



November 5 & 6, 2007, Emmett, Idaho

Pursuant to a recess taken on October 23, 2007, the Board of Commissioners of Gem County, Idaho, met in regular session this 5th day of November, 2007, at 8:00 a.m.

Present:	Michele Sherrer	Chairman
	Sharon Pratt	Commissioner
	Lan Smith	Commissioner
	Shelly Gannon	Clerk

Whereupon the following proceedings were had, to-wit:

**November 5, 2007**

*A motion was made by Commissioner Pratt to add Change Order #11 for Butte Road Bridge as item Q to the consent agenda. It was seconded by Commissioner Sherrer and carried unanimously.*

**JOHNSON CREEK ROAD VALIDATION PUBLIC HEARING:** While being tape recorded a public hearing was held for the purpose of conducting road validation proceedings for Johnson Creek Road (located in T7N, R1E, Sections 29 and 32, and in T6N, R1E, Sections 5 and 8), and to consider all information relating to the proceedings.

At the beginning of the hearing the Commissioners discussed any ex parte communication they had regarding Johnson Creek Road. Commissioner Smith stated he hadn't had any. Commissioner Pratt discussed page 149 of a book titled All Along the River by Nellie Trenton Mills, written communication she had received from Dorothy McConnel Pratt and photos she had received prior to the hearing. Those items or copies of them were entered into the record as Exhibits T-W.

After the public hearing notice was read Commissioner Sherrer read a list of Exhibits that had been received prior to the hearing.

The letter from the Idaho Department of Fish & Game was discussed. Commissioner Smith stated that the hearing doesn't have anything to do with developing the road but rather to determine public use of the road.

Historian James W. McGill's written comments (Exhibit A) were discussed and copies were circulated for the public for review.

Bryce Walker spoke in support of validating the road stating that it has historically been public right-of-way. He said it is a shorter route than the alternative from Pearl to Montour. He provided pictures of the foundations of two houses that were on his property as well as photos of Anderson Creek crossing (Exhibit X). Referring to Exhibit F Bryce stated that Stan

Records used the right-of-way for over 50 years adding that at one time it was used as a main road to Ola and Sweet. Bryce presented a 1902 Bureau of Land Management (BLM) map (Exhibit Y). Bryce stated that this is an important historical route with continuing use today being the only access to some properties. Access to property Bryce acquired in 1993 was discussed. Bryce has obtained an access agreement from his neighbor, Jeff Smith, for access to his property which is dated approximately 1994. During discussion regarding Exhibit J Bryce stated that communication poles are cut off but are still evident in the area.

Gudrun Robinson stated she has owned property in this area for 11 or 12 years. She discussed problems she has had for the last 5 years since Mr. Smith decided it was private property. She would like to see it declared public property so people can travel safely without violence. She said that when she first owned the property she had no problems crossing. She stated that she is not aware of any easement agreements for the right-of-way.

Exhibit A, History of the Johnson Creek Road by James W. McGill, was discussed. The date of 1967 in the letter was questioned and determined to be incorrect. A revised letter will be requested.

Richard Penrod stated that he has hunted in the area off and on for about 7 years. He supports the road as a public road for hunting and emergency access. He stated that when he has used the road there has been nothing impeding his use.

Lon McConnel stated that the road has always been considered a public road. His father lived on the family property in the area until he was 10-11 years old. He used to sell watermelon along the road indicating the amount of traffic on the road. Lon discussed previous ownership and homesteaders of the properties. He stated it was a route used to move livestock and as far as he knows it is still a stock trail. He remembers it as a livestock trail since 1940-1950s timeframe at which time he remembers some vehicle use also. He stated that as far as he knows it has always been a public road and he observes annual hunting use.

Jack Kilgore stated he moved to Idaho in 1967 and was a school teacher in Montour. He said he used the road numerous times that year and a couple of times a year each year since then. He said that a few years ago he was confronted by someone while using the road so he talked with BLM and was told it was a public road. He used the road last week and saw another vehicle on the road. He stated he feels it is used more now than in the 1980s.

