SHOSHONE COUNTY, IDAHO

BOOK 2021

Monday, May 17, 2021

The Board met pursuant to recessing Thursday, May 13, 2021.

Present:

Commissioners: Jay Huber

Mike Fitzgerald

John Hansen

Deputy Clerk: Lori J. Teeters

The following proceedings were had to-wit:

The Board convened at 9:00 a.m. for an Elected Officials meeting to discuss Shoshone County Response to COVID-19 Emergency and Emergency Declaration - Executive Session I.C. 74-206 (d) Exempt Public Records and Impact on Courthouse personnel and public access. Also in attendance was Matt Beehner. A motion was made by Commissioner Fitzgerald, seconded by Commissioner Huber to go into Executive Session pursuant to Idaho Code §74-206(d) exempt Public Records and Impact on Courthouse personnel and public access. Roll call: Commissioner Huber - Aye, Commissioner Fitzgerald - Aye, Commissioner Hansen - Aye. The motion carried unanimously. The Board adjourned from Executive Session at 9:20 a.m. and items were disclosed as follows:

- Masks will no longer be required in the Courthouse, except as still mandated for the 2nd and 3rd floor Courts (Federal Mandate);
- Social distancing will remain in effect;
- Sheriff's Department will require social distancing, but not require masks.

The motion was made by Commissioner Fitzgerald, seconded by Commissioner Hansen, that masks would no longer be required in the Courthouse, except as still mandated for the Courts (Federal Mandate), social distancing will remain in effect. The motion carried unanimously. The Board would like the minutes to reflect the appreciation they feel for each of the Elected Officials through this pandemic period and the help in making the hard decisions.

The Board convened at 11:00 a.m. to meet with Shoshone County Assessor, Jerry White to discuss and review his department pay/wage matrix. Also in attendance was Matt Beehner. Items discussed included the following:

- The Matrix was divided into two (2) different matrix's, one for the Assessor's Office/Motor Vehicle and one for Appraiser's. Both matrix's addressed entry level pay, and cap pay;
- Each grade is based on any courses that have been taken and certifications achieved;
- Employee's will still receive longevity raises, raising the cap year to 40 years of employment;

Commissioner Hansen made a motion to approve the matrix today with the condition that each current employee's wage will be reviewed and discussed during the budgeting process to ensure

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the matrix follows the Assessor's updated matrix policy for increases and it stays within budget for FY21/22, and to have an updated Compensation Policy, Commissioner Huber seconded the motion. The motion carried unanimously.

The Board convened at 1:00 p.m. to meet with Shoshone County Clerk, Tamie Eberhard to discuss and review the department pay/wage matrix. Commissioner Huber made a motion to approve the Pay/Wage Matrix as presented at the May 12, 2021 meeting with the Board, seconded by Commissioner Fitzgerald. The motion carried unanimously.

The Board convened at 2:00 p.m. for the FY 21/22 County Budget workshop on preliminary revenue and costs associated with each department. The Board will meet again mid-July for another workshop.

Shoshone County Sherriff, Mike Gunderson, revoke the appointment of Alexandra Striker, Emergency Communications Officer, effective 05/07/21.

Shoshone County Sherriff, Mike Gunderson, revoke the appointment of Shambri Hegbloom, Detention Deputy, effective 05/14/21.

Thereafter, the meeting adjourned.

ATTEST Tamie J. Eberhard

County Clerk

Deputy Clerk

Approved

Chairman

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Tuesday, May 18, 2021

The Board met pursuant to recessing Monday, May 17, 2021.

Present:

Commissioners: Jay Huber

Mike Fitzgerald

John Hansen

Deputy Clerk: Lori J. Teeters

The following proceedings were had to-wit:

The Board convened at 10:00 a.m. to discuss, review and consider 2021 Tax Exempt Applications pursuant to Idaho Code 63-602 for the following:

- Shoshone County Mining & Smelting Museum parcel #D-0000-006-3750 Approved with no changes from last year;
- Mullan Historical Society, Inc parcel #A-0100-013-005-A Approved with no changes from last year.

