

Welcome to tonight's City Council meeting!

The elected officials of the City of Bonners Ferry are appreciative of an involved constituency. Testimony from the public is encouraged concerning issues when addressed under the Public Hearing portion of the agenda. Any individual who wishes may address the council on any issue, whether on the agenda or not, during the Public Comments period. Normal business will preclude public participation during the business portion of the meeting with the discretion left to the Mayor and Council.

Vision Statement

Bonnors Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life.

AGENDA
CITY COUNCIL MEETING
Bonnors Ferry City Hall
7232 Main Street
267-3105
July 17, 2012
6:00 p.m. Budget Workshop
7:00 p.m. Regular Meeting

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

PUBLIC COMMENTS

Each speaker will be allowed a maximum of five minutes, unless repeat testimony is requested by the Mayor/Council

GUESTS

Bruce Drewes – Idaho T2 Center Road Scholar Program Presentation

REPORTS

Police/Fire/City Administrator/Economic Development Coordinator/Urban Renewal District

CONSENT AGENDA

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Treasurer's Report
4. Approve July 3, 2012 Council Meeting Minutes

OLD BUSINESS

5. City – Discuss Annexation

NEW BUSINESS

6. Sewer – Sewer Collection Power Point Presentation
7. Water – Award Deep Creek Crossing Waterline Replacement Project Bid (attachment)
8. Water – Authorize Mayor to Sign Amendment #12 to Owner-Engineer Agreement with Welch Comer for Water Master Plan (attachment)
9. Electric – Hire Lineman

10. City – Approve Special Event Permit for Bonners Ferry FFA Alumni Agricultural Festival on July 28, 2012 at the Fairgrounds (attachment)
11. City – Approve the Parade Permit for Boundary County Fair Board Parade on August 18, 2012 (attachment)
12. City – Approve Catering Permit for Kootenai River Brewing Company for FFA Ag Festival on July 28, 2012 at the Fairgrounds (attachment)

EXECUTIVE SESSION PURSUANT TO IDAHO CODE 67-2345, SUBSECTION 1

- (a) Consider hiring a public officer, employee, staff member or individual agent.
- (b) Consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student.
- (c) Conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency.
- (d) Consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code.
- (e) Consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
- (f) Communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.
- (g) Engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed.

ADJOURNMENT

NEXT MEETING DATE

INFORMATION

13. Street – LHTAC Idaho Technology Assistance Newsletter (attachment)
14. City – 2010 ADA Standards for Accessible Design (attachment)

July 13, 2012

Mr. Dave Anderson, Mayor
City of Bonners Ferry
P.O. Box 149
Bonners Ferry, Idaho 83805

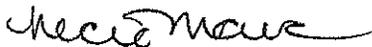
Re: Bonners Ferry Deep Creek Crossing Waterline Replacement Project

Dear Mayor Anderson and Council:

Enclosed please find the bid tabulation and review checklist that were received for the above reference project. We have reviewed the bid package received and it seems to be responsive.

Welch Comer & Associates recommends awarding the Base Bid to the low bidder, S & L Underground, Inc., in the amount of \$174,840.00. Should the City concur with our recommendation, please sign this letter below and return to our office for immediate processing. To expedite the award process for this project, we are also enclosing three (3) copies of the Notice of Award for your signature. We will date and issue this document to the Contractor once agency approval (USDA and DEQ) has been received.

Sincerely,
Welch Comer & Associates, Inc.



Necia Maiani, P.E.
Project Engineer

NMM/spm
Enclosures

City Concurrence:

Dave Anderson, Mayor

Date

Notice of Award

Date: July 17, 2012

Project: Deep Creek Crossing Waterline Replacement Project

Owner: City of Bonners Ferry, Idaho

Owner's Contract No.:

Contract:

Engineer's Project No.: 45002

Bidder: S & L Underground, Inc.

Bidder's Address: *[send Notice of Award Certified Mail, Return Receipt Requested]*

P.O. Box 1952

Bonners Ferry, Idaho 83805

You are notified that your Bid dated July 5, 2012 for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for BASE BID
[Indicate total Work, alternates, or sections of Work awarded.]

The Contract Price of your Contract is \$ 174,840.00.

3 copies of each of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent within ten [10] days of the date you receive this Notice of Award.

1. Deliver to the Owner [3] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), [and] General Conditions (Paragraph 5.01).
3. Other conditions precedent:
 - a. Please note that your Certificate of Insurance must list those additional insureds as identified in the Supplementary General Conditions.
 - b. The contract date referenced on the Performance and Payment Bond face and the bond date on the bond face **must** match the contract date on the Agreement. Failure to comply with dates may result in the rejection of bonds and further expense to the Contractor for re-issuance of the bonds with corrected dates.
 - c. SWPPP Notice of Intent must be executed and submitted electronically immediately after issuance of Notice of Award for this project, if applicable.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited. Within 30 days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

CITY OF BONNERS FERRY, IDAHO

Owner

By: _____

Authorized Signature

David Anderson, Mayor

Title

Copy to Engineer

EJCDC C-510 Notice of Award

Prepared by the Engineers Joint Contract Documents Committee and endorsed by the Construction Specifications Institute.

