

March 7, 2022

The Board of County Commissioners of Washington County, Idaho, does hereby meet this 7th day of March 2022.

IN THE MATTER OF ROLL CALL)

Donna Atwood, Clerk, called roll call: Kirk Chandler, present; Lyndon Haines, absent; and Nate Marvin, present via zoom.

Nate Marvin opened the meeting and Robert Peterson led the Pledge of Allegiance. Kirk Chandler gave the invocation.

IN THE MATTER OF CORRESPONDENCE/MEETINGS AND REPORTS)

Correspondence received by the Board was reviewed and disseminated as required.

Kirk Chandler moved to approve and read Resolution 22-02 approving the destruction of records for the County Clerk/Auditor and Treasurer Departments. The motion was seconded by Nate Marvin. Motion carried.

Kirk Chandler moved, seconded by Nate Marvin to approve the quote submitted by M2 Automation to add two cameras to the courthouse vault in the amount of \$3,880.20. Motion carried.

Kirk Chandler moved to allow the Commissioners to sign the letter to the BLM (Bureau of Land Management) for John Hoff. Nate Marvin seconded the motion. Motion carried.

IN THE MATTER OF MINUTES)

The minutes of the Board not heretofore approved of February 28, 2022 were approved as written.

IN THE MATTER OF UNIVERSITY OF IDAHO)

Pat Momont, met with the Board. Also present was Mikayla Lincoln with the Extension Office.

Momont discussed the current vacancy for the Extension Educator position. Momont informed the Board they have received one application for the position.

Lincoln provided an update to the 4-H program. Lincoln informed the Board that there are currently 181 members enrolled in the 4-H Program. Lincoln discussed upcoming events.

March 7, 2022

Momont discussed a request from the Fair Board. Momont informed the Board that there is a positive working relationship between the Fair Board and the Extension Office. Momont stated the Fair Board has purchased the ShoWorks Program. The Fair Board has requested the Extension Office share one-half of the cost of the program. Momont stated the Fair Board has also requested the County pay one-half the cost of the ShoWorks Liaison.

Chandler stated the cost could be considered during the upcoming budget process.

Momont stated that Ada and Canyon County charge a fee to the participants. Owyhee County does not charge a fee to the participants.

The Board will make a decision at a later date.

IN THE MATTER OF ELECTED OFFICIALS AND DEPARTMENT HEADS)

Those present were Washington County Treasurer, Sabrina Young; Weed Superintendent, Bonnie Davis; Sheriff, Matt Thomas; Juvenile Probation Supervisor, Dahlia Stender; Emergency Manager, Tony Buthman; Assessor, Debbie Moxley-Potter; Information Technology Director, Robert Peterson; Prosecuting Attorney, Delton Walker; and Clerk, Donna Atwood.

Sabrina Young addressed the Board. Young stated warrants of distraint were turned over to the Sheriff's Department. Currently there are four outstanding. Young stated the Notice of Pending Issue has been sent to the newspaper, Living in the News and is posted on the County website. Young inquired how the Board would like her to proceed with credit card forms to be signed by those who have County credit cards.

Bonnie Davis, Weed Superintendent, discussed the Annual Noxious Weed Notice that is to be published in the newspapers. Davis requested permission to publish the Notice as required by State Statute. The Board approved the request. Davis stated the Recertification Seminar was held at the fairgrounds last month. Davis informed the Board the BLM (Bureau of Land Management) Assistance Agreement has changed and it would be handled as a grant system. No employment applications received at this time.

Sheriff, Matt Thomas, reported he participated in a conference call with Summerill regarding the US Marshal Agreement. Thomas informed the Board he has contacted Design West regarding the upgrade to the plumbing in the jail.

Dahlia Stender, Juvenile Probation Supervisor, reported House Bill 589 is to be presented this week to the Senate Commerce and Human Resource Committee. Counties have been requested to provide input regarding the rule of 80 for detention staff. Stender informed

the Board the Department review went very well. Stender will present the report at a later date.

March 7, 2022

Tony Buthman, Emergency Manager, stated that Bee Tree requested Buthman to teach classes on preparedness, resilience, and survival techniques beginning mid-March. Buthman reported the current snow pack is at 79% as of today.

