

**BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON
BOARD MEETING MINUTES
November 4, 2013**

The Board of County Commissioners for Lewis County, Washington, met in regular session on Monday, November 4, 2013 at 10:00 a.m. **Commissioners Bill Schulte, Edna J. Fund, and F. Lee Grose** were in attendance. **Chairman Schulte** determined a quorum, called the meeting to order and proceeded with the flag salute. **Commissioner Fund** moved to approve the minutes from the 10:00 a.m. meeting held on Monday, October 28, 2013. **Commissioner Grose** seconded the motion.

Motion Carried 3-0

PUBLIC COMMENT

Jan Buckowski, Adna, spoke regarding a devaluation of his home and his struggles to get the issue resolved. He submitted written information to the Board and asked that it be included in the record.

PROCLAMATION

Commissioner Grose made a motion to approve the Proclamation Agenda item one. **Commissioner Fund** seconded the motion. **Commissioner Fund** read the Proclamation into the record.

1. Proclamation: Recognizing November 15, 2013 as “National Adoption Day”.

Susie Parker, Superior Court, invited the Commissioners to attend the Adoption Day Ceremony on November 15, 2013 at 2:30 pm in the Sheriff’s Training Room.

Motion Carried 3-0

NOTICE

Commissioner Fund made a motion to approve the Notice Agenda items two through five. **Commissioner Grose** seconded the motion.

2. Notice of Hearing: Regarding the proposed 2014 Annual Construction Program (ACP) and the Six Year Transportation Improvement Program (TIP) for the years 2014-2019. Hearing will be held on or after 10:00 am, on Monday, November 18, 2013. Resolution No. 13-514

Tim Elsea, Director of Public Works, stated pursuant to RCW 36.81.121, all counties are required to prepare, adopt, and submit a Six Year TIP for proposed road and bridge construction prior to the County’s budget adoption each year. Copies of this program will be furnished to the Washington State Department of Transportation (WSDOT), County Road Administration Board (CRAB), and the Transportation Improvement Board (TIB) not more than thirty (30) days after its adoption by the legislative authority. Pursuant to

WAC 136-16, all counties are required to prepare, adopt, and submit an ACP for proposed road and bridge construction prior to the County's budget adoption each year. A copy of the adopted annual program and appropriate resolution shall be forwarded to CRAB within thirty (30) days of its adoption but not later than December 31 of each year. A public hearing must be held prior to adoption of the 2014-2019 Six Year TIP and 2014 ACP providing an opportunity for any person to appear and be heard, either for or against the adoption of the proposed program. The public hearing will be held November 18, 2013, at the Commissioners Hearing Room on the 2nd floor of the Historic Courthouse in Chehalis, Washington. The notice of public hearing will be published in the East County Journal on November 6 and 13, 2013 and in The Chronicle on November 7 and 14, 2013. The notice of public hearing will also be posted on the Lewis County website.

3. Notice of Hearing: Regarding the amendments to the Lewis County Comprehensive Plan. Hearing will be held on or after 10:00 am, on Monday, November 25, 2013. Resolution No. 13-515

Lee Napier, Director of Community Development, stated the current County Capital Facilities Plan (CFP), the Six-year Transportation Improvement Program (STIP) and school district Capital Facilities Plans are not specifically part of the Capital Facilities & Utilities Element of the county's comprehensive plan. The CFPs and the STIP are usually updated and adopted by the Board of County Commissioners once a year. That means the Capital Facilities & Utilities Element must be amended each year to stay consistent with the updates of Public Works and Central Services. To streamline the process, the Capital Facilities & Utilities Element and Profile will be amended to automatically incorporate once adopted by the Board of County Commissioners. Additional edits to the Comprehensive Plan are also suggested to correct scrivener's errors in the school district descriptions. Future Land Use Map: The Future Land Use Map is based on the Official Zoning Map. As a result, a rezone request may require a comprehensive plan amendment. This can be an expensive and time consuming process for the applicant. To streamline that process, the two maps should be separated so a comprehensive plan amendment is not required for a simple rezone request. This will be accomplished by consolidating and renaming the land use categories so they reflect adopted future land use rather than zoning designations. The Planning Commission held two workshops and a public hearing on the amendment. After careful consideration of input by the public along with staff recommendations, the Planning Commission adopted a set of findings and conclusions and transmitted their recommendation to approve the Resolution to the BOCC.