Page 1 of 1

**BID REVIEW CHECKLIST
PRIOR TO RECOMMENDATION**

OWNER: CITY OF BONNERS FERRY
PROJECT: DEEP CREEK CROSSING WATERLINE REPLACEMENT PROJECT
Open Date: JULY 5, 2012 AT 2:00 PM

Bid Review Performed By: SHARIE MACDONALD

CONTRACTOR	S & L UNDERGROUND	
BID AMOUNT (Basis of Bid Award)	\$ 174,840.00	
PUBLIC WORKS LICENSE NO.	14825-AAA-1-2-3	
License Limit (See List)	\$5,000,000	
License Confirmed with the License Board at www.dbs.idaho.gov		
BID PACKAGE		
Are all forms filled out completely and correctly?		
ALL ADDENDA ACKNOWLEDGED?	YES	
BID PROPOSAL FORM	YES	
BID SCHEDULE		
FORM OF BID SECURITY	BID BOND	
Surety Company Confirmed at www.fms.treas.gov/c570/index.html ?	BERKLEY REGIONAL INSURANCE COMPANY	
LIST OF SUBCONTRACTORS	YES	
PLUMBING	N/A	
HVAC/BOILER	N/A	
ELECTRICAL	N/A	
NON-COLLUSION AFFIDAVIT	YES	
CONTRACTOR FOR PW TO PAY ALL TAXES	YES	
CERTIFICATION WITH ANTI-LOBBYING ACT	YES	
List other requirements:		

Summary (working)

SUMMARY OF REMAINING PROJECT COST	
As of 6-8-12 (updated 7/12/2012)	
Remaining USDA-RD Grant Funds to Date	\$ 540,986.82
WC Invoice Reimbursement	\$ 80,102.05
Deep Creek Crossing (Construction Bid)	\$ 174,840.00
Deep Creek Crossing (Engineering)	\$ 15,342.50
Electrical Reimbursement??	\$ 50,000.00
Remaining Grant Funds	\$ 220,702.27
US 95 (Kennedy to County Road 2d)	
Prelim Engineering (Environmental/Funding Admin)	\$ 7,800.00
Design, Topo, Bidding, Right of Way	\$ 33,800.00
Estimated Construction with 10% Contingency (10")	\$ 284,140.00
Construction Phase Services	\$ 47,950.00
Total	\$ 373,690.00
Shortfall for US95	\$ (152,987.73)

This is EXHIBIT J, consisting of 4 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated 08-16-05.

March 29, 2012 AMENDMENT #12 TO OWNER-ENGINEER AGREEMENT

1. Background Data

- a. Effective Date of Owner-Engineer Agreement: 08/16/05
- b. Owner: City of Bonners Ferry
- c. Engineer: Welch Comer and Associates, Inc.
- d. Project: City of Bonners Ferry Water System Improvement Project

2. Nature of Amendment

- Additional Services to be performed by Engineer
- Modifications to Services of Engineer
- ~~Modifications to Responsibilities of Owner~~
- Modifications to Payment to Engineer
- Modifications to Time(s) for rendering Services
- ~~Modifications to other terms and conditions of the Agreement~~

3. Description of Modifications

Attachment 1, "Modifications"

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER: City of Bonners Ferry

ENGINEER: Welch Comer & Associates, Inc.

By: David Anderson
Title: Mayor
Date Signed: _____

By: Philip F. Boyd, P.E.
Title: President
Date Signed: _____

AGENCY CONCURRENCE

Agency: USDA-Rural Development
By (Signature): _____
Typed Name: Noel J. LaRoque
Title: Civil Engineer
Date: _____

This is Attachment 1, consisting of 2 pages, to Amendment No. 12, dated March 29, 2012.

Modifications

The May 2011 Master Plan Addendum #4 prepared by Welch Comer & Associates, Inc. identifies replacement of undersized (4 inch) and steel main replacements as a priority within the capital improvement project. The City has grant funds remaining and wishes to replace approximately 2,700 lineal feet of 4 and 6 inch steel main along US95 south of the intersection with Kennedy with new water main.

1. Engineer shall perform the following Additional Services:

A. Environmental Information Document: Develop Environmental Information Document for the US95 Waterline Replacement in accordance with Agency requirements.

a. Engineer shall:

- i. Engineer will prepare one preliminary report summarizing the planned replacement and discussing expected environmental impacts, in accordance with Agency requirements. Engineer will submit this report to the appropriate Agencies for review and comment within 21 calendar days of authorization to begin this service.
- ii. Engineer will prepare one final report summarizing the planned replacement, discussing expected environmental impacts and addressing comments received from the reviewing Agencies, in accordance with Agency requirements.
- iii. Furnish 2 copies of final report to Owner and Agency within 10 calendar days of receipt of all Agency comments.
- iv. Engineer's services for this Task will be considered complete on the date when the final report and any other deliverables have been delivered to and accepted by Owner and Agency, as appropriate.

B. Engineer will complete design, bidding and construction phase services for the US95 Waterline Replacement in accordance with the Owner-Engineer Agreement.

- a. The new waterline will be installed on the east side of US95 within utility easements fronting the US95 right of way.

b. Right of Way services shall include:

- i. **Existing Monument Search and Right of Way:** Based on county records such as plats and surveys, search for and tie a sufficient number of existing monuments within the project limits. Monuments will be depicted on the design drawings and will also be used to determine the existing right of way
- ii. **Preparation of legal description for easements obtained by Owner for new waterline.**

2. For the additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

- A. The following services will be paid using the Lump Sum Method of Payment in accordance with the Contract:

Add New Items for US95 Waterline Replacement:

Topographic Survey	\$ 6,600
Design Phase Services	\$16,400
Bid Phase Services	\$ 5,000
Construction Phase Services*	\$18,800
Post Construction Phase Services	\$ 1,850
Total Increase to Lump Sum Services per this Addendum	\$48,650

- B. The following services will be paid using the Standard Hourly Rates Method of Payment based on a 35 calendar day construction contract in accordance with the Contract:

Add New Items for US95 Waterline Replacement:

Environmental Document/Agency Coordination	\$ 7,800
Resident Project Representative*	\$27,400
Right of Way Services	\$ 4,800

*The basis for the construction phase services is a 35 calendar day construction period. It is assumed that an RPR will be required full time for 5 working days.

