

Park County Commission Meeting Minutes  
Week of January 11 – 15, 2010  
Park County, Montana

January 11, 2010

Review of Daily Correspondence and Agenda

@8:35:40 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:

- Gallatin Valley Land Trust newsletter - To Commissioner Durgan for review
- Memo from union negotiator re. longevity pay issue - To Durgan for review
- Memo re. January 14 special SWB meeting
- Memo re. December 15 Livingston Community Trust meeting
- Memo from planning director re. grants committee meeting
- Memo from Nittany Grantworks re. NFWF support for Fleshman Creek Project
- Memo from MACo re. SRS forest payments - To finance director for review
- Memo from RC&D re. HOME grant funds
- Commission correspondence logs - To Durgan for review
- Memo from LTAP re. winter maintenance course
- Museum board member application
- Memo from MRL re. transfer station lease - To Taylor for review
- Envirocon certificate of insurance - To Taylor for review
- Memo from Liquid & Gas Pipeline Association - To DES Coordinator for review
- Commission postage log
- Memo from LTAP re. web-based transportation courses

Executive Assistant Raea Morris said the Records Retention Committee will conduct an onsite viewing of the fairgrounds storage Quonset hut at 1:30 p.m. today.

@8:55:06 a.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

January 11, 2010

Review of Minutes for Weeks of December 28, 2009 and January 4, 2010

@9:56:47 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 approve minutes for the Weeks of December 28, 2009 and January 4, 2010.

Reviewing meeting minutes for the Week of December 28, 2009, Commissioner Durgan requested a revision to Page 6 of 8; a bulleted item should read, "Receipt from Park Electric for \$900 re. sheriff's shack rental at Myer's Flat."

Commissioner Taylor made a motion to accept the minutes from the Week of December 28. Commissioner Durgan seconded that motion. Motion passed.

Reviewing meeting minutes for the Week of January 4, 2010, Commissioner Durgan requested a revision to Page 7 of 10; second full paragraph, the last sentence should read, "Woodbury said the grounds need septic systems for the new rabbit and poultry barn and rodeo ticket office, but there is inadequate space to do anything with drain fields, and some existing drain fields are not adequate in size." The first sentence of the fourth full paragraph should read, "Commissioner Durgan said a cost comparison of possible routes for sewer lines from the city sewer system to the fairgrounds via H Street and Saint Mary's School could be submitted to the city for a bid." The last sentence of the fifth full paragraph should read, "The Commission said the \$20,000 facilities improvement funds could be available for requests for proposals."

Commissioner Malone requested a revision to Page 4 of 10 third paragraph, the first sentence should read, "Human Resources Jill Ouellette said she is working on two potential job abandonment issues, one in the health department area and a second in a courthouse office, and will have a document for Commission signature on January 7."

Commissioner Taylor made a motion to accept the minutes for the Week of January 4. Commissioner Durgan seconded that motion. Motion passed.

@10:04:26 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

January 11, 2010

Public Hearing Regarding Budget Amendment Resolution for Road Department and Emergency Disaster Funds

@10:04:55 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Lani Hartung, finance; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled as a public hearing regarding a budget amendment resolution for road department and emergency disaster funds.

Finance Director Lani Hartung said the proposed resolution addresses a lease payoff for four road graders through the road department budget instead of a Burlington Northern settlement fund per the external auditor's suggestion, and a transfer-out is conducted once a year for the Emergency Disaster Fund.

Commissioner Durgan made a motion to approve Resolution #1075 presented by the finance officer amending the appropriations for Fiscal Year 2009/10 for the road fund and emergency disaster fund. Commissioner Taylor seconded that motion. Motion passed.

@10:08:02 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

### January 11, 2010

3:00 P.M. – Angel Line Board – West Room – Meeting minutes available in the Commission Office

### January 12, 2010

#### Review of Daily Correspondence and Agenda

@8:55:49 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:

- Memo from finance director re. computer software associates access - To IT Manager for review
- Memo from Senior Planner re. Shields River Bluff Subsequent Minor Subdivision extension meeting
- Memo re. March 10 County Weed Management Board meeting
- Memo from MT 6th Judicial Court re. order for withdrawal of counsel
- Memo from planning director re. Community Development Office name change
- Memo from Teamsters Local re. Clouse agreement payment
- Memo re. Montana base mapping boundaries workshops
- Certificate of liability insurance for Oasis Environmental
- Memo from Park Electric Cooperative re. tree trimming and powerline issues
- Memo from SWB member re. commercial refuse assessments - To Commissioner Taylor for review
- January 12 ITAC committee meeting agenda
- Memo from DOWL HKM re. draft landfill monitoring plan - To Taylor for review

- Memo from MDT re. Boulder River Forest Road inventory form - To Commissioner Durgan for review

Executive Assistant Raea Morris said the PCRFD#1 board okayed the county's HR representative to draft a policy handbook and two paid position job descriptions.

