

## STILLWATER COUNTY COMMISSIONERS MINUTES

**Notice:** These minutes reflect the proceedings of the Board of County Commissioners. The official minutes are on file with the Clerk and Recorder (MCA 7-4-2611(2)(b)).

### REGULAR MEETING DECEMBER 13, 2016

- Present:** Commissioners Dennis Shupak, Chair; Maureen Davey, (via teleconference) and Gerald W. Dell, Members; Lori Dobitz, Administrative Assistant.
- Others Present: Jerry Friend, Treasurer; Carol Arkell, DES; Joe Morse, Finance and Human Resources; Nancy Rohde, County Attorney; April Limburg, Planning Staff; Mark Crago, Commissioner Elect; Steve and Karen Marts; Coralee Hicks, citizen; and Marlo Pronovost, Stillwater County News.
- Open Meeting:** Commissioner Shupak opened the meeting at 9:00 am with the pledge to the flag.
- Minute Approval:** Commissioner Davey **MOVED** to approve the minutes of October 18, 20, and 25, 2016. Commissioner Dell **SECONDED**. Motion passed unanimously.
- Recognition:** Employee recognition for public service: Chad Cavendar, Road & Bridge Department - 5 years
- Regular Business:**
1. Facilities - Commissioner Davey said following a discussion with Marissa Hauge, Economic Development Coordinator, there are grant monies available through a Targeted Brownfields Assessment (TBA) to assist in funding a hazardous materials inspection at the former Stillwater Hospital Building. Commissioner Davey **MOVED** to postpone the proposal from Northern Industrial Hygiene, Inc. until further consideration of the grant. Commissioner Dell **SECONDED**. Motion passed unanimously.
  2. Finance: Courthouse Telephone System - Joe Morse, Finance Specialist, presented the Blackbox and Century Link Agreement Documents that includes the scope of work for the courthouse new telephone system. He explained the only change from the original proposal is that the County Library is not included because of their internet service and the location of the building. He said the total cost is \$47,432 for the project as bid and the county attorney has reviewed the contracts. Commissioner Dell **MOVED** to approve the agreements as presented. Commissioner Davey **SECONDED**. Motion passed unanimously.
  3. Planning: Shane Creek Ranch Subdivision Third Filing - Final Plat Approval w/supporting documents. This one (1) lot subdivision is located on Wagon Trail

Road. The site is approximately 14.224 acres in size and is legally described as a tract of land being Tract 4B as shown on COS 354611 located in the SW 4 of Sec. 32, T2S, R20E, MPM. April Limburg, Planning, stated the Mr. and Mrs. Marts, owners, have met all conditions of approval. Commissioner Davey **MOVED** to approve the final plat of the Shane Creek Ranch Subdivision Third Filing. Commissioner Dell **SECONDED**. Motion passed unanimously.

4. Stillwater River Road Rockslide: Commissioner Dell said before the Commission is the executed agreement by Hi-Tech Rock Fall Construction who will be doing the work on removing the rockfall and scaling scheduled to begin on January 9, 2017. Along with the agreement in the amount of \$346,999.00 is the performance and payment bonds; certificate of insurance, certificate of workers comp, and a notice to proceed. He said documents in reference to their list of employees that will be working on the project will be forthcoming. Commissioner Dell **MOVED** to approve the Hi-Tech RockFall Construction Agreement w/supporting documents. Commissioner Davey **SECONDED**. Commissioner Dell expressed his hopes of having the project begin sooner, however, with their scheduling and the upcoming holidays, it won't happen until after the beginning of the year. Carol Arkell said FEMA is seeking further information for the grant and the committee will address those questions. Motion passed unanimously.
5. Resolution: County Attorney and Commissioner Elect Mark Crago questions and concerns regarding Resolution 2016-38 a resolution to determine county office space options and its impacts, and requesting Resolution 2016-38 be rescinded.

Mark Crago, Commissioner Elect, addressed the Commission stating he and the county attorney had some concerns with adopted Resolution 2016-38. He said there has been no documented public approval or desire to move forward in this fashion. He said people he has talked to, people he has called, people he has written the paper are very adamant against this use of the facility. He gave the commission kudos for saving 3.4 million dollars for this project, however, he does not agree this is the way to use the money. He feels the money can be used in a similar project in a different facet. He also stated he felt the public's ability to be aware of the decision that was to be made that day was met with ambiguity in the language on the agenda. He also questioned the draft resolution and the public not being able to review the resolution 48 hours prior to the meeting. It is his preference, his hope, to rescind the resolution today and move forward the first of the year, put a steering committee together, and let's make it so the commission isn't solely responsible for the decision, he said. It will give the commission a fresh mind set and analyze this from the outside looking back in, Crago said, and if the hospital is it, fantastic, then let's move forward. I just don't think it is, I don't think most of the public feels that it is, he said. He stated he looks forward to working with the commission in the very near future, and hope to look forward in working on this together.

Commissioner Davey stated this is highly irregular. The form that was used for this agenda item is for our departments. Commissioner Davey asked the County Attorney if she is representing the commission or has there been a lot of discussion between

her and the commissioner elect. Davey said she feels a lot of discussion has taken place between the county attorney and the commissioner elect, and stated maybe she is wrong, but said he officially doesn't take office until 12:01 AM on January 1, 2017. Davey told the county attorney that it appears there has been a lot of discussion and yet the county attorney has not talked to the commission and she is suppose to represent the commission. Nancy Rohde responded that she has been representing the commission.