3. The schedule for rendering services is modified as follows:

- A. Engineer will complete the Environmental Document within 14 calendar days of approval of this Amendment for submittal to Owner and Agency.
- B. Design phase services (bidding documents) will be completed and submitted to the Owner and Agency for approval within 45 calendar days of the approval to proceed with design phase services.
- C. Bidding and construction phase services will be based on one prime construction contract and a maximum of 35 calendar days for completion of work from the issuance of Notice to Proceed.

CITY OF BONNERS FERRY, IDAHO
APPLICATION FOR CITY SPECIAL EVENT PERMIT
(REQUIRED UNDER ORDINANCE NO. 468)

Date of Application: ~~7/11~~ 11th July 2012 Alumni
License Issued to: Bonners Ferry FFA Alumni Gavin Williams
Business Name: Bonners Ferry FFA Alumni
Mailing Address: 444 Stage Coach Lane Maples Idaho
Physical Address: 444 Stage Coach Lane Maples Idaho
Phone Number: 208-290-6844
Type of Event: Agricultural Festival (non profit fundraiser)
Dates of Event: July 28th 2012
Location of Event: Fairgrounds Boundary County
Time of Event: 7:00 Am → 10:30 Pm

RECEIVED

JUL 12 2012

CITY OF BONNERS FERRY

By application, the applicant shall, waive, indemnify, and hold harmless the City of Bonners Ferry, its agents, its employees and authorized volunteers from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of the permitted activity or the conduct of applicant's operation of the event if such claim (1) is attributed to personal injury, bodily injury, disease or death, or to injury or to destruction of property, including the loss of use there from, and (2) is not caused by any gross negligent act or omission or willful misconduct of the City of Bonners Ferry or its employees acting within the scope of their employment.

The following requirements must be met:

- A. If sponsored by a local resident, entity or group, a signed copy of licensee's contract with the local sponsor.
- B. Evidence of at least one million dollars (\$1,000,000.00) combined single limit liability insurance that names the City as co-insured.
- C. A clean-up fee of one hundred dollars (\$100.00); all, some or none of which will be returned upon recommendation of the Chief of Police after his inspection of the premises after the organization has left the premises and their permit expired. The foregoing fee is subject to change from time to time by resolution of Council.

Fees and proof of insurance must be provided to the City of Bonners Ferry prior to the event.

Authorized Signature for Applicant: 
Printed Name: Gavin Williams
Office/Title: FFA Alumni event planner

Office Use:

Fee Paid: 135⁰⁰ Date: 7-12-12 Receipt No. 11105-20

Approved By: _____ Date: _____

2012-10

CITY OF BONNERS FERRY, IDAHO
APPLICATION FOR CITY SPECIAL EVENT PERMIT
(REQUIRED UNDER ORDINANCE NO. 468)

RECEIVED

Date of Application July 7, 2012 Parade

JUL 12 2012

License Issued to: _____

Business Name: Boundary County Fair Board CITY OF BONNERS FERRY

Mailing Address: PO Box 3098 Bonners Ferry

Physical Address: 10550 Kottman St Bonners Ferry

Phone Number: 267-7041

Type of Event: Fair Parade

Dates of Event: 8/18/12

Location of Event: Fairgrounds

Time of Event: Wed 8/15 - Sat 8/18

By application, we agree to hold the City harmless from any and all acts of malfeasance and nonfeasance of the licensee, its agents, employees and guests; and

- A. If sponsored by a local resident, entity or group, a signed copy of licensee's contract with the local sponsor.
- B. Evidence of at least one million dollars (\$1,000,000.00) combined single limit liability insurance that names the City as co-insured.
- C. A clean-up fee of one hundred dollars (\$100.00); all, some or none of which will be returned upon recommendation of the Chief of Police after his inspection of the premises after the organization has left the premises and their permit expired. The foregoing fee is subject to change from time to time by resolution of Council.

Fees and proof of insurance must be provided to the City of Bonners Ferry prior to the event.
\$35.00 Event Fee plus \$100.00 Cleanup Fee

Applicant Signature Boundary County Fair Board

Office/Title _____

Office Use:

Fee Paid 135⁰⁰

Date 7-12-12

Receipt No. 11105-22

Approved By _____

Date _____

202-10

ARIZONA STREET

KOOTENAI STREET

BONNER STREET

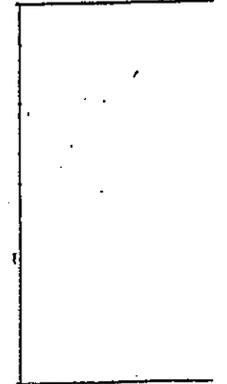
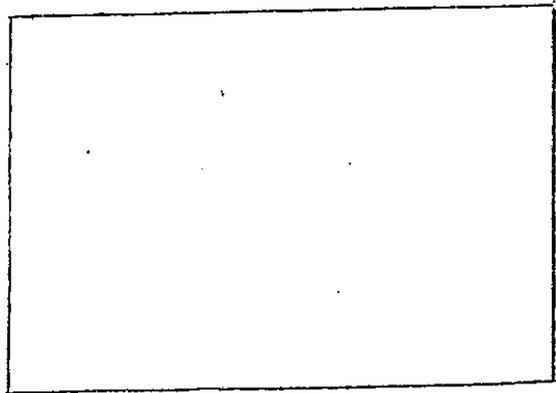
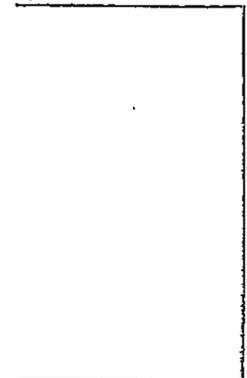
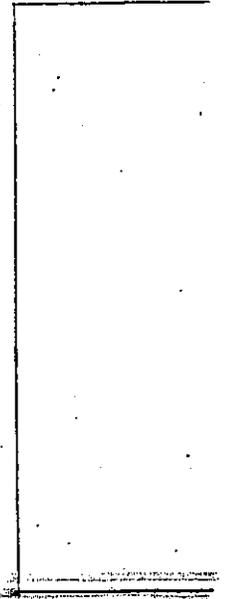
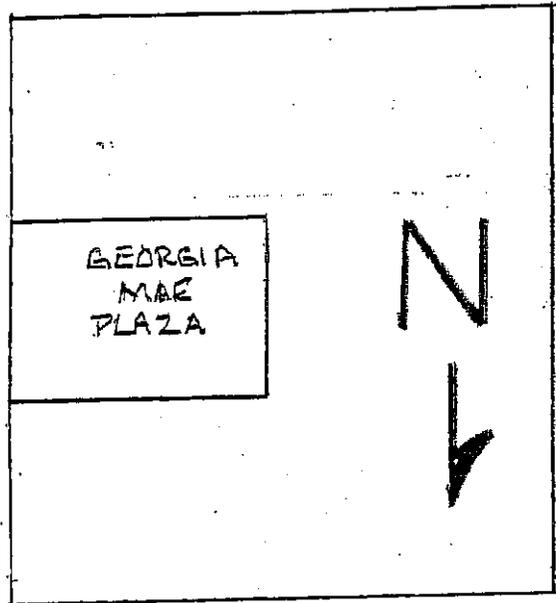
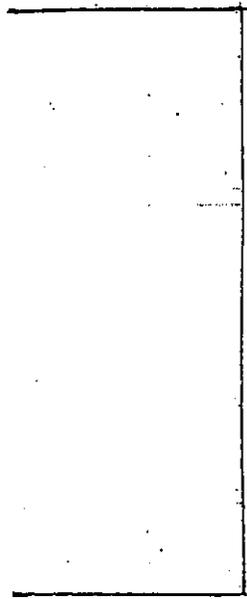
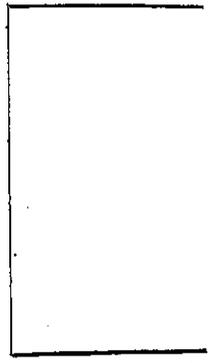
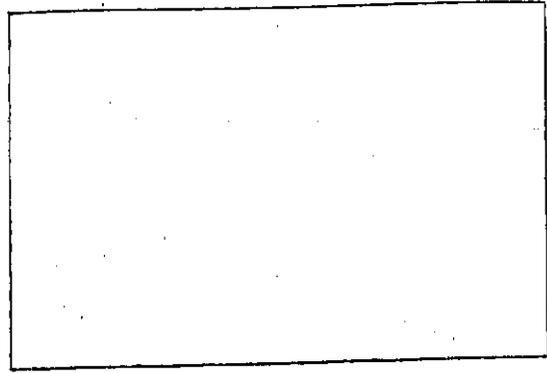
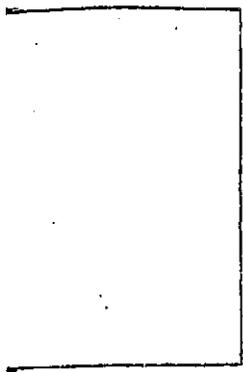
MAIN STREET

FIRST STREET

GEORGIA
MAE
PLAZA



TO FAIRGROUNDS →



HOLD HARMLESS AGREEMENT, WAIVER, AND RELEASE

*** INITIAL EACH PARAGRAPH, SIGN AND RETURN THIS DOCUMENT WITH YOUR APPLICATION***

*** PLEASE RETAIN A COPY FOR YOUR RECORDS ***

ACTIVITY: _____

Boundary County Fair Board

In consideration for being permitted by the City of Bonners Ferry, Idaho to participate in the above activity, I hereby waive, release, and discharge any and all claims for damages for personal injury, death, or property damage which I may have or which may hereafter accrue as a result of my participation in said activity. This release is intended to discharge and indemnify, in advance, the City of Bonners Ferry, Idaho (its officers, employees, and agents) from and against any and all liability arising out of or connected in any way with my participation in said activity, even though that liability may arise out of negligence or carelessness on the part of the City of Bonners Ferry, Idaho (its officers, employees or agents).

Boundary County Fair Board

I further agree that this hold harmless agreement further binds any corporation, person and/or entity which I may own, represent or be an agent for, throughout the activity, to include preparation and conclusion activities. It is my express intent that this Acknowledgement of Risk and Waiver of Liability shall serve as a release, discharge and assumption of risk for my heirs, estate, executor, administrator, assignees and all members of my family

Boundary County Fair Board

I understand that the above activity may be of a hazardous nature and/or include physical and/or strenuous exercise or activity, that serious accidents occasionally occur during the above activity; and that participants in the above activity occasionally sustain mortal or personal injuries and/or property damages as a consequence thereof. Knowing the risks involved, nevertheless, I have voluntarily applied to participate in said activity, and I hereby agree to assume any and all risks of injury or death and to release, indemnify and hold harmless the City of Bonners Ferry, Idaho (its officers, employees, and agents) who through negligence, carelessness, or any other act or omission might otherwise be liable to me. I further understand and agree that this waiver, release, and assumption of risks is to be binding on my heirs and assigns.

Boundary County Fair Board

I further agree to indemnify and to hold the City of Bonners Ferry, Idaho (its officers, employees and agents) free and harmless from any loss, liability, damage, cost, or expense which they may incur as a result of any injury and/or property damage that I may sustain while participating in said activity.