@9:12:03 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

January 12, 2010

Road Updates

@9:19:04 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Ed Hillman, road supervisor; Shannan Piccolo, civil deputy county attorney; Mary Maj and Robert Grosvenor, Gardiner Ranger District; Peter Werner and Mary Beth Marks, Gallatin National Forest; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss county road issues.

Gallatin National Forest Representative Mary Beth Marks said work is proposed this field season on Daisy Pass and Lulu Pass and adjacent Forest Service roads for roads associated with a New World Mine restoration project that has been ongoing since 1998. Marks said most reclamation and construction contracts are completed and the proposed road work will be the project's last major construction contract. Marks said a mine will be closed in the McClarren Pit area and some reclamation, erosion abatement, and road work will be done into the Daisy Creek drainage. Marks said the Forest Service is present today to brief the Commission on the proposed road work and receive an okay from the Commission. She said the proposed final work is to leave the road in as good a condition as possible.

Gallatin National Forest Representative Peter Werner said the Forest Service will concentrate efforts on stabilization of road surfaces through management of runoff water and reduction of sedimentation by installing drain dips and culverts. He said most work will be concentrated on the Fisher Pass section and may take four to six weeks to complete in July/August 2010.

The Commission said the Forest Service will need to obtain a county road work permit before any work can be done on a county road.

@10:11:04 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

January 12, 2010  
Human Resources Updates

@10:13:14 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Jill Ouellette, HR; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss activities in the human resources department.

Human Resources Analyst Jill Ouellette presented the Commission with employee change of status forms for signature. Ouellette said she is addressing an employee sick leave pay out issue, working on an OSHA report due January 31, submitted a wage and hour request January 11, and will hold interviews for a detention officer this week. She said a job posting will go out for a position in the clerk and recorder's office and she worked on an Angel Line job description update and posting. Ouellette said she has worked on sheriff's office longevity pay issues.

@10:28:59 a.m., Taylor made a motion to adjourn the meeting. Durgan seconded that motion. The meeting adjourned.

January 12, 2010  
Discussion of Inmate Health Insurance

@11:02:57 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Captain Jay O'Neill, Sheriff Allan Lutes; Shannan Piccolo, civil deputy county attorney; Camden Easterling, Livingston Enterprise; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss inmate health insurance.

Captain Jay O'Neill said an insurance representative from the National Association of Counties and Correctional Risk Services (CRS) met with the Commission in September to learn about jail inmate medical invoicing and other services. O'Neill said the monthly premium would be based on inmate days, determined by the number of inmates incarcerated on the twentieth day of each month multiplied by 31 days and 23 cents.

Sheriff Allan Lutes said the service protects the taxpayers. Lutes said an inmate's emergency appendectomy cost the county \$20,000 a couple of years ago. Commissioner Taylor said he thinks it is a good idea. Commissioner Malone said MACo encouraged this type of inmate insurance at its last Commission training.

Commissioner Taylor made a motion to process the claims administration management portion of the issue. Commissioner Durgan seconded that motion. Motion passed.

@11:17:33 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

#### January 12, 2010

1:00 P.M. – Senior Citizens Meeting – Livingston Senior Citizens Center

2:00 P.M. – I.T. Advisory Committee – Community Room

7:00 P.M. – Health Board Meeting – West Room

#### January 13, 2010

##### Review of Daily Correspondence and Agenda

@8:42:29 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:

- Interlocal agreement with city re. culvert and entry-way park maintenance
- Memo re. LEPC meeting - To Commissioner Durgan for review
- Citizen memo re. refuse assessment - To Commissioner Taylor for review
- Confidential legal advice memos to Commission from civil deputy county attorney
- County treasurer cash and bank accounts
- Memo re. sheriff's deputy longevity issue information
- Memo re. change of landfill hours newspaper ad
- Memo re. flagger training certification
- Memo re. Friends of the Library

@8:55:42 a.m., Durgan made a motion to adjourn the meeting. Taylor seconded that motion. The meeting adjourned.

#### January 13, 2010

##### Public Hearing for Yellowstone View Condominiums

I. Call to Order: @9:04:53 a.m., Chairman Malone called a meeting to order in the Community Room of the City/County Complex. Commissioners Durgan, Malone and Taylor were present. Also present were Philip Fletcher, planning director; Mike Inman, senior planner; Shannan Piccolo, civil deputy county attorney; Bob Jovick, attorney; William Smith, consulting engineer; and Commission Minutes Clerk John Mueller.

The meeting was scheduled as a public hearing for a Yellowstone View Condominium project.