Following review and discussion, a motion was made by Commissioner Huber, seconded by Commissioner Hansen to approve the 2021 tax exemptions.

The Board convened at 11:00 a.m. for a Public Hearing on Ordinance #163, amending the current Shoshone County Building Code, Title 7, Chapter 9, Adoption of Construction Codes as follows: The 2018 Edition of the INTERNATIONAL BUILDING CODE as adopted by the State of Idaho, The 2020 edition of the IDAHO RESIDENTIAL CODE, The 2020 Edition of the IDAHO ENERGY CONSERVATION CODE, The 2018 Edition of the INTERNATIONAL EXISTING BULDING CODE, and The 2018 INTERNATIONAL FIRE CODE. Also in attendance was Shoshone County Planning and Zoning Director, Dan Martinsen. Dan gave a synopsis of Ordinance #163 outlining the Building Code amendments and stating it had not been updated since 2016. There was no public present at the Hearing and no public testimony sent in prior to the Hearing or presented. The Public Hearing was closed at 11:15 and being there was no further discussion, a motion was made by Commissioner Huber, seconded by Commissioner Hansen to adopt Ordinance No. 163 as presented. The motion carried unanimously.

Thereafter, the meeting adjourned.

ATTEST Tamie J. Eberhard

County Clerk

By: Un J. Tecters
Deputy Clerk

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Wednesday, May 19, 2021

The Board met pursuant to recessing Tuesday, May 18, 2021.

Present:

Commissioners: Jay Huber

Mike Fitzgerald

John Hansen

Deputy Clerk: Lori J. Teeters

The following proceedings were had to-wit:

The Board convened at 9:30 a.m. and the meeting was called to order. Also in attendance was Matt Beehner. The consent agenda was reviewed for consideration as follows:

> PUBLIC COMMENT: Matt Beehner would like more information on the Multiple Listing Service Agreement.

> CHANGES TO AGENDA: There were no changes to the consent agenda.

OLD BUSINESS:

Consideration and Decision of the Minutes of the Commissioners' Public 1. Agenda Session dated Monday, May 10 to Thursday, May 13, 2021.

NEW BUSINESS:

- Consent Agenda (These items will be enacted by one motion unless requested by a Commissioner that one of more items be removed for separate discussion.)
 - Beer, Wine & Liquor Licenses
 - Shoshone County Pre-Pays
 - Resolution 2021-11 Approving Amendments to the Comprehensive Plan
 - Petition to Vacate Tatman, Findings of Fact and Conclusions
 - Agreement between Shoshone County and Coeur d' Alene Multiple Listing Service, Inc - The Agreement is between Shoshone County for the Assessor's office for assessment data for properties.

A motion was made by Commissioner Huber, seconded by Commissioner Hansen to approve the consent agenda as presented with specific items addressed as indicated. The motion carried unanimously.

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2. Executive Session: Indigent Cases: Consideration and Decision. Executive Session ID Code 74-206(d). A motion was made by Commissioner Fitzgerald, seconded by Commissioner Huber to go into Executive Session per Idaho Code 74-206(d). Roll call vote: Commissioner Huber – Aye, Commissioner Fitzgerald – Aye, Commissioner Hansen – Aye. The motion carried unanimously. The Board adjourned from Executive Session and a motion was made by Commissioner Fitzgerald, seconded by Commissioner Hansen to table the Indigent case until next weeks agenda.

The Board did at site visit to view alleged Nuisance/Encroachments at 42 E Street, 119 Tomsche Ave, 104 Tomsche Ave, E and F Streets, Brookside Avenue, adjacent to Burke Road, Wallace, Idaho at 1:00 p.m. Also in attendance was Matt and Minde Beehner, Shoshone County Public Works Department, Jim Cason, Jessica Stuzke, Stephanie Featherstone, HMH Engineering, Jim Roletto, and Josh McDonald with Shoshone News Press. The BOCC walked E Street, F Street and Tomsche Ave to view each of the alleged encroachment complaints. After viewing each alleged complaint, Commissioner Fitzgerald stated they will schedule a meeting in the next couple weeks to review and discuss each encroachment individually and possible decision based on the merit of each alleged encroachment.

