

**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  
MARCH 28, 2017**

**Present:** Commissioners Dennis Shupak, Chair; Maureen Davey; Mark Crago, Members; and Lori Dobitz, Administrative Assistant.

Others Present: Scott Waltner, Solid Waste Supervisor; Joe Morse, Finance Specialist; Jerry Friend, Treasurer; Clifford Brophy, Sheriff; Larry Bernhardt, Sheriff's Office; Monica Plecker, Contract Planner; April Limburg, Planning; Heidi Stadel, Clerk and Recorder; Steve Gonzales; Jane Moses, Virginia and Richard Cross, Dan Burkhart, Bill DeGrout, Meg Hatch, Karen and Tom Heyneman, Williams Civil Construction; Joel Kemp, Becky Gray. Susan Beug, Ken Williams, Alex Heyneman, Kevin Chandler, Renee Coppock, Bill Hand, Burt Williams, Joan Brownell, Laurie Beers, Julia Childs, Gretchen Martin, Edward Barta, John Beers, Ed Kimmick, Last Best News; and Mikaela Koski, Stillwater County News.

**Open Meeting:** Commissioner Shupak opened the meeting at 9:00 am with the pledge to the flag.

**Bid Opening:** 1. Sealed bids for Solid Waste Roll-Off Truck - Joe Morse, Finance Specialist, opened the one bid from Motor Power Equipment, Billings, MT for a 2018 Kenworth roll-off truck in the amount of \$104,761 w/trade in allowance of \$12,000 for the 1999 Kenworth. Commissioner Davey **MOVED** to take the bid under advisement. Commissioner Crago **SECONDED**. Motion passed unanimously.

**Consent Agenda:** Fire Warden - Duty Officer Appointments: Bill Pronovost, Deputy DES; Bryan Bartholmew, Park City Fire Chief; Rich Cowger, Columbus Fire Chief; Nick Jacobs, Columbus Assistant Fire Chief; and Charles "Chip" Kem, Undersheriff.

**File Items:** 1. DEQ - Request for Public Meeting Form for proposed opencut operation at MacKay Pit site located in Sec. 35, T5S, R17E, Fishtail, MT.

Commissioner Crago **MOVED** to approve the Consent Agenda and place the file items to file. Commissioner Davey **SECONDED**. Motion passed unanimously.

**Special issues:**

1. Stillwater River Road Rockslide: Stillwater Mining Company - Commissioner Crago reported that during the FEMA process, tipi rings were found in the area (Moraine) fishing site of the proposed storage site for the waste rock. An alternative was sought and Crago said it was agreed upon by the Stillwater Mining Company to use the former staging area for the tailings pond on the Hertzler Project. The Commission met in an emergency meeting on March 23, 2017, to enter into an agreement with the mine, he said. Commissioner Davey said the mine had originally offered the site, however, the fishing access was closer to the project, which didn't work out, so she is pleased with this outcome. Commissioner Crago thanked the mine for stepping up.

**Regular Business:**

1. Planning - Columbus Airport - Woltermann Memorial - Request for reimbursement for Airside Pavement and Electrical Rehab (AIP 3-30-0017-012-2015) in the amount of \$7,188. Commissioner Davey **MOVED** to approve the reimbursement request as recommended by the Airport Board. Commissioner Crago **SECONDED**. Motion passed unanimously.

2. Road Department - West Rosebud Project - Williams Civil Construction (WCC) work, bonding, and reclamation in the Mackay gravel pit. Commissioner Crago explained bonding will fall under the DEQ application that WCC submitted in order to reclaim the gravel. Commissioner Crago **MOVED** to approve the Road Superintendents recommendation to allow Williams Civil Construction to move forward without bonding the county for the gravel pit, submitting proof of insurance, and listing the county as additional insured. Commissioner Davey **SECONDED**. Motion passed unanimously.

3. Treasurer - Jerry Friend, Treasurer, explained the interest rates fell out at FIB and the county would receive better interest rates with it sitting in STIP, but in order to access it from STIP to utilize it if we need it, it has to be routed through the checking account which is at Yellowstone Bank. Commissioner Davey **MOVED** to adopt **Resolution 2017-24** authorizing participation in the Short term investment pool (STIP) and changing account access from First Interstate Bank (FIB) to Yellowstone Bank (YB), as requested and recommended by the County Treasurer. Commissioner Crago **SECONDED**. Motion passed unanimously. The resolution is filed with the Clerk & Recorder Document No. 368366.

4. Citizen Initiated Zoning - Action considered on the Beartooth Front Zoning Petition as to whether the county will proceed with Part I or Part II Zoning.