II. Conflict of Interest: None reported

III. General Public Comment: None

IV. Yellowstone View Condominiums Public Hearing

a. Brief Introduction of Proposal by Chair: Chairman Malone said the proposed project, submitted by Richard and Irena Herriford, is a six-plex condominium in Gardiner, Montana, off Jardine Road below the Rocky Mountain Campground.

b. Subdivision Administrator Report: Senior Planner/Subdivision Administrator Mike Inman provided the Commission with the planning board's recommendation of approval for the project, which included Inman's subdivision administrator's report. Inman presented pictures of the project for Commission review. He said the entire project was built before the owner/applicant (Herriford) submitted an application for county review. Inman said Herriford stated he thought the development would be exempt from review because it was a condominium. Referencing Section II, Part I of the county subdivision regulations, Inman presented a timing and authority log of the development in his report. Project consulting engineer William Smith said he is speaking on behalf of Herriford by power of attorney and the condo was started in late 2007 and completed in early 2009.

Inman reviewed criteria under which the project was reviewed, including projected affects on those criteria. Inman said the developer provided a storm water drainage and erosion plan that should mitigate any erosion issues. He said the major issue presented by the development relates to effects on public health and safety, specifically the slopes surrounding the project and retaining walls used to stabilize those slopes. Inman said the Park County subdivision regulations state under design and improvement standards that steep slopes in excess of 25 percent grade should not be built upon unless mitigated by a certified engineer. He said the condos sit on a flat grade, but surrounding slopes are steep in excess of 25 percent, and thus the issue is how to mitigate the development's impacts on public health and safety.

Inman said Smith submitted alternative wording to Inman's report Recommended Findings E and F and Recommended Conditions #17 and #18 under Affects on Public Health and Safety. He said that wording was not submitted in time for planning board review.

Addressing Recommended Condition #17, Inman said the planning department and planning board recommends the applicant have an engineer design, construct or supervise construction of retaining walls, and a "geotechnical engineer" shall review stability of the development's soils. Inman said Recommended Condition #18 states the applicant shall obtain easements to properties to the south and west of the project as is necessary for slope stability.

Smith said the applicant is okay with Recommended Condition #17 as submitted by Inman and the planning board. Smith said he provided language for Recommended Condition #18 because he came on the project after it was built. Referencing Recommended Finding #18, Smith said he recommends a covenant be filed with the final plat stating the development's slopes shall not be disturbed per MCA 70-16-203: Adjoining Owner's Right to Lateral and Subjacent Support -- Excavations. Inman said staff reviewed that MCA and determined a covenant would not protect the slopes in terms of public health and safety in the sense it does not guarantee people will not take actions that jeopardize the stability of the slopes. Inman displayed pictures that show disturbance on a down-slope property jeopardizing stability of the slope.

Inman said construction timing language in the county subdivision regulations provides the Commission with options. He said, per those regulations, the fact work was completed prior to application approval does not mean the project cannot gain approval, but the Commission can require the applicant to remove or redo the project to meet regulations.

Inman said the planning board wanted him to state to the Commission the planning board was not happy with the project and not favorable to the applicant bypassing the application process, building the project and then coming in to have it reviewed.

c. Developer's Presentation: Smith said Herriford proceeded with the condo project without application approval because a number of projects in the area successfully met the condo exemption. Smith said Herriford did not launch into the project with intention of avoiding the law or not meeting requirements as he understood them. Smith said the site on which the condos were built has been developed for residential buildings and activity for over three decades. He said the condo development is limited to the flat portion of the property. Smith said he utilized forensic engineering to assess the types of materials used for retaining walls and investigate and decide whether the wall meets engineering and safety standards. He said he has done a number of projects analyzing failures, and the analysis of a potential failure is identical in process. Smith said for that reason in regards to the condo project, he places his work of after-the-fact inspection of completed work in its existing state within the context of forensic engineering. Inman said he looked up the definition of "forensic engineering," and definitions he found define a practice of using engineering to determine how something failed and not an after-the-fact determination of whether something was constructed for safety factors.

Referencing Recommended Condition #18, Smith said he had detailed discussion with PHD Geotechnical Engineer Doug Chandler about the project, including pictures, thus that part of the planning board's condition is being met. Smith said the condo building was constructed according to plans approved by the state building department because a six-unit building falls under review of the state building codes. Smith said the state inspector has been onsite to view the project, and the building has been reviewed, inspected and approved in terms of the foundation and construction of the building toward an occupancy permit, which has not been pursued. Inman asked Smith if he had

documentation of that approval. Smith said he did not. Inman asked if the development received approval for each stage of construction and is awaiting final approval or if it is awaiting approval pending final review. Smith said the project has been inspected, but has not received final approval.

Smith said the condo is a good, sound building, and he is in a position to analyze and address site, slopes, and drainage in substantial detail in his report before the Commission. Smith said not all such work is completed, and some improvements will be completed in the construction stage to meet conditions.

