

Park County Commission Meeting Minutes  
Week of October 5 – 9, 2009  
Park County, Montana

October 5, 2009

Review Daily Agenda and Correspondence

@8:50:23 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Malone and Taylor were present. Also present were Raea Morris, executive assistant; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to review the daily agenda and correspondence.

Correspondence included:

- Email from Center for Health Transformation - To Commissioner Taylor for review
- Employee work request order
- BLM News newsletter
- October 13 Board of Health agenda - To Taylor for review
- Heard Across Montana newsletter - To Commissioner Malone for review
- Memo re. after-action review of Flaming Arrow Fire
- The Commission reviewed two confidential letters

Commissioner Malone said he spoke with Montana Fish, Wildlife and Parks board member Dan Vermillion regarding a proposed buffalo fence project. Malone said a conference call is scheduled for October 14 at 10 a.m., with Attorney Susan Swimley regarding transfer of the Gardiner Sewer District. Commissioner Malone said he has a contract with an individual to redesign the county website. Civil Deputy County Attorney Shannan Piccolo said she will add a non-discrimination clause to that contract.

@9:00:51 a.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 5, 2009

Review of Minutes for Week of September 28, 2009

@10:12:42 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present was Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to review Commission meeting minutes for the Week of September 28, 2009.

Commissioner Durgan requested a revision to Page 6 of 22; the sixth full paragraph should read, "There was discussion about only allowing the Roundup Association to use the new ticket building until the restroom sewage system is solved." On Page 7 of 22; second full paragraph, the second sentence should read, "There was discussion about adjusting the law enforcement budgeted reserve amount, subtracting 2.0 mills from the Sheriff's Office budgeted reserves. Commissioner Durgan said he is not comfortable with making that change without first informing the Sheriff's Office. Commissioner Malone said he will talk to Sheriff Lutes about that proposal."

Commissioner Malone requested a revision to Page 3 of 22; last paragraph, the third sentence should read," City Manager Ed Meece said he thinks three years is a long time to go on a professional services contract."

Commissioner Durgan made a motion to accept the minutes for the Week of September 28 with corrections. Commissioner Taylor seconded that motion. Motion passed.

@10:22:44 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

October 5, 2009

Discussion of Budget Issues with Treasurer's Office

@10:38:19 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Kevin Larkin, treasurer; Martha Miller, auditor; Lani Hartung, finance; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss budget issues with the Treasurer's Office.

Treasurer Kevin Larkin said he is present to ask why he was not granted a part-time person after requesting one during the budget process. Larkin said he explained his need to the Commission and invited the commissioners to view his office's operations. Larkin said he feels he is a fair person and agreed to give back \$3,500 from his budget at the request of a Commission memo to department heads. Larkin said the balance between a recent retiree's and a new hire's salaries is gone from his budget and he does not know how that worked. Commissioner Taylor said those funds were spent. Larkin said wages for the proposed part-time individual should be offset with county option tax money. He said his office is the busiest county office in regards to the number of citizens it serves each day and the office is open through the lunch hour. He said he has only one individual at the counter during that hour and he would like two, and he and his chief deputy are left to process all taxes.

There was discussion about Larkin using a temporary or an existing part-time county employee for his stated needs. Larkin said he does not think many applicants would apply for a temporary position. Auditor Martha Miller asked if she could be available to help the Treasurer's Office, which would give her an opportunity to learn about the taxes.

Larkin said that would not work because he needs someone in the office every day to understand how the office runs and to learn the complex motor vehicle system, and he would like to start with a permanent, part-time person. Larkin said Miller would never use the state motor vehicle program. Miller said she thinks she would have availability on a daily basis and she may be available when other Treasurer's Office staffers are ill.

Larkin said he requests the Commission reconsider giving him a permanent, part-time employee. He said job sharing in the courthouse has been done before and it does not work.

Commissioner Malone said the Commission will seriously consider the proposal.

@11:02:06 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

October 5, 2009

Public Hearing for Abandonment of Smith/Jesson County Road

@1:30:10 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Philip Fletcher, planning; Shannan Piccolo, civil deputy county attorney; Hank Rate, surveyor; Fred Hall, LS/Jesson; Margie Jesson, LS/Jesson; Jane Tecca, LS/Jesson; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled as a public hearing to abandon the Smith/Jesson Road.

Civil Deputy County Attorney Shannan Piccolo said the petition meets legal requirements as long as alternative access to public land exists. Commissioner Malone said the road was viewed by a viewing committee. He said Montana Department of Transportation had an issue with abandoning a portion of the road under the interstate.

Planning Director Philip Fletcher said his report states the county does not have interest in the road under petition. He said abandoning the road to be used as part of a commercial parcel is consistent with the county growth policy language for the area and what the city of Livingston is doing for commercial growth in that area. Fletcher said the planning department feels no one's access will be cut off by abandoning the road in question and supports the petition for abandonment.

Fletcher said Surveyor Hank Rate's report brought up the idea of the county developing a policy to rate road abandonments with a value and consider under some circumstances charging a fee to landowners who benefit from a road abandonment.

