

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

Tuesday, October 24, 2023

Present:

Commissioners: David Dose - Chair

Tracy Casady

Jeff Zimmerman

Deputy Clerk: Sydney Millard

9:30 AM **Executive Session:** Pursuant to Idaho Code 74-206(f) – To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.
Regular Session: Herrick Park

Also, present: Ben Allen, Stephanie Featherstone, Jessica Stutzke, Matt Beehner

Commissioner Zimmerman made a motion to enter executive session per Idaho code 74-206(f), seconded by Commissioner Casady. Roll call vote: Commissioner Casady – Aye, Commissioner Dose – Aye, Commissioner Zimmerman – Aye. The motion carried unanimously, and the public exited the room. The board exited executive session and Commissioner Dose made a motion to ask the Prosecutor to work with the Buell's attorneys to fine tune the license agreement and fine tune further protection for the County, seconded by Commissioner Zimmerman. The motion carried unanimously.

1:00 PM **Pottsville Seven Updates**

Also, present: Holly Hampton, Jed Friedman, Jim See, Ron Hayes, Nick Hogamier

Ron asked if the board was able to contact Hecla regarding property surrounding the park the group has interest in. Commissioner Dose said he was provided a new contact and is working on scheduling a meeting. Jed explained at the last meeting he was finishing an application for a Resource Advisory Council grant. The grant was awarded for \$131,000 towards the Shoshone/Pottsville Park, specifically the replacement of the restroom facilities. This covers the demolition of the current structures. They are looking at order the new concrete vault facilities sooner rather than later. They will work backwards from the lead-time of their delivery. They are looking at fall of next year right now for earliest delivery. Jed said they got the signed concurrence from the Idaho State Historic Preservation office blessing them to move forward on a restoration project on the west kitchen structure. He also recently received a draft document of

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

the park tree health. Official signed off version to hopefully come in the next month which he will share. Jed said they are looking at a lot of disease and insect infestation in the trees. This will be a bigger conversation moving forward regarding what they want to do. Holly said it may look more like a small timber sale once they get up there to do the work. Jed said they are dealing with this forest wide. Jim asked if this means the park would be closed during that period. Jed said they haven't begun to plan anything. Holly said the first step is to review the final report once received and see what that looks like. Then they can look at how they need to handle it. Holly explained for their next 5-year planning effort for the Coeur d' Alene River District, they are calling the project area I-90 East. This is the greater Wallace area to the Montana border. This will be a combination of timber harvest and prescribed fire among other things. There will likely be a recreation component as well. Treating trees at Shoshone Park may be wrapped into this project. Jim said he has been doing research with the idea of implementing an interpretive trail through the park and beyond into the Sportsman's Association. He thought it would be good to start with the Coeur d'Alene. He asked who should contact them and how to involve them in decision making or what they would like to see. Holly said it would be good to have a few more discussions and a proposal created. Tribal consultation is an option. Jed noted there would be a National Environmental Policy Act process to create a new trail. There being no further business the meeting adjourned.

5:30 PM Canyon Addition Land Use – 3rd FL Courtroom

Commissioner Dose called the meeting to order and shared the goals of the board for the evening. They are not making decisions tonight. The first goal is to educate the board on the issues. The second goal is to share the findings of the survey with local landowners and the board. The third goal is for the board to hear goals, concerns, and interests of everyone who lives in the area regarding the survey. Commissioner Dose asked Rob Stratton to review his survey. He said he was asked two years ago to identify some of the right of ways in Canyon Addition. He said the primary goal when looking at a survey is to determine where the boundaries were originally created and what has happened since then that might influence the boundaries. In this case, the plat was originally done in 1906. Matt Beehner said his deed is based on a powerline which gives you a distance from the powerline center line to the property line out to the railroad right of way. He presented this to the roads department but wasn't sure if it made it to Rob. Rob said he would need to look closer at the deed. Minde Beehner asked what direction the 30-foot shift was when the BLM came in. Joe Avery asked, if you're tying everything to the 16th, is that on the section line? Rob said it is a quarter section line. Joe asked if he had looked at the original field notes. Commissioner Dose asked for landowners/residents in the area to speak if they'd like. David Patrick at 104 Tomsche said his garage currently sits in what was supposed to be F Street. He asked if prior to 2017 if any work was done to fix the encroachment. He asked if F Street is still not shown as part of the Idaho Transportation Department map. Jessica said it is not