Bob Jovick, attorney for the applicant, said he is present to address Recommended Condition #18. Jovick said the applicant takes issue with planning board language requiring an easement or boundary relocation because that may prove to be a condition impossible to meet and thus stand in the way of final plat approval or subsequent sale of the units. Jovick said the condition as worded involves the private property rights of an adjoining neighbor who may have no interest in speaking with Herriford about an easement or boundary adjustment. Jovick said it is not good to give adjacent property owners veto power over a development. Jovick said the applicant therefore cites MCA 70-16-203 so the adjoining landowners must take into consideration destabilization of the slope. He said a temporary restraining order and preliminary injunction would follow if a neighbor undertook activities that may be detrimental to the condominium project. Jovick said the applicant suggested language requiring a covenant so landowners are aware a statute exists and the slope should not be disturbed. He said the applicant requests an amendment stating Recommended Condition #18 could be met either with a full substantiation of the developer's proposed language (covenant) "or" the option approved by the planning board.

Civil Deputy County Attorney Shannan Piccolo said she believes the planning board requested the applicant talk to adjacent property owners to learn whether they would be willing to enter into an easement or boundary line adjustment. Piccolo asked Jovick if the applicant had done that. Jovick said the applicant had not, but said he intends to do so in person. Piccolo said obtaining an easement with adjacent property owners puts the onus on the applicant/developer and ensures the future property owners they will not have to go to court to protect their condo because a written agreement will exist.

Commissioner Durgan said he does not feel it is the place of the board of commissioners to resolve an issue between two neighbors and this situation puts the Commission in a Catch 22. Durgan said pictures showing the down-slope landowner placing boulders and disturbing the slope present a classic example of why proper planning procedures and subdivision regulations exist and need to be adhered to. He said the whole issue factors into public health and safety concerns, which is what the planning board addresses through its review. Durgan said he is not comfortable with the situation at all, and developers have the obligation to know what they are doing before they get into a development. Jovick said he thinks Durgan's concerns of public health and safety are addressed by requirement of a geotechnical engineer in Recommended Condition #17.

Inman said the planning department understands the dilemma with personal property rights in this instance, but that is what the planning process is for. He said the concern for the planning department is setting precedence where a developer builds a development and then comes in to say the county cannot hold him to a particular standard or condition because it may prohibit the developer from selling the property. He said he does not want the issues associated with this case to circumvent the process and issues that may have arisen in a pre-application meeting. Jovick said he can appreciate Inman's comments and concerns as a planner, but with respect to the project the most practical alternative is to add the covenant to Recommended Condition #18 as an option for the highest possibility of an outcome.

@10:27:10 a.m., the meeting recessed. @10:42:44 a.m., the meeting reconvened.

Jovick said the applicant would be requesting the same covenant language with adjoining landowners if he were in the planning/pre-approval stage of the project or the present stage.

Inman said the south slope was existing, vegetated and stable in history. Inman asked when looking at the pictures presented, has the excavation compromised the stability of the existing vegetation and slope, and if it has whether the placed rip rap is necessary for stability. Smith said an environmental assessment in his report shows the soil conditions in the area to be reasonably stable, but the question is open for review and analysis by the required geotechnical work.

Inman said the county has the ability and option to hire its own engineer to conduct an analysis of the property and review any documents received from the applicant's engineer at the property owner's expense.

d. Additional Public Comment: None

e. Public Comment on Water and Sanitation: None

f. Close Public Hearing: @10:53:23 a.m., Malone closed the public hearing.

g. Commission Discussion of Proposal, Public Comment and Relevant Information:

Malone said he is unsure the MCA statute cited by Jovick applies in this case. Jovick said the statute is applicable because an individual cannot do something on his property that affects a neighboring property.

Inman asked Jovick whether the applicant took into account the lower retaining wall off the applicant's property may have to be improved if a geotechnical engineer recommends that. Inman said the applicant would be unable to mitigate the stability issue if the adjoining landowner does not permit work on his property. Jovick said one cannot predict what a geotechnical engineer would recommend. He said the area on which the condos were built has been flattened out for decades and had structures atop it. He said perhaps Herriford thought the condo unit would be a substitution for the former

structures. Inman said the flat area was increased outward toward the south slope. Inman said in using the analogy that the buildings are the same, he argues the weight of the condos are significantly more than a mobile home and a few outbuildings.

Inman said Recommended Condition #17 requires the applicant to install retaining walls on any slopes in excess of 25 percent or in areas necessary for slope stability. Inman said the applicant identified the south slope is necessary for the entire project, which Smith said contained 90 percent grades. Inman said that means the applicant would have to build retaining walls on property he does not own. Inman asked who would maintain that retaining wall and guarantee its stability for future condo- and adjacent landowners. Jovick said a maintenance agreement is one answer to that question.

Jovick said perhaps the cards have already been revealed in prejudging an engineer's report regarding stability and rocks already in place. He said he has a concern with that for the record. Inman said he is not stating what is required for final plat, but he is trying to clarify what Recommended Condition #17 requires. He said he wants the condition clarified on the record, because it makes it very difficult for him to administer final plat when the county and subdivider are not on the same page.

@11:22:35 a.m., Jovick requested and was granted a five-minute recess. @11:27:27 a.m., the meeting reconvened.

Jovick said in light of Inman's request for clarification of his interpretation of the planning board's language in Recommended Condition #17, the applicant respectfully requests the Commission consider the language proposed by the applicant for that recommended condition prior to the inception of the hearing. Jovick read into the record the first sentence from the proposed language, "Prior to final plat approval, the applicant shall install retaining walls in slopes in excess of 25 percent where soil conditions are determined by a qualified Professional Engineer or Geotechnical Engineer to require stabilization." Jovick said Inman's interpretation would require construction of a retaining wall based on slope regardless of an engineer's findings.

Planning Director Philip Fletcher said Inman's interpretation of Recommended Condition #17 as written is correct, and if the Commission wishes for Jovick's opinion to overtake Inman's, then it needs to make that clear at this point because the condition as written flat requires a retaining wall.

Commissioner Taylor asked if the applicant would be adverse to using a geotechnical engineer both the Commission and applicant agree on. Jovick said he would not be adverse to that.

Inman said language within his Recommended Condition #17 is based on the county's subdivision regulations. Inman presented the Commission with Chapter VI. C. Lands Unsuitable for Subdivision, for review.

Smith said he has received exemptions from the county on slopes for roads in the past going from three to one slopes to two to one slopes, so there was no indication for him to realize any slope over 25 percent would need a retaining wall. Smith said he thinks it is within the subdivision regulations and past approved road variances that a slope of 50 percent has not required a retaining wall. Inman said one cannot apply that argument to buildings or any past subdivisions reviewed by the county.

Piccolo said it may be a good idea for the Commission to re-review proposed language for Recommended Condition #17 in order to weigh ramifications of that language.

Commissioner Taylor made a motion to recess a decision until Thursday, January 21 at 11:00 a.m. Commissioner Durgan seconded that motion. Motion passed.

V. Adjournment: @11:56:12 a.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

January 13, 2010

Reappointing of Weed Board Applicants

@1:31:53 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Malone and Taylor were present. Also present was Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to reappoint Weed Board applicants.

Commissioner Malone said two applications were submitted from county residents Alvin Pierce and Jamie Lannen.

Commissioner Taylor made a motion to reappoint Jamie Lannen and Alvin Pierce to the weed board. Commissioner Malone seconded that motion. Motion passed.

@1:33:31 p.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

January 13, 2010

Reappointing of Solid Waste Board Applicant

@2:30:56 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Malone and Taylor were present. Also present was Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to reappoint a Solid Waste Board applicant.

Commissioner Malone said one application was received from county resident Susan C. Nelson. Commissioner Taylor said he has worked with Nelson for one year on the Solid

Waste Board and she has done a good job, is energetic and thinks she is a good representative for Park County.

Commissioner Taylor made a motion to accept Sue Nelson's application and reappoint her to the Solid Waste Board. Commissioner Malone seconded that motion. Motion passed.

@2:31:11 p.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

#### January 14, 2010

8:30 A.M. – Review of Daily Correspondence and Agenda – Commissioners Chambers – Cancelled due to Commission scheduling issues

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

10:00 A.M. – Agency on Aging Meeting – Whitehall, MT – Commissioner Taylor attended

10:00 A.M. – Local Emergency Planning – West Room

#### January 14, 2010

##### Review of Buford Family Transfer Denial

@10:05:57 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan and Malone were present. Also present were Mike Inman, planning; Philip Fletcher, planning; Shannan Piccolo, civil deputy county attorney; Lisa Buford, applicant; William Smith, consulting engineer; Steve Woodruff, attorney; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to review a Buford family transfer denial.

Senior Planner Mike Inman said family transfer applications are preliminarily reviewed by the sanitarian, county attorney's office and the planning department, and denied applications go before the County Commission so the applicant can explain his/her intention of the transfer. Inman said Buford's family transfer application was denied due to Section V. B. of the county subdivision regulations, which address apparent attempt to evade the Montana Subdivision and Platting Act. Inman said preliminary review of applications must take various criteria into account, including the prior history of the tract in question.

Inman said a rebuttable presumption is triggered if an applicant comes in with a family transfer for a parcel created by a prior family transfer. Inman said it is then the applicant's responsibility to rebut that presumption. Inman said he conducted a file search, which showed the applicant tried to subdivide the parcel in question in 2001 as a five-lot subdivision, which received preliminary plat approval from the planning board and Commission. Inman said records show Buford then twice met with former planner

Mike Spencer in 2006, one time in attempt to waive an environmental assessment for the subdivision. He said the staff/planning board report from a November 2001 meeting lists the parcel in question as Tract 12 of Certificate of Survey 615A, which is just over 20 acres divided into a five-lot subdivision. Inman said the family transfer was denied based on past history of attempted subdivision of the parcel, thus it appears to the planning department the applicant is attempting to evade the Montana Subdivision and Platting Act through the family transfer application exemption application. Inman said another issue is documentation that Buford's father William Hutcheson gave the parcel to another woman outside the family one year ago.

