

PUBLIC MEETING
July 22, 2003

Chair Anita Varone called the meeting to order at 9a.m.

Commissioners Murray and Tinsley were both present. Others attending all or a portion of the meeting included Sharon Haugan, Ron Alles, Eric Griffin, Nancy Everson, Marni Bentley, Michael McHugh, Bill Lumma, Cindy Morrison Swank, Pete Fleming, Ray Daigen, John Barbagello, Heath Mason, B.W. McCurdy, David Karlau, Debra Crider, Maurice Hardie, Wendy O., and Darby Revious.

Pledge of Allegiance. Everyone recited the pledge.

Resolution to Increase the Lewis and Clark Fire Service Area Rates. Marni Bentley presented the information. Marni stated that when the Fire Service Area was created last October, the fee was \$20.00 per property and that the resolution creating the fire district stated that the rates would be reassessed by July 31, 2003 and a new rate structure would be established. Marni added that notice was sent to all property owners within the area and legal ads were published according to the statutes. One phone call was received from the RV Ranch. One letter was received this morning and it was forwarded onto the Board. Marni stated that Staff does recommend approval of the Resolution to Increase the Lewis and Clark Fire Service Area Rates.

Bill Lumma, who lives on Raven Road about $\frac{3}{4}$ mile outside the Birdseye Fire District, stated that his rates were going to be in the order of \$150, and wanted to know how that compared to the rate structure for the Birdseye Fire District.

Ron Alles stated that the Birdseye Fire District is based on mill levies and the levy is around 10 mills. On a \$100,000 property, 10 mills generates between \$30-35.

Bill Lumma added that he would have to pay 5 times more according to the proposal for fire coverage that is 25 miles further away.

Commissioner Varone explained that they have been working with the Volunteer Fire Departments for 2 years encouraging them to bring in as much property as they can into the Fire Service Area.

Ron Alles added that the initial rate schedule was set at \$20 was to give neighboring homes the opportunity to work with the districts to annex into their areas. There have been close to 400 parcels in the neighborhood that have annexed into adjoining districts.

David Karlau, Valley View Heights Addition, stated that when he moved into the subdivision the property taxes were about \$10 and now they are near \$500. David added that there is always yearly increases and if a simple improvement, as building a shed, this to increases the assessment. David stated that he talked with an Insurance Underwriter from Centennial Insurance and he rated the Lewis and Clark County Fire District as a ten. David added that he could not see giving the Fire District additional money for incompetence.

Commissioner Varone stated that the Volunteer Fire Department, the Lewis and Clark County Volunteer Fire Department are as professional as any other fire department if not more in the area.

Commissioner Murray added that the reason it is rated as a ten is distance from the fire hall, not because of incompetence of the fire department.

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Commissioner Varone said that distance is a huge problem and that we have worked with the Volunteer Fire Departments in an attempt to have them incorporate as much property as possible. We want a small amount of property as close to the fire department as we can get. That is what our goal is ultimately.

David Karlau said that he is basically in favor of the proposal is he could see where he was getting some benefit out of it.

Paul Rickman spoke on behalf of his father who lives up the North Fork of the Prickly Pear. Paul wanted to know where he could get the petition for the Canyon Creek Fire Department.

Ron Alles stated that Marni Bentley works with the individuals to define the area that you want annexed into. Then the property owners would be identified and a petition would be taken to them. The petition would first go to the Board of Trustees for the fire department and they have to accept that they want that property in there and upon that decision, it would be brought forward to the Board of County Commissioners, who would then ultimately approve that annexation into the district.

Cindy Morrison Swank, 6670 Sleeping Giant View Drive, asked about the \$900 budgeted for personnel. Is the Fire Chief's salary taken out of the safety portion of the budget?

Ron Alles responded that the \$900 pays for the workers' compensation for all of the volunteers and that there are no paid members on the department.

Cindy Morrison Swank asked if there was any money available in grants or if the state could be petitioned and the fire district could get the extra money from the Federal Government?

Anita Varone stated that the fire departments regularly apply for grants and that there is no extra money.

Ron Alles added that many of the fire departments received new equipment. The Lewis and Clark Fire Department recently received a grant for a new wild land firefighting vehicle.