Commissioner Durgan made a motion to approve the abandonment of the Smith/Jesson Road. Commissioner Malone seconded that motion. Motion passed.

@1:37:43 p.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 5, 2009

Discussion of Smoke Free Montana Bill Effective October 1, 2009

@3:04:48 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Shannan Piccolo, civil deputy county attorney; Peggy O'Neill, Park County Board of Health; Clare Lemke, Park County Tobacco Use Prevention Program; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss a Smoke Free Montana bill.

Peggy O'Neill, Park County Board of Health, said a function of the board of health is to uphold the Montana Clean Indoor Air Act (CIAA). O'Neill said the county is required to appoint a coordinator to deal with violation complaints of the CIAA, filling out paperwork and notifying complainants that action is being taken. O'Neill said she thinks it is up to the Commission to appoint the coordinator. Clare Lemke, Park County Tobacco Use Prevention Program, said many violations are not expected and she thinks the coordinator position should be an easy effort with template violation letters available online. Lemke said she is available to guide the coordinator through the process the first time.

O'Neill said she thinks it may take two hours to process a complaint letter, and she said possibly an employee in the environmental health department could serve as the coordinator. The Commission said it will approach the environmental health department about whether it is willing to take on the responsibility for the coordinator position. Commissioner Malone said Commissioner Taylor can take the letter to the next board of health meeting.

@3:33:22 p.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 5, 2009

Discussion of Gifted Property from Gardiner Citizen

@3:39:22 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Shannan Piccolo, civil deputy county attorney; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss gifted property from a Gardiner citizen.

Commissioners Durgan and Malone reviewed four parcels in question using geographical information system data. Civil Deputy County Attorney Shannan Piccolo said the county

should consider whether the property in question would be useful to the county before it accepts it, because the county must follow legal procedure to sell public property.

The Commission said it would wait for answers of quick claim deed questions and scheduled a public meeting for October 8 to make a decision to accept or deny the gift.

@3:58:13 p.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

#### October 5, 2009

6:30 P.M. – Special Fair Board Meeting – Park County Fairgrounds Office

#### October 6, 2009

8:30 A.M. – Commissioner Taylor at Montana Environmental Health Convention – Helena

#### October 6, 2009

##### Review Daily Agenda and Correspondence

@8:32:52 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Raea Morris, executive assistant; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to review the daily agenda and correspondence.

Correspondence included:

- Citizen public information request
- Memo from MACo re. weed boards - To county weed board for review
- Memo from FEMA to Commissioner Malone re. hydroelectric project and flood insurance maps - To planning department for review
- Memo re. Park County Water District Black Mountain Software transfer

Commissioner Durgan said he was invited by Sheriff Lutes to sit in on a union negotiation meeting with the Sheriff's Office.

@8:48:44 a.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

#### October 6, 2009

##### Park County Road Updates

@9:00:10 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Ed

Hillman, road supervisor; Shannan Piccolo, civil deputy county attorney; Lani Hartung, finance; Myron Kovash, citizen; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss county road issues.

Citizen Myron Kovash asked when the county will complete road work on Elkhorn and Rogers Lane and East Main Street in Gardiner. Kovash said it has been two years since East Main Street was patched.

Finance Director Lani Hartung provided the Commission with an update of the road department budget. Hillman said he only signs off on purchase orders and does not sign claims other than for fuel and utility bills per a former commission directive. He said Mechanic Dan Hackman has been signing claims since Hillman came back on the job. Commissioner Durgan said the Commission will have a new directive prepared for him.

Hillman said Nittany Grantworks is working on a grant from 3M to buy 1,500 to 2,000 retro-reflective signs for Park County. Hillman said he has two crewmen entering all county sign data into a spreadsheet for that grant.

@9:28:03 a.m., Durgan adjourned the meeting.

October 6, 2009

Human Resources Updates

@9:33:06 a.m., Vice-Chairman Durgan called a meeting to order in the Commissioners Chambers. Present were Jill Ouellette, human resources; Shannan Piccolo, civil deputy county attorney; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to update the Commission about human resources issues.

Human Resources Analyst Jill Ouellette presented the Commission with employee change of status forms for signature. Ouellette said she has not heard back from the Commission about new pay scales she drafted from the 2005 wages with COLA increases. Ouellette said she drafted an Excel document for the Commission notifying them when their employee performance appraisals are due. She said she went through the last 24 pay periods she worked and copied the timesheets for Commission review.

Ouellette provided a report of work she completed over and above her regular duties in the HR office. Tasks included submitting a bill for a drug testing consortium; working with the Sheriff's Office for preliminary and final approval for authorization to work in the courthouse; working on a disciplinary issue for an employee in an elected official's office; working on a mandatory court order for an employee payroll; working on fairgrounds caretaker position interviews; working on Sheriff's Office longevity pay reports; working on a health benefits issue for a former employee and answering questions for the museum board.