Commissioner Crago said there has been a lot of hard work by the petitioning group to collect the signatures and did their due diligence to get this information to the county. Crago said the Zoning Petition was turned into the Clerk & Recorder on February 9, 2017, and she has been working on various steps in the authentication process, and has charted the map turned in with the petition. The map has been entered into the county database. She is currently moving forward with the authentication of the signatures. Crago said we have come to find out that the proposed CIZ overlaps an existing CIZ. He said the county would need legal clarification. Commissioner Crago **MOVED** to postpone a decision on this until the significance and legalities into zoning over zoning is clarified, and allow Heidi Stadel, Clerk & Recorder, to move forward and complete the authentication of the signatures. Commissioner Davey **SECONDED**.

Discussion: Commissioner Davey stated we discovered the over lapping of the proposed

district and existing district. She said the existing district was created in 1979 and may have some things that are not covered in this proposed district. She said more time is needed to look at it which will not hold up the Clerk and Recorder to continue her validation of signatures. Davey said the county is moving forward with process under Part 1 as requested in the petition.

Comments/Questions:

1. Karen Heyneman - asked if the commission could talk more specifically about the process. Commissioner Crago explained there is legalities of two districts overlapping and what board is in charge of what. If one district allows oil exploration without restrictions and the new zone is creating restrictions, these are questions and legalities we have to research, he said.

2. Burt Williams - said he and his group has not received any guidance since starting this process in 2014. He said his advisors have told him there is nothing that would prevent overlapping zones in rural areas and it is a permissible activity.

3. Joan Brownell - asked if the existing zoning board is active. Commissioner Crago said there is a board per se, but has not been active to our knowledge as it just came to light of the existing zone being there. Commissioner Davey said if the board was active it was because there would have been an amendment. If there has never been an amendment, then there was never any action taken.

4. Commissioner Crago - said his motion was to postpone, in fairness to the proponents and the opponents.

5. Edward Barta - asked the commission how long the postponement would be needed. Commissioner Crago said a target date of August 9, 2017, which is 6 months from the date the petition was submitted.

6. Bill Hand - inquired about submitting materials supporting the idea that the two districts can co-exists to the commission for consideration. Commissioner Davey said anything can be taken under public comment and that would be acceptable.

7. Commissioner Davey - asked if the original motion was to postpone because of the questions on the overlapping. Commissioner Crago said the motion was for clarification of the zoning over zoning and to allow the verification on the signature process to be completed. He said he could amend the motion to say tentative August 9, 2017, completion date of the verification of the signatures. Commissioner Davey said that was not part of the original motion.

8. Joan Brownell - said that would complicate matters considerably. The first motion about finding out about the extra zone and have another motion considering the verifications, because when we talk about verifications of signatures, it get very complicated, she said. It's a moving target, ie. someone dies today, or if someone has a transaction, land changes, so we have to discuss how we are going to deal with that.

Commissioner Crago said in fairness to the Clerk & Recorder, she has allowed the petitioners to continue bring in signatures on a regular basis, even after February 9, 2017. We have not tried to shut the group off from getting additional signatures turned in, but the longer you turn signatures in, the longer the verification process could take, Crago said. Brownell said since the February 9, 2017, date when they turned the petition in date is the end of it, but it's not going to be correct because things keep changing, she said. She rather not go out and get more signatures but if it keeps changing, we have to notify people of what is going on with the new

owners saying she is not sure what the best way of handling that. She said they do expect that when Heidi has some problems or questions when it comes to the verification process, they know the signatures inside and out.

9. Commissioner Davey - said she is not aware of the process for receiving signatures.

10. **CALL FOR THE QUESTION** - Commissioner Crago called for the question on the motion on the table currently and entertain a motion to set a cut-off date for acceptance of signatures. Commissioner Shupak called for a **vote**. Commissioner Crago and Commissioner Shupak voted aye. Commissioner Davey voted nay. Motion passed.

11. Jane Moses - asked if the motion simply is to postpone this agenda item until we learn more about zone over zone. She said that makes sense but she isn't sure about the signatures. Commissioner Crago stated it takes time to verify the signatures and part of the petitioning process is to do that and it has not been completed yet. He said the reason he moved to postpone was because of the new information and to give the clerk and recorder time to give the petitioners fair shot at having their signatures verified. Jane Moses said there is a process for learning about zone over zone, and there is also an overburden clerk, that has 2 or 3 elections going on. We have had a hard time in the past getting the signatures verified in a timely manner, she said. She asked if there is a way to separate the zone over zone research and the signature verification. Commissioner Crago explained the zone over zone is a legal research not a clerk and recorder research, so they would be researched independently of each other.