Cindy Morrison Swank asked what the capital expenditure was going to be used for in the 2004 budget. Is that for the new firehouse?

Ron Alles stated that it is classified as capital expenditures, but the purpose of it is to save enough money to either build a new firehouse or for the replacement of some of the vehicles the department already has.

Cindy Morrison Swank asked if a location has been determined for the new firehouse.

Anita Varone said that no decision has been made.

Cindy Morrison Swank stated that it was mentioned that 400 people or properties have taken advantage of annexation, so there should be less demand on the County Fire Department. Does this affect the budgeting process at all?

Ron Alles stated that initially the target amount of money was \$100,000, but with the annexation of roughly the 400 parcels, the amount will be about \$50,000-\$55,000. This will adequately fund them given their area of responsibility today.

Cindy Morrison Swank said that she appreciated the reduced rate last year to give people a chance to annex,

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but some of the people in the North Hills want to annex to West Valley. Steps were taken to initiate an RID, but the application was stuck in the County based on the outcome of the Fieldstone Estates Subdivision.

Ron Alles stated that that was a unique situation, and Chief Shepherd is here and we should meet after this meeting to talk about what would work.

Bill Lumma added that his last concern was that he has heard that there are some subdivisions that get built without an adequate fire plan for the long term.

Commissioner Varone stated that every subdivision that is approved has to go through a fire approval process.

Ron Alles added that one of the subdivision requirements within subdivision regulations is that there be two ingress egress routes. The particular subdivision required the second ingress egress road be brought up to county standards.

Commissioner Tinsley moved to approve the Resolution to increase the Lewis and Clark Fire Service Area rates. Commissioner seconded the motion and it passed unanimously.

Bid Award for the 2003 RID Maintenance Projects. Eric Griffin stated that this is for the annual RID Project. The bids were opened on June 24, 2003 by the City of Helena. The project was bid, that two schedules were to be awarded to the lowest bidder on each schedule. Two bids were received, Helena Sand and Gravel and Big Sky Asphalt. Helena Sand and Gravel was low on schedule 1 and Big Sky Asphalt was low on schedule 2. Eric added that he recommends that the 2003 RID project be awarded to Big Sky Asphalt for \$59,170.00 and authorize the Chair to sign.

Commissioner Murray moved to award the bids to Big Sky Asphalt for \$59,170.00 and authorize the chair to sign all of the appropriate documents. Commissioner Tinsley seconded the motion and it carried unanimously.

Health Department Contract with DPHHS: Public health nursing services to the maternal and child population. Mike Henderson stated that the contract is for fiscal year 2004. It is to provide home visiting service to high-risk families in the County as well as parenting classes and fetal infant child death review.

Commissioner Varone added that the total of the contract is for \$81,288.00.

Commissioner Murray moved that Lewis and Clark County enter a contract with the state for maternal and child health care and in the amount of \$81,288.00 and authorize the chair to sign. Commissioner Tinsley seconded the motion and it carried unanimously.

Health Department Contract with DPHHS: Continue the Health Department's Immunization Program in the amount of \$12,357. Mike Henderson stated that this provides immunization services with a walk-in clinic as well as a registry of immunization levels. It provides for nurses to examine records of kindergarten students to determine levels of immunization in the County.

Commissioner Tinsley moved to approve the Health Departments immunization program and authorize the chair to sign. Commissioner Murray seconded the motion and it carried unanimously.

Preliminary Budget Approval. Nancy Everson stated that this is the preliminary budget for fiscal year 2004. The department heads have all had meetings and submitted their budget to the Commissioners. The Commissioners have had a couple of budget work sessions. Copies will be available in the libraries in Lincoln,

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Augusta, and the Helena library. Public Meetings will be held in Lincoln on August 1 and in Helena on August 7 at 5:30 in the Commission Chambers and in Augusta on August 8. I have tentatively scheduled the final budget to be adopted at the regularly scheduled meeting on August 12.

Commissioner Murray moved that the preliminary budget as proposed by Staff and reviewed by the Commission in the amount of \$42,343,891.00 be accepted. Commissioner Tinsley seconded the motion and it carried unanimously.

Proposed Minor Subdivision, Preliminary Plat Approval to be known as the Griffin Davis Lot 22 Minor. The applicant proposes creating one additional space for one additional single-family dwelling. The subject property is located in the SW1/4 of Section 24, T11N, R4W and generally located between Bonner Road and Griffin Road and west of Applegate Drive.