Ouellette said a part-time Cooke City green box caretaker will work again this winter, she will work with the auditor on uniform allowance tax issues, and reasonable doubt testing was given to employees with commercial driver's licenses. She said Owen Voigt from MACo HealthCare Trust was present in the building to answer questions on October 1 and rejection letters for a fairgrounds groundskeeper position were drafted.

Addressing two confidential memos Ouellette submitted to the Commission, Ouellette said because she has been asked by the Commission chair not to approach the commissioners on an individual basis, employee appraisals have been put off, which does not assist morale in a positive way. She said the county needs a more effective system to set up and complete employee appraisals, as there are morale issues that should not be dragged on and on.

@10:00:27 a.m., Durgan adjourned the meeting.

#### October 6, 2009

10:00 A.M. – RC&D Board Meeting – Farm Bureau Conference Room – Commissioner Malone attended

10:00 A.M. – Union Negotiations – West Room – Commissioner Durgan attended

10:00 A.M. – Yellowstone Business Partnership Transportation Co Op Study – Community Room – Commissioner Durgan attended

#### October 6, 2009

##### Discussion of County Travel Policy

@1:30:10 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Shannan Piccolo, civil deputy county attorney; Lani Hartung, finance; Martha Miller, auditor; Camden Easterling, Livingston Enterprise; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss the county travel policy.

Finance Director Lani Hartung said every department is treating the county travel policy differently and she would like to know how the accounting office should address travel issues. Hartung and Commissioner Malone read into the record rules of interpretation and Montana Code Annotated on the topic. Hartung said some employees are claiming meal allowances in Cooke City, Gardiner, and Bozeman when in those cities over the lunch hour.

Civil Deputy County Attorney Shannan Piccolo said she will read statute on the issue and make a legal opinion.

There was discussion about use of a travel authorization form and the need to discuss it at a department head meeting. There was discussion about use of county motor pool vehicles in lieu of personal vehicles.

@1:58:02 p.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 6, 2009

Discussion of Hubbard-Wascom Exemption Denial Appeal

@2:01:14 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor (via telephone) were present. Also present were Shannan Piccolo, civil deputy county attorney; Philip Fletcher, planning; Mike Inman, planning; Barney Hallin, surveyor; Jim Hubbard, citizen; Judy Hubbard, citizen; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss a Hubbard-Wascom exemption denial appeal.

Senior Planner Mike Inman said the Hubbard-Wascom exemption request for relocation of common boundary was denied under Park County Subdivision Regulations Chapter 5; Section E-1: D #2, which states, "use of exemption is presumed to have been adopted for the purpose of evading the Montana Subdivision Platting Act if the proposed relocation creates a parcel of less than 160 acres which prior to relocation included more than 160 acres." Inman said the issue with the rebuttable presumption was implemented to prohibit a landowner to survey parcels greater than 160 acres, resurvey them with boundary relocations and make tracts of record that never go through subdivision review.

Ranch Owner Jim Hubbard said he has owned his ranch for 35 years without selling a parcel, and his goal for his 4,000-acre ranch is to sell a few parcels in order to raise money for his kids and provide a cushion so they will not have to sell the ranch under adverse conditions.

Surveyor Barney Hallin said the owner is proposing a covenant on the larger remaining parcel which would only allow a future owner of the parcel to subdivide it two times without going through county subdivision review. Civil Deputy County Attorney Shannan Piccolo said that proposal would prohibit an individual to do something permitted under state law, and the county cannot enforce or support such a provision.

Planning Director Philip Fletcher said it seems to him there may be a reasonable chance to work out a solution to the boundary relocation effort. He said the planning department will come up with options for Hubbard to consider, and suggested Hubbard present language to address the rebuttable presumption or hire a private attorney to determine whether a deed restriction or covenant can accomplish what Hubbard is attempting to do. Fletcher said the Commission will have to rely on legal advice from the civil deputy county attorney if differences exist after both sides present information.

@2:48:19 p.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

October 6, 2009

City/County Meeting

@4:03:40 p.m., City Commissioner Mary Beebe called a meeting to order in the Community Room of the City/County Complex. County Commissioners Durgan and Malone were present. City Commissioners Mary Beebe, Steve Caldwell, and Julianne Jones were present. Also present were Ed Meece, city manager; Martha Miller, auditor; Jerri Miller, airport board; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss joint city/county issues.

City Commissioner Mary Beebe opened the floor to public comment. None made.

Discussion of Joint Funding of Capital Projects at Airport (Snow Plow and Building): Airport Board Member Jerri Miller said the airport is required to draft a new layout plan for the airport by 2010 per Federal Aeronautics Association (FAA) funding requirements. Miller said the airport needs a new plow truck and storage building and is currently getting architectural designs for such a program at the airport. Miller said this is the first year the FAA agreed to fund snow removal and snow removal equipment buildings at a rate of 95 percent of \$350,000. Miller said the FAA funding has not yet been received and the city and county would have to make up the \$17,000 remaining cost.

Commissioner Durgan said the airport mechanic said he is unsure how long he can keep the current snow plow in service, and City Fire Warden Doug Laubaugh said the decision to fund the project is a “no brainer” and needs to be done. Miller said the airport board budgeted for a \$150,000 improvement needed this fiscal year.