Brad Little spoke neutrally stating there is no question this is an old road, definitely being a road before Gem County existed. He said there was a hotel on property in this area at one time. He discussed how miserable the road is when it's muddy and stated it is a nightmare to maintain. He discussed other roads in the area. He said the McConnel's maintain the road in order to move hay out. He said he doesn't know if the road was

formally abandoned by the County but assumes the County decided not to maintain it because it was a mess. He stated that landowners would have a prescriptive easement due to use over time. He said he has no problem with the road being open but wonders who pays for the damage that is caused. Brad said his family has trailed cattle along the road for many years. It has been used as a stock road since the late 1800's.

Effie Schultsmeier with BLM stated that there is no adverse possession of public lands. She said that in 1976 RS2477 was repealed. At that time counties were asked to state what roads were claimed under RS2477. She said that on March 1, 1984 Gem County replied with information in which Johnson Creek was not included. She said that in the 1990s a private landowner was working on the road which violated several laws. Effie said that BLM would evaluate any application made by the County for a public road. She doesn't feel the area would meet minimum environmental standards. She said that State blue line maps show that the County doesn't claim Johnson Creek as a public road. It was stated that there are many roads that used to be used that are no longer County roads. She will provide copies of items she referred to as Exhibits for the record.

Commissioner Smith stated that State reimbursement isn't required in order to determine a road a County road. He said the County doesn't submit information to the State for roads that reimbursement is not being requested for.

William Jeff Smith spoke in opposition of the road validation. He owns the property where the road crosses at the top of the hill. He stated that according to the title insurance information he received from the title company during his purchase there was not an easement on the property. He said in 1993 or early 1994 he allowed an easement so that Bryce Walker could access his property. He said that written permission has been given to anyone wanting to use the property as a stock road. He said the gates and fencing were put in as part of a Federal program to keep cattle from deep creek ravines on the property. He discussed a hunting program for kids he has set up on the property. He stated that garbage and dead animals are left when vehicles travel the property. He stated he has not seen any County improvements during the time he has owned the property except that the County has graded and graveled only his section during the last two years. He discussed improvements that have been made to his property. He stated that he doesn't have a problem with the neighbors using the right-of-way as long as the gates are closed. He stated that signs on the gates, which have been taken down, said "Please close the gates" further stating that he has not threatened to close the road with signs.

Exhibit AB which is a letter/sign indicated as Case 117-04 Exhibit #001 was discussed.

Jerry Kaiser, representing United Mining Company and Jeff Smith, discussed requirements for road validation. He stated the cost that the County would incur in maintaining the road would

not be in the public's best interest. He said that historic records don't demonstrate location of the road at the top of the hill. He said that showing a road on a map doesn't evidence use or maintenance stating that people's subjective beliefs are not sufficient.

Formal abandonment of the road was discussed. Jerry Kaiser stated that in order to abandon a road it must first exist stating that it wouldn't be a public road until after these proceedings have concluded.

Patrick Conley stated he bought the land in question in about 1978. He said nothing went along the road except for hoofed animals or a tractor. He knows the road as the Old Montour Road. He said he wouldn't have driven the road at that time because it was dangerous and not conducive for public use. He said he has asked the County and the highway district to maintain the road because it was not drivable after cattle had used it. Several roads he discussed were identified on a map.

The Assessor's map referred to during the hearing was entered into the record as Exhibit AC.

Gary Ojala said he has property near the summit. He discussed an altercation he had with someone who he said is a proponent of the road validation now but had previously stated it was a private road. Gary said he doesn't live on his property but he camps over occasionally since approximately 2000. He also works on Jeff Smith's property.

Kim Reed, Road Department Supervisor, discussed road maintenance the Gem County Road Department has done on Johnson Creek Road. He said it has been maintained once a year for the last 6 years. He said that when he took over as Road Department Supervisor a map was labeled in such a way that he thought he needed to maintain Johnson Creek Road to allow access for property owners so he graded it last year. He stated there are other roads in the County that are considered County roads that are not maintained.

William Jeff Smith stated from 1991 to 2002 they worked daily on the property and since 2001 a man has lived on the property. He stated there has been no maintenance on the road during that time.

The hearing was continued to Monday January 7, 2008 at 9:00 a.m.