4. Notice of Hearing: Regarding the adoption of the 2014 Final Budget. Hearing will be held on or after 10:00 am, on Monday, December 2, 2013. Resolution No. 13-516

Lara Seiler, Budget Office, stated this Resolution is a notice of the public hearing on the 2014 Final Budget. The notice for the hearing will be in the East County Journal on Nov. 13 and 20, 2013 and in The Chronicle on Nov. 14 and 21, 2013. The Board of

County Commissioners will meet on Monday, December 2nd, 2013 at 10:00 a.m. in the Lewis County Courthouse for the purpose of taking public comment on and fixing the Lewis County Final Budget for 2014.

5. Notice of Hearing: Regarding the adoption of the 2014 Vader Water System Final Budget. Hearing will be held on or after 10:00 am, on Monday, December 2, 2013. Resolution No. 13-517

Lara Seiler, Budget Office, stated this Resolution is a notice of public hearing concerning the adoption of the 2014 Vader Water System budget. This notice will be published in the East County Journal on Nov. 13 and 20, 2013 and in The Chronicle on Nov. 14 and 21, 2013. The Commissioners will meet on Monday, December 2, 2013, on or after 10:00 a.m., for a public hearing to adopt the 2014 Vader Water System budget.

Motion Carried 3-0

CONSENT

Commissioner Grose made a motion to approve the Consent Agenda items six through ten. **Commissioner Fund** seconded the motion.

6. Resolution No. 13-518 Approving warrants for payment.

Commissioner Grose stated this Resolution approves 13 special purpose warrants in the amount of \$4,736.11 and 165 regular warrants in the amount of \$527,333.17 for a total payment against the County in the amount of \$532,069.28.

7. Resolution No. 13-519 In the matter of the election to receive Secure Rural Schools and Community Self Determination Funds and allocations of Title II and Title III funds.

Commissioner Grose stated this Resolution is in regard to Secure Rural Schools Funding. Congress reauthorized the Secure Rural Schools (SRS) and Community Self Determination Program for 2013. The county must elect to either receive the SRS funding or return to 25% of actual receipts from the forest, with notification to the Governor's Office. The county must also elect to allocate from 15 to 20% of the full county payment to Title II (RAC approved projects) and Title III (specific county approve projects) with no more than 7% allocated to Title III and with notification to the Governor's Office. In 2012 the County elected to allocate 13% of project funds for Title II and 2% for Title III projects. The County is electing to allocate 15% of project funds for Title II and there will be no allocation for Title III projects for Federal fiscal year 2013.

8. Resolution No. 13-520 Approving a quit claim deed from Fredrick Selden to Lewis County for donation of property off Coal Creek Drive near Packwood, WA.

Tim Elsea, Director of Public Works, stated this Resolution approving and accepting a Quit Claim Deed from Frederick Selden to Lewis County for donation of property off

Coal Creek Drive near Packwood, WA. Frederick Selden, owner of the properties described as the East One Half of Lot 17 and all of Lots 18, 19, and 20, Timberline Village, has requested that Lewis County accept a donation of his property. Since the properties now lie primarily within the Cowlitz River, the property owner sees no benefit to owning the property, thus the offer of donation to the County. The Public Works Department may be able to use the donated property for possible erosion control from the Cowlitz River to the cul-de-sac on Coal Creek Drive. The attached resolution would approve the transfer of the property described on the attached executed Quit Claim Deed from Frederick Selden to Lewis County. Once accepted by the County by signing this resolution the Quit Claim Deed will be recorded.

9. Resolution No. 13-521 Approving an inter-local agreement between Lewis County and the City of Napavine regarding a Letter of Map Revision submission.

Lee Napier, Director of Community Development, stated upon reviewing the 2006 Flood Insurance Rate maps prepared by FEMA, the City of Napavine believed the mapping to be in error as it failed to correctly locate the river's floodway and flooding characteristics. The City desires to correct the location and characteristics through a Letter of Map Revision (LOMR). In response to the City's intend to submit a LOMR, FEMA responded to the LOMR application by requesting a concurrence letter from the County.

10. Resolution No. 13-522 Approving Amendment No. 11 to the Consolidated Contract No. C16891 with the WA State Department of Health.

Danette York, Director of Public Health and Social Services, the Consolidated Contract is the primary vehicle for transferring federal and state funding to Local Health Jurisdictions (LHJs) for planning and local implementation of public health prevention and early intervention programs and activities. This contract is effective for 3 years (2012-2014). Funding is allocated annually with amendments throughout the year.

