

April 10, 2023

The Board of County Commissioners of Washington County, Idaho, does hereby meet this 10th day of April 2023.

IN THE MATTER OF ROLL CALL)

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

Lyndon Haines 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.

Nate Marvin provided an update regarding the Washington County Fair.

Gordon Wilkerson stated he had attended SREDA (Snake River Economic Development Alliance) and the Soil Conservation District meetings last week. Wilkerson informed the Board he traveled to Twin Falls last week to participate in the discussion of the Lava Ridge Windmill Project. Wilkerson discussed having a public meeting with George Brown and presentation regarding property tax processes/structure.

Nate Marvin moved, seconded by Gordon Wilkerson, to approve a duplicate warrant payable to Hardin Sanitation in the amount of \$67.19. Motion carried.

Gordon Wilkerson moved, seconded by Nate Marvin to approve the ballot order for the May 16, 2023 School Levy Election. Motion carried.

Nate Marvin moved, seconded by Gordon Wilkerson, to accept the revised Guaranteed Maximum Price Amendment between Washington County and Beniton Construction Inc. Motion carried.

Nate Marvin moved, seconded by Gordon Wilkerson, to approve the IHS (Indigent Healthcare Solutions, Ltd) Software Non-Exclusive License Agreement. Motion carried.

IN THE MATTER OF MINUTES)

The minutes of the Board not heretofore approved of April 3, 2023 were approved as written.

The minutes of the Board not heretofore approved of April 3, 2023 Town Hall Meeting were approved as written.

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IN THE MATTER OF CLAIMS)

The claims, audited by the Auditor, were presented and reviewed by the Board. All credit card claims were reviewed.

The Auditor was authorized to issue warrants totaling \$208,570.06 for general expenses by a motion of Nate Marvin, seconded by Gordon Wilkerson. Motion carried unanimous.

IN THE MATTER OF WEED AND RODENT CONTROL)

Weed Superintendent, Bonnie Davis, met with the Board. Davis discussed the roadside spraying agreement with ITD (Idaho Transportation Department) in the amount of \$7,100.00 effective July 1, 2023 through June 30, 2024, Davis stated the department is responsible for spraying from the Payette to Adams County lines.

Nate Marvin moved, seconded by Gordon Wilkerson to approve the agreement between the Washington County Weed Department and Idaho Transportation Department. Motion carried.

Davis provided a department update. Davis informed the Board that the Weed and Rodent Board meetings will be Tuesday, April 11, 2023.

IN THE MATTER OF ROAD & BRIDGE/SOLID WASTE)

Jerod Odoms, Road and Bridge/Solid Waste Supervisor, met with the Board. Odoms presented an Application for Placement of Culverts/Approaches to be placed on Cove Road submitted by JR Bumgarner.

Nate Marvin moved, seconded by Gordon Wilkerson to approve an Application for Placement of Culverts/Approaches to be placed on Cove Road. Motion carried.

Odoms informed the Board that the road graders are out doing road maintenance. Odoms stated that the Cove Road Bridge project is expected to begin in late 2024. Odoms provided an update on the Dixie Creek Bridge to the Board. Odoms also discussed the bridge located on Burton Lane which is scheduled to be replaced. Odoms stated Crane Creek Bridge is scheduled for testing in May of 2023. Odoms informed the Board asphalt bids are due to be opened next week.

There was discussion regarding CDL licensing. Odoms stated that testing can now be done in-house. Odoms informed the Board he met with the Mann Creek Cooperators last week regarding road maintenance near Mann Creek Reservoir. Odoms stated the Regional ITD meeting was held last week, and future projects were discussed. Odoms stated a PAWG (Payette Adams, Washington, Gem) meeting will be held this week.

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(Thursday) with ITD. Widening and adding turn lanes on Stagecoach Road are to be discussed at that time.

Wilkerson discussed the condition of Keithley Creek Road and requested Odoms to address the matter.

Marvin discussed the placement of the sign for the Extension Office. Marvin requested Odoms contact Tyler O'Donnell at the Extension Office to address the matter.

