

March 21, 2022

The Board of County Commissioners of Washington County, Idaho, does hereby meet this 21st day of March 2022.

IN THE MATTER OF ROLL CALL)

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

Nate Marvin opened the meeting and Donna Atwood led the Pledge of Allegiance. Lyndon Haines gave the invocation.

IN THE MATTER OF CORRESPONDENCE/MEETINGS AND REPORTS)

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

Lyndon Haines moved, seconded by Kirk Chandler to approve Retail Alcoholic Beverage License No. 28 for Stans Ole's Tavern LLC doing business as Ole's Tavern, 617 Highway 95, Weiser, Idaho. Motion carried unanimous.

Kirk Chandler moved, seconded by Lyndon Haines to approve the February 2022 Operation in Funds/Statement of Treasurer's Cash in the amount of \$15,638,842.35. Motion carried unanimous.

Haines stated he attended the Southwest District Health Board meeting last week.

Chandler stated he attended the Magistrate Commission meeting last week.

IN THE MATTER OF MINUTES)

The minutes of the Board not heretofore approved of March 14, 2022 were approved as amended.

IN THE MATTER OF BOARD OF EQUALIZATION)

Assessor Debbie Moxley-Potter met with the Board. There were no matters brought before the Board.

IN THE MATTER OF SOCIAL SERVICES)

Lori Nakamura, Social Services Deputy Clerk, met with the Board.

Nate Marvin moved, seconded by Lyndon Haines to go into executive session at 9:15 a.m. in accordance with I.C. 74-206(1)(d) Consider records that are exempt from public

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disclosure. Motion carried unanimous. Kirk Chandler, Aye; Lyndon Haines, Aye; Nate Marvin, Aye.

Nate Marvin stated they were out of executive session at 9:19 a.m.

Kirk Chandler moved, seconded by Lyndon Haines to approve the Forgiveness Request for Case No. 2013-61. Motion carried unanimous.

Lyndon Haines moved, seconded by Kirk Chandler to approve the Deputy Social Services Clerk's Reasons for Approval or Denial of claims. Motion carried unanimous.

IN THE MATTER OF INFORMATION TECHNOLOGY)

Robert Peterson, Information Technology Director, met with the Board. Peterson informed the Board that an interview for an assistant is scheduled for March 22, 2022 with his department.

Peterson discussed phishing emails that have been received over the past few months. Peterson informed the Board that the Zoom recording retention process would begin today. Peterson stated there are some recordings that have been downloaded for longer retention purposes.

Peterson presented a spreadsheet of budgeted and anticipated expenses to the Board for review. Peterson discussed the Microsoft upgrade that is needed and stated the cost is now more than originally anticipated. Peterson discussed that it will cost \$14,400.00 in labor with CompuNet and the upgrade subscription to Microsoft 365 will be a monthly charge of \$4,032.80 for 95 users. Peterson informed the Board that he would like to purchase 75 licenses and add additional as needed. Peterson stated if the upgrade were paid on an annual basis, there would be an approximate savings of 20% to the County. Peterson informed the Board the cost would include other Microsoft programs such as Word, Excel, Teams, etc. as well as moving the email server to the Cloud. When the process is completed, there will no longer be an in-house exchange server.

Peterson discussed the email spam filtering system. Peterson stated that as long as the County stays current with Microsoft office there would no longer be a need to renew the proof point subscription, which is due in May with a renewal cost of \$8,500.00 per year. Peterson stated the projected costs are approximately \$60,000.00 over what he had budgeted for. Peterson stated he would like to pay for a portion of the upgrade from ARPA (American Rescue Plan Act) funds.

Peterson discussed enclosing the server in the server room between the Assessor and Treasurer offices. Peterson stated a new server rack could be purchased for approximately \$2,000.00 that would provide additional protection to the server.

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Haines suggested items that would be a one-time purchase to be purchased with ARPA funding.

Peterson stated he had requested a quote from Dell, which came back at \$140,000.00 for the same work.