The city and county commissions said they would strongly consider providing the needed remaining funds. Miller said the airport board will attend individual commission meetings to request those funds.

Parking Situation with Sale of Old East Side School Building: No report

Community Center Feasibility Study: Commissioner Malone said the county commission has not made a decision whether to provide funds for the feasibility study. Malone said the county would like to be involved in the architectural design of the building to ensure it is not over the top.

City Employee on County Safety Committee: Malone said the county has stepped up its safety program to address safety issues in the courthouse and typically had a city employee on the county safety committee. City Manager Ed Meece said the city will appoint an individual to sit on that committee.

Discussion of Montana Clean Maintenance Contract: Malone said the county has discussed entering into a one-year contract with Montana Clean, and there has been discussion janitorial work may be done in-house based on the amount of the bid from Montana Clean. There was discussion to create a joint contract between the city and county for janitorial services. Meece said double checking Montana Clean's work is necessary because it has been spotty at times. Malone said complaints about janitorial work are to be routed through the county commission executive assistant and Pam Payovich with the city.

Other Business: Meece said a monitor in Dispatch will enable surveillance of the emergency backup generator.

No additional public comment made. The next city/county meeting is scheduled for November 3, 2009 @ 4:00 p.m. in the Community Room.

@4:36:15 p.m., the meeting adjourned.

October 7, 2009

8:30 A.M. – Commissioner Taylor at Montana Environmental Health Convention – Helena

October 7, 2009

Review Daily Agenda and Correspondence

@8:57:24 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Raea Morris, executive assistant; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to review the daily agenda and correspondence.

Correspondence included:

- Memo from floodplain administrator re. Heart K Ranch project findings of fact
- Memo from Allied Waste Management Inc. - To Commissioner Taylor for review
- Memo from Transportation Commission re. approved federal projects
- Commission postage meter log
- Memo from Montana Clean re. contract length
- Memo re. expiration of courthouse elevator inspection certification
- Legal opinion to Commission from civil deputy county attorney

@9:16:08 a.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 7, 2009

9:00 A.M. – Claims Review – Commissioners Chambers

October 7, 2009

Discussion of Parking and Septic Issues and Options for County Noise Ordinance near Pine Creek

@10:30:31 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Shannan Piccolo, civil deputy county attorney; Mike Inman, planning; Allan Lutes, sheriff; Dann Babcox, PCRFD#1; Citizens Kevin Funk, Allan Chase, Jessica Chase and Dean Gilbert; Camden Easterling, Livingston Enterprise; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss parking and septic issues and options for a county noise ordinance near Pine Creek.

Pine Creek Citizen Kevin Funk said he is present to inform the Commission about parking and noise issues local residents are having to deal with in Pine Creek due to live music at the Pine Creek Cafe. Funk said a person reaches a point when he decides he will not take something any longer when he has been victimized, and he is 100 percent at that point. Funk said the parking issue of cars parked on both sides of East River Road at the Pine Creek Café is a total mess for immediate residents of Pine Creek and anyone who passes through it, which is creating a dangerous situation for people parking in and passing through Pine Creek. He said an area 18 feet from the centerline is owned by the state, and the only thing he can think of is to put “No Parking” signs all the way through Pine Creek. Funk said Pine Creek Cafe has taken no responsibility for the parking issue, and someone will be hurt eventually, and that is a liability for the county and a cost to county taxpayers. Funk said Citizen Howard Carter is offering parking for cafe events, so no parking through Pine Creek would not affect or be a hardship for the business.

Dann Babcox of Park County Rural Fire District #1 said East River Road is a state highway, but Pine Creek Road is a county road and the situation is bad. Babcox said clearance to get around the corners with emergency vehicles is a problem when cars are parked on both sides of the road. Babcox said he is asking for “No Parking” signs for the area.

Commissioner Malone asked Funk how “No Parking” signs would affect the Methodist Church’s harvest auction. He said the Commission must look at county roads as a whole, and Gardiner and Wilsall also have parking issues, but he agrees businesses need to take some responsibility.

Commissioner Durgan said he understands Funk’s concern because he has seen the issue firsthand, but East River Road is a state highway and the county does not have

jurisdiction over that road. He said the Montana Department of Transportation would have to be contacted about any “No Parking” signs on that road.

Funk said he will take the issue to the state and to the bitter end if the county has no jurisdiction to help him. He said he will get no parking through Pine Creek one way or another. He asked who put up existing no parking signs in Pine Creek. Citizen Allen Chase said he saw the county put up those signs.

Senior Planner Mike Inman said Ned Shapiro’s sister telephoned him a few weeks ago asking whether there is any zoning or parking restrictions in the Pine Creek Café area. Inman said Funk was parking his dump truck with a backhoe and trailer in front of the café for multiple days at a time in an area designated for diagonally parking, which required Pine Creek patrons to find parking elsewhere. Inman said he informed the caller no zoning exists in the county enabling the planning department to take any action on the matter. Inman said he informed the caller to telephone the Sheriff’s Office about the parked dump truck, and that office responded asking Funk to move the truck, which he did but honked his horn from across the café for extended periods of time. Inman said he agrees there are parking issues in Pine Creek, but there are two sides to the story.