Assessor, Debbie Moxley-Potter, reported her office is half way through Property Tax Reduction Applications. The Assessor staff is attending training and working on the Farm Manual.

Commissioner Marvin inquired on HB 741. There will be a webinar on Tuesday March 8, 2022 with Idaho Association of Counties to discuss the proposed bill.

Robert Peterson, Information Technology Director, discussed the retention of Zoom Cloud Recordings and a proposal of a retention policy. Peterson requested a six-month retention policy for recordings. Peterson stated recordings may be downloaded and retained for a longer period if needed.

Prosecuting Attorney, Delton Walker, inquired if the recordings could be saved to an external hard drive. Peterson stated that was an option. Marvin stated he felt six months retention would be sufficient.

There was discussion of the server upgrade and the progress that has been made. Peterson stated it has been scheduled for a later date.

Clerk, Donna Atwood, stated there would be a Supplemental School District Levy Election Tuesday March 8<sup>th</sup> for Weiser and Cambridge School Districts. Atwood informed the Board she will be posting for an additional court clerk due to employees retiring within the office.

IN THE MATTER OF PROSECUTING ATTORNEY)

Delton Walker, Prosecuting Attorney, met with the Board. Also present was Washington County Sheriff, Matt Thomas, and Planning and Zoning Administrator, Bonnie Brent.

Walker discussed vertical representation for clients in court as requested by the Public Defense Commission. Walker discussed attorney appointments made by the judges. Walker stated the Public Defense Commission has stated vertical representation of public defenders is to be provided.

Thomas inquired if it was the intent to do a blanket fine across the board on ordinance violations. Thomas stated an infraction has no teeth in it.

Chandler stated there has to be enforcement of code.

March 7, 2022

Thomas informed the Board that he and Brent had discussed enforcement and proposed issuing a written warning, and then an infraction and the third violation would be a misdemeanor.

Walker stated the idea of a graduated process is good. He stated it is enforceable by the court.

Marvin inquired on the process of adjusting the code to allow for the suggested penalties. Walker stated a penalty schedule could be adopted in county code. It would still require each section of the code that talks about a penalty to be adjusted.

The Board agreed that consistency would be best. Marvin stated he would like the changes made in a reasonable amount of time.

Thomas stated a penalty schedule would be easier for staff to enforce. There was continued discussion of language to be drafted.

Brent will draft language to be added to county code regarding code enforcement and the penalties to be charged. There was discussion of the complaint process and the steps to be followed after a complaint is received.

IN THE MATTER OF PLANNING AND ZONING)

Bonnie Brent, Planning and Zoning Administrator, met with the Board. Brent updated the Board on scheduled hearings with the Planning and Zoning Commission.

Brent discussed a request received for a variance as a means to get an additional building right. There was discussion of what is allowed on prime Ag land. The group discussed the definition and interpretations of prime Ag land.

IN THE MATTER OF AMBULANCE)

Nate Marvin moved, seconded by Kirk Chandler to recess as the Board of Washington County Commissioners and convene as the Board of the Weiser Ambulance District. Motion carried unanimous.

Donna Atwood, Clerk, called roll call: Kirk Chandler, present; Lyndon Haines, absent; and Nate Marvin, present via zoom.

Luke Smith, Ambulance District Director, met with the Board. Order No. 22-23 for general expenses in the amount of \$8,613.23 was presented to the Board for review.

Smith reported that the Ambulance District had twenty-seven calls for service last week, which included six transfers and twelve public assists/refusal for care.

March 7, 2022

Smith reported delivery of the new ambulance had been pushed back to August. Smith discussed financial reports for the district. Smith discussed maintenance on the vehicles with the Board. Smith stated a new set of tires may be needed on one of the ambulances at an estimated cost of approximately \$2,000.00.

Kirk Chandler moved, seconded by Nate Marvin to approve Order No. 22-23 for general expenses in the amount of \$8,613.23. Motion carried.

Nate Marvin moved, seconded by Kirk Chandler to recess as the Board of the Weiser Ambulance District and reconvene as Board of Washington County Commissioners. Motion carried unanimous.

