can be opened if there is reason to do so. Neighbors’ statements are in the record; and the BCC has made a decision. Graves didn’t see a legal basis to proceed with the neighbors in a new hearing.

The BCC said they made their decision after careful and deliberate consideration, and had a different interpretation than the hearing examiner. The BCC asked staff to monitor the applicant to assure compliance with conditions. Kristine Hilt said she follows up on almost all County permits. The most successful permits include a specific review timeline.

Bergin will complete Findings of the Appeal for BCC approval.

EXECUTIVE SESSION - Idaho Code 74-206(1)(f) - Consideration of threatened litigation - Engh reconsideration

Also present: Blaine County Chief Deputy Prosecuting Attorney Tim Graves; and County Certified Floodplain Manager Kristine Hilt.

Fosbury moved, seconded by McCleary, to go into Executive Session, pursuant to Idaho Code 74-206 (1)(f), to discuss with legal counsel the legal ramifications of and legal options for potential litigation of the Engh reconsideration. Fosbury (aye) and McCleary (aye). Motion carried unanimously.

OPEN SESSION RESUMED

Fosbury moved, seconded by McCleary, to not reconsider the Engh plat amendment application at Henslee Ranch for further consideration, and direct County legal counsel to draft response. Motion carried 2/0.

ADJOURN

At the hour of 5:02 p.m., with no more business before them, the County Commissioners adjourned.

Attest: _____ Approved _____
JoLynn Drage County Clerk Jacob Greenberg Chairman