There was discussion regarding the lights on Highway 95 and Indianhead Road.

Lyndon Haines moved, seconded by Gordon Wilkerson, to go into executive session at 9:36 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. Gordon Wilkerson, Aye; Lyndon Haines, Aye; Nate Marvin, Aye.

Lyndon Haines stated they were out of executive session at 9:42 a.m.

Wilkerson inquired if Odoms would be willing to meet with citizens regarding road maintenance. Odoms agreed to participate in a meeting.

#### IN THE MATTER OF WOLF REDUCTION DISCUSSION)

Wilkerson provided an update on the Wolf Reduction Program. Wilkerson stated that he had spoken with Fish and Game representatives. Wilkerson stated he had also spoken with Representative Boyle regarding the matter. Wilkerson informed the Board that the Wolf Control Board was put in place and funding is available for control from the Wolf Control Fund in excess of \$400,000.00.

Haines requested that Wilkerson provide previous legislation that may be presented in June at the Commissioner and Clerk's Conference.

Judy Boyle entered the meeting. Haines requested legislation that Boyle had previously presented.

#### IN THE MATTER OF PROSECUTING ATTORNEY)

Delton Walker, Prosecuting Attorney, met with the Board. Walker stated Idaho Code 67-2805 addressed Public Works projects. Walker stated that if a project is in excess of \$50,000.00, a public works license would be required.

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Lyndon Haines moved, seconded by Gordon Wilkerson, to go into executive session at 10:01 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. (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. The mere presence of legal counsel at an executive session does not satisfy this requirement. Motion carried unanimous. Gordon Wilkerson, Aye; Lyndon Haines, Aye; Nate Marvin, Aye.

Lyndon Haines stated they were out of executive session at 10:26 a.m.

IN THE MATTER OF COUNTY SETBACK DISCUSSION)

Mike Kaech met with the Board. Kaech discussed the Constitution and Article 5 regarding setbacks and “just compensation”. Kaech read a portion of the Republican Party Platform on the record. Kaech stated he had researched his property through Amerititle and informed the Board that the county would have to purchase easements etc., from property owners.

Gordon Wilkerson read Idaho Code 67-6529 as follows: “No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product”. Wilkerson stated the setbacks established in the county are wide and confusing. Wilkerson discussed a 50-foot road right-of-way. Wilkerson stated his interpretation is that the 40-foot setback is beyond the 50-foot right-of-way. Wilkerson inquired where the county got authority to put setbacks in place? Wilkerson stated that Prosecutor Walker had indicated it is found in Idaho Code 39-4116(5) which reads: “Local governments shall exempt agricultural buildings from the requirements of the codes enumerated in this chapter and the rules promulgated by the board. A county may issue permits for farm buildings to assure compliance with road setbacks and utility easements, provided that the cost for such permits shall not exceed the actual cost to the county of issuing the permits.”

The Board discussed the interpretation of “permit” in Title 39.

Haines stated that Title 39 is found in Idaho Building Code. Haines stated that he reads that to mean the exception is the ag building. Haines discussed the Idaho Regulatory Takings Handbook that was updated in January 2023. Haines read the following from the handbook: “Regulatory actions are harder to evaluate for “takings” because government may properly regulate or limit the use of private property, relying on its authority and responsibility to protect public health, safety and welfare. Accordingly, government may

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abate public nuisances, terminate illegal activity, and establish building codes, safety standards, or sanitary requirements without creating a compensatory “Taking.” Government may also limit the use of property through land use planning, zoning ordinances, setback requirements, and environmental regulations.” Haines stated the question is whether a setback is a taking.

Wilkerson questioned the purpose of a 40-foot setback from a county road.