BEFORE THE SHOSHONE COUNTY BOARD OF COUNTY COMMISSIONERS

In the matter of: CHARLES AND LENAE TATMAN, A PETITION TO VACATE OR BANDON A PORTION OF SHOSHONE COUNTY PUBLIC STREET OR RIGHT-OF-WAY

Agency Case No. P-100-20

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DECISION

The PETITION came before the Shoshone County Board of Commissioners on a public hearing originally on October 19, 2020, at which time the case was called, and a partial hearing conducted before the matter was continued to March 23, 2021 at 2:00pm. The Petitioners were present, among many members of the public (a specific sign-in sheet was utilized and is made part of the record).

FINDINGS OF FACT AND CONCLUSION FINDINGS OF FACT

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All facts supported by the record of this proceeding are incorporated herein. If any of these Findings of Fact are deemed Conclusions of Law, they are incorporated into the Conclusions of Law section.

PROCEDURAL HISTORY

- A. The Board finds the record is comprised of:
- 1. Those items described in the "Exhibit Inventory List" as prepared and submitted at or prior to the hearing on October 19, 2020, and the continuation hearing on March 23, 2021, to the Board of County Commissioners;
- 2. Testimony and evidence presented orally or in writing at the time of the public hearing on October 19, 2020, and the continuation hearing on March 23, 2021, by the Petitioners, and other individuals who were present and gave testimony or presented written comment/testimony.
- B. On May 7, 2018, an Application with attached handwritten letter from Lenae Tatman dated May 7, 2018, was submitted and accepted by Shoshone County Planning and Zoning Administration.
- C. The Board of County Commissioners obtained a preliminary survey of the Subject Area from ALTA ENGINEERING.
- D. An initial hearing was scheduled on the Petition on October 19, 2020, at which point some evidence/testimony was presented and the matter was continued upon objection made by Shawn Glen on behalf of Brookside Development as to the form of the procedures, the Board of County Commissioners halted the proceedings, and continued the matter.
- E. Prior to the continuation hearing being scheduled, Shoshone County underwent COVID-19 precautionary measures and all hearings were postponed until in-person hearings could safely be conducted.
- F. The continuation hearing was scheduled on March 23, 2021, at 2:00 p.m., at the 3rd Floor District Courtroom of the Shoshone County Courthouse for purposes of conducting the continuation hearing, receiving testimony and evidence.
- G. The Board convened on April 8, 2021, for discussion and decision on the Petition. At that time, the Board discussed their concerns, additional information they would desire including information on re-routing F street as an option and tabled their decision.
- H. On April 29, 2021, the Board convened for discussion and decision on the Petition. At that time, the Board advised that no additional investigation or information would be received to aid in the Board's decision, but that they were awaiting additional guidance from

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legal on the law associated with the matters raised by the Petition. The decision was tabled, to be scheduled on May 6, 2021, for discussion and decision.

I. On May 6, 2021, the Board convened for discussion and decision on the Petition. At that time, the Board took action to DENY the petition, directing legal to prepare the necessary Findings of Fact and Conclusions of Law and Order of Decision.