Attorney Steve Woodruff said the findings of fact of the 2001 subdivision application were approved with conditions by the Commission, but Buford is not a realtor or real estate developer. Landowner Lisa Buford said she initially thought about subdividing the property after receiving subdivision approval in 2001 because it seemed like the thing to do, but she did not want to sell the property because she wanted to know her neighbors and subdividing would increase her taxes. Buford said it did not make financial sense for her in 2001, but the property would be more valuable over time as five parcels.

Commissioner Malone asked Buford why she went through all the expense of the subdivision process and then did not go through with it. She said assessment fees in Glastonbury were a factor. Buford said she gave a piece of the parcel to her father with hopes he would move to Montana, but her father gave the piece of land free of charge to a family friend, Suzann Utke. Buford said she did not intend to sell the parcels in 2001 after receiving subdivision approval, and she did not know about the family transfer conveyance at that point and thought subdivision was the only way to create more parcels. Consulting Engineer William Smith said many Glastonbury people were trying to have a tenants in common situation in 2001, which is possibly why Buford subdivided. Smith said the family transfer was not discussed with him in 2001 because Buford's children were young at that time. Buford said her regret is giving a piece of land to her father and not doing a family transfer at that time, but the action was an emotional, irrational move done on a whim.

Inman said the planning department's issue with the situation is setting precedent. Inman said the reasons Buford stated for not going through with the subdivision appear sound, but said it was never brought up over the years Buford was not trying to subdivide her property. Inman said it appears the effort did not work out for her in the past for whatever reason and she is now trying to do something that looks the exact same as the subdivision without having to go through subdivision review. He said the planning department is trying to protect the family transfer, which has seen much abuse, so land-rich/cash-poor ranchers and others can convey property to children. He said Buford's task is to prove to the Commission why this situation is a specific case and can be approved.

Malone said the occasional sale went away because many landowners sold off 10 acres when they needed cash. He said the legislature may crack down on family transfers because it is too often used for subdividing property without subdivision review.

Commissioner Durgan said another problem of such abuse is it puts a financial burden on county services when areas are subdivided that logistically should not be. He said ranchers took advantage of the occasional sale, so family transfers must be done in good faith and maintained.

Woodruff said Buford would have gone through with the subdivision in 2001 if she was going to treat the land as a commodity, and the presumption has to be the family transfer application is a legitimate and valid conveyance based on information and discussion presented. He said the clear object is to make division of property for her children. Inman said Buford's intent looks legitimate, but the difficulty in the matter comes with the history of the parcel. He said the Commission is not dealing with legitimate intent at this point, but is dealing with a file that looks like Buford is trying to do the same thing as was attempted with subdivision of property in 2001. Inman said he has concerns with Woodruff's rationale, because approving the family transfer application would enable anyone who proposes to subdivide his property to then come in with a family transfer stating his mind has changed and wishes to transfer to his children, agrees not sell the transferred parcels for three years per regulation, and is in compliance with the Montana Subdivision and Platting Act and is exempt from county subdivision review. Inman said surveyors will pick up on that and more such efforts will come into the county and the Commission would have to approve them. Inman said pre-application meetings are designed to get all intentions and issues out in the open at the outset to put efforts on the right path.

Civil Deputy County Attorney Shannan Piccolo said presumptions should be narrowly viewed and the onus is on the applicant to prove he/she is not attempting to evade the Montana Subdivision and Platting Act.

Malone said the Commission cannot consider the reasons why Buford did not go through with the original application in 2001, which Buford stated as being for financial reasons. Malone said Buford not only thought about subdividing the property at that time, she put serious money into it by having Smith survey the subdivision and build an access road. Malone said Buford then had two subsequent meetings with Spencer to discuss what it would take to go forward with the subdivision in 2006. He said the burden of proof is now on Buford to convince the Commission she is not using the family transfer to evade the Montana Subdivision and Platting Act. He said based on the fact Buford originally subdivided the property and had two subsequent meetings with Spencer, Buford has not proved that to him based on previous history, which shows she wanted to subdivide the property for some purpose.

Commissioner Durgan said he sees the family transfer was laid out in a pattern with various lots that provide Buford the opportunity to go through the subdivision process and make arrangements with her two sons to convey the land to them in the same lot pattern, while taking the county off the hook of setting precedent. Durgan said he agrees with Commissioner Malone there has not been enough of a rebuttable argument of the presumption stated in the denial.