Commissioner Davey said she does not feel, when the county attorney is talking to outside people that really is not an elected person, *that we haven't had the communication that I think a county attorney and the commission needs.*

County Attorney Rohde said any member of the public can come and talk to her about their concerns. She doesn't feel he is an outside person, he is the commissioner elect at this point, and we have known that he was the one that is going to take office in January since June. She said him coming to talk to her is not improper, anybody can come talk to her. She said he has treated her like he has treated everybody else, other department heads and elected officials. She said he has gone and talked to majority of them. Commissioner Davey said except he has not been in our office very much and we have welcomed him. *We seem to be doing business like this, during public comment, and maybe I'm different, I like to talk to people up front.* Davey said she would have seen this as a discussion upstairs, but here we are today. Rohde said these discussions need to be in the public and Davey said they are posted. Mark Crago explained he requested the county attorney, at the advice of MACo Attorney, review the statute on open meeting laws. Commissioner Dell asked if either County Attorney Rohde or Commissioner Elect Crago were going to submit anything in writing to the Commission. Rohde said she agreed with Commissioner Elect Crago and she is very much in favor of developing a steering committee to focus on these things. She thinks it great that Marissa Hauge, Economic Development, is applying for funds to assist with Northern Industries Hygiene study on the facility. Rohde said this is a Capital Improvement Project, it is not a general maintenance project. It is saying things are being done piece meal and she is afraid that allows a potential risk to the county for violating statutory provisions that say you can't split contracts. Commissioner Davey asked if she could give the commission the statute she is referencing and Rohde said she would. She is concerned because this is a new project and if the hospital looks to be the best one after we have done some more focus research and planning on it, and that turns out to be the best for the community, then so be it. It is a new project, it is not a continuation of the 2012 project. That building was purchased with the intent to put county offices over there. Commissioner Davey stated the county did not purchase it, the county owns it. The county attorney said the county paid off the bonds and you have put more money into it. Commissioner Dell said for the Assisted Living, not the hospital. The intent has been to put county offices over there, Rohde said. It has significantly changed from what the commission first envisioned in 2012. It has become a new project and needs to be treated as such, Rohde said. It needs to be treated as a capital improvement project and encourages the commission to put together a steering committee with department heads, elected officials, members of the public and move

forward. Rohde said she is representing the county and the commission to the best of her ability and for the best interest for Stillwater County.

Commissioner Shupak stated as far as the roof repair, there is insurance money for that project. Commissioner Davey said the county received insurance money to re-roof the building which was already in the making. The county attorney said there is an argument to be made though that it is still part of the major renovation project. Commissioner Davey asked who it is an argument with, who do we convince that it is not a building maintenance? Rohde said, It would be the public, it would be if the public filed any kind of suit against the county. There is arguments to made on both sides and the potential. Commissioner Shupak said the insurance money has been sitting there and it can't be used for anything else.

Coralee Hicks stated she has been looking at this and coming to the meetings. When she researched this to see where the county was financially, we are talking a lot of county taxpayers dollars. She doubts if we could do that and actually fix everything in the courthouse that needs to be done. She said her research shows no financial plan that she could see or how much this would actually cost. She found structural issues that needed to be addressed and stated she can find nothing in the file that has been done. She asked why would you put money into a new roof on a building that may not be structurally ok. She said she admires the commission for the difficult job, and she does not expect them to know everything. We have people in our community that are engineers and architects and suggested the commission make use of them.

Commissioner Davey said she is not an architect or an engineer and that is why we hired an architect/engineer to look at these things, and we did. All that information is up in the Clerk & Recorder office. She said the architect did just what the commission asked them to do. The first step - to look at the space. We didn't go beyond that, nothing further Davey. She said resolutions have been changed in the past and there's no reason that things can't be changed, there is flexibility there, but it seems like it has been very hostile and very secretive in the actions that have been taken with this building and I will go back to July 2011 when we had a public hearing about paying off those bonds and it was advertised that we could use the building for county offices. We heard no negative discussion at that time and to commit 1.5 million dollars of county money was very tough for me to do. But in order to move forward with the hospital which we heard from quite a few people to "let's do that". I certainly always want to follow the open meeting laws. Davey stated she never intentionally or the other commissioners keep the resolution from the public.

Commissioner Shupak called for a motion on the request to rescind Resolution 2016-38. Hearing no motion, no action will be taken, and Resolution 2016-38 stands as it is.

- Consent agenda:**
1. Road and Bridge - Gasboy Service Offering Agreement
  2. Human Resources - Sapphire Employee Assistance Program Service Agreement - Modification 5.

**File items:**

1. Department Reports:
  - a. Justice of Peace- month ending November 30, 2016
  - b. Economic Development- month ending November 30, 2016.

Commissioner Davey **MOVED** to approve the consent agenda and place the file items to file. Commissioner Dell **SECONDED**. Motion passed unanimously.

**Public Comments:** None heard.

**Meeting Adjourned:** Hearing no further business, Commissioner Shupak adjourned the meeting at 9:32 AM