Applicant, Debra Crider asked if this proposed subdivision could be rescheduled to the following week.

Michael McHugh added that the public hearing would be held on Tuesday July 29, 2003 and the decision be held on Thursday July 31, 2003.

Commissioner Murray moved that at the request of the applicant that the statutory deadline on the Griffin Davis Lott 22 Minor be extended through July 31, 2003. Commissioner Tinsley seconded the motion and it carried unanimously.

Commissioner Varone opened up the public hearing to anyone who wishes to speak on the application for the Griffin Davis Lot 22 Minor. No one was in attendance.

Resolution to Adopt Raven Road and Black Mountain Drive as County Roads. Frank Rives stated that a meeting was held with a Sterling Harold who was representing some of the landowners that have property on Raven Road and Black Mountain Drive. They were interested in creating an RID to improve those two roads. In our discussions, we mentioned that the County does not do RID's for roads that are not public roads or public access easements. About 2 ½ years ago there was a subdivision, Raven Acres Estates by Bill Bonning. Even though the subdivision was approved, he could not meet the conditions of approval because he was unable to prove that he had legal and physical access, physical access being a road built to county standards, legal access being a public access easement. In the discussions with Mrs. Harold, she was told that she needed to get a petition going to declare a county road. This was in discussions with the County Attorney. It was determined by Staff and the County Attorney that the best recourse was to declare Raven Road and Black Mountain Drive as county roads. A county road is a public road and once the roads are adopted as county roads the applicants could pursue the creation of the RID for Raven Road and Black Mountain Drive. For the Public Meeting today, notices were sent out to adjacent landowners, three signs were posted for the proposed change. A road report was received by one of the County Commissioners and as of July 11, 2003, one letter of protest was received for the road change. If the resolution is approved, you would be approving Raven Road and Black Mountain Drive as county roads according to the access easements, which are recorded in the certificate of survey, which are listed in the resolution. One of the problems with Raven Road is that the road does not necessarily follow where the easement is. We are recommending that the access easements that are recorded as the certificate of survey indicate is Raven Road and Black Mountain Drive. Later on, we will have to have the road surveyed to see where road is in relation to the access easements.

Commissioner Tinsley stated that #2 on the petition shows that the lands and owners that are affected are and then it says list, is there a list of those people attached to this petition?

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Frank Rives stated that those are the people that signed the petition. They are not all of the people along Raven Road and Black Mountain Drive.

Commissioner Varone asked Frank Rives to explain how many people need to sign the petition in order for it to come before the Board of County Commissioners as a request.

Frank Rives stated that State Statute requires that a number of landowners, at least 10 have to sign the petition to request the change. The application was reviewed by Marni Bentley, and she determined that the statutory requirements had been met.

Commissioner Varone stated that there were about 17 signatures and wanted to know how many residents were on the two roads.

Frank Rives stated that he didn't know how many residents there were, but knew that there were quite a bit more.

Marilee Coleman, 6610 Raven Road, stated that she is a new resident. She does contribute to the local road association. I would adamantly support a RID.

John Morzack, I also live on Raven Road for about 6 years. I completely support what I didn't think was an RID. What exactly is it?

Sharon Haugen stated that today the Commission is considering whether or not to declare the easement as a county road. The County Commission is not considering the RID today. We do not have a petition for a RID, so this is only the first step if a RID is going to be done. We could declare it a public road and not have a RID being pursued.

John Morzack asked what the ramification was to make it a public road.

Sharon Haugen stated that it would enable anyone to use that road for ingress and egress to the different lots. It would not obligate the County to maintain it, and it would not change the current maintenance on the road. If you or any of your neighbors would like to subdivide, there would be public access rather than nonpublic access. One of our requirements is that you have legal access for subdivisions. A public access is the only thing that fits that requirement.

John Morzack stated that he does support this change to the public road.