RELEVANT FACTS

- A. That the Comprehensive Plan designates the area as SHOSHONE COUNTY CENTRAL CORRIDOR
- B. That the existing Zoning of the property in this request is (R-2) MULTI-FAMILY RESIDENTIAL
 - C. That the existing land use in the area is RESIDENTIAL
- D. That the proper requirements for legal notice & advertising of the hearing have been fulfilled.
- E. That the proposal is located within the unincorporated area of Shoshone County, known as: 104 Tomsche Avenue, Wallace, Idaho, within the plat known as Canyon Addition to the City of Wallace, Shoshone County, Idaho, recorded on February 19, 1906. A legal description and vicinity and preliminary survey maps were received as Exhibits MAP-1, MAP-2, MAP-3, and LD-1.
- F. That the proposal is located within an (ACI) Area of City Impact: City WALLACE
- G. That the following Agencies/Districts were solicited for comments, concerns & requirements on June 11, 2020:
 - a. Southfork CDA River Sewer District: Joe Close, Sewer District Manager, who responded on June 16, 2020 (Exhibit AC-2).
 - b. Shoshone County Public Works Department: Jim Cason, Director, responded on September 17, 2020 asserting that after review of the request, it was determined that the proposed portion of F Street has never been developed and/or used as a public travel way. Furthermore, the proposed portion to be vacated does not leave any real property adjoining without access to an established public right-of-way. He has no concerns, conditions or recommendations. (Exhibit AC-6)
 - c. Avista Utilities: Dave Padon, RER-CDA/Spokane Avista, responded on June 22, 2020 stating that per Idaho Code "...we do specifically require that utility easements be reserved as of the vacation process." He requested that a copy of whatever action is taken [in response to the proposal] be submitted to Avista. (Exhibit AC-4)
 - d. Wallace School District 393: Bob Ranells, Superintendent, responded on June 25, 2020 recommending denial of the request. (Exhibit AC-3). Todd Howard

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responded on March 17, 2021, that there are currently no bus riders in the area south of Highway 4, but would ask that no decisions be made that would limit the use of State Highway 4, E Street, F Street, and Tomsche Avenue as a potential bus stop location. (Exhibit AC-7).

- e. East Shoshone Water District: Carl Scheel, Water District Manager, responded on June 19, 2020 stating, "The district has no water main in this portion of F Street." (Exhibit AC-1)
- f. City of Wallace: Kristina Larson, City Clerk, on behalf of the City of Wallace Planning & Zoning and Historic Preservation Committee, responded on August 6, 2020 by submitting the minutes of the July 22, 2020 meeting where the proposed vacation was discussed and a motion. Made to submit comments. Dave Sherman, Chairman stated, "The Wallace P&Z Commission finds nothing in this proposal that would be detrimental to Wallace." (Exhibit AC-5).
- H. Public comment. With the exception of Petitioners, all public comment received written or otherwise was in opposition to the proposed Petition. See Exhibits PC-1 through PC-15.
- I. In support, the Applicant, Mrs. Tatman argued that a denial of the petition to vacate F Street will result in substantial financial burden to their family because they will have to tear down their garage, relocate it, and then build another one. Further, it will impact their property value and negatively impact taxable value of the property. She stated that the County receives a benefit by approving the Petition because they would take on additional tax liability for the vacated property which would increase the County's taxable real property income.
- J. Those in opposition who presented testimony at Public Hearing made the following arguments in support of their position, although these are not exhaustive, and the Board relies upon the record of the actual testimony presented in aid of its factual basis:
 - a. A decision approving the Petition would establish precedent for future County vacations and encroachments;
 - b. The cost to bring in utilities would negatively impact any future development in the area;
 - c. Vacating F Street affects more than one landowner and would not be in the best interests of the County or other current residents that live in that area;
 - d. Regulations for permits need to be better regulated and consistent, the County cannot just give property away or let people build at will;
 - e. The portion of F Street that the Petitioner proposes to vacate was and remains public right-of-way and once encroaching structures were built many years ago, it prevented vehicles from accessing the alley between Tomsche Ave. and Brookside Ave. by F Street. A request was made that the Board deny the Petition or reconfigure F Street along the easternmost boundaries of Canyon Addition in order to allow vehicle and utility access.

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K. At the conclusion of the presentation of testimony and evidence, the Board made a decision to take the matter under advisement.

APPLICABLE LEGAL STANDARDS

The Board relies upon the following legal authority in support of its decision:

Shoshone County Subdivision Code Title 10, Subdivision Regulations, Section 10-7-4 Administrative Provisions, Vacating and Recording Plats provides for: any plat prepared and recorded as herein required maybe vacated, in whole or in part, as provided by Section 50-1306A, Idaho Code, easement shall remain to continue operation and maintenance of existing public utilities.

Shoshone County Comprehensive Plan (1996) which establishes long range plans for growth, development, land use and environmental protection in Shoshone County. The plan outlines goals, objectives and policies that provide fundamental decision-making guidance for other County ordinances and for future development. The Comprehensive Plan includes a future land use map that provides a general outline of areas of suitable projected land uses.