Motion carried 3-0

HEARING

Hearing: Ordinance 1247 License to Produce, Process, and Sell at Retail Marijuana and Related Products.

Chairman Schulte announced the hearing and went over the procedures. He asked staff for a report.

Glenn Carter, Prosecutors Office, stated Washington voters recently voted to legalize recreational marijuana, and the Washington State Liquor Board (WSLB) promulgated rules implementing the initiative. Under those rules, the WSLB allocated four permits to unincorporated Lewis County. The rules specify that applicants for those permits must comply with local law, including land use and business license requirements. The state rules impose new costs on the county that will not be reimbursed. The new facilities will

attract criminal attention and require extra patrols and sheriff's personnel. It is appropriate for the County to require a business license for each such producer, processor and retailer of marijuana under state law.

The biggest controversy surrounding the WSLB rules is whether the state can legalize what federal law explicitly prohibits. This is important to the county for a variety of reasons, including but not limited to our desire not to issue a license to do what federal law prohibits. The question therefore is whether federal law prohibits the liquor board's attempt to legalize a highly-regulated, intrastate market for the cultivation, processing and sale of marijuana. The short answer is yes, federal law prohibits it.

The United States Supreme Court decided this issue in 2005, ruling that the federal Controlled Substances Act constitutionally prohibits the purely intrastate cultivation and use of marijuana ***even when it is in compliance with state law*** – in that case the California medical marijuana law. In a 6-to-3 opinion, the U.S. Supreme Court upheld Congress' power under the Commerce Clause to regulate purely local production and distribution of medical marijuana. See *Gonzales v. Raich*, 545 U.S. 1, 125 S.Ct. 2195, 162 L.Ed.2d 1, 73 USLW 4407, 05 Cal. Daily. Op. Serv. 4725 (2005). In other words, the federal Controlled Substances Act pre-empted the California state law that attempted to legalize medical marijuana. It is unlikely that the Supreme Court will change its opinion. Rather, the liquor board points to a letter written by Attorney General Holder saying that – in the exercise of his prosecutorial discretion -- his office does not presently intend to prosecute small producers, processors and distributors of "recreational" marijuana.

The United States Attorney General and prosecutors in general, when exercising their prosecutorial discretion, issue at least two types of memoranda. The first type states that the activity in question is legal. A second type states that the activity is illegal but that, for whatever reason, violators will not be prosecuted. The memorandum provided by Eric Holder in this case is of the second type. It admits that the conduct is illegal, but says that he may or may not prosecute violators. There are several practical problems with the memorandum: (1) it applies only as long as Eric Holder is in office – when he leaves office he may be replaced by an attorney general that decides to prosecute everyone that violates the Controlled Substances Act (CSA); (2) the memo does not even ensure that Eric Holder will not prosecute Washingtonians for violating the CSA – it simply states that he ***may*** not prosecute such folks; and, (3) the memo places any local government official at risk of prosecution under federal law for permitting the cultivation, processing and distributing of pot in violation of federal law.

Even if the Supreme Court had not decided the *Gonzales* case and declared that federal drug law pre-empts state law, article 1, section 2 of the Washington Constitution specifically provides that federal law is supreme in Washington:

The Constitution of the United States is the supreme law of the land.

In turn, the US Constitution provides:

[T]he laws of the United States ... shall be the supreme law of the land...anything in the ...laws of any state to the contrary notwithstanding.”

Art. VI, US Const. So, under the Washington Constitution, the federal drug laws are the supreme law of Washington, “any law of [the] state to the contrary notwithstanding.”

Staff’s proposal reconciles the two by permitting the cultivation, processing and sale of marijuana where the applicant has complied with the Controlled Substances Act registration provision in 21 U.S.C. 823. Even though the Controlled Substances Act outlaws the cultivation, processing and sale of marijuana it creates a process under which US Attorney General – in this case the same Eric Holder who issued the memo we referenced earlier – exempts persons and entities from the prohibition of federal law. The applicable provision is set out in 21 USC 823 and is implemented at 21 CFR 1301.33. The Attorney General has issued exemptions under that statutory provision and rule. Most recently, the Attorney General issued an exemption to the University of Mississippi for growing, processing and distributing marijuana.