Donna Atwood, Clerk, called roll call: Kirk Chandler, present; Lyndon Haines, absent; and Nate Marvin, present via zoom.

#### IN THE MATTER OF INFORMATION TECHNOLOGY)

Robert Peterson, Information Technology Director, met with the Board. Peterson informed the Board that one of the host servers in the courthouse is at the end of life and will need to be replaced. Peterson proposed to update the host servers in the Justice building and consolidate everything to servers located in the courthouse at an estimated cost of \$6,406.52 from CompuNet. This will include an upgrade to memory and will double the current storage. Peterson stated the funding would come from the computer budget and hopes to be able to use some of the ARPA (American Rescue Plan Act) funds to assist with the upgrades. Peterson informed the Board he would like to place the order.

The Board approved the request.

Peterson discussed the wireless access points (14) that are in need of updating. All are at end of life and need to be upgraded. Peterson informed the Board that he would like to change to Cisco Meraki version with a three year license at a total cost of \$10,015.04.

The Board instructed Peterson to proceed with the purchase.

#### IN THE MATTER OF UNITY BRIDGE) – CANCELLED

#### IN THE MATTER OF JOE KULP APPEAL HEARING)

Nate Marvin opened the hearing at 1:00 p.m. Marvin read the Notice of Hearing on the record.

The purpose of the hearing is to appeal the Planning and Zoning Commission's decision to deny the submitted residential building permits requested by Joe Kulp on (A1)

March 7, 2022

agricultural zoned land in excess of the number currently allowed in Washington County Code.

Members of the public present were Joe Kulp, Lily Rockwell, Margaret-Ann Border, Michael Kaech, Jay Langer, Cathy Kaech, Gary Reiter, Tom Carr, Andrew Hart, Devin Hart, Catherine Wyss, Gene Wyss, Mary Lundin, Larry Lundin, Tad Mundell, David Smith, Chris Uebelhoer, Mikal Smith, Carolyn Kiesz, Gordon Wilkerson, Alex Chavarria, Samuel Tate, Dan Leuthold, and Lisa Collini.

Marvin inquired of the members of the Board if they had any ex parte communications on the issue.

Chandler stated he has had communication with several persons regarding this section of County Code.

Marvin inquired of those who wish to testify in favor to address the Board.

Joe Kulp, 1925 Hienrich Road, Midvale, addressed the Board. Kulp stated he is requesting an additional building permit that he feels he is entitled to because the County has issued others, specifically to the Lancaster project with six splits without a subdivision or entitlement. Kulp stated he is asking for equal and fair treatment as was given to Lancaster in a previous decision.

Catherine Wyss stated she was in favor. Wyss stated the Board gave Sam Lancaster building permits when there were 15 residents against allowing the request. Wyss stated they were told it was a State Regulation, that anything 20 acres or more could get a building permit. Wyss informed the Board all Washington County residents should be treated the same. Wyss stated she believed Kulp should get the permit.

Michael Keach, Midvale, stated he was in favor for the same reasons as stated by Wyss. Keach stated, if one gets it, you have to let everyone. Either that or take the other permits back.

Chris Uebelhoer, 2224 Hog Creek Road, Cambridge addressed the Board. Uebelhoer stated he was in favor for basically the same reasons as the previous people. Uebelhoer stated per his reading of the code, he felt it was pretty clear that Kulp was entitled to a permit just as the Commissioners saw fit that Lancaster was entitled to.

Jay Langer addressed the Board. Langer stated he was in favor for the same reasons. Lance informed the Board they need to be fair or do away with all the permits on these type of things.

Tad Mundell, Weiser, addressed the Board. Mundell informed the Board he is in favor. Mundell stated he has 90 acres and would like to do the same thing one day. Mundell stated

March 7, 2022

he was in favor of anyone with 20 acres or more to be able to have a farm and have a right to build a house and reside on their property.

Larry Lundin, Midvale, addressed the Board. Lundin stated he is in the agreement with the previous testimony. Lundin said he believed there needs to be equality in the County. Lundin stated favoritism cannot be shown to one person and not another.

Carolyn Kiesz, Midvale, stated she was also for Mr. Kulp. Kiesz stated to discriminate against one person when you have done something for someone else is serious. Kiesz stated the County should be very careful in making things equitable for all.