Boundary County Fair Board

I HAVE CAREFULLY READ THIS HOLD HARMLESS AGREEMENT, WAIVER, AND RELEASE AND FULLY UNDERSTAND ITS CONTENTS. I AM AWARE THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT BETWEEN THE CITY OF BONNERS FERRY, IDAHO, AND MYSELF AND I SIGN IT OF MY OWN FREE WILL. (Each participant / vendor must personally sign)

SIGNATURE: *Boundary County Fair Board* DATE: *7/9/12*

PRINT NAME: *Boundary County Fair Board* ADDRESS: *62550 Kootenai St*

TELEPHONE # *267-7041*

RECEIVED

JUL 13 2012

CITY OF BONNERS FERRY
CATERING PERMIT APPLICATION

CITY OF BONNERS FERRY

Owners Name: Michael Naumann

Business Name: Kootenai River Brewing Company

Business Address: PO Box 1901, 6424 Riverside St
Bonnors Ferry, ID 83805

State Beverage License Number: 11797

I hereby request a catering permit for the following dates: July 28, 2012

from the hours of 12 a.m./(p.m.) to 10 a.m./(p.m.) at the

following location: "Slab" at Fairgrounds

Catering will be done for the following group or organization sponsoring the event: FFA Ag Festival

Type of Event: BBQ

Wine: _____ Beer: X Hard Liquor: _____

Michael Naumann 7/11/12
Signature of the Licensee Date

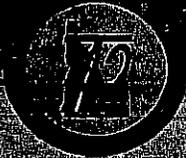
Michael Naumann
Printed Name

Address: PO Box 1901 Phone: 208-255-9700

Date Submitted to City Council _____

A non-refundable fee of \$20 per day is required with the application

Please make check payable to: City of Bonners Ferry
P. O. Box 149
Bonners Ferry, ID 83805



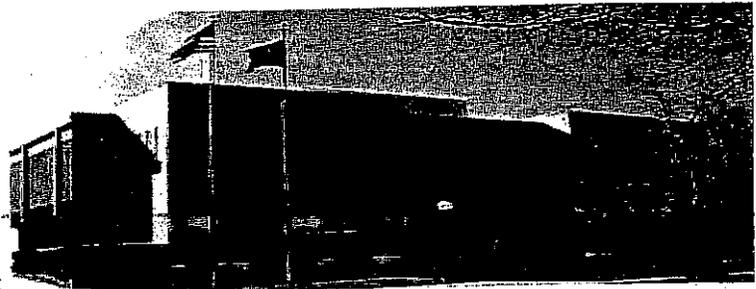
SUPREME COURT RECOGNIZES "NEW" BASIS FOR PUBLIC ROAD CREATION

By David E. Wynkoop*

INTRODUCTION

The Idaho Supreme Court issued a major highway law ruling on November 9, 2011. In the case of *Brian P. Sopatyk v. Lemhi County, et al*, the Court reaffirmed a territorial statute regarding the creation of public roads and made a number of pronouncements of significant interest to Idaho highway agencies.

In 1998, Lemhi County validated ACR as a public road. Sopatyk sued claiming ACR was not a public road. The trial court remanded to the County for a new public hearing. In



FACTS

The Anderson Creek Road ("ACR") runs the length of Mr. Sopatyk's property. The ACR was originally built within the townsite of Gibbonsville, Idaho. In 1878, gold miners filed a miner's plat showing the road on federal land. ACR served as Main Street for Gibbonsville and provided access to various mining claims and cabin sites. Part of the property ACR was located on became private property in 1897 and was later purchased by Sopatyk. The public used ACR intermittently through the years, but at times and in places ACR had become overgrown with brush.

2004, Lemhi County reaffirmed its decision that ACR is a public road based upon several legal theories, including a conclusion that the road was made public by an 1881 Idaho territorial statute.

The trial court affirmed that the ACR was made public by the 1881 territorial statute and also ruled that the road was dedicated to the public by the miner's plat.

In This Issue...

- Supreme Court Recognizes "New" Basis for Public Road Creations....Cover & Pages 4 & 5
- Staff News...Page 2
- Distracted Driving...Page 3
- Idaho Open Meeting Law Manual Update...Page 5
- Cell Phone Use Banned for Commercial Motor Vehicles...Page 6
- 2012 Idaho Standards for Public Works Construction Manual (ISPMC) Now Available...Page 6
- "De-Paving" is a Hot Topic in the Plains States...Page 7
- Harper County's Experience...Turning Paved Roads Back to Gravel...Page 7
- Idaho T2 Center Spring Classes 2012...Pages 8 & 9
- Safety Fest of the Great Northwest—2012 Schedule...Page 9
- National Work Zone Awareness Week 2012...Page 10
- What is a Webinar?...Page 10
- Top 9 Stress Relievers...Page 10
- Idaho T2 Center 2012 Road Scholars and Road Master Recipients...Page 11
- Calendar Of Events...Back Page

RS 2477 ROADS

The Idaho Supreme Court first discussed the federal statute known as R.S. 2477 which provided that: "The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted." This federal statute was adopted in 1866 and repealed (but not retroactively) in 1976. Thus, roads created between 1866 and 1976 on undesignated federal lands and accepted by a public agency pursuant to state law became public roads. Such roads remain public even though the underlying land is later sold into private ownership. In this case, there was historical evidence by way of newspaper accounts, maps, photographs and affidavits, that ACR

Continued on Page 4...

Continued from Front Page...

was created and used by the public in 1878.

DEDICATION OF ROAD BY THE MINER'S PLAT

Lemhi County ruled and the trial court agreed that ACR became an RS 2477 public road by virtue of the 1878 miner's plat. The Supreme Court reversed this ruling on the grounds that the miners could not dedicate a road on federal land the miners did not own. The Court noted that a government agency must accept the offer of dedication under RS 2477. The miners' committee did not constitute a public agency for purposes of accepting the RS 2477 offer.

