



November 15 & 16, 2010, Emmett, Idaho

Pursuant to a recess taken on November 9, 2010, the Board of Commissioners of Gem County, Idaho, met in regular session this 15th day of November, 2010, at 8:00 a.m.

Present:	Lan Smith	Chairman
	Michele Sherrer	Commissioner
	Sharon Pratt	Commissioner
	Leandra Rountree	Deputy Clerk

Whereupon the following proceedings were had, to-wit:

**November 15, 2010**

The Pledge of Allegiance was said.

*A motion was made by Commissioner Sherrer to add the Middleton Fire District amended levy approval to the agenda for November 18, 2010 at 8:00 a.m. and the State of the County Presentation to the agenda for November 19, 2010 at 3:00 p.m. and a meeting with the Legislators for November 19, 2010 at 5:00 p.m. due to the fact these items were left off the agenda. It was seconded by Commissioner Pratt and carried unanimously.*

**INDIGENT HEARING #10-070**: At 10:01 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)(d) for indigent matters with a roll call vote as follows: Commissioner Smith, aye, Commissioner Pratt, aye, and Commissioner Sherrer, aye.

Mark Peterson representing Southwest Idaho Advanced Care Hospital was in attendance. Deputy Clerk Diane Wright was sworn in. The case file was entered into the record as exhibit A., the response to the medical review was entered into the record as exhibit B., and the Clerk's calculations of payment was entered into the record as exhibit C.

Regular session reconvened at 10:52 a.m.

A motion was made by Commissioner Sherrer to reverse the original denial on 10-070 and approve the case with the modification of the billing from Southwest Idaho Advanced Care Hospital that the remaining 5 days be deducted so that amount would be \$28,524.54 according to the recommendation

in exhibit C. It was seconded by Commissioner Pratt with discussion. Motion carried unanimously.

**INDIGENT APPLICATIONS:** At 11:15 a.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.

11-011

Notice of Lien

After reconvening in regular session at 11:16 a.m. a motion was made by Commissioner Sherrer to sign Statutory and N-1 lien as applicable on 11-011. It was seconded by Commissioner Pratt and carried unanimously.

*A motion was made by Commissioner Sherrer to add the Hilfiker contract addendum to the consent agenda as item D. due to timeliness. 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:** Items on the consent agenda included A. Appointment of Fran Yett to the Zoning Commission, B. Letter of Support for Western Idaho Community Action Partnership, Inc. in applying for benefits enrollment center grant for Gem County, C. Certificate of Residency for Melissa Johnson, Kara Jenkins, Madisen Chinnock, and Erin Frederick, and D. Hilfiker Contract Addendum.

A motion was made by Commissioner Sherrer to approve items A. and C. on the consent agenda and remove item B. until November 16, 2010 at 1:15. It was seconded by Commissioner Pratt and carried unanimously.

A motion was made by Commissioner Sherrer to approve item D. on the consent agenda. It was seconded by Commissioner Pratt and carried unanimously.

**MINUTES:** The minutes of October 25 & 26, 2010 were reviewed. A motion was made by Commissioner Sherrer to approve the minutes of October 25 & 26, 2010 as amended. It was seconded by Commissioner Pratt and carried unanimously.

*At 2:30 p.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 litigation with a roll call vote as follows:*

*Commissioner Pratt, aye, Commissioner Sherrer, aye, and Commissioner Smith, aye.*

*Regular session reconvened at 3:00 p.m.*

**LOUCKS SPECIAL USE PERMIT APPEAL HEARING:** While being tape recorded an appeal hearing was held. The hearing began at 3:15 p.m. Commissioner Smith explained the appeal hearing process.

Victor Villegas with Evans Keene law firm spoke representing the applicant. He stated the basis of the appeal is regarding 4 of the 9 criteria the Zoning Commission felt didn't comply with the Comprehensive Plan. There are 4 sections of the Comprehensive Plan that the applicant believes were in error in the Planning Commission's decision. The first section discussed is section B. "Will be harmonious with and in accordance with the general objectives or with any specific objective of the comprehensive plan and/or this title." Upon review, he said that the Planning and Zoning Commission had one reason they felt they had to vote no on this issue, they were concerned that the reclamation plan would not meet the purpose of the County Residential Area (CRA) future land use designation, he said the CRA is not a zone but rather a future land designation. He discussed repeated Supreme Court decisions that held that when a zoning body relies solely on a comprehensive plan it elevates the comp plan to the status of an ordinance which has caused those cases appealed to be remanded back to the decision makers.

Mr. Villegas stated that the application Mr. Loucks submitted in 2009 was also appealed. He said the Commissioners upheld the decision and gave a list of items that might help in obtaining the permit. Among that list was the finding that there was not a sufficient reclamation plan in place. The applicant feels he has now submitted a sufficient plan that would meet the vision of the comp plan at some point.