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

on the map. He said he is looking to solve the issue. Matt Beehner asked if the highway map fits the code of the official county road map. Speaking as Brookside Development, Matt said they went to give up the road in 2021, and it was decided to not vacate the property, nothing has changed. He said he has spoken with the previous board about getting waterline back to the property. The fastest way is through Mr. Patrick's garage. Back then the cost was \$17,000, that cost will have doubled or tripled now. He is still fighting to get water. They offered to move the road and that was denied by the county and past owners. He said the vacation of right of way process was done before the public hearing was scheduled. Brookside Development has been incurring costs. He provided the board with pictures of encroachments. He asked the board to follow Idaho Code. Minde Beehner, speaking for the Beehner's, said her focus is the encroachment complaints that she filed in October of 2019 that she had to re-file in April of 2021. She said they had their property surveyed before they built and had it recorded. She said there are issues with the findings of fact after the hearing. Minde said at least a year before the hearing there were two legal descriptions and two legal maps for the vacate and snow lot. They weren't recorded but they were stamped signed and dated by Alta. She said they provided proof during the hearing that F Street was being plowed, through pictures and testimony, which was the reason the garage was put where it is. She said her frustration rose after nothing happened for five months after the denial of the vacate. She said the attorney sent a letter which generated a meeting between the then commissioners, the Tatman's, and Mr. Ludwig came as well. She said in that meeting the board told the Tatman's they had an encroachment, but they weren't going to worry about it at that time. She said in the findings of fact that Mike Fitzgerald wrote, it said the county's road list didn't list it, but there are also roads on there that aren't county roads. She isn't sure the legality of the county road list. Commissioner Dose asked other citizens if they'd like to speak. Kirk Koh said he has been tied to the valley for 62 years, and past commissioners have set precedent of things that haven't been done the right way. He said he voted for Commissioner Dose and Commissioner Zimmerman because they ran on transparency. Chris Bishaw said a few years ago the Beehner's approached the Tatman's to compromise. She said she tried to buy Brookside property from the Beehner's. She was waiting because Matt didn't know the cost to bring a waterline down. Matt told her about the petition to vacate the road, which would make or break her decision to buy the property. She waited for months, and nothing happened so she had to move on. She said the Tatman's essentially fenced off another quarter acre of land, enjoyed it as their own, didn't pay taxes on it. Then they sold, and the new owner likely paid more money for property they don't have rights to. She doesn't know why nothing has been done to fix this. Mr. Ludwig said the lots on the back side of the alley were owned by Billy White for a while who then sold. Jann Higdem said she just found out about the meeting after receiving the letter from Matt Beehner that Public Works sent out. She said she is opposed to Public Works convening a meeting to solicit public input on encroachments in Canyon Addition or anywhere in the county because encroachments are illegal according to Idaho Code 40-2319. She said the Supreme Court in 1962 confirmed that a gas station had to remove their pumps, island, canopy and signs that were installed in the 30's because they encroached on a right of way. She said a garage built in the 80's on F Street is an illegal encroachment and the county has no authority to permit its construction. She cited Shoshone County Ordinance 139 in part, which states that half streets shall not be permitted. F Street can not be reduced. She cites case law, Keyser v. City of Boise 1917 and Kleiber v. City of Idaho Falls 1986. Also, Barton v. State 1983, State v. Idaho

PROCEEDINGS COUNTY COMMISSIONERS

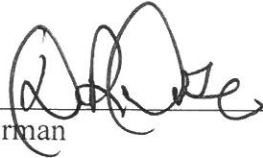
SHOSHONE COUNTY, IDAHO

BOOK 2023

Power Co. 1959 and Boise City v. Sinsel 1952. She also said that Chris Pfahl has had his license revoked from disciplinary action from too many unsatisfied customers. Minde Beehner asked Rob Stratton if he was comfortable with the dotted line up along the railroad right of way. Rob said when he records a survey, he is offering an expert opinion. She asked if Rob was provided a copy of the original deed if that would be beneficial. Rob said he would need to see it to tell. Commissioner Dose asked Mr. Patrick if he was aware of any of these issues as he bought the property. Mr. Patrick said they were told that this was a potential, but the road didn't show up on any county road maps. Commissioner Dose asked if he has any ideas for solutions. Mr. Patrick said if the county would let him buy the county right of way. He said it could help the Beehner's as he would allow the waterline. Commissioner Dose asked Matt Beehner what they offered the Tatman's in the past. Matt said they offered to move the road, which he pointed out on the displayed survey. Matt said this was before Brookside Development incurred all their attorney's fees to fight this. Matt said he is interceded in a solution, but Brookside Development needs to be made whole. Commissioner Zimmerman asked Matt what the attorney's fees were. He said over \$10,000 and under \$50,000. Commissioner Dose asked Mr. Patrick what he thought about the idea of the county moving the right of way to the far side of his property in return for the property that he's currently sitting on. Mr. Patrick said they'd have to think about it, but it's a possibility. Public Works had no questions. There being no further business the meeting adjourned.

