

# PROCEEDINGS COUNTY COMMISSIONERS

## SHOSHONE COUNTY, IDAHO

### BOOK 2021

Monday, November 22, 2021

The Board met pursuant to recessing Thursday, November 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 10:00 to meet with Planning and Zoning Department, Dan Martinsen and Monica Miller. Also, in attendance was Matt and Minde Beehner, Dawn Wiksten and Robin Hack. Commissioner Fitzgerald started off the discussion with wanting to ask Dan and Monica about the future of the department, what they are succeeding in, what improvements are needed and basic goals. Commissioner Fitzgerald asked Dan and Monica what they are seeing with the customer base coming in, and what they spend the majority of their time on, i.e. permits, approaches, vacations, floodplain, etc. Dan stated that they are seeing a lot of out of state people moving in and buying up land that they want to develop. They are also seeing a lot of local customers that already have the land and the majority of those want to do R.V. spots, conditional use permits, and temporary land development. They spend a lot of time with these customers, educating them on the process of Conditional Use permits, minor-subdivisions, etc. Because housing has been such a big problem, the department has faced some big challenges, with manpower and enforcement. The three (3) main issues they are struggling with in the department are:

- Land Development
- Compliance issues
- Enforcement

On top of the everyday processes, there are floodplain questions, ordinance updates, and code revisions. Between Dan and Monica, they have split job duties, with Monica handling the majority of the calls, administration of the department, building permits and Dan handling floodplain and site disturbances, subdivisions and land use. Dan is also the Disaster Emergency Services manager and that takes up part of his time as well. They work well with the new Building Official, Public Works, and the Assessors office. The County came out with a new form for Complaints/Blights/Nuisances and that has helped the department in that process, but still struggle with finding time to investigate and enforce code violations. One goal of the department is a clearer process on enforcement and code violations. They would like to move toward a more forceful Planning and Zoning department, while still being very easy to deal with and easy processes. The Commissioners would like to follow up with Dan and Monica again to continue the discussion of moving the Planning and Zoning department in the right direction and helping them achieve the goals they have. There was no action taken, and the meeting adjourned at 11:05 a.m.


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Thereafter, the meeting adjourned.

ATTEST Tamie J. Eberhard  
County Clerk

Approved:   
Chairman

By: Don J. Tacey  
Deputy Clerk

**PROCEEDINGS COUNTY COMMISSIONERS**

**SHOSHONE COUNTY, IDAHO**

**BOOK 2021**

Tuesday, November 23, 2021

The Board met pursuant to recessing Monday, November 22, 2021.

Present:

Commissioners: Jay Huber  
Mike Fitzgerald

Deputy Clerk: Lori J. Teeters

The following proceedings were had to-wit:

Commissioner Hansen attended the Shoshone-Benewah Forest Health Collaborative meeting at 1:30 p.m. via Zoom.

Thereafter, the meeting adjourned.

ATTEST Tamie J. Eberhard  
County Clerk

Approved:   
Chairman

By:   
Deputy Clerk

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2021

Wednesday, November 24, 2021

The Board met pursuant to recessing Tuesday, November 23, 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 and Robin Hack. The consent agenda was reviewed for consideration as follows:

PUBLIC COMMENT: Robin wanted it on the record that she thinks the Wrecking yard applicants should have to provide proof of insurance when applying for their renewal application and that if it is canceled during the year at any point, the County should be notified of it.

CHANGES TO AGENDA: Gem Plan Board of Trustee Nomination on behalf of the Commissioners to re-elect Glenda Poston.

OLD BUSINESS:

1. Consideration and Decision of the Minutes of the Commissioners' Public Agenda Session dated Monday, November 15 to Thursday, November 18, 2021.

NEW BUSINESS:

1. **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 – there were 7 licenses were presented.
  - Shoshone County Pre-Pays
  - Cancellation of Taxes – Homeowners Exemptions – approved as presented.
  - Wrecking Yard License Renewal for 2022 for Pine Creek Auto Wrecking – approved as presented.
  - Wrecking Yard License Renewal for 2022 for Kurrelmeyer Wrecking – approved as presented.
  - Service Level Agreement for Electronic Transaction and Point of Sale Access for Shoshone County Assessor's office – approved as present.
  - Service Level Agreement for Electronic Transaction and Point of Sale Access for Shoshone County Sheriff's office – approved as presented.
  - F Street Encroachment(s) Findings of Fact and Conclusions- approved as presented.

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- Findings of Fact and Conclusions for Tristate Consulting Engineers, to Vacate and Abandon a portion of Potlatch Road – approved as presented.