Sheriff Allan Lutes said the sheriff’s office issue is not to legislate or decide where to legislate but is strictly enforcement of anything existing put up by a lawful entity, such as a no parking sign erected by the state, or if individuals park out on the actual road. Lutes said East River Road is a state highway, so there needs to be some reckoning who will set up the code or the restrictions. Lutes said the only thing the sheriff’s office can do is enforce the existing restrictions and take appropriate action on them. He said he realizes problems exist there and it is frustrating, but the Sheriff’s Office cannot make rules and can only enforce what is in place. Lutes said he agrees something needs to be done for safety purposes.

Malone said the county needs to determine whether there is a safety issue and whether the county has the authority to do something. Malone said he will check on a supposed no parking ordinance in Pine Creek.

Discussing a noise ordinance in regards to the Pine Creek Café, Funk said he is feels like a victim and is he victimized every time the café is playing music loudly on summer weekends. He said he does not have the same rights as everyone else because he cannot use his deck due to the noise and sometimes he must close windows at night so his children can sleep.

Funk said the county wasted its time in attempt to curb the noise from the café and it did not stop the loud music. Funk said currently the county sheriff’s office cannot do anything about the music and he wants a noise ordinance to shut down the live music outside. He said he will not put up with the issue next summer and either a noise ordinance is established or there will be a lot more going on out there than there is now. He said people have been killed over issues like this, and he guarantees that a victim will figure out something to do about an issue. He said something is needed for law

enforcement to protect the victims and the violators. Funk said the county could contact other counties or the city to learn of their noise ordinances.

Commissioner Durgan said one has to be careful about what he wants, as it cuts both ways in a rural area. He said if he is working his cattle and they are bellowing or he is running his tractor harvesting crops or working late at night or someone does not like him spraying his crops with an airplane in the early morning, then that affects his operation too and how he runs his business. Durgan said he is sympathetic because he has heard a music ranch 1.5 miles away from his home.

Funk said the café noise is out of the ordinary. Funk said many people really don't care about the music and put up with it, but when someone is a victim and trying to get people to stand up and help, the county attorney has been no help. He said he is not trying to stop everyday life, but he wants the same rights everyone else has when he goes home at night. Funk said he will work very hard to work on a noise ordinance, and people need common sense with noise of barking sheep herding dogs and ranching operations.

Malone said the issue is a slippery slope. He said dogs bark, truckers hit Jake brakes on the highway, ranchers run tractors, and a decay ordinance was tried and did not go over well. Malone asked how an ordinance would be written so the rodeo, a music fest, sirens from law enforcement or starting a truck without a muffler does not fall under the ordinance prohibitions. Funk said a perfect noise ordinance is not practical. He said other counties have ordinances and he is prepared to work with whomever the ordinance will affect to get one in Park County.

@ 11:04 a.m., Undersheriff Scott Hamilton entered the chambers and provided Commissioners Durgan and Malone with a complaint and waiver and agreement to defer prosecution through justice court dated November 7, 2008, for review. Hamilton said the Sheriff's Office received a citizen complaint about Pine Creek Café noise with 18 attached written complaints from local citizens.

Civil Deputy County Attorney Piccolo said the county must be careful to make an ordinance broad enough so it does not spot zone an area or apply the ordinance to one business that rightfully can do what it wishes with its property.

Chase said he lived in Natrona County, Wyoming, and that state has a noise ordinance that goes into effect at 10 p.m., after which a certain decibel cannot be surpassed. Chase said outdoor activities in Wyoming required a permit from the county. Commissioner Durgan said the county can check into that ordinance.

Funk said the café has other options if a noise ordinance were implemented. He said the café would cry hardship, but it can move the music indoors. He said he wants a county-wide noise ordinance because he knows how important it is to have a noise ordinance and he does not want other people victimized. Funk asked the Commission if it understands how volatile the situation is getting in Pine Creek. He said if the music were played once

or twice a month, the citizens would not be here for the current meeting, but the situation has gotten totally out of hand and there is no middle ground whatsoever.

Funk said he contacted the liquor licensing department in Helena and it is investigating the café, and the café could be in violation of its license for serving liquor outside. He said he has talked to the fire marshal, and Funk will hold the café to the capacity of that building. He said it will be full blown war out there and he will do everything within his means.

Malone said the Commission will go slowly in investigating the ordinance issue so it does not make a mistake on the matter.

Funk said he was concerned about Pine Creek Cafe's septic system. He said he is concerned the café has no extra restrooms for large crowds, but there is no issue with septic because the café is up to code.

Public comment was made by Citizen Dean Gilbert. Gilbert said Adair Creek Road has many blind corners and asked if they could be reduced to accommodate semi truck traffic on the road. Undersheriff Hamilton said a patrolman will drive the road with a video camera and provide that visual for Commission view.