ATTEST Tamie J. Eberhard
County Clerk

By: Sydney Millard
Deputy Clerk

Approved: 
Chairman

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

Wednesday, October 25, 2023

The Board convened at **9:30 a.m.** in regular business session and the meeting was called to order.

Present:

Commissioners: David Dose - Chair

Tracy Casady

Jeff Zimmerman

Deputy Clerk: Sydney Millard

Also, in attendance: Matt Beehner

PUBLIC COMMENT: Matt said there is no dispute if the power pole on Tomsche Avenue is in the road.

The consent agenda was reviewed for consideration as follows:

OLD BUSINESS:

1. Consideration and Decision of the Minutes of the Commissioners' Public Agenda Session dated Monday, October 16, 2023 to October 20, 2023. A motion was made by Commissioner Casady to approve the minutes, seconded by Commissioner Zimmerman. The motion carried unanimously.

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
 - Shoshone County Payables
 - Cancellations/Homeowner's Cancellations
 - Letter of Support for Ambulance Service District Grant

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

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

2. Executive Session: Indigent Cases: Consideration and Decision. Executive Session ID Code 74-206(d). A motion was made by Commissioner Casady, seconded by Commissioner Zimmerman to go into Executive Session per Idaho Code 74-206(d). Roll call vote: Commissioner Casady – Aye, Commissioner Dose – Aye, Commissioner Zimmerman – Aye. The motion carried unanimously. The Board adjourned from Executive Session and a

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

motion was made by Commissioner Casady to table case #2023-28 pending receiving further information needed from the Clerk's office, seconded by Commissioner Zimmerman. The motion carried unanimously.

10:00 AM To Discuss Holiday Time Off

Also, present: Shelby Wilcox, Katie Murray, Matt Beehner

Commissioner Dose explained historically the county has given some admin days to employees. He has talked with the Clerk who said they have tried to aim for Fridays in the past for these days as its easier for the Courthouse to be closed with permission from the Judges. Whatever is decided will need to be ran by the Judges to make sure it accommodates their schedules. Commissioner Dose said he thinks they should give the three days off around Thanksgiving, Christmas, and New Years, as well as two additional days of Good Friday and July 5th. Because they were not able to give a COLA increase, this is a way to give back to the employees without a major impact on the budget. Commissioner Casady asked if Commissioner Dose spoke with employees. Commissioner Dose said he did, and the vast majority expressed interest in Good Friday and fourth of July weekend. Commissioner Zimmerman said he is concerned about the budget, but he agrees with the three days given historically. He said that if they had stuck with last year's budget without raising it, they would have had to put \$1.3 million in, raise taxes and use foregone money. Also, they are using LATCF funds to pay off equipment and copiers. He is concerned the extra days will cost the county in work that won't be done. Commissioner Casady said she understand the county's financial state but believes the employees will put in extra work to make sure everything is covered and are worth two extra days off. Commissioner Dose said it will cost the county time, but he thinks until we can get a wage study, we are probably under compensating several employees. He said two additional days as a one-time encouragement to staff in lieu of the COLA increase may be appropriate. Commissioner Dose made a motion that pending approval from the Judges, they approve the following days as admin days: November 24, December 22, December 29, March 29 and July 5, seconded by Commissioner Casady. The motion carried. Matt said the employees are better off by getting additional days versus a COLA raise. Shelby asked since the transfer station can't be closed those admin days, they have in the past had to use the dates by a certain date, and if that will be the same. Commissioner Dose said yes. There being no further business the meeting adjourned.