Idaho Code § 40-203 outlines the requirements for taking action to abandon and vacate a county highway district system or public rights-of-way. Among provisions related to notice and who may petition, it requires the Board to decide whether the abandonment and vacation of the highway or public right-of-way is in the public interest of the highway jurisdiction affected by the abandonment or vacation. (emphasis added). The decision whether or not to abandon and vacate the highway or public right-of-way shall be written and shall be supported by findings of fact and conclusions of law.

"The necessity of public access is not germane to the determination of public road status under I.C. § 40-202." Roberts v. Swim, 117 Idaho 9, 16, 784 P.2d 339, 346 (Ct. App. 1989). However, once it is determined that a public road has been created, necessity and importance are critical factors to be considered under the public interest evaluation mandated for road validation

In reliance upon case law related to Idaho Code § 40-203, the following factors are noted for the Board to consider in determining whether the proposed action is in the "public interest,":

- 1. Where the vacation relieves the County of the expense of maintaining the road
- 2. Elimination of associated liability to the traveling public for potential injuries received as a result of defects in the road
- 3. Necessity and importance of keeping the road
- 4. Amount of people utilizing the road
- 5. Whether vacating the road serves a single interest

The following additional areas of law were consulted and/or may be applicable to the consideration of this Petition: Idaho Code §67-6521, Actions by Affected Persons; Idaho Code §67-6535, Approval/Denial Requirements.

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CONCLUSION

Based upon the record as a whole as presented through evidence and testimony at the public hearings on the Petition, the Board of Commissioners of Shoshone County finds that there is insufficient evidence presented upon which the Board can determine vacation of the right-of-way is in the public interest as required by Idaho Code § 40-203. The Petition and argument of Petitioners focuses primarily upon the financial impact to the Petitioner (Tatman) if they were forced to remove encroachments that the record supports have existed on the public right-of-way in excess of twenty (20) years. Although there was information presented that vacation would result in taxable real property to the County's benefit, there was no information presented as to the estimate of value of the property proposed to be vacated or the increase in taxable value. Absent further evidence related to viable alternatives in the area for public access and utilities in the event of development associated with adjacent properties including but not limited to Brookside Avenue, the Board finds that no findings can be made that vacation is in the public interest.

RIGHT TO APPEAL

YOU ARE FURTHER NOTIFIED THAT any affected person aggrieved by a final decision may seek judicial review to the District Court of Shoshone County within twenty (28) days after all remedies have been exhausted under local ordinance pursuant to Idaho Code § 67-6521(1)(d), and Idaho Code Chapter 52, Title 67, and the procedures outlined therein.

DATED this 19th day of May 2021.

| s/Mike Fitzgerald | |
|---------------------------|--|
| Mike Fitzgerald, Chairman | |
| S/Jay Huber | |
| Jay Huber, Commissioner | |
| s/John Hansen | |
| John Hansen, Commissioner | |

Attested To By:

s/Lori J. Teeters

Lori J. Teeters, Deputy Clerk

SHOSHONE COUNTY, IDAHO

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RESOLUTION 2021-11 A RESOLUTION ADOPTING AMENDMENTS TO THE SHOSHONE COUNTY COMPREHENSIVE PLAN

WHEREAS, Shoshone County desires to provide for necessary updates to its comprehensive plan consistent with the needs of Shoshone County and in the public interest;

WHEREAS, Shoshone County Planning and Zoning Commission received a petition to amend the Shoshone County Comprehensive Plan, and a public hearing was held on that petition;

WHEREAS, Shoshone County received recommendations for approval of amendments to the Shoshone County Comprehensive Plan from the Shoshone County Planning and Zoning Commission, and held a public hearing on the proposed amendments on April 28, 2021;

WHEREAS, Shoshone County Board of Commissioners approved the amendments and authorized legal to prepare a Resolution to adopt said amendments:

NOW, THEREFORE BE IT RESOLVED THAT, the Shoshone Board of County Commissioners, do hereby proclaim and declare the adoption of amendments to the Shoshone County Comprehensive Plan as follows:

"Page, 20. Amend Section 7: a) Insert the following sentence: Direct new development to land outside of the hillsides and mountains" was revised to state the following:

"Develop design standards and criteria for development on hillsides and mountains."

