

Commissioners Minutes

March 31, 2023 – 2:39 p.m. to 2:57 p.m.

**MEETING WITH COUNTY ATTORNEYS FOR LEGAL STAFF UPDATE**

Commissioners Brad Holton and Leslie Van Beek

Deputy PA Zach Wesley

COO Greg Rast

Deputy Clerk Monica Reeves \_\_\_\_\_

MEETING WITH COUNTY ATTORNEYS FOR LEGAL STAFF UPDATE

The Board met today at 2:39 p.m. for a legal staff update and to consider the following action item: *Consider potential disclosure and self-recognition of meeting of quorum of the Board without public notice regarding land use case nos. RZ2020-0019 and SD2020-0035 and declaration that all action taken at or resulting from the meeting are void.* Present were: Commissioners Brad Holton and Leslie Van Beek, Deputy PA Zach Wesley, and Deputy Clerk Monica Reeves. COO Greg Rast arrived at 2:46 p.m. Today's meeting pertained to a conversation Kim Yanecko and her husband had with Commissioner Van Beek and Commissioner Holton on March 28, 2023 at approximately 12:30 p.m. regarding the Taylor Jene/Ftera Views Subdivision land use case (Case Nos. RZ2020- 0019 and Case SD2020-0035) which was heard by a previous Board on December 21, 2022. A request for reconsideration had previously been filed and we are in the time period where judicial review can be sought. The question was posed to the PA's Office about what the ramification is of that incidental meeting. Deputy PA Wesley said not every impromptu discussion becomes a meeting, generally it's considered a meeting when there is a decision or deliberation. This would potentially be a deliberation. It does not have an immediate action that's pending, but it is in that land use cycle where there are so many potential next steps from judicial review to platting so it likely did qualify as something where a conversation needs to be held at an agendized meeting with minutes. Idaho Code has a policy for the corrective actions where a violation may be cured by the agency upon the agency's self-recognition of a violation. The first step would be a motion from the Board and a disclosure of the conversation and what the information the Board received, followed by a motion of self-recognition that the step occurred. The secondary would be to have a declaration that all actions taken at or resulting from that meeting in violation of the Act would be void. It's Deputy PA Wesley's understanding that there was just information exchanged, there is no official action that is contemplated or planned at this point and there is nothing immediately scheduled. The next phase of this would be judicial review and then platting and the platting will have its own noticed hearings with separate agendized decision points on the judicial review as well and so there is not need for a declaration declaring any actions void at this point. Commissioner Van Beek disclosed that the visit was unsolicited and she did not know the nature of the meeting request. Ms. Yanecko had some specified questions which have been answered numerous times by County staff. She asked the number days the County had to issue FCO's, and if there was new information the Board reviewed. Commissioner Van Beek told Ms. Yanecko that

she has a limited ability to respond to questions so there was no commitment. The Yaneckos want to be informed and understand the process so it was easy to draw Commissioner Holton into the conversation and he indicated the case was decided by a previous Board. There was nothing new or promised in the conversation. Commissioner Van Beek said the County is not responsible for costs for retained outside legal counsel and it would be inappropriate to guide anyone in that process, that onus falls to the applicant seeking reconsideration. The meeting caught people by surprise and Commissioners Van Beek and Holton listened to the concerns as a courtesy and the response to her questions was given. Commissioner Holton said the only thing he represented was that Ms. Yanecko had raised questions that he would try to look into. In looking into it some of her arguments are incorrectly assumed and one of the big heartaches she has is on the FCO's, but in the August 2021 hearing they didn't do FCO's because their decision was different than the P&Z Commission's decision which required a second public hearing which occurred in December of 2022 so there were no FCO's between August of 2021 and December of 2022. Ms. Yanecko said it was illogical for there to be FCO's between August of 2021 on December 2022 because the Board was meeting on a different subject and had gone against the decision of P&Z which required that the case either be sent back to the P&Z Commission or create a new public hearing. Commissioner Holton said he did not represent anything he would do other than try to figure out what Ms. Yanecko's concerns were and where we were at with it. Commissioner Van Beek said more than a year had passed between the August of 2021 hearing and the December of 2022 hearing which is unorthodox in that kind of a decision, and normally you would not have that wait time but the applicant did revise their application and the previous Board chose to accept those late exhibits. Commissioner Holton said he was walking past Commissioner Van Beek's office headed to The Chief Operating Officer's office and he was trying to be respectful and recognized the citizens were living in a period of angst about this case and he hates to see that, but in retrospect it would have been best to not participate in the conversation. Commissioner Van Beek said she sat through previous hearings regarding testimony about dry wells and the Board had asked for clarification which was provided but it did not rise to the level of being able to say that was a dry area. Commissioner Van Beek made a motion for the Board of County Commissioners to acknowledge for Case No. Nos. RZ2020- 0019 and Case SD2020-0035 that there was potentially an open meeting violation which is cured by this process today in disclosure of the conversation and the content between the Board and Kim Yanecko, unintentional on both parts, as a citizen seeking answers, and with Commissioners reiterating what's already been stated by Legal and DSD staff with no promise that there would be any part on the County other than to field the questions which she has done and she has took note of what Ms. Yanecko wanted and put those back on the record today. The motion was seconded by Commissioner Holton and carried unanimously. The meeting concluded at 2:57 p.m. An audio recording is on file in the Commissioners' Office.