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

10:30 AM To Discuss Utility Easements for Pinecreek Bridge – Jessica Stutzke

Also, present: Jessica Stutzke, Amanda LaMott, GE Siegford

Jessica explained she thought it would be a good time to introduce Amanda from LHTAC to the board, as they have many projects with them. GE from HMH also joined, who is on the design team for several bridges. Jessica said the Pinehurst Water District has a line that runs along the Pinecreek Bridge, which is a full replacement in the Federal Aid bundle. She said sometimes the price to move the utilities falls on the utility company, and sometimes it is brought into the project. For this one, it was deemed the relocation of their pipe would fall onto Pinehurst Water District. Jessica said she raised some questions because in 2019 a similar bridge project approved the relocation of utilities as a project cost. She provided the board with a document the Pinehurst Water District produced in 2019 to LHTAC that is listed as an easement but there is no record of recording, and it doesn't look like a traditional easement and so its not considered a legal document. She thinks a question that may come before the board is why was this approved in 2019 and not for this project. Amanda said there aren't great records for how the utility relocation was approved in 2019 as a project expense. She said LHTAC is governed by a council of city mayors, county commissioners and highway district commissioners. She read a LHTAC policy that states utility relocation costs will not be eligible for Federal funding on projects where the utility is within the public right of way at the permission of the owner. However, there are exemptions and special cases. Such as rural utilities that don't service a lot of homesteads in the area. There is a process where Pinehurst Water District can claim hardship for the council to review on a case-by-case basis. Commissioner Zimmerman asked if Pinehurst Water District is aware of the situation. Jessica said she has not contacted them, she wanted to get this sorted out first and make sure they were aware of all their options. GE said they asked if Pinehurst Water District had any other documentation, and they did not. Commissioner Dose asked about how much this would cost the water district. Amanda estimated \$15,000-\$20,000, maybe more. Commissioner Dose asked what they do with their water while they're building the bridge. GE said that's one thing that makes it cost a little more, the creation of a temporary bridge next to the existing bridge and relocating the water line to the temporary bridge. Commissioner Dose said he and Jessica can work together to approach Pinehurst Water District and let them know of the pending challenge. GE asked what the process would be if the water district wanted to claim a hardship. Amanda said it would be through Jessica to herself at LHTAC as the project manager to bring to their council. Her recommendation would be for the water district to create a proposal in letter form outlining their reasons for hardship addressed to the LHTAC council. Jessica shared they have a ton of bridge projects going through LHTAC right now at various phases. Gem bridge is about 98% complete. Elk Creek trussell is in the design phase. Moon Creek bridge has been designed and a contract has been selected. Country Club bridge is designed and has been put out for contracts. Silver Bridge is well into the design phase. The design process has also been started for Two Mile Bridge. Amanda expressed kudos to the county for being aggressive in applying for grant funding through LHTAC. She explained they are hoping to have the request for proposal advertised next week for the Moon Pass tunnels. She reviewed the

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

selection process for an engineering consultant which includes being advertised by the Idaho Transportation Department for 3-4 weeks. There is a set list of questions they must respond to and show their technical ability, who's on their team, experience, and their quality control process to name a few items. Once proposals come in, there is a selection committee of five people for scoring. There being no further business the meeting adjourned.

12:00 PM PUBLIC HEARING: To Discuss, Review and Consider a Fee Increase for Shoshone County Solid Waste Transfer Station

Also, present: Shelby Wilcox, Richard Brenner, Matt Beehner

Commissioner Zimmerman made a motion to open a public hearing, seconded by Commissioner Casady. Roll call: Commissioner Casady – Aye, Commissioner Dose – Aye, Commissioner Zimmerman – Aye. The motion carried unanimously. Commissioner Dose walked through the hearing rules and turned the hearing over to Richard for the staff report. Richard said this all started with their wood pricing. They used to stockpile wood at Government Gulch then chip it before they lost their site. They were going to process dimensional lumber in the air curtain burner, but per their air quality permit through DEQ they can't burn about 75% of the wood that comes in. They can only burn clean dimensional. No plywood, nothing with paint or glue. Most of the wood is going into their waste stream now, and being hauled over to Missoula so they must make up for that cost. Proposed is \$85/ton for clean wood and \$145/ton for mixed loads.

Commissioner Dose asked him to explain how they derived the fees. Richard said its all broken down between wage and benefits, cost of trucks, fuel, equipment, maintenance, tires, short haul trucks and bins. Commissioner Dose asked what else we are burning. Richard said green wood. He said it's hard to keep up with their limited floor space. Richard said right now, dimensional, and plywood and painted is considered clean wood because it was going to be chipped. Now, dimensional only will be considered clean wood so the verbiage is changing.

Matt said he supports the increase. He said their breakdown has 40% benefits, but most counties have 50-60%. Richard said they might be low on that. They did an average. Shelby said they don't want to shock the public. Matt said it needs to cover the total cost. Commissioner Dose made a motion to close the public hearing, seconded by Commissioner Zimmerman. Roll call vote: Commissioner Casady – Aye, Commissioner Dose – Aye, Commissioner Zimmerman – Aye. The motion carried unanimously. Commissioner Zimmerman said he supports the increase. Commissioner Casady said she supports the user fees. Commissioner Dose said he's sorry to raise fees but the alternative of the taxpayer taking it is unacceptable. Commissioner Zimmerman made a motion to approve the fee schedule for Shoshone County Solid Waste at \$85/ton for clean wood and \$145/ton for mixed loads, including the new definition for clean and mixed wood. Seconded by Commissioner Casady. The motion carried unanimously. Commissioner Dose said this will be effective immediately.

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023

1:00 PM 6-County Boundary Joint Ordinance Proposal

Also, present: Dan Martinsen, Trish Brown, John Elsbury

John said he has attended a few meetings since he last met with the Board. One being at the Assessor's conference recently, where he didn't get much feedback on the proposal. Commissioner Casady said she has heard the Assessor's ask who will be changing the deeds. John said the landowner's will. He said a good question is what comes first, the county updating their tax rolls or the deeds, and there's really nobody to ask. His opinion is to change the tax rolls first. He is volunteering surveyors to work with the landowners. He thinks each Assessor upon updating their tax rolls should prepare a letter for the landowners notifying them of the boundary change, which are all timber companies. He said this does not affect any taxpayers. He doesn't anticipate any negative support in legislature. All four surrounding counties have approved the proposal. Dan said he met with John, and he was able to answer all their previous questions and satisfy remaining concerns. Nobody is gaining or losing property. Commissioner Casady made a motion to approve the 6-County Boundary Joint Ordinance Proposal as written, seconded by Commissioner Zimmerman. The motion carried unanimously.

2:00 PM To Discuss Vacation Right of Way Process – Planning & Zoning

Present:

Commissioners: David Dose - Chair

Jeff Zimmerman

Deputy Clerk: Sydney Millard

Also, present: Dan Martinsen, Trish Brown, Stephanie Featherstone, Matt Beehner

Commissioner Dose explained he began having this discussion with Planning & Zoning and thought it would be good to have everyone hear. Dan said they have had several vacations of right of way that have gone through the process, and some have been handled different than others. Recently it came upon them they needed clarity on how to proceed. He said he thinks they have the process and the noticing and what's required of the applicant clear but need to know what to do about the value of the square footage of property that is being proposed to be vacated. In a general sense, they have some sort of public right of way that someone is requesting to vacate a portion of it. There are a few different sections of Idaho Code that address how to handle this. One of the issues reads that if the property is valued at greater than \$2,500,


PROCEEDINGS COUNTY COMMISSIONERS


SHOSHONE COUNTY, IDAHO

BOOK 2023

the board may decide to charge a fee of dollar amount for that property. There is no definitive on how to calculate that value. As they have four applications before them, planning and zoning wants to give them heads up on what they may or may not expect, as well as for future applications. Dan said he thinks they will see more vacation of right of way applications. Commissioner Dose said he spoke with the prosecutor who stated it would not be legal to charge for a right of way. He said they need to meet with him to discuss what Dan is reading and compare notes. Commissioner Dose asked if planning and zoning had any thoughts about managing a fee if it was found to be legal. Dan said it seems reasonable and fair to him to utilize the current per square cost for the land value from the assessor's office. Matt said he read the same thing Dan did and was told the same thing by Ben that it would not be legal. He thinks people should pay fair market value for property. He said that Susan Copeland asked if the county got Potlatch Road or the right of way too. Dan said the right of way. He also said that without an official county property map, how do we know we're giving away land we actually own.

ATTEST Tamie J. Eberhard
County Clerk

Approved: 
Chairman

By: 
Deputy Clerk

PROCEEDINGS COUNTY COMMISSIONERS

SHOSHONE COUNTY, IDAHO

BOOK 2023


Thursday, October 26, 2023

10:00 AM Office hours in Calder – Zimmerman

3:00 PM Office hours in Avery - Zimmerman

ATTEST Tamie J. Eberhard
County Clerk

By: Sydney Millard
Deputy Clerk

Approved: 
Chairman