Hence, a procedure exists for people who wish to manufacture, process, and sell marijuana to obtain the federal certification to do so. Under our proposal, any applicant for a business license who presents their permit from the state liquor board and presents their qualifying certificate from the United States Attorney General will receive a business license from the County. The County will be assured that the federal government has permitted the activity and the official issuing the license will be protected from prosecution for permitting what otherwise would be a violation of federal law. I understand some folks may say this is tantamount to a prohibition on manufacturing, processing and distributing marijuana in unincorporated Lewis County because the US Attorney General would “never” issue such an exemption. But, the state has based the legitimacy of the rules on a memo from the same person Eric Holder. If, as the state says, Eric Holder supports the rules, then this waiver should be forthcoming. If, in fact, Eric Holder is not supportive of the rules, then he won’t issue the exemption and the state perhaps should rethink the enterprise.

In particular, the liquor board might consider the advice given to the State of California by the United States Supreme Court in *Gonzales v. Raich*. There, the Supreme Court majority highlighted the provisions of the Controlled Substances Act that authorize the Attorney General (Eric Holder) to reclassify Schedule 1 drugs, meaning Eric Holder could reclassify marijuana from Schedule 1. 545 U.S. at 33. [At page 14 of the opinion, the Supreme Court states that “The CSA provides for the periodic updating of schedules and delegates authority to the Attorney General, after consultation with the Secretary of Health and Human Services, to add, remove, or transfer substances to, from, or between schedules.” 545 U.S. at 14-15; 21 U.S.C. 811. See also 545 U.S. at 33.]

If the Attorney General granted the request to remove marijuana from Schedule 1, the state would no longer be requiring the county to ignore applicable, governing federal law. If, however, the state already asked Attorney General Holder to do this and he

has said no, then he has given his answer and the answer is that federal law prohibits the production, processing and sale of marijuana anything in the state law and liquor board rules to the contrary notwithstanding.

Ron Averill, Centralia, asked the County does not issue business licenses so does the legislation creating recreational marijuana provide some type of provision for the County to issue the business license?

Glenn Carter stated in the WAC 314-55-020 (11) these were the rules processed it does specifically authorize County's to require business licenses. We also do have a kind of business license in the music festivals ordinance.

Ed Sookkooja, Pe Ell, stated the assumption was made that there would be crime involved in surrounding these retail, production, or processing facility. What do you base that on? Can you make that same assumption on banks?

Glenn Carter stated these would be sites that would bring criminal attention and the problem is that there is a security concern that applies to banks and there is a security concern that applies for to these sites.

Ed Sookkooja asked if this is only for unincorporated areas in the County.

Glen Carter answered yes.

Chairman Schulte asked if anyone would like to speak. There were none. He closed the question and answer period and opened the formal hearing.

Glenn Carter asked that his previous comments be adopted into the record.

Ron Averill stated he personally has very strong concerns about recreational marijuana being legally available to the population. He has always wondered why in a State that has spent so much time effort and money to outlaw tobacco smoking has come around and supported the growing and production of marijuana which is a product that is smoked. He recommends approval of this Ordinance.

Ed Sookkooja stated you are making mountains out of mole hills. This is a new industry and will bring jobs to our community.

Commissioner Grose stated the reason we are passing an Ordinance which has some fees attached to it is because we recognize there are no provisions in the state law or the liquor board control rules which will account for increase cost to the county which may and probably will occur.

Chairman Schulte stated when he took his Oath of Office it was to support the Constitution of the State of Washington and the United States Constitution. If we force or allow putting our staff at risk for approving violation of federal law we are in remiss. I

don't want to put my staff in a position of approving a permit for an illegal activity by federal law.

Commissioner Fund thanked council for putting together this Ordinance. There has been a lot of study and work put into this.

Chairman Schulte asked if anyone would like to speak. There were none. He closed the formal hearing and asked for a motion.

Commissioner Fund moved to approve Ordinance 1247. **Commissioner Grose** seconded the motion.

Ordinance No. 1247 An Ordinance of Lewis County Adopting a new Chapter 20 of Title 5 of the Lewis County Code Regarding a License to Produce, Process, and Sell at Retail Marijuana and Related Products.

Motion carried 3-0

There being no further business, the Commissioners' public meeting adjourned at 10:52 p.m. on November 4, 2013. The next public meeting will be held Monday, November 18, 2013.

Please note that minutes from the Board of County Commissioners' meetings are not verbatim. A recording of the meeting may be purchased at the Commissioners' office.

**BOARD OF COUNTY COMMISSIONERS
LEWIS COUNTY, WASHINGTON**

ATTEST:

P.W. Schulte, Chairman

Karri Muir, CMC, Clerk of the Board
Lewis County Commissioners

F. Lee Grose, Commissioner

Edna J. Fund, Commissioner