Haines read County Code 5-3-4 (A) as follows on the record: “In Zones A1 and A2, no dwelling or structure or any portion thereof, except steps and uncovered porches less than ten feet (10') in width, shall be erected within fifteen feet (15') of the property boundary lines or within forty feet (40') of the street right of way or within one hundred feet (100') of any state or federal highway. No farm or ranch buildings shall be erected within fifteen feet (15') of the property boundary lines or within forty feet (40') of the county road right of way or within one hundred feet (100') of any state or federal highway”. Haines stated that Planning and Zoning would have to review that section of the code before changes could be made. Haines also discussed the code from neighboring counties. Haines stated that Adams County setbacks are 20-feet from the property line, 10-feet between buildings and 80-feet from the center line of a right of way. Gem County is based off the classification of the road. Owyhee County is a 5-foot setback from the property line, 40-feet from the county road, or 100-feet from the state or federal highway. Haines provided copies of other county setbacks to the Board. Haines stated every county seems to be a little different.

Wilkerson questioned the purpose of a road setback.

Haines stated he believed that the intent was to make sure a building was not built in an area where a road could expand to. Haines stated that any time you can make the code easier to understand is an advantage to everyone.

Conley Walker stated not every road in the county has the same setback area. Walker inquired what the definition of right-of-way is.

Haines informed the group that Planning and Zoning would need to review this portion of the code. The Board will make the final decision.

Marvin discussed a 15-foot setback from the property line due to the possibility of fire and damage to the neighbor’s property.

Chris Christopherson addressed the Board and discussed the purpose of a setback.

Conley Walker inquired Nate Marvin what is the distance required between buildings within the city regarding fire safety.

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Marvin stated it depends on the location. Marvin indicated it should not be an encroachment on your neighbor. Marvin stated there are different setbacks for residential properties.

Walker stated he did not want his neighbor encroaching on him or vice versa. Walker informed the Board that pushing buildings further away for county roads goes against trying to preserve agricultural ground. The point is to keep the growth as close to the road as we can. Walker discussed emergency access.

Haines stated that at the end of the day it should best be the smallest setback you set. The county cannot control setbacks on the state highway.

IN THE MATTER OF AMBULANCE)

Lyndon Haines moved, seconded by Gordon Wilkerson, 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: Gordon Wilkerson, present; Lyndon Haines, present; and Nate Marvin, present.

Luke Smith, Ambulance District Director, met with the Board. Order No. 23-25 for general expenses in the amount of \$21,356.35 and Order No. 23-0014 for payroll expenses in the amount of \$29,441.49 was presented to the Board for review.

Smith discussed the possible hire of an experienced paramedic and a stated certified EMT (Emergency Medical Technician). Smith informed the Board he is working on scholarships for employees for training,

Smith reported the Ambulance District had fourteen calls for service last week which included three transfers and six public assists/refusals for care.

Nate Marvin Moved, seconded by Gordon Wilkerson, to approve Order No. 23-25 for general expenses in the amount of \$21,356.35. Motion carried.

Nate Marvin moved, seconded by Gordon Wilkerson, to approve Order No. 23-0014 for payroll expenses in the amount of \$29,441.49. Motion carried.

Lyndon Haines moved, seconded by Gordon 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: Gordon Wilkerson, present; Lyndon Haines, present; and Nate Marvin, present.

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IN THE MATTER OF AG BUILDING EXCEPTION)

Dan Leuthold met with the Board. Leuthold thanked the Board for the work they have done regarding the Ag building exception. Leuthold informed the Board they are not his enemy, but he does have a problem with what they represent. Leuthold stated he would like to know how this came about. Leuthold stated there is nothing more important than honesty and transparency. Leuthold stated he had thanked Delton Walker because for the first time at the Town Hall meeting, he stood and stated what the discussion was about. Leuthold stated some believe things are not fair. Leuthold stated he resents the control that is trying to be exercised. Leuthold informed the Board that people want less interference from the county. Leuthold stated to the Board that people want them to be honest and transparent. Leuthold suggested that the rules should be defined regarding the Ag building exception. Leuthold indicated that any setback constitutes a taking.

Haines stated as representatives, he does not have a problem being questioned. Haines informed Leuthold that he is always a phone call away. Haines stated the code should be easy to read and understand.

Motion by Lyndon Haines, seconded by Nate Marvin and unanimously carried to recess at 11:21 a.m. until April 17, 2023 at 8:45 a.m.

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Chairman, Board of County Commissioners

ATTEST:

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Clerk

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