"Page 36. Amend Historical or Special Sites section: a) Insert following paragraph under first paragraph: The City of Wallace's designation as a historical site should be protected and enhanced by preserving the natural environment and mountains surrounding Wallace through adoption of a mountain overlay zone."

AND THEREFORE, BE IT FURTHER RESOLVED, that the Comprehensive Plan shall be amended consistent herewith, and shall be effective immediately upon its adoption and approval.

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Adopted unanimously, in open session this 19th day of May 2021.

BOARD OF COUNTY COMMISSIONERS

s/Mike Fitzgerald
Mike Fitzgerald, Chairman
s/John Hansen
John Hansen, Commissioner
s/Jay Huber
Jay Huber, Commissioner

ATTEST:

s/Lori J. Teeters
Lori Teeters, Deputy Clerk

The Commission reviewed and approved the following report as presented. The following bills or claims against the County were examined and allowed; and in payment of the same the County Auditor is hereby authorized and directed to issue warrants/checks on the following viz:

CHECKS

| 001 | Current Expense | \$52,688.36 |
|------|--------------------|-------------|
| 002 | Road & Bridge | \$34,556.84 |
| 006 | District Court | \$3,578.42 |
| 0012 | Historical Society | \$35.56 |
| 0016 | Indigent | \$935.68 |
| 0018 | Park | \$473.24 |

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| 020 | Appraisal | \$1,269.41 |
|------|--------------------------------|--------------|
| 023 | Solid Waste | \$53,192.42 |
| 027 | Weed | \$290.93 |
| 0037 | Snowmobile | \$327.29 |
| 052 | Airport | \$672.76 |
| 0055 | Fish Hatchery | \$356.38 |
| 056 | Emergency 911 | \$1,278.13 |
| 9101 | Auditor's Trust | \$268.56 |
| 9106 | Sunshine Statue | \$180.00 |
| 9109 | Title III Trust – 2008 & Prior | \$48.57 |
| 9183 | Support Trust | \$1,548.85 |
| 9186 | Motor Vehicle Trust | \$321,228.22 |
| 9189 | Payroll Draw Trust | \$25,100.00 |
| 9219 | Drug Court Program | \$300.00 |
| 9235 | ITD – Express Bus | \$2,074.19 |
| 9247 | Silver Mountain Legal | \$697.00 |
| 9251 | Weed Grant-Inland Empire | \$1,619.66 |
| 9258 | RP-Trapper Creek | \$347.50 |
| | TOTAL: | 503,067.97\$ |

| STATE OF IDAHO |) |
|--------------------|------|
| |) ss |
| County of Shoshone |) |

We, the Shoshone County Commissioners, being duly sworn do hereby certify and declare that we have reviewed the demands enumerated and referred to in the foregoing register and that the same are to the best of our knowledge accurate and are just claims against the County and that there are funds available for payment thereof in the County Treasury.

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| s/Mike Fitzgerald | s/John Hansen | s/Jay Huber | |
|-------------------|---------------|--------------|--|
| Commissioner | Commissioner | Commissioner | |

Thereafter, the meeting adjourned.

ATTEST__Tamie J. Eberhard____

County Clerk

Approved

Chairman

SHOSHONE COUNTY, IDAHO

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Thursday, May 20, 2021

The Board met pursuant to recessing Wednesday, May 19, 2021.

Present:

Commissioners:

Deputy Clerk: Lori J. Teeters

The following proceedings were had to-wit:

The BOCC attended the Idaho Association of Counties Annual Conference in Coeur d' Alene from 8:00 a.m. to 3:30 p.m.

Commissioner Huber attended the Shoshone County Ambulance District Board Meeting at Fire District #1 at 6 p.m.

Thereafter, the meeting adjourned.

ATTEST Tamie J. Eberhard

County Clerk

Approved: