

**OFFICE OF THE BOARD OF COUNTY COMMISSIONERS
OF BLAINE COUNTY
REGULAR MEETING OF THE AUGUST 2021 SESSION**

First Day

Tuesday, August 3, 2021

Pursuant to Statutory Provisions, the Board of Blaine County Commissioners (BCC) met this day at 9:00 a.m. Present were Chairman Dick Fosbury, Vice-Chair Angenie McCleary, and Commissioner Jacob Greenberg; County Administrator Mandy Pomeroy; Blaine County Chief Deputy Prosecuting Attorney Tim Graves; Assessor Jim Williams; Disaster Services Coordinator Chris Corwin; Human Resources Generalist Justin Highhouse; Land Use and Building Services Director Tom Bergin; Administrative Services Supervisor Stephanie Carlson and Support Specialist Kay Draper; Recording Secretary Sunny Grant; Idaho Power Local Area (Blaine County) Energy Advisor Amber Larna; Jade Schachtel; Joan Swift; Libby Massey; *Idaho Mountain Express* reporter Alejandra Buitrago; and Boise State Public Radio Reporter Rachel Cohen. County Clerk JoLynn Drage was present for part of the morning meeting.

Some participants in this meeting were by webconference or teleconference.

Commissioner Fosbury called the meeting to order at 9:00 a.m.

PUBLIC COMMENT: - None.

BOARD OF EQUALIZATION - Idaho Code 63-501A

No BOE issues at this time.

EXECUTIVE SESSION – §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 and County Indigent Services Assistant Hayleigh Simpson.

Greenberg moved, seconded by McCleary, that the BCC convene in Executive Session, pursuant to Idaho Code 74-206 (1)(d), to consider indigent medical records that are exempt from disclosure. Roll call: Greenberg (aye), McCleary (aye), and Fosbury (aye). Motion carried unanimously.

OPEN SESSION RESUMED

INDIGENT CONSIDERATIONS - Board of County Commissioners Action

Greenberg moved, seconded by McCleary, to deny request number 2021-1140-1, finding that indigency has not been established. Motion carried unanimously.

BLAINE COUNTY AMBULANCE DISTRICT

Greenberg moved, seconded by McCleary, to convene as the Ambulance District Board. Motion passed unanimously.

• Tentative Approval of FY2022 budget for the Blaine County Ambulance District (BCAD)

Also present: Blaine County Grants and Procurement Specialist Stephen McDougall Graham; Wood River Fire Protection District (WRFR) Commissioner Jay Bilet and WRFR Chief Ron Bateman; Sun Valley Fire Chief Taan Robrahn; Ketchum Rural Fire District Chief / Sun Valley Fire Department Assistant Chief Rich Bauer; and Sun Valley Mayor Peter Hendricks.

Grant Manager McDougall Graham said there are some emergency service-specific grant programs under ARPA that are not under local fiscal recovery funds that may be worth looking into. County Clerk JoLynn Drage didn't think there was time to use ARPA funds this fiscal year before the September 30 deadline.

Public Comments:

- WRFR Chief Bateman thanked the BCAD for needed additional funds.
- KRFD Chief Bauer asked the BCC to consider paying the North County Fire District for storing an ambulance at Greenhorn Fire Station.
 - *Greenberg said the County should get legal advice on how best to support the Greenhorn Station.*
- Mayor Hendricks thanked the BCC for funding the different providers as appropriate for their needs. He asked the BCC to consider putting one-half of the Ambulance District Contingency "frozen assets" to work for the community by funding the different departments for requested needs starting immediately, or, at the latest, by the first day of FY2022. Hendricks said he expected the consultant's proposals would agree with local emergency service experts' requests.
- Sun Valley Chief Robrahn echoed Mayor Hendricks' suggestion to fund emergency service partners immediately. He said it doesn't take an outsider to see that consecutive calls happen every three or four days; and it takes time to hire and train personnel to be able to respond immediately.

The BCC reviewed revisions to the tentative budget and capital improvement fund. County Clerk Drage will adjust the FY2022 budget with these latest requests and re-present to the BCC later in the meeting.

Later in the meeting:

County Clerk Drage presented the BCAD with an updated tentative budget totaling \$3,830,134. The BCAD made the following motion:

Greenberg moved, seconded by McCleary, to approve the preliminary budget of \$3,830,134 for the FY2022 Ambulance District Budget. Motion passed unanimously.

Greenberg moved, seconded by McCleary, to reconvene as the Blaine County Board of Commissioners. Motion passed unanimously.

CONTRACTS, GRANTS, AND AGREEMENTS

• FY22 Indigent Defense Financial Assistance Grant

Also present: Blaine County Chief Public Defender Justin McCarthy.

This is Request to Accept Grant funds of the annual Indigent Defense Financial Assistance Agreement Grant Application. The Blaine County Public Defense Department accepts a general grant award of \$66,601; plus \$25,000 to fund two conflict-free defense attorneys to provide counsel for those who have conflicts with Blaine County public defense attorneys. McCarthy said much of the Public Defense Commission funding goes to pay expert witnesses.

Greenberg moved, seconded by McCleary, to approve acceptance of grant funding in the amount of \$91,601 from the FY2022 Indigent Defense Financial Assistance Grant. Motion passed unanimously.

CONSENT CALENDAR

- **Beverage License Renewals** for Zöe 75, St. Luke's Medical Center Wood River, TNT Taproom, Silver Creek Hotel, Hailey Grocery Outlet, Cafe Della, The Red Shoe, Valley Club, and La Cabanita #2.
- **New Beverage License Applications:** DD Frank Co, LLC, dba Maude's.

Greenberg moved, seconded by McCleary, to approve the Commissioners' Consent Calendar for August 3, 2021. Motion passed unanimously.

COUNTY DEPARTMENT REPORTS

- **County Administrator** - Mandy Pomeroy
- County Administrator Pomeroy reviewed draft of proposed contract for the Ambulance Strategic Planning Process with AP-Triton.
- Pomeroy will meet with Department of Environmental Quality to discuss potential Department of Environmental Quality funding of water infrastructure expansion to help develop community housing.
- Road and Bridge is repairing damage caused by an avalanche on Trail Creek last winter. There are some concerns about the stability of Trail Creek Road. Administration and the Sheriff's Office are going to post signs warning people the road is unsafe for travelers and road crews.

BOARD of COUNTY COMMISSIONERS REPORTS

The Commissioners reported on issues and committees they were involved in:

- **Public Defense Commission Rulemaking Public Hearings** – Greenberg said Chief Public Defender Justin McCarthy is working with other public defenders to voice ongoing concerns about certain issues.
- **Meeting on Sustainability with Ketchum Mayor** – Greenberg, County Administrator Pomeroy and Sustainability Manager Lynne Barker met with Ketchum staff to discuss how to assemble the Sustainability Advisory Committee and its priorities.
- **Idaho Association of Counties Housing Committee** - Greenberg stated this committee is meeting with Valley County Commissioners to discuss housing needs and objectives, and the County's role in providing community housing.
- **Water Workshop and Retaining Dr. Pabich to be Water Point Person**
Also present: Water consultant Dr. Wendy Pabich.
Fosbury said Dr. Wendy Pabich, founder of Water Futures and consultant on sustainable water futures, can provide water planning help to County leadership and the community. The BCC requested a contract with Pabich.
- **Wood River 3R Task Force** - Commissioner Fosbury will attend upcoming meeting to discuss how to implement recycle, resale and upcycle programs. The Task Force discussed a proposal with Wood River Land Trust to resell usable items in their store.
- **Discussion of CDC COVID 19 Recommendation** – Rising number of COVID cases are overwhelming Idaho hospitals and patient transport services. Greenberg suggested the BCC consider reinstating a mask mandate, particularly in buildings.
- **Housing** - Fosbury said Sun Valley Board of Realtors Government Affairs Director Bob Crosby will reach out to the real estate community for solutions to housing availability.
Fosbury has discussed the housing shortage with Blaine County School District Trustee Dan Turner.

BREAK

BREAK

LAND USE and BUILDING SERVICES HEARINGS

- **Title 9, Zoning Regulations Text Amendments - Chapter 19. Public hearing and consideration of amendments to Chapter 19 Wetland Overlay District. The amendments were initiated by the Board of Commissioners.**

Also present: Blaine County Land Use and Building Services Director Tom Bergin and Land Use Planner Allison Kennedy.

Kennedy reported public notice.

Greenberg moved, seconded by McCleary, that notice was adequate. Motion passed unanimously.

Land Use Planner Kennedy reviewed edits made to the text amendments.

- The BCC defined definitions for different types and locations of wetlands.
- The BCC discussed aquatic and terrestrial species, including birds and insects.
- Kennedy said Blaine County tends to add more wetlands protection than the Army Corps of Engineers, and there is no need to include ACE wetlands restoration requirements.

Public Comment: None

Greenberg moved, seconded by McCleary, to approve, as recommended by Planning & Zoning Commission, the proposed text amendments to Title 9 Zoning Regulations, Chapter 19 Wetlands Overlay District, finding the proposed text amendments are in accordance with the Comprehensive Plan, and will not have demonstrable negative impact on potable water, or upon delivery of services, as amended. Motion passed unanimously.

- **Title 9, Zoning Regulations Text Amendments - Chapter 21A. Public hearing and consideration of amendments to Chapter 21A Scenic Highway Overlay District. The amendments were initiated by the Board of Commissioners on April 13, 2021. Chapter 21A amendments omit solid walls from the chapter for purposes of improved safety to wildlife and vehicles on Highway 75. The Planning and Zoning Commission recommended approval of the amendments on May 27, 2021.**

Also present: Blaine County Land Use and Building Services Director Tom Bergin, and Land Use Planner Allison Kennedy.

Land Use Planner Kennedy reported public notice.

Greenberg moved, seconded by McCleary, that notice was adequate. Motion passed unanimously.

Kennedy said public notice didn't specifically mention the proposal to remove aspen trees from the Scenic Highway Overlay (SHO) District. A new meeting on September 7 has been noticed that includes the proposal to remove aspen trees. The BCC can hear the Text Amendments today, but not make a decision.

Kennedy said these text amendments are drafted to better meet the purpose of safety and visibility for the safety of wildlife and vehicular traffic in the SHO.

Kennedy and the BCC discussed the following topics:

- Recommended revisions to today's staff report, removing "or wall" from references to berms and fences, and discussed definitions and restrictions of walls and fences in the SHO. Fosbury said walls have impacts in addition to obscuring views.
- Site conditions as they relate to moving vehicles and large wildlife.
- Berms, including height restriction computation and natural grade, which can be lower than the highway. Fosbury felt there should be a maximum height for berms. Greenberg asked about wildlife migration over fences on top of berms.
- Trees, including aspens and other rhizomatous trees. There is a 30% cover limit for shrubs and trees for a property in the SHO along the length of the highway. Fosbury said enforcement is an issue, because aspens can be considered a natural-growing weed. Bergin said aspens could originally fit the requirement, but they are dynamic and hard to kill.

Greenberg moved, seconded by McCleary, to continue the Title 9, Zoning Regulations Text Amendments - Chapter 21A discussion to September 7, 2021 at 1:30 pm. Motion passed unanimously.

- **Request by Jae Hill for Reconsideration of Road & Bridge "Maintenance" Permit Denial Review and consideration of an appeal by the applicant, Mr. Jae Hill, of the denial by the Board of County Commissioners on May 4, 2021, of a Right of Way Approach and Encroachment Permit Application. The April 22 application sought a "maintenance agreement [with the county] to conduct regular maintenance and periodic minor repairs on Imperial Gulch Road" south from its intersection with Greenhorn Rd. This road is located in T3N, R17E, Section 14. B.M., Blaine County.**

Also present: Applicant Jae Hill and his attorney Sam Linnett; Deer Creek Ranch attorney Gary Slette; and Greenhorn Ranch Homeowners Association attorney Ed Lawson.

Blaine County Chief Deputy Prosecuting Attorney Tim Graves said the BCC previously denied validation of Imperial Gulch Road (IGR) as a public right-of-way; and subsequently considered and denied landowners Jae Hill and Kyle Kimball's request to maintain IGR. As a result of that denial, Blaine County Code requires applicants get a permit before conducting work on a public or private right-of-way in Blaine County. Blaine County Code 6-1-1A requires a permit be requested to maintain a road that is mostly private with public access easements across Greenhorn Homeowners Association and Deer Creek Ranch. There is legal question of whether those easements can be expanded; and the County does not have authority to expand an easement across BLM land.

The landowners have appealed the denial of the permit, pursuant to Blaine County Code 6-1-1-4. Graves outlined rules and timeline for the appeal. The BCC can affirm, affirm with conditions, reverse or modify their prior decision.

Appellant's Appeal Argument:

Sam Linnett, counsel for the appellant, said this issue initially started with an approach and encroachment permit. At the County's suggestion, the landowner initiated a validation process, and after two years, the County denied the validation.

Linnett said the appellant is back with a subsequent approach and encroachment permit over IGR, which is a public road, according to the Greenhorn plat. Landowner Jae Hill is trying to get access to his property to construct a home, which he is entitled to do, under Blaine County Land Use regulations. Hill has a residential parcel determination, was previously permitted, and needs to be able to use his property and all property rights he has. Previous homeowners have been given approval; the County has previously maintained the road, and the maintenance work requested was taken exactly from Blaine County's own road classification. The request is based on Blaine County's maintenance standards approved by Blaine County Commissioners. Mr. Hill deserves to have reasonable access to his property.