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

- 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 Huber to approve Indigent case #2021-35 and 2021-55, to deny case #2021-49.

#### 2022 Beer, Wine & Liquor Licenses

#41	Wallace Brewing Co LLC	Wallace Brewing Co	Wallace	Beer/Wine
#42	The Snake Pit LLC	The Snakepit	Kingston	Beer/Liquor
#43	W INN INC	O'Rourke's	Wallace	Beer/Liquor
#44	Mullan Trail Gas & Groc	Mullan Trail Gas & Groc	Mullan	Beer/Wine
#45	Barney's Harvest Food #3	Barneys Sooper Markets	Pinehurst	Beer/Wine
#46	Ricktor LLC	Kingston Kwik Stop	Kingston	Beer/Wine
#47	Ricktor LLC	Rick's Place	Kingston	Beer/Wine

Parcel	2021 Taxable	HO Credit	New Value
B-0050-003-001-A	170,518	85,259	85,259
C-0200-003-008-A	116,808	58,404	58,404
C-0300-003-006-A	10,026	3,570	6,456
D-0000-006-2480	212,420	53,105	159,315
D-0100-016-008-0	74,539	37,270	37,269
D-0600-000-002-C	228,504	114,252	114,252
D-0750-003-005-A	120,497	60,249	60,248

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D-0800-001-000-B	154,217	77,109	77,108
D-1550-006-026-A	175,078	87,539	87,539
D-9030-000-202-A	121,789	60,895	60,894
E-0000-007-4225	176,016	88,008	88,008
E-0050-011-014-A	168,625	84,313	84,312
E-0050-020-005-A	2,523	1,262	1,261
G-0050-001-000-A	29,599	14,800	14,799
G-0050-008-000-C	197,999	99,000	98,999
G-0050-035-000-B	103,504	51,752	51,752
G-0150-000-027-0	211,479	105,740	105,739
G-0350-00H-007-A	114,126	57,063	57,063
G-0700-002-024-A	238,247	119,124	119,123
O-0400-000-004-A	288,185	125,000	163,185
O-1160-000-014-0	212,676	106,339	106,337
O-2050-000-012-B	29,698	14,849	14,849
O-3350-002-010-0	24,872	12,436	12,436
42N01E-12-8400	288,086	99,324	188,762
42N02E-18-7100	31,661	14,339	17,322
45N05E-15-4500	291,661	125,000	166,661
48N02E-03-5550	159,241	59,466	99,775
48N02E-06-0910	92,578	46,289	46,289
48N02E-29-3390	77,343	38,672	38,671
48N02E-30-0465	276,433	125,000	151,433
48N04E-21-0600	62,156	29,320	32,836

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49N01E-35-6230	317,240	120,011	197,229
49N04E-22-2525	139,890	69,946	69,944
50N02E-34-0520	108,917	26,565	82,352
MH-00295	31,992	15,996	15,996
MH-00391	14,795	7,398	7,397
MH-00533	34,476	17,238	17,238
B-0050-009-022-A	140,859	70,430	70,429
48N03E-03-5365	82,824	20,706	62,118
F-0100-006-008-0	70,756	35,378	35,378
A-0300-001-003-A	110,440	55,220	55,220
B-0050-020-016-A	245,799	40,557	205,242
G-9730-00B-0B4-0	180,200	45,050	135,150
O-0980-001-007-0	110,899	55,450	55,449
46N02E-31-3150	110,306	55,153	55,153
49N01E-35-5050	57,191	28,596	28,595
MH-00995	9,702	4,851	4,851
C-0050-031-012-0	203,219	101,610	101,609
C-0450-001-004-0	86,435	43,218	43,217
49N02E-29-5500	85,123	41,110	44,013
F-0050-001-007-0	79,358	39,679	39,679
48N03E-04-6050	184,108	92,054	92,054
O-1950-001-001-0	51,760	25,880	25,880
D-1300-002-006-B	153,171	38,294	114,877
48N02E-07-0650	110,051	49,585	60,466

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G-0200-000-021-0	229,329	114,665	114,664
A-0100-005-022-A	47,268	23,634	23,634
D-1600-004-004-A	147,424	28,812	118,612

BEFORE THE SHOSHONE COUNTY BOARD OF COUNTY COMMISSIONERS

In the matter of:  <b>F STREET ENCROACHMENT COMPLAINT(S)</b>	<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER OF DECISION</b>
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This matter came before the Board of County Commissioners for a decision with respect to a citizen complaint demanding removal of multiple encroachments on F Street, Wallace, Shoshone County, State of Idaho.