@11:24:10 a.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

#### October 7, 2009

3:00 P.M. – Parks and Recreation Board – West Room – Meeting minutes available at [www.parkcounty.org](http://www.parkcounty.org) and in the Planning Department

#### October 8, 2009

8:30 A.M. – Commissioner Taylor at Montana Environmental Health Convention – Helena

8:30 A.M. – Safety Meeting – Commissioners Chambers

#### October 8, 2009

##### Decision of Gifted Property in Gardiner

@9:32:31 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Shannan Piccolo, civil deputy county attorney; Scott Hamilton, undersheriff; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to decide whether to accept gifted property in Gardiner.

Commissioner Malone said the taxable income on the four parcels in Gardiner offered by Paul Pugh of Portland, Oregon, is approximately \$230 per year.

Civil Deputy County Attorney Piccolo said it is within the county's rights to accept the gifted properties. Undersheriff Scott Hamilton said he is familiar with where the parcels are located. He said he does not see any problem with the county accepting the parcels, but said he would not give an opinion on one parcel adjacent to land owned by a family member.

Commissioner Durgan made a motion to accept the gifted properties in Gardiner offered by Mr. Pugh. Commissioner Malone seconded that motion. Motion passed.

Malone said he will send an email to Mr. Pugh notifying him of the decision and speak with Guardian Title about their efforts in the matter.

@9:44:51 a.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 8, 2009  
Personnel Meeting

@10:00:01 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Jill Ouellette, human resources; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to address a personnel issue.

Human Resources Analyst Jill Ouellette requested the meeting close to the public. Commissioner Durgan made a motion to close the meeting. Commissioner Malone seconded that motion. The meeting closed.

@11:08:38 a.m., the meeting adjourned.

October 8, 2009

10:00 A.M. – Local Emergency Planning Committee – Community Room – Postponed to October 15, 2009

October 8, 2009  
Discussion and Approval of School Budget for Fiscal Year 2010

@11:22:10 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Ed Barich, superintendent of schools; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to consider approval of the school budget for Fiscal Year 2010.

Superintendent Ed Barich provided the Commission with a document, *Certification of District and County Mill Levies for School Year 2009-2010* for review.

Commissioner Durgan made a motion to accept the school budgets for 2010. Commissioner Malone seconded that motion. Motion passed.

@11:35:51 a.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 8, 2009

12:00 P.M. – Commissioner at Livingston Community Trust Meeting – Adagios Restaurant

October 8, 2009

Public Hearing to Consider Venus Heights Subsequent Minor Subdivision Preliminary Plat Application

@1:04:41 p.m., Chairman Malone called a meeting to order in the Community Room of the City/County Complex. Commissioners Durgan and Malone were present. Also present were planning department personnel Philip Fletcher and Mike Inman; Civil Deputy County Attorney Shannan Piccolo; Citizens William Smith, Edward Anderson and Pouwel Gelderloos; and Commission Minutes Clerk John Mueller.

The meeting was scheduled as a public hearing to consider a Venus Heights Subsequent Minor Subdivision preliminary plat.

II. Conflict of Interest: None reported.

III. General Public Comment: None made.

IV. Venus Heights II Subsequent Minor Public Hearing

a. Brief Introduction of Proposal by Chair: None made

b. Subdivision Administrator Report: Subdivision Administrator and Senior Planner Mike Inman provided the Commission with a history of the four-lot subsequent minor subdivision application, which extends back to February 2005. Inman said the subdivision was put on hold and resubmitted in summer 2009, but the subdivision still falls under and must be reviewed under the 2005 county subdivision regulations.

Inman provided the Commission with a written staff report he said was in part drafted from the planning board report submitted at the time of the subdivision application. Inman said he listened to audio tapes of previous hearings for the subdivision, as those hearings were held prior to his employment with Park County. Inman said in reviewing those audio recordings he never heard the board or staff grant approval of improvements

to the road. Inman said he recommends denial of the subdivision based on the issue the developer made improvements to the subdivision road prior to final plat approval by the governing body. Inman said that work was documented in a report by the former planning director per General Review Procedures: 1A - Construction Procedures – which states improvements cannot be made in advance of approval, and Commissioners' Approval Requirements, which state the governing body shall disapprove any subdivision not in compliance with those regulations. Inman said the subdivision, if approved, would not be in compliance with the county's regulations.

c. Developer Presentation: Engineer William Smith said Inman is focusing on an aspect that is just one small piece of a mosaic. He said property owner Edward Anderson put a road in before subdivision of the property was ever contemplated. He said presentations to the planning board and Commission were never an attempt to have the road viewed as is. Smith said the planning board and Commission in 2005 had the opportunity to address the issue Inman is having and they did not. Smith asked the Commission to look at engineered drawings of the profile of the road and proposed and existing road grades. He said there are substantial changes to the road as required by the drawings, and the applicant would like to have the road accepted as is. He said the applicant is not asking to change anything about the road that was submitted to the planning board or data to which the board based its approval.