The Board agreed to move forward with the Microsoft Office upgrade and server rack.

Lyndon Haines moved, seconded by Kirk Chandler allow the use of approximately \$52,000.00 of ARPA funding for Computer Hardware and Software upgrades. Motion carried unanimous.

IN THE MATTER OF PROSECUTING ATTORNEY)

Delton Walker, Prosecuting Attorney, met with the Board.

Nate Marvin moved, seconded by Lyndon Haines to go into executive session at 10:03 a.m. in accordance with I.C. 74-206(1) (a & b) to consider hiring a public officer, employee, staff member or individual agent. This paragraph does not apply to filling a vacancy in an elective office, (b) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student. Motion carried unanimous. Kirk Chandler, Aye; Lyndon Haines, Aye; Nate Marvin, Aye.

Nate Marvin stated they were out of executive session at 10:32 a.m.

IN THE MATTER OF PLANNING AND ZONING)

Bonnie Brent, Planning and Zoning Administrator, met with the Board. Also present was Planning and Zoning Administrative Assistant, Charlie Downey, and Washington County Sheriff Matt Thomas.

Brent presented the building permit reports on permits issued on the Lancaster property as requested by Chandler. Brent stated the permits were issued for one dwelling and for one shop.

Chandler stated he had requested the information because in last week's discussion Marvin had stated that the Board did not approve building permits for the Lancaster divisions, the Board denied the rezone. Chandler stated building permits should not have been issued on the Lancaster property because the Board did not approve them. Chandler stated that needs to be considered and the Board should not have Brent issue any more building permits since they were not approved by the Board. Chandler stated that if all the Board did was to deny the rezone, there should not be any building permits on those divisions of land. Chandler stated two building permits have been issued and no more

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permits should be issued unless some other action is taken. Chandler stated it was brought up that the Board made a mistake in doing what they did on the Lancaster issue, “but we followed the advice of our prosecutor and we all voted unanimously to approve that denial.” Chandler stated the Board did not do anything wrong and that he did not know what you would do different. You both (Haines and Marvin) stated you would not make that mistake again. Chandler stated that Marvin had indicated that the Board had denied the rezone, but we did not approve building permits.

Marvin stated the Board was given information in an executive session by legal counsel on what the Board should do.

Chandler stated that Walker had explained that advice after the motion was made. Chandler stated it was on the record what Walker had “told us what to do.” Chandler stated he did not think there was a problem, but we did not do anything wrong. Chandler stated they should not give any more building permits to the people who bought that property because the Board has not authorized it. Chandler stated, “Delton said the code was changed whenever after Woodcock’s Decision to stop multiple divisions of property with homes and so if that is the case, we need to stick with that.” Chandler stated with the different advice and legal opinions received, it did not change the code. Chandler stated legal advice is not the code and “if we want to do something like Delton has recommended on the legal advice, then we have got to have a hearing and change the code. We can’t just keep making it up as we go along.”

Haines stated Lancaster had gone through the hearing. What went before the Board was, “we needed to rezone it with a development agreement”. Haines stated that was the mistake he believed was made. Haines stated the Board should have gone ahead with the rezone to A-2 because Lancaster had gone through the entire process. Haines stated that Planning and Zoning had said, “This looks like a good place for some homes to be built in A-2 Ag.” Haines stated that all the Board had to do was change the property from A-1 to A-2, but did not make that change because of the advice that was received. Haines stated that they had already been through the hearing process. Haines stated the hearing process was done right.

Chandler stated a rezone would have opened it up for one acre or larger subdivisions. Chandler stated that is not what was being proposed, but it would have opened it up for that. Chandler stated that the code allowed for 20-acre Ag splits with single-family dwellings. Chandler stated that if the Board did not approve that in the motion and just denied the rezone, then we should not be giving building permits.

Walker stated the Board was making good points. Walker stated that additional legal advice had been requested after Walker had talked to the Board.

Marvin confirmed that the additional legal advice was received from Chris Meyer of the firm Givens Pursley.

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Walker stated that on the day he had given the comment about the rezone, he had given an alternative interpretation of the code. Walker informed the Board that the interpretation was a tentative interpretation of the code and should be considered carefully.

Haines inquired if it would be of value to have Chris Meyer or someone else from Givens Pursley give an opinion on whether or not building permits should be issued.

Walker stated that two attorneys from the same firm have provided two different interpretations of the County Code and it could be valuable to request their opinion on the matter.

Chandler stated he believed the Code needs to be clarified. Chandler stated, "The thing we have to stay away from and be careful of is that we can't dictate what the code says by legal advice. I'm getting to the point where I don't trust anybody's legal advice because every week it changes." Chandler stated, "We are not following the code, we're just following whatever happens to fit the day and that's wrong."

Walker stated that is how the system works. Walker stated the Supreme Court or the Court of Appeals consider decisions as they come before them. Walker stated the County had the Woodcock Decision and then a code change. Walker stated there has not been a court case to interpret what the code change results are. Walker informed the Board there has not been a court decision on what the effect of the 2012 code change was.

Chandler stated that the attorneys may be giving the county advice, but the code is not being changed. Chandler informed the group that Haines made a motion to cancel the code hearing that was planned and all the work that had been done and to just start over. Chandler stated nothing has been done since that time.

Haines stated there has been a lot done since that time. Haines informed Chandler that he (Chandler) "had been completely cantankerous because it didn't go your way. The last one didn't go your way, the one before didn't go your way. You had 80, how many pages of code changes Kirk that were nonsense. They were insanity."

Chandler stated they could have a hearing on the changes.

Haines suggested having a hearing on the changes that Chris Meyer had provided.

Chandler stated we are starting over with different ideas. Chandler informed the group he was not going back to those same ideas. Chandler stated that the fact is the code has not been changed. Chandler said, "We cannot dictate the code on legal opinion."

Haines inquired of Chandler how many versions has Chris Meyer provided. "Every time Kirk, we get close, there is something else you find that you want to change."

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Chandler stated he sees problems, but that does not mean there cannot be a hearing. Chandler stated that it divides the farmland. “You guys have said, and Nate especially, that we have got to preserve the farmland. The suggestions Chris Meyer has given us divides the farmland up more.”

Haines stated that Meyer’s changes came from the Board.

Marvin inquired about placing a moratorium on building permits until the matter is settled.

Walker stated the changes from Meyer were just proposed changes. Walker informed the Board that Meyer was trying to come up with something workable and understandable. Walker stated the county needs to provide feedback to Meyer on his proposals.

Planning and Zoning Administrator, Bonnie Brent, stated that Meyer had originally clarified the code and then after discussions on the clarification, we have added to the code at Board’s request. The changes are changes that Meyer has been requested to make.

Walker stated that Woodcock had made an application to the County that they never had before. That application was to be able to put houses on 20-acres or more parcels without rezoning from A-1 to A-2. Walker stated that application was denied because the County had not interpreted the code that way. Walker informed the group that Woodcock did sue and the court ruled that Woodcock could put houses on 20-acres or more parcels without rezoning. Walker stated that was in 2008-2009. Walker stated that in 2012, the County made an adjustment to the code. Since that time, those requests were or may have been denied administratively. Walker stated that data is not available. Lancaster tried to rezone. At that time, it was questioned if the Lancaster request was a Woodcock type situation. Walker stated that at that time, he reached out to Chris Meyer who agreed to review the situation. Walker discussed the Land Use Planning Act written by Chris Meyer and Gary Allen that the State of Idaho relies on. Walker stated that it contains code sections as well as case law. The court ultimately decides the interpretation through legal opinion.

Walker discussed a possible moratorium on building permits. Walker stated he had asked about that in July or August of last year. Walker informed the Board that Givens Pursley relied on Frank Lee who indicated it would have to be an emergency situation. The County would be hard pressed to meet the moratorium requirements at this time.

Brent confirmed that there has been one building permit for a dwelling and one for a shop issued on the Lancaster property. Brent stated the building permits were issued based on the motion from the hearing on his Land Use Application. Brent stated it was her

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understanding that Lancaster was denied the rezone and was allowed to put a house on every 20-acres. Brent informed the Board that Lancaster left the hearing thinking that the Board was giving him the opportunity to put a house on every 20-acres. Brent stated that was her understanding as well and that is why she issued the building permits.

Chandler stated that was his understanding.

Sam Lancaster entered the meeting.

Brent informed the Board that if they instruct her not to issue any additional permit that is what she will do. Brent informed the Board she had issued permits because she thought that was what she was supposed to do in that situation.

Walker stated that additional legal advice has been provided since that time.

Marvin stated he believed there should not be any more permits issued until the matter is resolved.

Haines stated he did not believe it was fair to punish the person who did not make a mistake. Haines stated, "Lancaster's went through the whole process. To me the mistake was on our end, not on their end." Haines stated Lancaster had gone through the appropriate hearings. Lancaster went to Planning and Zoning who approved the request. Haines said, "To punish them for something we did seems to be a bit silly." Haines informed the group he wished they had approved the Rezone Request to A-2 with a Development Agreement.

Walker stated there was feedback against that as well.

Haines stated some of those same people who opposed the Lancaster Rezone now want the 20 acres

Chandler stated that was because the Board approved 20-acres or larger for a single-family dwelling. Chandler stated people have applied for that and were denied. Chandler named Wyss', a person Mikal Smith sold some ground to. Chandler said, "There were several of them that had come in and talked to Bonnie about getting a building permit and they were told no."

Haines inquired if that was part of Chandler's ex-parte communications. Haines and Walker stated they were not aware of such requests.

Chandler stated it was after the decision was made. Chandler stated he found it interesting that people came in "testifying to allow what our code says and what we made a decision with Sam on 20 acres or larger and we didn't even consider it."

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Marvin reiterated that the code has not been changed.

Chandler stated that the Board allowed Sam to have 20-acres or larger with a single-family dwelling because we were told by our prosecutor that is what our code allowed.

Marvin stated we are at a point that we need to fix the code before going any farther.

Chandler stated that Walker had indicated that if the public gets to the point that they want things different, then we could change it to be different. "They have come in big groups to ask for something different and we haven't considered it."

Haines stated a hearing for Joe Kulp was advertised. There was not a hearing advertised for 20 acres or more throughout the entire County. Haines stated, "You sent an email to your friends, they came, they showed up, they testified. If we send 20 acres to everybody in the County, I'm sure you will have a room full of people that are not just on an email list, that will show up and make their voices heard." Haines continued, "We can do that. We can have a hearing on 20 acres or more. You better schedule the Vendome as that place will be filled."

Chandler stated the hearing was on the agenda. Chandler stated everybody that wanted to know about it, could have known about it.

Haines stated that it was not on the agenda as "20 acres or more throughout A-2 ground throughout the county. It stated Joe Kulp Appeal, so unless you had any knowledge about what Joe Kulp's Appeal was, it wasn't for the entire county. We had a select group of people who all said the exact same thing. 'Yeah, I think Joe should have 20 acres or more.' Haines stated that one of the guys testifying did not even know Joe's name. Haines said, "It was not the most informed discussion."

Walker stated that there was not a good sampling of the public about growth on 20 acres of more; we only got "We feel bad for Joe."

Haines stated that was his point. If you want a hearing on 20-acres or more, you advertise it as a Public Hearing for 20-acres or more on A-1 Agricultural ground.

Walker stated he could reach out to Givens Pursley and Chris Meyer if the Board would like.

Marvin stated he was in favor of Walker contacting Chris Meyer. Marvin stated the situation needs to fix this. Marvin stated there has been a lot of hours and time on the matter and "we are no further ahead than they were when they started". Marvin stated he would like to schedule some time with Chris Meyer.

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Brent informed the Board she needs to know what they would like her to do in the meantime. Brent informed the Board there is a building permit ready to be issued. Brent stated the permit has been inspected by the Inspector; it is ready to pick up. Brent stated the permit is for an applicant who purchased one of the 20-acre parcels from Lancaster. Brent stated that the people who have purchased those lots fully intend to build there. That was the understanding of what could be done. Brent stated that if the Board did not want her to issue building permits on the subject property, she would like them to make a motion stating that.

Marvin moved to put them on hold until we get this resolved. Motion died due to lack of a second.

Lancaster stated there is 1.2 million dollars on the line and it is going to be a bad lawsuit.

Bonnie inquired if she is to issue building permits.

Chandler said, "I don't know that it was up to her (Brent). Nate is the one who said we didn't approve permits. He could change his assessment of what we did. He voted."

Marvin stated he voted to not go through the rezone.

Chandler stated the code needs to be changed to actually say what it means. Chandler stated that Brent is not the one who gets to decide what the code says, "she is supposed to do what the code says, and not what she thinks it says. The Commissioners are the ones who are supposed to make sure the code is that way. Delton and Chris Meyer and Gary Allen and Lee, whoever they are, do not have the authority to change the code. They can give us suggestions, but if we don't change it, it is still what it says." Chandler stated that Brent had understood at the time of the decision that it was for 20-acres or larger with a home. If there was a difference of opinion after that, it has not been changed. Chandler stated that in the Kulp situation, he understood that there are two building permits available on the original parcel.

Haines stated he believed Chris Meyer had provided good direction regarding code changes and he is in favor of having a hearing. Haines reiterated that he could not punish Lancaster for his mistake. Haines stated that they could blame whomever.

Chandler disagreed and said, "You did not make a mistake."

Haines stated that if he could go back, he would change it, which tells him he made a mistake. Haines stated the decisions were made with the information available that day. But with the information that was received later on, Haines stated he would certainly go back and say, "I didn't make the best decision that day." Haines informed the group we can blame whomever, but we're all in this together. "I am not going to punish Lancaster for something I did. They left with the idea on that day that they had six

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building permits on 120 acres.” Haines stated he would do it differently now. Haines stated he thought they would still have their permits. Haines informed the group that Lancaster went through the hearing process. “Planning and Zoning said yes, this is a good thing to do. This is a perfect area to do this. So I am not going to punish them for that. If I were telling you (Brent) what to do, I would tell you to keep doing what you are doing.”

Walker stated anyone can apply for a rezone.

Marvin inquired if it was an option to re-visit the decision on the Lancaster rezone.

Walker will check with Meyer. Kulp could apply for a rezone. Walker stated that if it is A-1 property, the person is asked to rezone if they have used their normal amount of building permits. Walker stated that is how the code reads. This due to an exception in 2003, which allowed the four building permits.

Haines pointed out that there is not an action item on the agenda during this time.

Brent informed the Board she is still unclear as to what she should do.

Code enforcement discussion: Brent stated she had emailed information to the Board prior to the meeting.

Chandler stated he had reviewed the information and thought it was fine.

Sheriff Thomas discussed the process to be followed. A person would receive a warning letter, then an infraction, followed by a misdemeanor charge.

Marvin read the code violation penalty on the record.

The Planning & Zoning Office would issue the initial letter for building code violations. Policing Code violations would require the Sheriff to issue a warning letter.

Walker stated this is an improvement. Walker stated it provides the offender plenty of opportunity to be compliant.

Brent discussed Title 8 regarding the policing section would remain the same. Thomas will review Title 8 and address any needed corrections/changes. There was discussion regarding Title 2, Solid Waste fees.

Brent discussed Title 6, Subdivision Violations. Brent inquired if the Board wants to leave the violations as it is currently or change to the same process as discussed. The Board agreed to change to the same process of a warning letter, then an infraction, followed by a misdemeanor charge.

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Marvin discussed 5-19-512 regarding Oil and Gas wells. There was also discussion regarding 5-15-15 CAFO (Confined Animal Feeding Operation).