Pete Fleming, 6315 Raven Road, I have a number of concerns or questions that I need answered. Back in 1994 when a RID was proposed, your own Planning Department came up with a number of questions and problems relative to easements. There is one that I am concerned with other than the road not being within the easement. My deed says nothing about a road easement. The only easement on my property according to my deed is access for the power company, which is a pipeline that goes across the lower corner. I have not been able to find any evidence in the public record of any type of road access easement ever being granted by any of the previous owners of my property. I spent about about 3 hours the other day with Frank looking at all of the materials that were there. Frank mentioned a certificate of survey. I went and procured one of these so-called surveys, and the only thing I was given was a map. It didn't say anything about when it was surveyed, who surveyed it, why it was surveyed, and according to some rules for procedures of actions on public easements, documentation should be provided in the form of a statement and/or a label on certificates of surveys, deeds, covenants, or other methods of dedication and must be in the public record. I couldn't find it.

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I am wondering if there was even officially a road there at all. Granted that it is there and has been in use for years, but as far as I can determine, an easement of any kind was ever granted across my property. That is a concern for me.

Commissioner Varone asked if Frank Rives or Sharon Haugen could respond to that, and if in fact there is an easement across the property, what is the situation then?

Frank Rives stated that after conversations with Mr. Fleming, I had a list of all the certificates of survey, and found the easement listed on two certificates of survey.

Pete Fleming stated that the other concern he had was Black Mountain. As far as I know that is a private drive, Mr. Chuck Dykes is the owner and he has it gated and locked. I am wondering why that needs to be a county road when he will not allow access across his property. I am not in favor of a RID, and I don't see any other valid reason to declaring the roads public.

Commissioner Varone stated that it was made clear that this has nothing to do with a RID. This has to do with making this a county road.

Pete Fleming stated that he understood that, but he can't see any other reason for making this a county road other than to get a RID.

Bill Lumma, 7450 Raven Road, stated that there are three residences that are occupied on Black Mountain Drive from the beginning to where the gate is. The gate is after two of those residences and Mrs. Harold who lives on Black Mountain Drive who has done a lot on this proposal, as well as Mrs. Coldiron. After the Coldiron residence, the road becomes quite impassable in many ways. This is one of the problems that exist, to declare where the boundaries of this county from private to public or county road are. In the original petition, I wrote on the petition to declare Raven Road and Black Mountain Drive up to the Coldiron residence a county road. That was the original petition that most people signed.

Commissioner Varone stated that the legal route of the road to be adopted is Raven Road to Coldiron residence access of residence 5850 Black Mountain Drive.

Bill Lumma stated that it is in there and we don't have to worry about the gate of Mr. Dykes. The second point I have is that the reason for having a public road access in there is that a lot of people own more than one lot. There is one of the last roads in the county that you can get privacy at the end of a road. There is no record of road maintenance, so there have been times that we have been snowed in for three days.

Maurice Hardie, 5845 Birdseye Road, stated that the first half-mile on the northern side of Raven Road fronts our property. My first concern is what is going to happen to the taxable value of that property which is now grazing land. My second concern is that the road not being on where the survey is, there is a mining claim that goes out into that road. As far as our property is concerned, any additional easement will have to come off of the other side because I won't allow it on our property and there is not a section line. There is a sixty-foot easement on every section line. That road has encroached on our property in a place or two. I will strongly protest this proposal.

Commissioner Varone stated that it is her understanding that if this road is adopted as a county road, no change will take place unless or until a RID is established. If a RID is established, one of the requirements is to have a complete survey done to the road change in the correct area.

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Ron Alles stated that that was correct. As far as the taxable valuation of the land, when the Department of Revenue goes out and assesses properties, although access is one of the issues in determining valuation, it would appear by declaring this a county road versus its existing status should not have an effect on what the valuation of property is. It doesn't mean that Mr. Hardie's valuation will not change. In fact you may have received a reappraisal notice recently. Any change in the taxable valuation or assessed valuation should not be affected by declaring this a county road.