Landowner Edward Anderson said he was under the understanding he would be told by the county how the road was to be built when he put in a water line. He said in adding the water line, he was doing what he said he would do for the first subdivision, and work below was no attempt for the Commission to make an as-built determination. Inman read into the record comment from Former Planning Director Jackie Robbins, which stated the subdivision's top lot was not approved due to the condition of the road, and the landowner was not to make any improvements to the road until that lot was approved for development. Inman asked Anderson if he improved the roads with the turnarounds in order to put in a well on the top lot. Anderson said part of the project in putting in the well was to do the road. Inman said the issue of making road improvements prior to approval was brought up in previous hearings, but was not made out to be a big issue. He said it was simply stated and neither the planning board nor the Commission took action on the matter.

D. Public Comment on Proposal: Citizen Pouwel Gelderloos said his property abuts Anderson's lots and he would like easements to the canyons from Anderson's roads to do fuel reduction and fight any fires that may occur. There was discussion about local fire service use of the subdivision road and whether such an easement was possible or desired.

Inman said Paradise Valley Fire Chief Mike Graham said he was in favor of granting an 8-percent road grade variance requested by the applicant, but he took that back because he did not realize how long the 10-percent grade would stretch. Inman said Graham said he would only approve the road if it was a certain width and met multiple other criteria.

Smith said he has never waived from the fact a 10-percent waiver is what was requested.

E. Public Comment Related to Water and Sanitation: None made

F. Close Public Hearing: @ 1:54:55 p.m., Malone closed the public hearing.

G. Commission Discussion of Proposal, Public Comment, and Relevant Information: Civil Deputy County Attorney Piccolo said the Commission must determine whether evidence shows road improvements were done after the application was submitted and before approval was granted and for the purpose of the subdivision, or whether it was created for the purpose of putting in a well on the top lot. Piccolo said the applicant has the ability to resubmit the application under the new subdivision regulations.

Inman said he does not know how much time remains before the application's 45-day review period expires.

Commissioner Durgan said all three commissioners visited the site in question on a site visit, and at this time he feels like all three commissioners should be in on a decision, which it cannot do without Commissioner Taylor present. Durgan said he would like to take the matter under consideration until such time Taylor is present to discuss and understanding the Commission has to make findings of fact. Commissioner Durgan made a motion to recess the meeting until October 14 at 1:00 p.m., to consider a decision on the subject. Commissioner Malone seconded that motion. Motion passed.

@2:10:19 p.m., Durgan made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

October 8, 2009

4:00 P.M. – Discussion and Decision regarding Closure of Road in Wilsall for Filming Company – Commissioners Chambers – Canceled

October 9, 2009

Review Daily Agenda and Correspondence

@8:54:56 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Raea Morris, executive assistant; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to review the daily agenda and correspondence.

Correspondence included:

- PCRFD#1 daily status report

- Memo from Beaverhead County re. counties receiving SRS monies
- October 15 Solid Waste Board Agenda
- Memo from Extension re. diagnostic leaf scorch report for courthouse trees
- Memo re. East Boulder Mine closure
- Citizen memo re. violation of illegal outhouse - To Commissioner Taylor for review
- Memo re. Flying Pig loading zone meeting
- Memo from GIS/IT department re. October 15 telephone training refresher meeting
- Memo from planning re. server pathway for Venus Heights pictures
- October 13 fair board agenda - To Commissioner Durgan for review
- Memo from Gallatin Valley Land Trust
- Memo re. Miller family transfer denial appeal
- Memo from Montana FWP re. bison management fence proposal
- Memo re. Job Service meeting announcement - To Commissioner Malone for review
- Citizen memo re. museum director
- Memo re. Gallatin National Forest project listing
- Memo from Granite Enterprises re. merger
- Memo from Montana Clean re. contact information
- Memo re. road and bridge department teamsters agreement
- Memo re. GIS/IT department job description
- Memo re. union negotiations
- Legal advice to commission from civil deputy county attorney
- Memo from IT Department re. server updates

Commission Durgan said he contacted the road supervisor to clear up a road permit misconception for a driveway into the Rocky Mountain Campground in Gardiner. Durgan said Weed Manager Clay Williams will address a weed issue near the campground.

@9:15:41 a.m., Taylor made a motion to adjourn the meeting. Durgan seconded that motion. The meeting adjourned.

October 9, 2009

Signing of Contractual Provision of the J & H, Inc. Perpetual Maintenance Agreement

@9:31:50 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Shannan Piccolo, civil deputy county attorney; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to sign a contractual provision of a J&H Inc. perpetual maintenance agreement.

Civil Deputy County Attorney Shannan Piccolo said the perpetual maintenance agreement would last for the life of the county's large copy machine. Piccolo said IT Manager Marc Richards recommended the services of J&H for that copier.

Commissioner Durgan made a motion the Commission accept the contract. Commissioner Taylor seconded that motion. Motion passed.

@9:35 a.m., the meeting adjourned.