**FINDINGS OF FACT AND CONCLUSION**

**FINDINGS OF FACT**

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. Shoshone County has received several complaints concerning encroachments in the Canyon Addition area of Shoshone County, State of Idaho. These complaints requested and demanded immediate removal of encroachments, but the subject of this decision is encroachments located on the east side of F Street, Shoshone County, State of Idaho.
- B. The Board of County Commissioners conducted a site visit on May 19, 2021 for the purposes of inspecting all complained encroachments in the Canyon Addition area.
- C. At the time of inspection, it was observed that there were numerous encroachments including a building located on the platted east side of F Street.



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#### *RELEVANT FACTS*

1. During the course of the site visit in the area, it was observed that there were numerous items included a constructed building/garage on the area platted on County maps as F Street (east side);
2. The ITD road map shows that F Street is not a road which presently, nor in the past, receives road dollars for activity and maintenance. The road map shows Tomsche and the western portion of E street do contain activity and minimal maintenance in that area;
3. The County road list, which is compiled by the Public Works department based upon roads that are actively maintained and which funds are received from the state for that purpose, does not list F Street;
4. F Street is a platted County street pursuant to the records known to us. There is no evidence indicating that F street, at least the eastern portion, has been opened or maintained by the County in the past. Nor is there any evidence indicating it has been publicly used for purposes of access.

#### **APPLICABLE LEGAL STANDARDS**

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

Idaho Code 40-2319 is the authority relied upon in addressing encroachments within the public right-of-way. It provides for two types of removal: mandatory and discretionary. Mandatory removal is required where open highways are obstructed by an encroachment and as a result, the area is unsafe for pedestrian or motorist use. All other types of encroachment situations allow for the removal of said encroachments, but do not require it.

In order to determine whether or not a public right-of-way is considered an "open highway," we are guided by and rely upon the authority outlined in Idaho Code 40-202.

#### **CONCLUSION**

Based upon the information obtained during the site visit, it is apparent that encroachments exist on the eastern portion of F Street. As a result, it is necessary for us to determine whether or not those encroachments exist in a circumstance that requires mandatory removal under 40-2319 or are merely discretionary.

It is our decision relying upon the County road list, the ITD map, and the lack of expenditures of public funds for purposes of maintenance of the eastern portion of F Street, that it is not an open highway requiring mandatory removal of encroachments.

As a result, it is our decision in exercising our discretion not to require removal of any encroachments on the eastern portion of F Street at this time. However, we hereby direct that the County Attorney prepare and send a letter advising the adjacent property owner who placed the encroachments that an encroachment exist and the County may require removal in the future to

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the extent it is necessary and in the public interest as determined by the Board of County Commissioners with the advice of its public works director.

DATED this 24<sup>th</sup> day of November, 2021.

s/Mike Fitzgerald  
Mike Fitzgerald, Chairman

s/Jay Huber  
Jay Huber, Commissioner

Attested To By:

s/Lori J. Teeters  
Lori Teeters, Deputy Clerk  
to the Shoshone County Board of Commissioners

BEFORE THE SHOSHONE COUNTY BOARD OF COMMISSIONERS, IDAHO

**IN THE MATTER OF THE APPLICATION CASE NO. VAC-813-21  
TRISTATE CONSULTING, LLC BUELL BROS, INC.) PETITION TO VACATE  
FINDINGS OF FACT, LEGAL STANDARDS, FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER OF DECISION**

**HEARING DATE: OCTOBER 26, 2021 /10:00 AM FILE NUMBER: VAC-813-21  
APPLICANT: TRISTATE CONSULTING ENGINEERS, LLC. (BUELL BROS, INC)**

**PROPOSAL:**

The Applicant is petitioning the County to vacate and abandon a portion of Potlatch Road public right-of-way adjacent to Lot 1, as described in Instrument No. 509967, Records of Shoshone County, Block 6, Herrick Park Subdivision filed as Instrument No. 203899; located in Section 5, Township 45 North, Range 3 East B.M., Shoshone County, Idaho; further described in application submittals.

FINDINGS OF FACT: (Bold & Underlined) text are Administrator findings and /or recommendations)

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1. That the proposal is located at: 2 River Road, Calder, ID 83808 under parcel number(s) O-1850-006-001-A; located within Section 5, Township 45N, Range 03E. B.M.; Shoshone County, Idaho.
2. That the Comprehensive Plan designates the area as **SOUTH CORRIDOR**
3. That the existing Zoning of the property in this request is **(NR) NATURAL RESOURCE**
4. That the existing land use in the area is **RESIDENTIAL/RECREATIONAL**
5. **On September 14, 2021**, notice of public hearing was mailed to all persons owning property within 300 feet of the subject right-of-way. Providing notice of a public hearing before the Board of County Commissioners to be held on October 14, 2021 at 10:00 am.
6. **On September 14th, & 21st, and October 5, 2021**; notice of public hearing was published in the Shoshone County Press. Providing notice of a public hearing before the Board of County Commissioners to be held on October 14, 2021 at 10:00 am.
7. That a portion(s) of the Potlatch Road public right-of-way which Petitioner is requesting be abandoned and vacated (**are/are not**) improved for public or private use.
8. That a portion(s) of the subject right-of-way (**is /is not**) necessary or required to provide access to property which is not owned by Petitioner. Property (**is /is not**) left without access to a public right-of-way by the abandonment.
9. It (**is /is not**) in the public interest to abandon and vacate the excess right-of-way and place the property into private ownership which may be taxed so long as the order reserves easements for existing public or private utilities.
10. That said proposed public right-of-way (**was/was not**) created by Case no. CV-2017-94 (Mueller, Etal vs. Shoshone County, Idaho, and Potlatchdeltic Inc. Was not because: \_\_\_\_\_)
11. That the proposal (**is / is not**) located within an (ACI) Area of City Impact.
12. Public Comment: As of the writing of this report no public comment has been received. The Administrator did receive inquiries from four (4) adjacent property owners regarding questions related to clarification of what was being proposed. Application information was provided to one of the owners. None submitted formal comments.
13. That the following Agencies/Districts were solicited for comments, concerns & requirements:
  - o **AVISTA Utilities Corporation**): Chris Sands, Project Manager stated via email dated October 8, 2021 that s Avista has no utility services in this portion of the subject right-of-way. Any existing utilities services and or easements will be preserved. He had no other comments, concerns or requirements with the request for vacation. (See Exhibit AC-1)
  - o **Shoshone County Public Works Dept**: Jim Cason, Director, submitted a comment response dated 10/13/2021; where in summary he stated that the Department had researched the subject vacation request, and determined that the Dept. had concerns regarding maintaining access to the St Joe River as a water resource for road maintenance needs, access and ROW area for future bridge replacement, as well as an established public access point. (See Exhibit AC-2)
  - o **Shoshone County Assessor Office**: Katie Murray, Deputy Assessor submitted a determination of property value of the subject requested area to be vacated. The value was

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determined to be \$29,655.65, based upon the factor of (0.9200/sf) multiplied by the proposed vacation of (32237.4 sf, or 0.74 ac)

14. On October 14, 2021 at 10:00 am; a public hearing before the Board of County Commissioners was held. The Chairman (Fitzgerald) opened the hearing and explained procedures for a hearing. The Chairman introduced the subject case VAC-813-21. The Planning Administrator then presented the application and findings of fact, Applicable Legal Standards, proposed Conditions of Approval, Administrator Recommendation and draft Conclusions of Law. The Applicant Representative (Steve Syrcle/Tim Mueller) presented their application/testimony. The Chairman then opened the hearing to Public Testimony where they heard from four (4) members of the public. All testimony was in opposition to the proposal. The Applicant Representative were given the opportunity to rebut and answer questions. The Chairman closed the hearing to further Public Testimony. The BOCC deliberated and determined that more information or clarification of presented information was needed prior to rendering a decision. Chairman Fitzgerald motioned to continue the hearing to a date certain of October 26, 2021 at 10:00 am, to reconvene and potentially render a decision.

15. On October 26, 2021 at 10:00 am, public hearing (VAC-813-21) continued from October 14, 2021, was resumed and reopened by Chairman Fitzgerald. The Chairman made an opening statement regarding disclosing a potential conflict of interest and the determination was made that no conflict existed, and the hearing was opened. The BOCC resumed their deliberations where the Chairman stated he had reviewed the application exhibits and received clarification from Public Works staff regarding access points and easements through adjacent properties. Commissioner Huber stated that he has also received clarification to his questions. After further discussion Chairman Fitzgerald motioned to deny the application and recited the reasonings within the Conclusions of Law. Commissioner Huber seconded and the vote carried unanimously.

#### APPLICABLE LEGAL STANDARDS

##### **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. Easements shall remain to continue operation and maintenance of existing public utilities.

##### **Shoshone County Comprehensive Plan (1996)**

The Comprehensive Plan 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.

**Idaho Code §50-1306** outlines general provisions for the right of City to comment per their Area of City Impact agreements with the County.

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**Idaho Code §50-1306A** outlines general provisions and procedures for the vacation of plats

**Idaho Code §40-203** outlines general provisions for the abandonment and vacation of county highways and rights-of way', including petitioner requirements, establishments of hearings, and legal noticing requirements.

**Idaho Code §50-1317** outlines general provisions for vacation procedure in unincorporated areas and cities not exercising their corporate functions.

**Idaho Code §50-1318** outlines general provisions for in absence of opposition.

**Idaho Code §50-1319** outlines general provisions for in presence of opposition, continuance of application, hearing, when petition granted.

**Idaho Code §50-1321** outlines general provisions for necessity for consent of adjoining owners.

**Idaho Code §50-1322** outlines general provisions for appeal from order granting or denying application to vacate.

**Idaho Code §67-6521** defines an "affected person". An affected person may request a hearing on any permit authorized under Chapter 65. It outlines the actions the Board may take, and provides for judicial review, if requested, within 28 days after all remedies have been exhausted under local ordinances.

**Idaho Code §67-6535** requires that the approval or denial be in writing and be accompanied by a reasoned statement that explains the criteria and standards considered relevant, the relevant contested facts, and the rationale for the decision based on the factual information contained in the record, applicable provisions of the Comprehensive Plan, relevant ordinances and laws.

**Idaho Code §67-2343** provides general requirements for meeting notices such as the Commissioners' weekly deliberations.

**PROPOSED CONDITIONS OF APPROVAL:** This application was denied, therefore no Conditions of Approval are applicable.

### CONCLUSIONS OF LAW

1. Comprehensive Plan
  - o The proposal (does/ does not) conform with the goals and objectives contained in the Comprehensive Plan.
  - o Does not because:
2. Codes and Regulations
  - o The proposal (does/ does not) conform to the standards contained in "Applicable Standards"
  - o Does not because:

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3. Zoning
  - o The proposal (is / is not) consistent in with the purpose and intent of the existing zoning classification. (NR-Natural Resource District)
  - o Is not because:
4. Surrounding Use
  - o The proposed use (is / **is not**) compatible with the existing surrounding uses in the area.
  - o Is not because: (See reasonings below)
5. That said proposed public right-of way (is / **is not**) located on land owned by or surrounded by the United States or the State of Idaho, nor does it provide the only means of access to such public lands.
  - o Are, because: \_\_\_\_\_
6. The testimony received for the proposal expressed:
  - o Support o **Opposition**
  - o Both o Neither
7. Impact on Public
  - o The proposal (is / is not) detrimental to public health, safety, or well-being; and (is / is not) in the public interest.
  - o Is detrimental and not in the public interest because:
    - 1) **The County actively uses the right of way for withdrawal of water for Public Works Department construction and maintenance purposes.**
    - 2) **The County possesses a documented County water right with the Idaho Department of Natural Resources for the water usage at the subject location.**
    - 3) **The County has utilized County forces to make improvements to the subject right of way to improve access for the use of the water right.**
    - 4) **Preservation of the right of way for future construction and/or bridge replacement is viewed to be in the best interest of the County long-term.**
      - o The issue at hand appears to be more complex than involving the abandonment of right of way for the mutual benefit of the County and an adjacent landowner. The issue at hand is viewed to involve other items that include, but may not be limited to: land use, authorized and unauthorized access, private property trespass and/or public safety. Therefore, in my opinion, other alternates (other than private land acquisition with "gating off" undesired uses) exist to resolve such issues.
      - o Closing, the County is willing to work in its part as a property owner with other interested entities in identifying issues with the area and working towards solutions.

MOTION:

**Based on the Findings of Fact and Conclusions of Law set forth in these documents and any additional determined during the Public Hearing process, the Shoshone County Board of Commissioners, now hereby resolve to order that this petition to Vacation/Abandonment of Public Right of Way be, (APPROVED w/ Conditions / **DENIED** for the above reasons:**

MOTION BY: Chairman, Mike Fitzgerald    SECONDED BY:    Commissioner Jay Huber



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Roll call Vote:

Mike Fitzgerald, Chairman Y/N Jay Huber Y/N John Hanson Y/N

s/Mike Fitzgerald  
Mike Fitzgerald, Chair

Date: 11/24/2021

s/Jay Huber  
Jay Huber, Commissioner

Date: 11/24/2021

Thereafter, the meeting adjourned.

ATTEST Tamie J. Eberhard  
County Clerk

Approved:   
Chairman

By: Lon J. Teeter  
Deputy Clerk

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BOOK 2021

Thursday, November 25, 2021

Present:


Commissioners:

Deputy Clerk:

The following proceedings were had to-wit:

Courthouse is closed for the Thanksgiving Holiday.

ATTEST Tamie J. Eberhard  
County Clerk

Approved:   
Chairman

By: Lon J. Teeters  
Deputy Clerk