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, present; and Nate Marvin, present.

Luke Smith, Ambulance District Director, met with the Board. Order No. 22-25 for general expenses in the amount of \$1,634.05 was presented to the Board for review.

Smith reported the Ambulance District had thirty calls for service last week, which included eight transfers and four public assists/refusal of care.

Smith reported there has been increased use of narcan on emergency calls.

Smith requested permission to move forward with the purchase for tires from Commercial Tire. The Board approved the request.

Smith discussed repairs to cots and inquired if the Board would like him to have all the cots checked for needed service. The Board agreed.

Lyndon Haines moved, seconded by Kirk Chandler to approve Order No. 22-25 for general expenses in the amount of \$1,634.05. Motion carried unanimous.

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, present; and Nate Marvin, present.

IN THE MATTER OF CATTLE GUARDS)

Bruce Winegar with the Weiser Valley Highway District met with the Board. Also present was Britney Chandler, President of the Weiser River Cattlemen's Association.

Winegar stated the Highway District has tried to adopt the Washington County rules and regulations for roads so that they are the same. Winegar discussed County Code 9-1-2 regarding cattle guards. Winegar stated that the landowner is to pay for the cattle guard

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and the County will do the install and maintain the cattle guard. Winegar informed the Board that if a new cattle guard is needed, the landowner has to purchase it. Winegar discussed traffic and stated it is not always the landowner who is destroying cattle guards. Winegar stated the Highway District believes that the County should purchase the cattle guards after the initial purchase. Winegar stated that maintenance and replacement would be the responsibility of the County.

Chandler stated the County has chosen not to maintain private roads.

Winegar read a proposal as follows: The initial cattle guard shall be purchased by owner and all subsequent cattle guards and maintenance be purchased by the County. Winegar stated the Highway District would like to be on the same page as the County. Winegar inquired if the Board would be willing to change the current County Code per the proposal.

Haines stated he believed the County should consider the proposal.

Britney Chandler stated she did not know Winegar was coming in today. Chandler informed the Board that the Association had discussed the same issues.

Winegar stated other counties have this in place. Winegar stated maybe BLM (Bureau of Land Management) should share in the cost.

IN THE MATTER OF ROAD & BRIDGE/SOLID WASTE)

Jerod Odoms, Road and Bridge/Solid Waste Supervisor, met with the Board. Odoms presented claims for demand warrants.

Kirk Chandler moved, seconded by Lyndon Haines to approve a demand warrant payable to HDR Engineering, Inc., in the amount of \$10,851.17 for expenses for Cove Road Bridge. Motion carried unanimous.

Lyndon Haines moved, seconded by Kirk Chandler to approve a demand warrant payable to J-U-B Engineers, Inc., in the amount of \$4,046.69 for engineering services for Cove Road Bridge. Motion carried unanimous.

Odoms discussed the cost of fuel and the possibility of parking equipment in a secure place after hours.

There was discussion of replacing cattle guards in the County as per the request of Bruce Winegar with Weiser Valley Highway District earlier today. Odoms discussed the cost of materials and stated the County does currently provide maintenance of the cattle guards.

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There was discussion of the landowner installing the first cattle guard and the County will maintain and replace the cattle guard if needed. There was discussion the possible use of concrete cattle guards.

IN THE MATTER OF INTERVIEWS)

Nate Marvin moved, seconded by Kirk Chandler to go into executive session at 1:25 p.m. in accordance with I.C. 74-206(1) (a & b) to consider hiring a public officer, employee, staff member or individual agent. This paragraph does not apply to filling a vacancy in an elective office, (b) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student. Motion carried unanimous. Kirk Chandler, Aye; Lyndon Haines, Aye; Nate Marvin, Aye.

Nate Marvin stated they were out of executive session at 2:05 p.m.

Motion by Nate Marvin, seconded by Kirk Chandler and unanimously carried to recess at 2:05 p.m. until March 28, 2022 at 8:45 a.m.

Chairman, Board of County Commissioners

ATTEST:

Clerk

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