Woodruff asked if fewer lots created would make a difference in the Commission's decision. He said Commissioners Durgan and Malone and Inman all three said they believe Buford is legitimately attempting to convey the property to her family members but appear to still be denying the application. Durgan said he appreciates the fact Buford is attempting to do some estate planning, and lots are still there for estate planning, but they could go through the review process and the county would be off the hook for deciding on family transfers in this manner.

Buford said she is happy to agree to a five-year or longer period of time in which the lots could not be sold through the family conveyance if that would impact the Commission's decision. Inman said the issue is the history of the tract shows Buford tried to subdivide it in the past.

Smith said an adverse decision on this family conveyance may significantly reduce the likelihood Buford's children will ever see the property.

@11:23:36 a.m., Malone requested a recess for the Commission to consult legal counsel.  
@11:32:22 a.m., the meeting reconvened.

Commissioner Durgan made a motion to recess the discussion until Tuesday, January 26 at 1:30 p.m. so staff can review prior subdivision files and recordings of previous planning board and commission meetings on the matter. Commissioner Malone seconded that motion. Motion passed.

@11:35:47 a.m., the meeting closed.

#### January 14, 2010

1:30 P.M. – Consider Knutson-Callan Final Plat Application – Commissioners Chambers  
– Postponed to January 14 due to Planning Department Staff schedule

7:00 P.M. – Special Solid Waste Board Meeting – West Room – Meeting minutes available at [www.parkcounty.org](http://www.parkcounty.org) and in the Commission Office

#### January 15, 2010

##### Review of Daily Correspondence and Agenda

@8:37:29 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:

- Application for SWB - To Commissioner Taylor for review

- Memo from fair board re. Jan. 19 meeting agenda
- Memo from IT Manager re. outlying office telephone meeting
- Memo from Attorney Swimley re. review of Gardiner Sewer District transfer
- Memo from juvenile detention officer re. juvenile violator report
- Memo from Peggy Glass re. Dispatch 911 meeting notice
- Memo re. landfill methane monitoring - To Taylor for review
- Memo re. energy efficiency Community Development Block Grant - To planning director for review
- Memo from FAA.gov re. consumer survey - To Commissioner Durgan for review
- Memo from IT Manager re. assistance request protocol
- Memo from MACo re. discussion of green house gasses
- Memo from Tri County Sheet Metal re. equipment bid
- Memo from Attorney Knuchel re. county change of legal representation for Gardiner Sewer District
- Memo from DES Coordinator re. National Guard Civil Support Team - To Durgan for review

@8:51:34 a.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

#### January 15, 2010

9:30 A.M. – Meeting to Discuss Fleshman Creek Project – Fleshman Creek Site/NRCS Office – Commissioner Durgan attended

#### January 15, 2010

#### Discussion and Approval of 9<sup>th</sup> Street Island Bridge Project Design

@10:00:51 a.m., Chairman Malone called a meeting to order in the Community Room of the City/County Complex. Commissioners Malone and Taylor were present. Also present were CTA Engineering Representatives Kevin Feldman, Mark Westenskow and Scott Nelson; Shannan Piccolo, civil deputy county attorney; Belinda Van Nurden, DES; Ed Hillman, road supervisor; Citizens Roy Senter, Anna Cleek, Mary Lennon, Brad Shepard, DeeDee McMillan, Dale Mattila, Corky Dunagan, Chuck and VonAnne McCalla, Amy Petruilis, Martha Schmidt; Anne Sperry, Shawn Hansard, Steve Philips, Jane Ann Morris, Kit Libbey, Marissa Olson, Ray Olson, Sherri and Michael Ott, Cara McNeely, Margot Aserlind, Ted Madden, Gloria Black and Amy Sunvison; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to consider approval of the 9<sup>th</sup> Street Island Bridge project design.

Commissioner Malone provided a review of permitting and planning work completed on the 9<sup>th</sup> Street Island Bridge Replacement Project to-date.

Kevin Feldman of CTA Engineering said the meeting was scheduled to discuss the current status of bridge design with the public and receive approval from the Commission with public comment to move forward with that design. Feldman said his firm is trying to condense bridge design time into two or three months, and CTA hopes to finalize the design in one or two weeks after approval, advertise for bid within three weeks, and start construction in late February. Feldman said CTA has had good cooperation from many players involved in the process, including Montana Fish, Wildlife and Parks, Army Corps of Engineers, Montana DEQ and the flood conservation district. Feldman said easements with adjacent property owners for bridge construction still need to be obtained.

Mark Westenskow of CTA Engineering provided a video presentation and discussion of the proposed bridge project, including the replacement bridge; removal of the existing and Bailey bridges; construction of a temporary bridge; and all site, safety, and communication logistics associated with the project. He said the replacement bridge will have one river pier and a pedestrian walking lane.

Feldman and Westenskow fielded citizen questions about the proposed project, which included utilities, bridge dimensions and design, targeted construction timeline, ADA compliance, and communication with island residents.