TERRITORIAL ROAD STATUTE

The Court then discussed the 1881 Idaho Territorial statute which provided that: "All roads or highways laid out or now traveled, or which have been commonly used by the public...in the several counties of this Territory, are hereby declared county roads." There was good historical documentation that ACR was created and in use in 1881. The territorial statute constituted an acceptance by an Idaho public agency of the RS 2477 offer. The Court noted the requirement that there must be substantial evidence of regular use of the road, and ruled that this requirement was satisfied in the Sopatyk case.

PASSIVE ABANDONMENT

Sopatyk argued that even if ACR was created as a public road, it was passively abandoned by five years of non-use and no maintenance. The

Court ruled that Sopatyk did not meet his burden to prove that the road was unused and unmaintained for any specific five year period of time. The Court noted that since 1906, ACR has accessed forest service lands and so it is likely that ACR has been regularly used for recreation and wood gathering.

UNCONSTITUTIONAL TAKING

Sopatyk next argued that the validation proceeding constituted an unconstitutional taking of his property. The

The Court did not discuss its prior holdings that the statute of limitations requires takings claims be commenced within four years of the alleged taking. This would be an additional reason for holding that Sopatyk could not succeed with his takings claim.

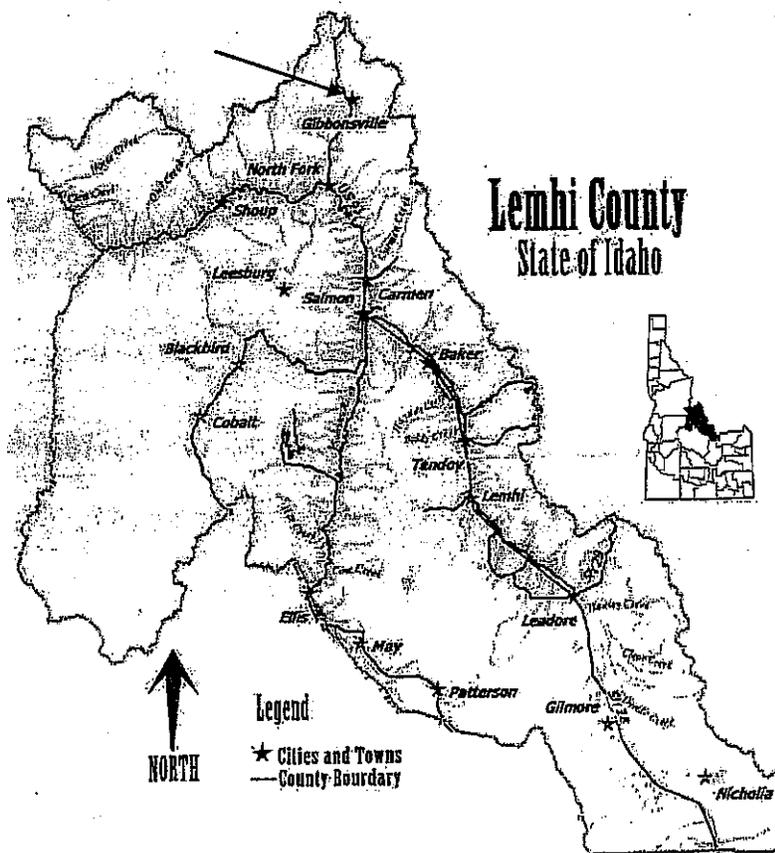
WIDTH OF THE ROAD

The County ruled in its validation proceeding that the width of ACR was fifty feet, even though the travel path was only ten feet, and the trial court agreed. The Supreme Court affirmed citing an 1887 territorial statute which provided that "All highways, except alleys and bridges, must be at least fifty feet wide except those now existing of a less width." This statute has continued through Idaho history and is now codified at Idaho Code §40-2312. The Court noted that Sopatyk did not introduce credible evidence to contradict the presumption of a fifty foot width.

THE VALUE OF VALIDATION PROCEEDINGS

Lemhi County commenced this action by validating ACR as a public road pursuant to Idaho Code §40-203A. On appeal to the courts, the

County's validation ruling was given a presumption of correctness. Sopatyk had the burden to prove that the County's decision was wrong. Had Sopatyk initiated this proceeding, the County would have had the burden to prove in court that ACR had been created as a public road. In a close case, the party who has the burden of proof often loses



Court responded that ACR became a public road no later than 1881, long before Sopatyk's property became private in 1897. Thus, Sopatyk's predecessors took ownership of the property subject to the pre-existing public road. The validation proceeding did not create new public rights to use ACR, but rather confirmed pre-existing rights. Accordingly, Sopatyk had no takings claim.

Continued on Page 5...

...Continued from Page 4

the case. In this case, there may have been a different outcome if the litigation had been initiated by Sopatyk as a quiet title lawsuit as opposed to an appeal from the County's validation proceeding.

LESSONS LEARNED

1. The Supreme Court acknowledged a public road creation theory not previously well known. The ACR was not created by dedication because the land on which the road was placed was federal land not owned by the miners. There was not adequate evidence to prove that the ACR was created by prescriptive use. Accordingly, the Court reached back to the 1881 Territorial Statute to rule that ACR was a public road. An Idaho road agency, which cannot prove the existence of a public road by deed, dedication or prescription has a new tool in the tool box to prove the existence of a public road. While the *Sopatyk* case dealt with creation of a road on federal land, the reasoning should be the same for roads created on private property. If it can be proved by historical documents that the road was in use prior to 1881, the road may be a public road.
2. A party claiming a public road has been passively abandoned has a significant proof problem. It is difficult to prove that there was no use or maintenance of the road for a five year period. Unless the evidence clearly demonstrates that the road was blocked off to public use for at least five continuous years, a court is unlikely to rule that a public road has been abandoned.
3. If it is important to keep a road open for public use and there is a serious threat to the continued use of the road, consideration should be given to commencing a validation proceeding. The conclusion is more likely to result in the confirmation of a public road if the road agency initiates a validation proceeding.
4. It is important to preserve historical road records. In this case, old maps, newspaper accounts and photographs showing the road, and letters and affidavits, were vital to the County's success. Maintenance records and records of public use are important to demonstrate that a public road was created and to defend against an argument that the public road was passively abandoned.
5. The Court reaffirmed its recent ruling in the *Halverson* case that a public right-of-way in Idaho is presumed to be fifty foot in width. This is helpful when a public agency widens a road or when dealing with right-of-way encroachments.
6. It is important to understand how a road right-of-way was created. Generally rights-of-way created by deed or dedication have different rules than roads created by prescriptive use or the 1881 statute. If the road was created by deed or dedication, one must look to the document to determine the width of the right-of-way. Also, a road created by deed or dedication cannot be passively abandoned, and can be vacated only by utilizing the formal statutory vacation procedure.

CONCLUSION

The *Sopatyk* case reaffirms a valuable addition to the arsenal of road creation theories. In areas of the State where early mining, logging, ranching or farming occurred, the 1881 territorial statute should be considered when a property owner attempts to close a long used or maintained road.

* *Mr. Wynkoop represents approximately forty Idaho agencies. He has actively practiced law in Idaho for 33 years. For more information, please call 208-887-4800.*

Reference: David E. Wynkoop, Sherer & Wynkoop LLP, 730 N. Main St., Meridian, Idaho 83642

Idaho Open Meeting Law Manual—Update

November 2011, the Office of the Attorney General updated the *Idaho Open Meeting Law Manual, Idaho Code §67-2340 through 67-2347*. To review the manual and/or print a copy, please go to: www.ag.idaho.

For further information, please contact:

State of Idaho
Office of the Attorney General
700 W. Jefferson St
PO Box 83720
Boise, ID 83720-0010
Phone: (208) 334-2400
Fax (208) 854-8071
www.ag.idaho

Idaho Counties Risk
Management Program (ICRMP)
3100 Vista Ave., Suite 300
Boise, ID 83705
Phone: (208) 336-3100
Fax (208) 336-2100
Email: intake@icrmp.org
www.icrmp.org



Fact Sheet

Adoption of the 2010 Standards for Accessible Design

The Department of Justice Has Adopted Revised ADA Standards

The Americans with Disabilities Act (ADA) requires the Department of Justice (the Department) to publish ADA design standards that are consistent with the guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). The Department has adopted revised ADA design standards that include the relevant chapters of the Access Board's 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of the Department's revised rules implementing title II and title III of the ADA. To minimize compliance burdens on entities subject to more than one legal standard, these design standards have been harmonized with the Federal standards implementing the Architectural Barriers Act and with the private sector model codes that are adopted by most States. The changes to the design guidelines were adopted by the Access Board as a series of separate rules that were combined in the 2004 ADA/ABA guidelines. These rules addressed recreation facilities, play areas, State and local government facilities (detention facilities and courthouses), and, finally, the revision of the Access Board's 1991 guidelines. These changes have been adopted, with some modifications, as the 2010 Standards for Accessible Design.

SUMMARY OF CHANGES

A. Recreation Facilities

1. Amusement Rides (Sections 234, 1002)

Many newly designed or newly constructed amusement rides must be accessible and located on an accessible route to the ride. However, amusement rides designed primarily for children, amusement rides that are controlled or operated by the rider (e.g., bumper cars), and amusement rides without seats, are not required to provide wheelchair spaces, transfer seats, or transfer systems, and need not meet signage requirements. That said, these rides must be on an accessible route and must provide appropriate clear space.

2. Recreational Boating Facilities (Sections 235, 1003)

If boat slips are provided at a boating facility, the minimum number that must be accessible depends upon the size of the facility. Accessible boat slips must be dispersed throughout the various types of boat slips.

Where boarding piers are provided at boat launch ramps, at least 5% (but no fewer than one) must be accessible. Gangways that are part of a required accessible route are to be accessible, subject to certain enumerated exceptions.

3. Exercise Machines and Equipment (Sections 206, 236, 1004)

At least one of each type of exercise equipment must be on an accessible route and must have a clear floor space positioned to enable an individual with a disability to use the equipment.

4. Fishing Piers and Platforms (Sections 237, 1005)

Newly designed, newly constructed, or altered fishing piers must provide accessible routes, subject to the same exceptions permitted for gangways. At least 25% of guardrails or handrails must be no higher than 34 inches and must be dispersed. Clear floor or ground space must be provided at each accessible railing, and turning space must be provided on the pier.

5. Golf Facilities (Sections 238, 1006)

Newly constructed and altered golf facilities must have either an accessible route or golf car passages with a minimum width of 48 inches connecting accessible elements and spaces within the boundary of the golf course. An accessible route must be provided to the golf car rental area, bag drop-off areas, and other elements that are outside the boundary of the golf course. One or two teeing grounds (depending on the total number provided) per hole must be

accessible.

If weather shelters are provided, a golf car must be able to enter and exit the shelters. Certain percentages of practice teeing grounds, practice teeing stations at driving ranges, and putting greens must be accessible.

6. Miniature Golf (Sections 239, 1007)

At least fifty percent of all holes on a miniature golf course must be accessible. These accessible holes must be consecutive, and they must be on an accessible route. The last accessible hole must be on an accessible route that connects to the course entrance or exit without going back through other holes.

7. Play Areas (Sections 240, 1008)

Play areas designed, constructed, and altered for children ages two and over in a variety of settings, including parks, schools, childcare facilities, and shopping centers, are covered.

Accessible ground and elevated play components, accessible routes, ramps and transfer systems (typically a platform or transfer steps), and accessible ground surfaces must be provided.