David Smith, Midvale, stated he believed Kulp should be given the splits and building permits. Smith stated there are 1000 of acres in Midvale and in the area of Heinrich Road, that are good for grazing and that is about it. Smith informed the Board he knows several young people who would like to buy 20 or 30 acres of land and put a house on it. Smith stated that the rezone procedure that they are trying to force Kulp to go through is bullshit. Smith indicated it is perfectly legitimate to build a home on A-1 land. Smith stated the subdivision process is a travesty. Smith stated the subdivision process makes sense when you want to put in 10 or 20 or 200 houses, but to make someone spend that much money or time to be able to put a house on 20 or more acres is wrong. Smith told the Board there are many people wondering why Ms. Soulier was so excited to help Sam Lancaster and now she is against it. Smith stated that not to put out roadblocks and make things more expensive than it needs to be.

Margaret Ann Border, Gentry Lane, stated she hated to see the community become known for being disorganized by giving different privileges to different folks. Border told the Board the community is getting that kind of reputation.

Gene Weiss, 1688 Gentry Lane, addressed the Board. Weiss stated he did know the whole story, but he was not sure why Kulp was turned down when the one below his place was approved. Weiss stated he is in favor now, but would not have been before someone else had been allowed to do so. He told the Board he did not feel there was enough room to allow for the development on Gentry Lane. The road was not taken from cattle guard to cattle guard as was stated by Planning and Zoning for Gentry Lane.

Mary Lundin, Midvale, informed the Board the Kulp property is close to her residence. Lundin stated she believes this is an example of extreme bad thinking and illogical decision. Code is to provide direction and instruction as to what is supposed to be done for one and all. Lundin told the Board, "Whoever decided not to do this is really lame brained".

Marvin inquired for comments in a neutral position on the appeal.

No members of the public came forward.

March 7, 2022

Marvin asked for testimony in opposition of the appeal.

Devin Hart, Eagle, Idaho stated he purchased 20 acres from Kulp as part of the original split in June as agricultural property. Hart stated he was aware of the rules in the county going in and had talked to everyone about what to expect for building permits on the original property split. Hart stated he knew at the time he purchased the property, that they would be one of the few building permits to be issued. Hart informed the Board he received the third building permit and thought the fourth building permit has been issued on the original property split. Hart stated he has concerns now as he purchased the property in hopes it would remain as it is today. Hart informed the Board he attended the Planning and Zoning meeting and understood that the two properties in question were not “an apples to apples situation”. Hart stated he has concerns on the condition of Heinrich Road. Hart informed the Board a portion of the road is considered a seasonal road. Hart said it would be difficult to support more traffic if the road was not brought up to County standards. Hart stated he did not believe that Heinrich Road has the appropriate infrastructure in place to support more traffic or year round traffic. Hart stated that allowing the additional permits would alter the character of the land. He stated it was his intent to use the property for dry grazing. If approved, this would allow a subdivision 10 miles from Midvale in a rural area that has historically been and is still used mostly for dry grazing. Hart told the Board if this were allowed, additional permits would come. Hart stated he wanted to use the land as purchased for grazing and would like to purchase additional property. Hart said if the area is to become a subdivision with a bunch of homes, they will probably not keep the property as a started property for what they intend to do with it. Hart said they purchased the property because of the rules that were in place at the time of purchase. Hart asked, “If you open up this door, when do you say no?” He said there are people who feel this would be a negative for them.

Andrew Hart, Star, Idaho addressed the Board. Hart stated he would like to echo what Devin Hart had stated. Hart stated he has heard that rules were not being applied equally and has concerns with that. Hart said this is not the first hearing on this issue. In previous hearings it was explained why it was not apples to apples comparison. Hart said if an exception was given, they would like to understand what the rules are. Hart said it seems that some people think the rules are being followed and some think they are not.

Hearing closed at 1:23 p.m.

Marvin suggested that since there were only two commissioners present the decision will be made at a later date. Chandler agreed.



Prosecuting Attorney, Delton Walker, addressed the Board. Walker stated the situation with Lancaster is that his property was close to the impact zone and along the 95 corridor. Walker stated Lancaster applied for a re-zone that was denied. That was the only action taken by the County on Lancaster. Walker stated he did believe some permits may have been issued.