John Barbagello, 6430 Raven Road, I gave to your secretary the list of the appropriate MCA statutes that apply to this particular process of declaring something a county road. I recognize that the RID process and the county road declaration process go hand in hand. We are dealing with the legality of the road itself in terms of it being on or not on those particular easements that are declared on plats on deeds on surveys. According to the statute the petition to establish or alter or abandon a county road, everything seems to be done there what is required by statute. I had some concerns on the statute that states the petition must set forth these six things: one, the particular road, that is fine; two, the general route thereof, that is fine; three, the lands and owners effected, none of the properties were listed as those to be affected, yet that is a requirement of the petition process that was not fulfilled; four, whether the owners who can be found consent thereto, so the statement that the signatures on there are the representatives we're looking for, those are the lands in question. Obviously that's not, because if there is a question of consent, if someone dissents and they don't sign it then they are not included. The list of the signatures in fact is not a list of all of the landowners and it cannot be considered equal to that. Fifth, where consent is not given, but probable cost of a right-of-way, when I looked at the submitted signed petition I noticed that someone put a N/A as if there would be no costs in declaring this a county road or in bringing it to the point that it could be declared a county road. As I looked at the rest of the statutes, that is not true. There will be costs to make adjustments for either an irregularity in where the road is or an irregularity in where the easement is and that has to be considered as a cost. In another statute, there are field notes that are required. There are none that I know of that have been filed because it hasn't really been evaluated for what the real costs in changes will be. It is an unknown. Another statute talks about damages, resulting from establishment or alteration of road, whenever the Board makes an order establishing or changing a road, it must find the amount of damages sustained by each owner or claimant of lands or improvements that on or affected by the roads. This has not been done. The statutes in the MCA deal mostly with perhaps declaring an easement where there is no access at all. I would receive no benefit with this. The damages for me might be great, because the road is irregular in front of my property. It is not exactly on where the easement says it should be. There will be incurred to me to make changes on my deed or to have my surveyor survey it. Another statute states that the Board shall by order direct that proceedings to procure the right-of-way be instituted under Title 70, Chapter 30, by the County Attorney against all non-accepting landowners. I do not believe the road should be made a county road. I do not believe that there is legal precedence in this particular case to do so because it was not properly filed. I don't believe that it should be passed because it was improperly applied for with missing information. I believe in the long run, it is not going to be to accomplish anything, because the RID will probably won't go through once the costs of road repair are seen.

Commissioner Varone asked if we could get the County Attorney to listen to Mr. Barbagello's comments, so he can provide recommendations to us, in particular the estimated costs and the non-applicable as opposed to not knowing or whether or not this would remain a legal document if we changed it to not known.

Commissioner Tinsley added that he asked Frank Rives about the list because that is where he interpreted the statute. Commissioner added that he thinks he corrected his interpretation as Mr. Barbagello was. He doesn't think it applies to just the people on the petition, but also to other residents who are affected.

Ron Alles stated that Staff would meet with Deputy County Attorney Paul Stahl and review some of the issues

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raised by Mr. Barbagello.

Derwain Harold stated that she first approached the county to see about a RID. The first meeting she had with the county about the RID, I personally invited Mr. Barbagello and he had other things to do at that time. As far as the NA, I was under the understanding that there was a \$150.00 filing fee. I paid that out of my own pocket, so that it was not relevant to anybody else. There is a lot of traffic on this road already, so as far as it becoming a public road, I do not see that it will have any effect on that traffic. There is a church at the bottom of the road that has brought in a lot more traffic and that is a concern to some people as to how that will be addressed. I understand that this is not for the RID so that there will be no changes in the road at this time, so there will be no costs for anybody to do anything.

William Lumma, 7450 Raven Road, for the record I can say that this process was carried out under the advisement of the County Road Board. I know that Mrs. Harold followed everything that she was supposed to do. I thank Mr. Barbagello for his rundown of all of the what-ifs. I think they are relatively moot and irrelevant at this point in that we are only proposing a change from private road to county road. Independent of any consideration of an RID and secondly, the use of the road has been established by tradition for so many years and the reality is that there are many of such cases in Montana and elsewhere. They are always solved in the matter of the public good. I think a surveyor is required. The County has already stated that in their process that they absorb the cost of the survey. I don't see what the problem is with the first step of this despite all of the misgivings and what-ifs.

Maurice Hardie, the last two speakers have indicated that this public road won't change a thing. We are not looking for anything beyond this being a county road. Therefore the whole position is moot, it doesn't change anything. Secondly, these people chose to buy and live up there and I pray they don't do it at my expense.

Commissioner Varone closed the public hearing.

Commissioner Murray asked Sharon Haugen is there is time to study and review this or if time was of the essence.

Sharon Haugen stated that statutes don't set a time in terms that you have to act now that you've had the hearing.