8. Swimming Pools, Wading Pools, and Spas (Sections 242, 1009)

Accessible means of entry/exit are required for swimming pools. Such accessible means of entry include a pool lift or sloped entry, and either a transfer wall, transfer system, or pool stairs. Wading pools must provide a sloped entry, and spas must provide a pool lift, transfer wall, or transfer system. Wave action pools, leisure rivers, and sand bottom pools where user access is limited to one area shall not be required to provide more than one accessible means of entry, either a pool lift, sloped entry, or a transfer system.

9. Saunas and Steam Rooms (Sections 241, 612)

Where provided, saunas and steam rooms must be accessible, having appropriate turning space, doors that do not swing into the clear floor space, and, where provided, an accessible bench. A readily removable bench is permitted to obstruct the turning space and the clear floor space.

B. Public Facilities

1. Detention and Correctional Facilities (Sections 232, 807)

At least one of each type of general holding cells, general housing cells, medical care facilities, and visiting areas must be accessible. In addition, at least one of each type of special holding cells or special housing cells also must be accessible. Also, at least one of each type of central holding cells, court-floor holding cells, and visiting areas in a judicial facility must be accessible.

2. Judicial Facilities (Sections 231, 807, 808)

Each courtroom must be accessible. Jury boxes, witness stands, and jury deliberation areas must be accessible. Judges benches and other employee work stations must be accessible, but raised courtroom work stations are not required to provide ramps or lifts at the time of construction as long as the space has been designed to permit the future addition of a ramp or lift without substantial reconstruction.

3. Residential Dwelling Units (Sections 233, 809)

This section establishes requirements for dwelling units provided by public entities subject to title II. For residential units that are also subject to the section 504 regulations of the Department of Housing and Urban Development, the standards defer to the HUD regulation for the scoping requirements. For all other units, at least 5% must be accessible to individuals with mobility impairments. In addition, at least 2% must be accessible to individuals with communications related disabilities.

C. Changes to the 1991 Standards

The 2010 ADA Standards for Accessible Design contain more than incremental changes. These changes are addressed in detail in Appendix B to the title III regulation and in the Department's regulatory impact analysis. A few examples of these changes are discussed below.

1. Reach Range Requirements (Section 308)

The reach range requirements have been changed to provide that the side reach range must now be no higher than 48 inches (instead of 54 inches) and no lower than 15 inches (instead of 9 inches). The side reach requirements apply to operable parts on accessible elements, to elements located on accessible routes, and to elements in accessible rooms and spaces.

2. Water Closet Clearances in Single User Toilet Rooms (Sections 603, 604)

In single-user toilet rooms, the water closet now must provide clearance for both a forward and a parallel approach and, in most situations, the lavatory cannot overlap the water closet clearance. The in-swinging doors of single use toilet or bathing rooms may swing into the clearance around any fixture if clear floor space is provided within the toilet room beyond the door's arc.

3. Assembly Areas (Sections 221, 802)

The design requirements for assembly areas have been revised to provide more specific guidance about the appropriate vertical and horizontal dispersion of accessible seating, sightlines over standing spectators, and the provision of companion seating. In addition, lawn seating areas and exterior overflow areas without fixed seats must now connect to an accessible route.

The scoping of seating in large facilities has been reduced. The incremental scoping for wheelchair spaces and companion seats required in assembly areas with fixed seating has been reduced. Under the 1991 Standards, incremental scoping for assembly facilities with more than 500 seats was one additional wheelchair space and companion seat for each increase of 100 seats. Under the 2010 Standards, facilities with 501 to 5000 seats must provide one additional wheelchair space for each additional 150 seats (or fraction thereof) and facilities with more than 5001 seats must one additional space for each 200 seats over 5001.

4. Common Use Circulation Paths in Employee Work Areas (Sections 203.9, 206.2.8)

Under the 1991 Standards, it was necessary to design work areas to permit an employee using a wheelchair to approach, enter, and exit the area. Under the 2010 Standards, it will be necessary for new or altered work areas to include accessible common use circulation paths within employee work areas, subject to certain specified exceptions.

5. Location of Accessible Routes (Section 206)

All accessible routes connecting site arrival points and accessible building entrances now must coincide with or be located in the same general area as general circulation paths. Also, where a circulation path is interior, the required accessible route must also be located in the interior of the facility.

6. Location of Accessible Routes to Stages (Section 206)

In situations where a circulation path directly connects a seating area and a stage (either a permanent or temporary stage), both title II and title III entities must now provide an accessible route that directly connects the accessible seating and the stage. However, where a direct circulation path from the seating area to the stage does not exist, a direct accessible route need not be constructed. This provision is in addition to the pre-existing requirement to provide an accessible route to connect the accessible seating and the stage and other ancillary spaces used by performers.

7. Direct Access Entrances from Parking Structures (Section 206)

Where levels in a parking garage have direct connections for pedestrians to another facility, all of these direct entrances must now be accessible.

8. Transient Lodging Guest Rooms (Sections 224, 806)

Overall scoping for guest rooms with accessibility features is unchanged, but the rules now limit the number of rooms where both communication access and mobility access features are provided. No more than 10% of the guest rooms (but not less than one room) required to provide mobility features may also be equipped with communication features. In addition, guest rooms with mobility features and guest rooms with communication features must be dispersed among the various classes of guest rooms, and shall provide choices of types of guest rooms, number of beds, and other amenities comparable to the choices provided to other guests. When the minimum number of guest rooms required is not sufficient to allow for complete dispersion, guest rooms must be dispersed in the following order - guest room type, number of beds, and amenities.

For more information: The final rule and this fact sheet are available in electronic format on the Internet at <http://www.ada.gov/>. For additional information or to order copies of any documents, call the ADA Information Line (800) 514-0301 (voice) or (800) 514-0383 (TTY). Copies will be available in accessible formats.

last updated August 3, 2010