Section C. "Will be designed, constructed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that such use will not change the essential character of the same area." He said Planning and Zoning had several reasons they voted no on this

section. He said Planning and Zoning put a lot of emphasis on residential in that area, but must remember the area is zoned A2 which allows this raw construction activity. There are other activities similar to this requested use, one currently in use and 2 that have been permitted. Previously the applicant had been asked to consider less use on the property; Mr. Villegas stated this application does that. The applicant was also asked to consider an alternate route for vehicles, there is a new cross access agreement with an adjoining property owner. It appears the CRA comes up again in the section. Another error has to do with traffic, evidence has been presented that South Slope Road will not be used for traffic. Regarding harmonious uses he asked the Commissioners to consider what is allowable there now. A planned unit development could be requested in an A2 zone which would also increase traffic in the area.

Section D. "Will not be hazardous or disturbing to existing or future neighboring uses." Mr. Villegas said the Planning and Zoning Commissioners focused on the testimony regarding the possible impact on groundwater to adjoining wells. He discussed an Idaho Supreme Court decision regarding this issue stating water issues are under the jurisdiction of the Department of Water Resources. Whether or not there is proper allotment of water and whether or not it will have an impact on wells is under the purview of the State. Also under this section dust creation and rock crushing activities were considered. The applicant submitted a dust mitigation plan. He stated the Planning and Zoning Commission is overstepping their bounds determining issues that are regulated by the Department of Environmental Quality.

Section G. "Will not involve uses, activities, processes, materials, equipment and conditions or operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors." Mr. Villegas said no specific reasons are given for denying this particular criteria.

Conditional uses, permitted uses and criteria allowable in A2 zoning were discussed.

A copy of the 2009 Decision and Order was requested by the Commissioners for review. Commissioner Smith discussed reference to the CRA and impact one acre lots in the area would create. It was pointed out that A2 zoning would not support that. This area becoming engulfed with gravel pits

and there being a tipping point at which point a zone needs to be changed to Industrial zoning was discussed as well as existing versus intended character. It was stated the intent is that this area will be county residential use at some point in time, current zoning is less than the predominate current use. Commissioner Smith thought it was very clear that the intent of this area is residential over industrial zoning.

Deputy Prosecutor Tim McNeese discussed documents that should be included in the record. Whether or not records were available for review for all members of the Zoning Commission and the Board of County Commissioners was discussed. Tim stated he would review the Idaho Supreme Court decision that the applicant's attorney referenced to determine if the law has changed. The Commissioners would like a more complete record. It was stated they didn't feel there was enough information to remand the application back to the Zoning Commission. Documents, which had originally been referenced, were requested. Those documents included a copy of the 2009 application packet, documented complaints from neighbors in the area, the Beukert Schwers Decision, the Idaho Supreme Court decision and the minutes referred to by Zoning Commissioner Wilkerson. Legal counsel will review the documents and advise what will be allowable for review by the Commissioners. Copies of allowable documents will be available for public viewing as well.

The appeal hearing was carried over to Monday December 6<sup>th</sup> at 8:30 a.m. in order to allow review of requested documents.

**The Board recessed at 5:00 p.m. to 8:00 a.m. on November 16, 2010.**

**November 16, 2010**

**Commissioners Smith and Sherrer attended the Local Emergency Planning Council Meeting.**

**Commissioner Smith was absent from the meeting.**

**PUBLIC WALK-IN:** Tim Simpson met with the commissioners to discuss the Over the Line Softball Tournament; the tentative date is June 25, 2011.

**PROSECUTING ATTORNEY:** Prosecuting Attorney Dick Linville

and Deputy Prosecuting Attorney Tim McNeese met with the Commissioners to discuss Prosecuting Attorney Matters.

At 11:05 a.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)(f) for litigation with a roll call vote as follows:

Commissioner Pratt, aye, and Commissioner Sherrer, aye.

Regular session reconvened at 11:30 a.m.

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

**Commissioner Smith returned to the meeting.**

**LETTER OF SUPPORT FOR WESTERN IDAHO COMMUNITY ACTION PARTNERSHIP, INC (WICAP):**

Karin Hoffer met with the Commissioners to provide an overview of the Benefit Enrollment Center Grant they are applying for.

A motion was made by Commissioner Pratt to sign the letter of support for WICAP in applying for the Benefit Enrollment Center Grant. It was seconded by Commissioner Sherrer and carried unanimously.

**PROPERTY TAX EXEMPTION - FLEDA WRIGHT:** This discussion was rescheduled to November 23, 2010.

**STATE OF THE COUNTY PREPARATION:** The Commissioners worked on the State of the County presentation scheduled for November 19, 2010

**The Board recessed at 5:00 p.m. to 8:00 a.m. on November 18, 2010.**

**November 18, 2010**

**MIDDLETON FIRE DISTRICT LEVY CORRECTION:** With no public present a public hearing was held for the purpose of considering a correction of the Middleton Fire District levy. There was no written documentation for the record and no public present. A motion was made by Commissioner Pratt to approve the reduction in the levy for the Middleton Fire District. It was seconded by Commissioner Sherrer and carried unanimously.

**PROPERTY TAX CANCELLATIONS FOR TAX CODE AREAS 012 and 013:** Commissioner Sherrer made a motion to approve the 276

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property tax cancellations for tax code areas 012 and 013 due to the Middleton Fire District levy correction. It was seconded by Commissioner Pratt and carried unanimously.

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

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