Linnett said the denial was based largely on the rationale for the validation petition; specifically, the Validation Findings of Fact stated that ... "a road closed readily acceptable to construction and residential traffic would permanently alter the character of IGR and contravention of the public interest." Linnett said he didn't believe it was proper for the BCC or the County to make that determination and restrict residential or construction traffic to access a property that has the right to have residential and construction traffic. That restricts the ability to use the property, and the intent of the County stated its denial to do that. Linnett said they wanted to work with the County to get a correct process for Linnett to get permitted access to his property.

Linnett, on behalf of landowner Hill, asked for reversal of the denial, and a permit to do maintenance to the specifications the County has on record.

Appellant Jae Hill, property owner at 99 Imperial Gulch Road, said they did not appeal the validation as ordered by the County because the first words in the Decision and Order were, "Imperial Gulch Road is a public road," and proceeded to say validation of Imperial Gulch Road was not in the public interest. Hill elaborated on his attempts over four years to be able to build a cabin on his property.

BCC Comments:

Attorney Graves said road validation requires two things:

- Evidence the road is public through some federal or state statutory process or some other dedication; and
- The BCC has to make a determination that validation of the road as a public right-of-way is in the public interest.

The BCC determined that evidence suggested the road was likely a public right-of-way; but the BCC failed to determine that validation of the right-of-way was in the public interest, and, subsequently, the BCC did not validate Imperial Gulch Road as a public right-of-way.

Public comments were made by affected property owners, but not allowed in the record.

Appellant's Rebuttal:

- Linnett countered the public comments regarding the plat and public access to Greenhorn Road.
- Linnett said Greenhorn's position during validation hearings was the opposite of what it is now.
- Linnett said this application is an argument that there was an error made in a decision, based on unlawful or erroneous justification for denial.
- Hill said their request is to maintain Imperial Gulch Road to the County's own stated standards.

BCC Deliberation:

County Attorney Graves said one justification in the BCC’s decision that validation was not in the public’s interest was that it should remain in a primitive, unmaintained state. If the BCC chooses to believe validation is not in the public interest, and chooses not to validate the right-of-way, the right-of-way is not considered a public road.

- Commissioner McCleary reiterated the BCC’s previous decision to not validate the road because it wasn’t in the public interest, and it isn’t in the public’s interest to have a maintenance agreement for the road.
- Commissioner Greenberg confirmed with the County Attorney that the BCC’s rationale in their validation decision was not faulty.
- The deadline to challenge the validation decision is past.
- Attorney Graves said he didn’t believe the County had denied a building permit or the ability to build a residence on the property. He conceded that not having a fully paved road or a recreational road to the property makes it more challenging to build something, but he said there are numerous structures throughout the County that have been constructed in remote areas.

Greenberg moved, seconded by McCleary, to affirm the prior January 26, 2021 determination of denial on Imperial Gulch Road decision, and direct counsel to draft a written Decision for BCC consideration. Motion passed unanimously.

LAND USE and BUILDING SERVICES

• **Findings of Fact: Midnight Acres Short Plat**

The BCC reviewed the Findings. Land Use Director Tom Bergin asked the BCC to consider setbacks language and review additional Plat Note 5. The BCC asked staff to determine if the County received the Phase I fee of \$72,000. Bergin said Land Use staff will continue to research the Development Agreement and search for the payment.

APPROVAL OF BOARD OF COUNTY COMMISSIONERS MEETING MINUTES

• **May 25, 2021, Regular Meeting-** as amended

Greenberg moved, seconded by McCleary, to approve the minutes of May 25, 2021 Regular Meeting Minutes and July 19, 2021 Special Budget Meeting Minutes, as amended. Motion passed unanimously.

EXECUTIVE SESSION – §74-206 (1)(c) Property Acquisition

Greenberg moved, seconded by McCleary, to go into Executive Session, pursuant to Idaho Code 74-206 (1)(c), to conduct deliberations to acquire an interest in real property which is not owned by a public agency. Greenberg (aye), McCleary (aye) and Fosbury (aye). Motion carried unanimously.

ADJOURN

At the hour of 4:45 p.m., with no more business before them, the County Commissioners adjourned.

Attest: _____ Approved _____
 Stephen McDougall Graham Dick Fosbury
 County Clerk Chairman