March 7, 2022

Walker stated a majority of the people stated they were in favor of “this”. Walker stated if we were to change County Code to make it clear that this was allowed, a person with 1600 acres could put 80 homes on their property under what has been talked about today. A person with 1500 acres could put 75 homes on their property without applying for a subdivision. A person with 200 acres could put 10 homes on their property. If allowed, where will this lead? Walker stated if this is the direction the County wants to go, that is up to the Commissioners, but wanted to make sure they knew this is where it could lead. Walker stated that since the Lancaster issue, additional legal advice and information has been received. Lancaster has been granted permits, based on a denial of an application of a rezone. Walker indicated that if Lancaster has 120 acres, he could place 20 homes on the property if the county were to follow the pattern being discussed today. It was corrected, Lancaster could have received six building permits.

Chandler inquired if Walker explained to the public on that day that the Board denied the permit because the code said that 20 acres or more zoned A-1 Ag a single family dwellings were allowed. Chandler said the decision was made on Walker’s advice that the code said the building permits could be had without rezoning. Chandler said that was why the rezone was denied.

Walker stated that was one way to interpret the code and stated there was a legal opinion that suggested that. Walker stated the Woodcock decision suggested the same. Walker informed the group that since that time additional feedback has been received. There has been concern that, for example, a 1600 acre ranch having 80 homes on it. Walker told the Board that raised concerns relating to infrastructure unless they went through the subdivision process or something for road regulations and so forth. If this were to happen without the subdivision process, the County would have no regulation for road and infrastructure.

Chandler inquired if there were Road and Bridge Standards in the County.

Walker stated these would be private roads and County Road and Bridge Standards would not apply. Walker stated concerns have been expressed that if 80 homes were placed in a 1600 acre area, which without requiring input from the landowners developing the property, the County could have the burden of bringing the road up to county standards.

Chandler discussed the process of the County adopting a road and the process of bringing the roadway up to County standards.

Marvin discussed water and sewer issues, availability of power, school bus routes, etc.

Walker stated other communities have had issues with growth of this type. Walker stated if the County wants to bare those burdens of where that will lead, that is fine. Walker stated that what has been advised in the past for potential health, safety, emergency management,

March 7, 2022

fire, and police of 80 homes in the country and how the County would be able to provide services.

Chandler inquired if Lancaster had presented a plan regarding power, water, sewer and roads.

Walker stated those items would have to be addressed by Lancaster with the appropriate entity. Walker stated that if the request was allowed County wide, there could potentially be hundreds or thousands of home on 20 acre parcels without the ability to provide the resources needed. The items the landowner is to provide does not cover everything. Walker stated the County would have to figure out how to get the additional tax money to cover the additional expenses the acre incurred if unlimited growth is allowed on 20-acre parcels.

Chandler inquired if legal opinion changes code.

Walker stated the code has been in place for years and when new approaches are brought forward, such as the Woodcock decision, legal opinions have to come together to interpret the code. The Woodcock case presented a new view of the code. Woodcock applied for permits, but wanted the property to remain A-1. Woodcock appealed, and the court interpreted it that the property could remain A-1 and have a home on the 20-acre parcel or greater like Lancaster was allowed. Following the Woodcock case, County Code was amended and there was an attempt to try to limit the unlimited number of 20-acre parcels. The Lancaster application did not address that issue. Joe Kulp is addressing that issue. Lancaster applied for a rezone and subdivision, which was denied. This issue was not addressed regarding the Lancaster property/application.

Chandler inquired what changed in the code with the Woodcock decision. Chandler stated that Woodcock divided their property but it remained zoned as A-1. Chandler asked if there were changes to the code that limited the number of 20-acre splits.

Walker stated that was correct and the County tried to revise the code in or around 2012. At the time people construed the 20-acre provision allowed them to divide A-1 land into multiple 20 acre lots, each with anew residence.

Chandler stated that when Lancaster built his home that was the last original split on the property. Chandler stated that Lancaster was allowed six more without the original parcel

splits on 20 acres or more because the code indicated single-family dwellings were allowed.