*At 11:35 a.m. a motion was made by Commissioner Sherrer, seconded by Commissioner Pratt and carried unanimously to go into executive session under Idaho Code 67-2345(1)(f) for pending litigation with a roll call vote as follows: Commissioner Smith, aye, Commissioner Pratt, aye, and Commissioner Sherrer, aye.*

**INDIGENT APPLICATIONS:** At 11:50a.m. a motion was made by Commissioner Pratt, seconded by Commissioner Sherrer and carried unanimously to go into executive session under Idaho Code 67-

2345(1)(d)for indigent matters with a roll call vote as follows:  
Commissioner Smith, aye, Commissioner Pratt, aye, and  
Commissioner Sherrer, aye.

07-040	Sign Final Determination
07-046	Sign Release of Statutory Lien
07-052	Sign Release of Statutory Lien
07-058	Medical Application
07-061	Medical Application
07-062	Sign Release of Statutory Lien
07-066	Involuntary Mental Hold
07-067	Sign Statutory Lien
07-071	Sign Statutory Lien

After reconvening in regular session at 11:58 a.m., Commissioner Smith made a motion to sign final determination on 07-040, to sign release of statutory lien for 07-046 and 07-052, deny 07-058 because the County is not the last resource and the applicant is not indigent, deny 07-061 because the application is incomplete, the applicant was not cooperative and the applicant is not indigent, sign release of statutory lien for 07-062, approve application for mental services for 07-066, and sign statutory liens on 07-067 and 07-071. It was seconded by Commissioner Pratt and carried unanimously.

**The Board recessed at 12:00 p.m. for lunch to reconvene at 1:15 p.m.**

**CONSENT AGENDA:** The Consent Agenda included items A. Duane Harrison Rezone Decision & Order, B. Qwest phone rate contracts, C. Public Defender Contract with Mimura Law Offices, D. May, Shumate, Minum & Jones Rezone Decision & Order, E. Ordinance 2007-14 May, Shumate, Minium & Jones Rezone, F. Kaiser, Jordan & Sharp Rezone Decision & Order, G. Ordinance 2007-15 Kaiser, Jordan & Sharp Rezone H. Brian & Charlene Fackrell Rezone Decision & Order I. Ordinance 2007-16 Brian & Charlene Fackrell Rezone, J. Idaho Juvenile Offender System Authorized Agency User Agreement, K. Declaration of Foldable Bleachers at the Fairgrounds as excess property, L. Ordinance 2007-17 David Blackstock Rezone, M. City of Emmett & Gem County Building Inspector Agreement, N. Memorandum of Agreement to Support the Community Incentive Program, the Re-Entry Program and/or the Mental Health Program, O. Geographic Information System Agreement with Alliance Title and Escrow, P. Broken Circle Estates Amended Decision & Order and Q. Change Order #11 for Butte Road Bridge. A motion was made by Commissioner Pratt to approve items A., C., D., E., F., G., H., I., J., K., L., N., O., P. and Q. It was seconded by Commissioner Smith and carried unanimously.

After discussion regarding Qwest rates and services a motion was made by Commissioner Pratt to approve item B. on the consent agenda.

Item M. will be added to next week's consent agenda.

**APPROVAL OF MINUTES:** The minutes of October 22 & 23, 2007 were reviewed. A motion was made by Commissioner Pratt to approve the minutes of October 22 & 23, 2007 as amended. It was seconded by Commissioner Smith and carried unanimously.

**PLANNING & ZONING DOCUMENT PROCESS DISCUSSION:** Brad Hawkins-Clark, Jennifer Kharrl and Kandi Hall with Development Services, John Henderson with the Assessor's Office and David Hargraves Deputy Prosecutor met with the Commissioners and Clerk to discuss the process of handling Planning & Zoning documents including plats and mitigation, license and development agreements. Items discussed included the signature process, timeframes, tracking and recording of documents. Brad will provide written follow-up documentation for changes made during the meeting.

**INDIGENT HEARING 07-050:** At 3:16 p.m. a motion was made by Commissioner Pratt, seconded by Commissioner Smith and carried unanimously to go into executive session under Idaho Code 67-2345(1)(d) for indigent matters with a roll call vote as follows: Commissioner Smith, aye, Commissioner Pratt, aye, and Commissioner Sherrer, aye.

While being tape-recorded during executive session, an indigent appeal hearing was held for 07-050. Those present were Commissioners Sherrer, Pratt and Smith, Clerk Shelly Gannon, Deputy Clerk Diane Wright and Deputy Prosecutor Hargraves.

The case file was entered into the record as Exhibit A.

After reconvening in regular session at 4:05 p.m. a motion was made by Commissioner Pratt to continue case #07-050 to December 17, 2007 at 2:00 p.m. It was seconded by Commissioner Smith and carried unanimously.

*Assessor Greg Himes submitted tax cancellations for signature. Parcel numbers included in the cancellations were RP00426713, RP00023708, RP00400001, RP02178100, MH00712300, MH00718900, MH00719700, MH00739300, MH00748700, MH00783000, MH00784500, MH00849000, RP00077401, RP00371500, RP00386303 and PP02175300. A motion was made by Commissioner Pratt to sign the cancellations. It was seconded by Commissioner Smith and carried unanimously.*

### **November 6, 2007**

**ROAD DEPARTMENT UPDATE:** Kim Reed, Road Department Supervisor, met with the Commissioners to discuss that status of Road Department projects.

**PLANNING & ZONING UPDATE:** Brad Hawkins-Clark, Development Services Director, met with the Commissioners to discuss Planning & Zoning issues.

**PUBLIC WALK-IN:** No members of the public met with the Commissioners during public walk-in.

**PROSECUTING ATTORNEY MATTERS:** Deputy Prosecutors, David Hargraves and Tim McNeese met with the Commissioners to discuss Prosecuting Attorney matters.

**The Board recessed at 12:00 p.m. for lunch to reconvene at 1:15 p.m.**

The Commissioners worked on Administrative matters.

The Mayor met with the Commissioners during this time to discuss City/County matters.

**COMMUNITY SERVICE PROGRAM DISCUSSION:** Linda Zimmer Boise County Commissioner, Cheryl Pendergrass Community Service Director, Tim Fleming Gem County Prosecutor, Mark Mimura Gem County Public Defender and Judge Tyler Smith met with the Commissioners to discuss aspects of community service programs.

Funding of the program was discussed. Linda Zimmer stated that Boise County used Title III money to help with funding the program. In order for the program to sustain itself depends a lot upon the number of hours of services the judge assigns. Cheryl Pendergrass stated that Boise County charges those assigned to community service \$4.00 per hour with approximately .60 cents of that going toward workers compensation insurance. Cheryl reviewed placement, tracking and payment options. Mark Mimura discussed impacts of the program from the Public Defender point of view stating that many people may rather be assigned a public defender and go to trial opting for jail time with work release or double hours of SILD which may cost them less per day. Judge Smith stated that he feels there is a lot of opportunity for community service within our County. Contracting services with Boise County was discussed.

**The Board recessed at 5:00 p.m. to 8:00 a.m. on November 13, 2007.**

**CLAIMS FOR THE FOLLOWING FUNDS WITH WARRANTS WRITTEN September 1 through September 30, 2007:**

CURRENT EXPENSE FUND .....	\$ 328,779.29
ROAD & BRIDGE FUND .....	144,075.57
CIGARETTE TAX/BLOCK GRANT .....	23,856.58
DISTRICT COURT FUND .....	40,681.37
COUNTY FAIR .....	23,799.70
COUNTY JUSTICE FUND .....	200,084.44

FAIR, GROUNDS & BUILDINGS FUND .....	13,254.14
HEALTH DISTRICT .....	6,246.00
INDIGENT .....	11,952.99
ENHANCED 911 .....	9,233.86
REVALUATION FUND .....	15,891.85
SOLID WASTE FUND .....	48,134.91
TORT .....	657.11
NOXIOUS WEED FUND .....	11,983.33
WATERWAYS .....	6,829.08
AMBULANCE FUND .....	<u>54,326.58</u>
TOTAL	939,787.00

Approved: \_\_\_\_\_  
Chairman

Attest: \_\_\_\_\_  
Clerk