October 9, 2009  
Personnel Meeting

@10:02:01 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Julie Hogg, clerk and recorder's office; Jill Ouellette, human resources; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to address a personnel issue.

Julie Hogg of the clerk and recorder's office requested the meeting close to the public. Commissioner Durgan made a motion to close the meeting. Commissioner Taylor seconded that motion. The meeting closed.

@10:20 a.m., the meeting adjourned.

October 9, 2009  
Discussion of Heart K Ranch Floodplain Issues

@10:30:27 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Shannan Piccolo, civil deputy county attorney; Philip Fletcher planning; Kerry Fee, citizen; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss a Heart K Ranch floodplain issue.

Floodplain Administrator Philip Fletcher said the position of the county floodplain administrators is straight forward. Fletcher said many violations were made by the Heart K Ranch in deviating from a conditionally approved floodplain permit, and the ranch admitted to those violations. Fletcher said the question is what the penalty should be since everyone agreed the ranch violated the terms of the permit. Fletcher said Section 412 of the county floodplain regulations permits the Commission to assess any penalty for the violation. He said ranch personnel provided no settlement offers to the floodplain administrators.

Commissioner Malone read into the record findings of fact drafted and submitted by Co-Floodplain Administrators Fletcher and Barbara Woodbury.

Citizen Kerry Fee requested a copy of the civil deputy county attorney's legal opinion on the issue. Fee was told he would have to fill out a public information request. Fee said the former owner of the Heart K Ranch property would let the ranch sheet over with high water. He said he and John Bailey agree the river will now stay on the side of the rip rap due to the Heart K Ranch floodplain project, which will create a channeling effect and lower the river over time. He said that may affect the current head gates, which may require manipulation of the river in the future to enable water to enter the head gates.

Commissioner Durgan said the landowner did not mess with the bank of the river per se, but it appeared the river may make a channel behind the head gates.

The Commission said it would schedule a public meeting with Heart K Ranch officials present to decide on the matter. Commissioner Taylor made a motion to try to schedule another meeting at the Heart K Ranch's convenience. Commissioner Durgan seconded that motion. Motion passed.

@10:56:19 a.m., Taylor made a motion to adjourn the meeting. Durgan seconded that motion. The meeting adjourned.

October 9, 2009

Opening of Bids for Park County Senior Center Project

@1:01:06 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Shannan Piccolo, civil deputy county attorney; Martha Miller, auditor; Julianne Brown, RC&D; Chad Warhank, Kenyon Noble Lumber; David Mortye, Beartooth Electric; Park County Senior Center Representatives Rick Van Aken, Barb Williams, and Les Williams; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to open bids for a Park County Senior Center Project.

Commissioner Malone opened sealed bids received in the clerk and recorder's office prior to the bid deadline. Bids included:

Cucancic Construction: Base bid: \$1.2 million; Deductive Alternative #1: Remodel Cashier and Business Office Area; \$6,179 Alternative #2 Remodel of Main Street Stair Entry: \$7,212; Alternative #3: Remodel of Second and Third Floor Living Unit Entrance Doors: \$8,358; #4: Addition of Janitor Sink and New Plumbing in Room 114: \$1,846; Alternative #5: Electric Service/Entrance Revisions: \$38,232

MBA Construction: Base bid: \$987,800; Alternative #1: \$3,900; Alternative #2: \$8,600; Alternative #3: \$5,000; Alternative #4: \$3,700; Alternative #5: \$52,000

Spring Corporation: Base bid: \$893,000; Alternative #1: \$8,900; Alternative #2: \$8,500; Alternative #3: \$4,500; Alternative #4: \$1,750; Alternative #5: \$60,000

R&R Taylor Construction Incorporated: Base bid: \$973,500; Alternative #1: \$15,654; Alternative #2: \$11,090; Alternative #3: \$1,004; Alternative #4: \$1,718; Alternative #5: \$42,000.

Walker Construction Inc.; Base bid: \$1,350,000; Alternative #1: \$5,000; Alternative #2: \$5,000; Alternative #3: \$5,000; Alternative #4: \$1,000; Alternative #5: \$3,000. The bidder submitted a modified bid form with a modified base bid: \$432,000 deduction; Alternative #1: \$3,491 addition; Alternative #2: \$4,915 addition; Alternative #3: \$2,378 addition; Alternative #4: \$340 deduction; Alternative #5: \$56,904 addition.

Fisher Construction; Base bid: \$3,000,000; Alternative #1: \$0, Alternative #2: \$0. The bidder submitted a modified bid form with a modified base bid: \$1,916,000 deduction; Alternative #1: \$12,500 deduction; Alternative #2: \$32,000 deduction; Alternative #3: \$7,600 deduction; Alternative #4: \$2,000 deduction; Alternative #5: \$39,100 deduction.

The Commission said it will review the bids for compliance, provide the bids to the Senior Center and RC&D, and a decision will be made at a future public meeting.

@1:24:49 p.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

Marty Malone  
Chairman, Park County Commission  
Park County, Montana

Denise Nelson  
Clerk & Recorder  
Park County, Montana