

October 25, 2021 Regular Session of the Beaverhead County Commissioners

The Board of Commissioners, in and for Beaverhead County, Montana, met in session on October 25, 2021 at 9:00 a.m. in the Commissioners' Room of the Beaverhead County Courthouse. Present: Chairman John H. Jackson, Commissioner Mike McGinley, Commissioner C. Thomas Rice and their Assistant Cindy Decker.

Updates on County Projects

Road Supervisor Bob Ferris and Public Works Secretary Jamie Flynn joined the meeting. Bob stated that the crew has been blading some roads and actually had to plow snow.

The Rock Creek Bridges project is still on hold waiting for parts to be delivered for the pile driver.

GIS Coordinator Tracy Sawyer, Superintendent of Schools Mike Miller, Facilities Assistant Jim Sivils, Sheriff Paul Craft, DES Coordinator Tom Wagenknecht and Casey Elliott from the Tribune joined the meeting.

Paul said that the Maurer site has been cleaned up. He has been notified that it will be too difficult to move NOAA into the new IM site because the antennas need to be separated by at least 20 feet. He will be doing some more research as far as what our obligations are to NOAA.

The equipment has been installed in Butler and 966 Wisdom is up and functioning but there are issues with Wisdom Sheriff. It is currently being worked on.

There was a power bump Saturday night and it took out the computer fan in dispatch. Paul would like to obtain some additional service coverage on those computers for the future.

He is looking into 3 Rivers for internet upgrade; Paul did **not** tell them that the county would run the cable. He also stated that some of the equipment needed for the jail upgrade was delivered to the wrong address, so that is a waiting game too.

There was discussion regarding the transformers in the outside alleyway. West Electric has been here looking at it; Paul would like to see a much bigger generator to cover the whole courthouse in the event of an outage. The transformers will most likely be set either on a pole or on our utility easement.

Tracy stated that he has been working with Bob documenting all the roads in the county. He has also been working on the gravel pit. Paul requested copies of the new road spreadsheet so each of his deputies can have access to them.

Mike Miller will be at Reichle school for observation tomorrow. He mentioned that Tracy has helped him with a project to find out how many rural schools used to dot the landscape of Beaverhead County; the total is 34 little schools. Mike will forward this on to Rob for the County Growth Policy. He also stated that Fran Schisler was awarded the Montana Retired Educators Volunteer of the Year.

Jim said that next week West Electric will continue working in the jail on the H-vac. Their goal is a week on and a week off. Jim will call RE Miller regarding the Sally Port today. The sprinklers are all blown out for the winter.

Jamie said that the Wisdom job opening closes today at noon. She has received 3 applications. Commissioner Jackson will give the applicants a call today to schedule interviews.

Tom said that the new Food Sanitarian is working out well. Lanie has been helping her get settled in.

Commissioner McGinley added that Madison County was helping us during that transition and now they don't have a planner so our planner will be helping them out. An official agreement is in place.

The following Road Department Report was submitted and scanned into the minutes:

BEAVERHEAD COUNTY ROAD WORK
October 17th to October 23rd, 2021
Dillon, Lima and Wisdom Areas

DILLON AREA

- Bladed on the following roads: Bond, Anderson, Blacktail, Bannack Bench and Smith.
- Moved the old bridge on Rock Creek for the replacement bridge.
- Moved equipment.
- Road checked Dillon area roads.
- Equipment service and repair.

LIMA AREA

- Bladed on the Little Sheep Creek Road.
- Installed a culvert on South Valley Road.
- Hauled gravel on South Valley Road.
- Road checked Lima and Dell area roads.
- Equipment service and repair.

WISDOM AREA

- Bladed on the following roads: Rock Creek and Twin Lakes.
- Hauled gravel on Twin Lakes Road and Rock Creek Road.
- Shop cleaning and maintenance.
- Road checked Jackson and Wisdom area roads.
- Equipment service and repair.

Action on Previous Meeting Minutes

The minutes of the October 18, 2021 meeting were read and the following motion was made:

MOTION: Commissioner McGinley moved and Commissioner Rice seconded that the minutes of the October 18, 2021 meeting be approved. A verbal vote was taken and the motion carried unanimously.

Public Comments on Subjects Under County Jurisdiction Not on Agenda**Treasurer's Report**

Treasurer Cathy Huckle joined the meeting and presented the September Cash Report.

Commissioner McGinley stated that the ARPA (2991) money needs to be deposited into an interest-bearing account. A letter from the Commissioners will be written stating the same and delivered to the Treasurer.

Discussion & Action ~ Family Transfer Process

Clerk & Recorder Stacey Reynolds, GIS Coordinator Tracy Sawyer, Land owners Keni & Jeff Crane, Planner Rob Macioroski, Planning Secretary Rochelle Hoerning, Eric Wendland and Surveyor Travis Wilson joined the meeting.

Rob began the discussion stating that the 18 month hold ordinance is enforceable but might not "hold up in court". Stacey said that the MACo attorney told her that the final decision is on the commissioners' shoulders.

Commissioner Jackson added that really, this is a way to avoid the subdivision process. He also asked if we let one slip through, then that sets a precedent and many more people will try to do this.

Travis said he is very active with the legislature and SB 231. The only two ways to create a piece of ground now; the family transfer or subdivision. He doesn't agree that the county can supersede the state rules.

Stacey reiterated that the final say is up to the County Attorney. This rule has been in effect since 2007. Jed can be available this afternoon if discussion needs to be continued.

Eric stated that there are many reasons that someone would want to do a family transfer and the intentions are not always known to others.