Marvin stated he did not believe the Board allowed the additional permits.

Walker stated the County denied the Lancaster rezone request. Walker indicated that the County Administrator allowed the permits. Walker stated that in the interim, the County has sought additional legal advice regarding the code. Walker said code was changed and  
March 7, 2022

referred to 5-4-1 which indicates that in 2012 under 5-4-1 B3 language was added stating only one-single family residence allowed per approved lot. Walker stated that was designed to say the approved lots are the four allowed splits. That was the intent in 2012. Walker said the prior decision was made in 2003, which stated “no residential subdivision shall be allowed in A-1 zone.

Walker stated again that the Lancaster Rezone was denied. That was the only action that came before the Commissioners.

Chandler stated Walker had, at that time, explained to the Commissioners that the Lancaster Rezone was denied because 20-acres or more could have a single-family dwelling.

Walker stated that was the tentative interpretation. The Planning and Zoning Administrator is not to blame. The Administrator is following Legal Counsel Advice and is protected in doing so. Walker asked, “Where will this lead, and is this where our County is wanting to go?” Do we want to follow the current legal advice or follow the Woodcock line of reasoning? Walker stated that on the day the Lancaster issue was discussed, the opinion Mikal Smith presented from a Law Firm was considered. Since that time additional legal advice was sought by the County and we are now following that advice. Walker stated that Kulp made an application. Before that application was made the County received the additional interpretation of the code based on the fact that this could lead to vast growth in the County that we may not be able to handle financially. Walker stated that if the Commissioners want to go that route, the code could be adjusted.

Chandler stated conflicting opinions have been received from different attorneys with Givins Pursley. Chandler stated that the decision that has been made would apply to the Smith property as well. Chandler stated that it seemed to be the flavor of the day as to who comes in and who gets what.

Walker stated he had a copy of the opinion provided by Gary Allen before the Lancaster decision came through. Walker stated that opinion did apply to the Lancaster situation by implication. Walker stated he viewed that opinion as a possible interpretation for the Lancaster situation even though it was sought for a different reason. After that, additional advice was requested from Chris Meyer at Givins Pursley to see if Gary Allen’s opinion

was solid for the County. Walker stated it is true that everyone should be treated the same. When further legal advice is received, should that advice be followed or not.

Chandler discussed the Woodcock decision and stated, “Woodcocks decision was by a judge that said what we did with Lancaster’s was okay. We did it with Lancaster’s again and now we are saying that no, we won’t do it any more because we have a legal opinion that didn’t change the code at all.” Chandler continued saying, “The judge ruled, and in fact the code said, that you could have divisions like that in our code.” Chandler stated the

March 7, 2022

code was not changed. It was not changed from saying single family dwellings were allowed on A-1.

Walker stated the code was changed after Lancaster. Walker said before Woodcock, the County was interpreting the code the way Chris Meyer is inquiring it be interpreted now. Walker said Woodcock brought up a new issue and the judge interpreted the code to say, “You can do multiple 20 acre parcels, no limitation.” Walker stated that was concerning to the County because of the potential growth. At that time the Planning and Zoning Administrator followed the Court Order on Woodcock and then sought a change in the code to clarify that so there would not be unlimited, 20 acre lots with houses throughout the entire county. Walker stated that is how the changes to code came about in 2012. Walker stated there were no changes for years until the Lancaster request and the interpretation from Gary Allen provided by Smith. Walker inquired, “Can the County follow this path, and will it be sustainable financially. Where will it lead for every thousand acres?” Walker stated that if this is what is wanted or intended, the code should be clarified to make it clear.

Walker stated that just because permits were issued on the Lancaster property does not change the code. The county can take whatever route they feel is best for the County in the future and go through the official steps of changing the code to follow the line of reasoning of Lancaster. Walker said granting permits to Lancaster is not a change to County Code.

Marvin stated a decision would be made next week.

Motion by Nate Marvin, seconded by Kirk Chandler and unanimously carried to recess at 1:59 p.m. until March 14, 2022 at 8:45 a.m.

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Chairman, Board of County Commissioners

ATTEST:

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Clerk

A full audio recording of the Commissioner Meeting is available at the Clerk's Office