Commissioner Tinsley moved to make the final decision of the Resolution to Designate a County Road on Raven Road for August 14, 2003. Commissioner Murray seconded the motion and it carried.

Proposed Minor Subdivision, Preliminary Plat to be known as the Mason Commercial Minor. The applicant proposes creating a commercial storage facility with 40 units. The subject property is located in the NE1/4 of Section 30, T10N, R2W and generally located south of and adjacent to East Main and northeast and adjacent to Roselake Road. Jerry Grebenc stated that this proposed subdivision is located east of East Helena along old Highway 12, between old Highway 12 and Clark Street. The internal access road has an approach onto old Highway 12, the Montana Department of Transportation does maintain that. So an approach permit from that department would be necessary. The applicant would need to construct a gravel road to all portions of the development to meet county standards. Jerry Grebenc stated that Marni Bentley recommended that the address be that according to the internal access road through the subject property. This would comply with the addressing conventions that the County has adopted and would help enhance E911. The property is in the Eastgate Fire District. It is located approximately 1 mile to the nearest station. The Fire Department did recommend that the developer provide all-weather access to the development and that the access be provided

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within 150 feet of all portions of the development. In lieu of that access, the Fire Department asked that fire sprinklers be installed. The Fire Department also asked that the storage units be constructed to appropriate setbacks or that the units have a fire resistance that is approved by a building official. The County does not have building permits or building standards for such a development, there are state standards that have to be met. Since there is not any zoning in the area, setbacks are not necessarily required. A storm water drainage plan would be required due to the fact that there will be road construction for the proposal, which does increase impermeable surfaces. Staff recommends approval subject to 13 conditions.

Commissioner Murray asked Jerry Grebenc asked if this property falls under the lead area in East Helena and do we need to work through potential lead problems with the lead abatement group.

Jerry Grebenc stated that typically that is only made a requirement if dealing with a residential subdivision. Due to the fact that this is commercial and theoretically there won't be children playing in the commercial facility. We generally don't address commercial facilities; we certainly can if you'd like us to add that to the conditions.

Commissioner Murray stated that his concern was the disturbance of the soil. Are there special precautions that have to be taken because of the lead problem in the East Helena area.

Jerry Grebenc stated that he wasn't sure at this time.

Commissioner Varone asked if Jerry knew if the property was in the lead abatement area.

Jerry Grebenc stated that it was in the lead abatement area, almost all of East Helena is. But whether or not they are required under the EPA standards to do any mitigation during construction would need to be looked at.

Commissioner Varone stated that the Commission would like to take a look at that and if a condition of approval needs to be added, would you, Jerry, add language that for that condition.

Mr. Mason stated that the soil disturbance would be very minor. The ground is very level. I will probably just be pouring the slab and coming in with the road improvements up to the 24 feet width required by the county. Mostly I'll be covering the dirt. I don't plan on any kind of excavation.

Commissioner Murray asked Mr. Mason about the Fire Department's request for all-weather roads to your development.

Mr. Mason stated that there is a fire hydrant on Clark Street that is within 150 feet and there are a couple more across the road. The access road will come in on the west side of the road parallel to East Main Street and will contact the internal road that runs east west.

Commissioner Murray moved that the final decision be made on July 24, 2003. Commissioner Tinsley seconded the motion and it carried.

Lease Agreement to lease a 1995 Polaris ATV from John McKittrick and a 2004 Polaris ATV from Shawn Lashway from July 23-27. Commissioner Murray stated that the purpose of the lease is to provide for the reserves ATV vehicles during their police work at the Stampede and Fair. It is similar to the same agreement that was signed last year. The purpose the action today at leasing the vehicles at no cost is to put them under the County insurance policy.

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Commissioner Murray moved to enter into an agreement, for the ATV's lease them for County use, and authorize the chair. Commissioner Tinsley seconded the motion and it carried.

Emergency Termination Resolution for Jimtown Fire (nunc pro tunc). This was passed and adopted on July 18, 2003 and was signed. Commissioner Murray moved to enter into a nunc pro tunc resolution terminating the emergency resolution for the Jimtown Fire and authorize the chair to sign. Commissioner Tinsley seconded the motion and it carried.

There being no further business, the meeting adjourned at 11:05am.

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