Commissioner McGinley said that if you speak with 3 attorneys you will get 3 different answers. Mike sincerely disagrees with the MACo land attorney that this is "illegal". He referred to the MCA code 76-3-501 and stated that he feels that it is cut and dry; must not do family transfer to evade subdivision. What is "right and wrong" and what is "legal or illegal" sometimes are two different things.

Mike asked why the landowners want to do a family transfer and then sell one of the parcels; it is the parcel in Keni's name. Keni said that they can't afford to do a subdivision and can't afford NOT to sell a piece of ground at this time. They see the opportunity to do this while interest rates are low too.

Mike stated that this puts the commissioners in an awkward position because it might be "right" to let them do this sale, but is it "legal"? Keni asked the commissioners to put themselves in her place; also, what would she gain on their land from the county by doing subdivision? They constantly have to clean up trash on their land from the landfill.

Stacey said that this really goes back on the surveyor's shoulders and the Title Company because they are very aware of the county's policy for the last 14 years. They should have advised their clients of the 18 months hold prior to doing the survey. Keni replied that Travis *did* tell them, but Rob told them that it wouldn't be enforceable. That is why they proceeded with the sale.

Mike commented that it is the commissioners' job to enforce the ordinance. Eric replied that just because it is a policy or ordinance doesn't mean that it's lawful. Mike said that he actually thinks the Cranes are "right" to want to do this, but it's just not "legal".

Commissioner Rice thinks that our County Attorney Jed Fitch should be present and involved in this discussion. Stacey said that there was a similar situation several years ago but the landowners came to the commissioners *before* they went ahead with the sale of part of the Family Transfer; however, they never did go through with the survey.

Eric said that there is a lawful exemption from subdivision that exists if done correctly.

The Cranes agreed to come later this afternoon when Jed can be present via phone. Keni asked where all the money obtained from subdivisions goes. Mike replied that we have staff hired to take care of these things; the county doesn't just collect money just to do it. It costs money to get through the process of subdivision. He reiterated that the ultimate decision falls on the Commissioners after taking advice from the County Attorney.

Eric said that really, we should have a process to determine what constitutes "evading" a subdivision. Maybe that could be discussed this afternoon with Jed.

This item will be revisited this afternoon around 1:30.

Recess

Recess Commission Meeting for 911 Communication Board Meeting and lunch.
At 1:30 p.m., Chairman Jackson reconvened the meeting with Commissioner McGinley, Commissioner Rice and their Assistant Cindy Decker present.

Discussion resumed regarding the Family Transfer Process

County Attorney Jed Fitch joined the meeting via speaker phone and he was brought up to speed on this mornings' discussion. Surveyor Travis Wilson, Clerk & Recorder Stacey Reynolds, Eric Wendland, Planner Rob Macioroski, Landowners Keni and Jeff Crane and Casey Elliott from the Tribune joined the meeting.

Tom R. began by asking Jed if there is a process or checklist written down regarding Family Transfers. Jed responded that people can do one family transfer per life. He reminded everyone present that family transfers cannot be done to avoid or evade subdivision.

He went on to say that our Ordinance *is enforceable* and the Clerk & Recorder *must* uphold and enforce it. The state has never actually passed a *specific* limitation on family transfers ordinances. It is up to each county to set their own criteria.

Commissioner McGinley quoted 76-3-501 which seems to contradict 76-3-511. Jed replied that, in theory, the state statute leaves it up to the county to decide how to make sure that that Family Transfers aren't used to evade subdivision review. He went on to say that it would be ideal if the State would come up with a clear policy statewide regarding this issue.

Commissioner Rice remembers that the Commissioners have given 2 variances in the last 14 years. Stacey reminded everyone that only one followed through with a survey. Jed stated that he will be here in person next Monday.

At this time, the recorder stopped because the battery died.

Keni stated that all they want is to raise their children in a country setting and to live free. They have no intention of subdividing.

Mike mentioned that years down the road, maybe the people that buy this parcel of land from the Cranes, might complain to the Cranes about them shooting guns but there won't be any covenants in place to back that up. He just wants the Cranes to look into the future.

Eric asked what the difference is if they sell today or in four months; they are allowed to do it once. He doesn't believe that the Cranes are trying to evade subdivision.

After discussion, the commissioners decided that there needs to be a formal request from the landowners to the commissioners for a family transfer variance. This will be on the agenda next Monday as "Discussion & Action ~ Variance Request of County Subdivision Regulation's 18-month Restriction on the Sale of Parcels Created by Family Transfer Exemption from Mandatory Subdivision Review – Regarding a Parcel Created by Certificate of Survey #1999FT".

After lengthy discussion, the following motion was made:

MOTION: Commissioner Rice moved and Commissioner McGinley seconded that Action on the Request for a Variance on the proposed sale of a parcel of the filed Crane Family Transfer be on the Commissioners' Agenda for November 1, 2021. A verbal vote was taken and the motion carried unanimously.

Unfinished Business/Other Topics of Discussion

Routine matters occupied the attention of the Board for the remainder of the day.

Payment of Invoices

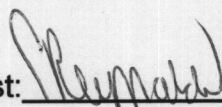
The Commissioners reviewed and approved invoices for a total of \$36,335.03, beginning with check #208305 and ending with check #208336. The Invoice Payment Schedule is located in the Financial Administrator's Office.

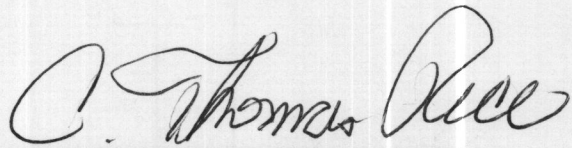
Public Comments on Subjects Under County Jurisdiction

There were no public comments.

Adjourn

There being no further business to come before the Board, the meeting was adjourned at 5:00 p.m.

Attest: 
Clerk of the Board

Approved: 
VICE Chairman of the Board