There was discussion about the possibility of pushing the project off until fall 2010 if permitting or funding does not come through in a timely fashion to allow for spring construction. Feldman said the target construction period is 120 days with completion before 2010 spring high water.

Commissioner Taylor made a motion to accept the proposal by CTA for the 9<sup>th</sup> Street Island Bridge design. Commissioner Malone seconded that motion. Motion passed.

@10:54:52 a.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

January 15, 2010

Discussion of the Permitting for 9<sup>th</sup> Street Bridge Project

@11:31:33 a.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Malone and Taylor were present. Also present were CTA Engineering Representatives Kevin Feldman, Mark Westenskow and Trent Schwartkopf; Shannan Piccolo, civil deputy county attorney; Philip Fletcher, planning; Ed Hillman, road; Mike Cox and Jeannette Blank of Oasis Environmental; and Commission Minutes Clerk John Mueller. No public comment made.

The meeting was scheduled to discuss permitting of the 9<sup>th</sup> Street Bridge Project.

Jeannette Blank of Oasis Environmental said all permits are based on 90-percent completion of the bridge design. Blank said she notified agencies any necessary addendums will be submitted as they come up. She said she will submit a permit for the

State Historic Preservation and Parks Office and Montana Department of Natural Resources and Conservation for state lands that do not need Commission signature.

Blank presented the Commission with a Montana agency joint application to Montana Department of Environmental Quality. Commissioner Taylor made a motion to accept and approve the application. Commissioner Malone seconded that motion. Motion passed. Blank presented the Commission with a Montana agency joint application to U.S. Army Corps of Engineers. Commissioner Taylor made a motion to accept and approve as supplied by the engineers. Commissioner Malone seconded that motion. Motion passed. Blank presented the Commission with an application for Philip Fletcher of the Park County Floodplain Administration. Commissioner Taylor made a motion to accept the floodplain application. Commissioner Malone seconded that motion. Motion passed. Blank presented the Commission with a Montana agency joint application to Montana Fish, Wildlife and Parks for SB 124 approval and to satisfy MEPA requirements. Commissioner Taylor made a motion to accept the joint application for Fish, Wildlife and Parks. Commissioner Malone seconded that motion. Motion passed.

Blank said Oasis will put together a storm water pollution and prevention plan and notice of intent that will go to DEQ.

Planning Director Philip Fletcher said the county floodplain administration is required to send letters of notice to adjacent property owners and other parties potentially affected by the project and asked CTA and Oasis to initiate that process. He asked Blank for copies of comments from governmental agencies involved in the project for floodplain administration records.

Commissioner Taylor made a motion to sign the affidavit that the 9<sup>th</sup> Street Bridge belongs to the county. Commissioner Malone seconded that motion. Motion passed.

@11:59:19 a.m., Taylor made a motion to adjourn the meeting. Malone seconded that motion. The meeting adjourned.

January 15, 2010

Discussion of Cutler Lake Cell Tower Issue

@4:33:41 p.m., Chairman Malone called a meeting to order in the Commissioners Chambers. Commissioners Durgan, Malone and Taylor were present. Also present were Brett Linneweber, county attorney; Franklin Rigler, citizen; and Commission Minutes Clerk John Mueller.

The meeting was scheduled to discuss a Cutler Lake cellular tower issue.

Citizen Frank Rigler said he was recently notified by a cellular telephone company it may not come back to install a tower on property he owns near Corwin Springs. Rigler said Former Museum Director Brian Sparks had no right to be on his property, which resulted in a filed report on museum letterhead that Rigler said shut down a contract he had to

install a cellular tower on his property. Rigler said he would like to settle the issue with the county and is asking for money from the county for the cell phone tower. He said the cell tower was ready to go and would have been installed in June 2009.

Rigler submitted to the Commission a bill of lost income and expenses he said he has incurred since time the county made a payment to him on the matter in summer 2009. Rigler said he feels Archaeologist Larry Lahren should be paid for work he conducted as a result of Spark's actions, and the invoice stated Rigler is entitled to \$800 a month for the cell tower that would have been installed. Rigler said he would settle for and sign off on a year's payment for the tower to get the issue resolved. Rigler said the whole situation has been an aggravation and has caused his wife stress.

County Attorney Linneweber said it is public record Sparks is no longer employed by the county. Commissioner Durgan said the Commission never gave Sparks authorization to enter Rigler's property.

Commissioner Malone said the county did not authorize Lahren to conduct the work he conducted, so the county should not pay for that work. Rigler said he agreed with that. Linneweber asked if Lahren's work and associated costs would have been necessary regardless of whether the alleged trespass issue occurred. Rigler said those expenses would not have been incurred had the trespass issue not happened.

Rigler said the county could consult on the issue and get back with him within two weeks. Linneweber said he will telephone Rigler on the matter after he has further reviewed it.

@4:50:12 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