12. Nancy Rohde and Commissioner Davey discussed the motion in depth and the reason of postponement. Commissioner Davey asked for clarification of the postponement as she understood it was because of new information. Rohde said that is one of the reasons, but also wanting to allow time so the process continues to go forward. Davey said part of the motion was a time-line as to when the signatures would be ready. Nancy Rohde said the purpose of that was to let the commission know the process is continuing, it isn't going to stop.

13. Karen Heyneman - asked if that was a procedural standard, why does it have to be tied to the postponement motion, because that is going to happen regardless. Rohde said she thought it would give the petitioners some assurance not the opposite. We are going forward in good faith, it is a process, and it is not stalemating, Rohde explained, *it is a message we are trying to convey.*

14. Edward Barta - asked in terms of the signature verification if the date of August will be sufficient. Heidi Stadel, Clerk & Recorder, said she is confident she can meet that date.

15. Nancy Rohde, explained another land use attorney is on board and it was that persons suggestion that we have this meeting today to have this decision on Part 1 or Part 2. In going through the process, we scheduled a date, we gave public notice, we realized it was premature. This added another component to it, she said, to make us realize that we need to answer this legal question. Rohde thinks the land use attorney thought the signatures were going to be done, but given the volume of what this petition is, the verification of signatures in a week or 10-days is not going to happen, she said.

Rohde said she didn't realize that when she was advising us to get this on the agenda.

16. Renee' Copock - asked if Stillwater County has a deadline to verify signatures. Heidi Stadel said there is not a resolution in our county on how to address this process, so she reached out to other counties and reviewed their processes. She came up with a list of what would be reasonable. Heidi Stadel said a resolution will be drafted following this for future petitions.

Commissioner Crago called for point of order and get back to the motion to change the action of postponement, otherwise end the meeting and allow for public comment and take all comments within the comment period.

17. Karen Heyneman - asked what will or can happen during a postponement period and what is not allowed during a postponement period, ie. fracking and other activities.

She asked if there is a stay. Nancy Rohde said no and she isn't aware of anything going on. As it exists today, Rhode said, whatever is allowed today would be allowed to go on, this doesn't stop anything.

18. Dan Burkhart - addressed the meeting scheduled for August and asked for a larger facility for people to attend these meetings. Commissioner Davey said we will get to a point of a public hearing where proponents and opponents will speak and yes she see's a larger facility.

**Recess:** Commissioner Shupak, at the request of Burt Williams, called a recess at 9:45AM.

**Reconvene:** Commissioner Shupak reconvened the meeting at 10:00 AM.

**Public Comments:** Burt Williams said the group will not make most of their comments today that they had on decision for Part 1 vs Part 2 until the commission is closer to making a decision in a meeting. He asked for a show of hands for those opposing the petition for zoning Part 1 - 0, he asked for a show of hands for those in support of the petition for zoning Part 1 - 22. He then introduced Joan Brownell to make her comments.

Joan Brownell read a letter she submitted for the record to be filed with the petition. In summary, the letter stated she has been involved in this effort since 2014, and by November 2015, they had collected the necessary 60% of all landowners and submitted the petition to the county commission. She said they did not receive the signature verification process until the end of March 2016. County Attorney Rohde required them to obtain affidavits for all individuals who signed in a representative capacity for trusts. They had to reconnect with over 100 original signers to obtain affidavits, of which some were lost in the process for various reasons. She said she expects to have the opportunity to work with the county to correct or resolve and signature issues as the signature verification process proceeds. She said the group has received overwhelming support from all walks of life. She asked if Heidi Stadel agreed to a cut-off date, rather it be today or in August.

Heidi Stadel, Clerk and Recorder, said she agrees there should be a cut-off date to accept signatures. Nancy Rohde stated that a decision for a date will need to placed on an agenda for action.

**Meeting Adjourned:** Commissioner Davey called for a point of order. Commissioner Shupak called for any further comments. Hearing no further comments, Commissioner Shupak adjourned the meeting at 10:00 AM.

Claims and

Warrants:

Claims were examined and warrants ordered drawn in the amount of \$ 317,755.12 and payroll in the amount of \$385,246.65 for a total of \$703,001.77 for the month ending March 31, 2017.

APPROVED BY /s/ Dennis Shupak, Commissioner Chairman

ATTEST: Heidi L. Stadel, Clerk and Recorder