

## December 13, 2021 Regular Session of the Beaverhead County Commissioners

The Board of Commissioners, in and for Beaverhead County, Montana, met in session on December 13, 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 Rock Creek Bridges project is complete. The crew has been blading a few roads and hauling gravel on Stone Creek. The byway and Lemhi Pass will be closed by this Friday the 17<sup>th</sup>.

County Attorney Jed Fitch, Facilities Assistant Jim Sivils, Casey Elliott from the Tribune, Superintendent of Schools Mike Miller and GIS Coordinator Tracy Sawyer joined the meeting.

Jed stated that he has advised that the signs need to be removed from Buster Brown Road. As of yet, the signs are still there. This is a County road up to Timber Creek. Jed will reach out to the attorney involved. He will also reach out to the owner of the LaCense as Buster Brown Road runs through there as well.

Jed also mentioned a letter he received from a resident who tried to access land by Lakeview Road which is across the Clark Canyon Dam. The issue is that there is a locked gate on a public road that crosses the Bureau of Rec onto BLM property. Tracy said that in the subdivision plat it says "private road" with five parcels. He stated that that wording should not be on the COS. Jed will be doing more research on this subject. He also stated that the new Deputy County Attorney is doing well and that he plans on filing for re election in January.

Jed also advised that the Dillon City attorney will be resigning effective December 31, 2021. Currently, the city will not accept any of the county's cases which are conflict cases. Jed is concerned that his case load may pick up because of this as his office is sworn to do justice regardless of the logistics. Of course, the County Attorney's Office already does many of the city's cases because they are felonies.

Mike Miller will be headed to Melrose today regarding track meets. He will be in Polaris on Wednesday. The county spelling bee will be February 16, 2022.

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

### BEAVERHEAD COUNTY ROAD WORK December 5<sup>th</sup> to December 11<sup>th</sup>, 2021 Dillon, Lima and Wisdom Areas

#### DILLON AREA

- Bladed on the following roads: Birch Creek and Sweetwater.
- Hauled gravel and bladed on Stone Creek Road.
- Plowed snow on the Pioneer Mountain Scenic Byway.
- Cleaned a culvert on Highway 324.
- Gravel pit test holes on South Valley Road.
- Road checked Dillon area roads.
- Equipment service and repair.

#### LIMA AREA

- Mowed shoulders on Big Sheep Creek Road.
- Spot repair on Big Sheep Creek Road.
- Dug test holes for Stibal Lane gravel pit.
- Moved equipment.
- Road checked Lima and Dell area roads.
- Equipment service and repair.

#### WISDOM AREA

- Culvert repair on Twin Lakes Road.
- New employee training.
- Road checked Jackson and Wisdom area roads.
- Equipment service and repair.

**Action on Previous Meeting Minutes**

The minutes of the November 29, 2021 meeting were read and the following motion was made:

MOTION: Commissioner McGinley moved and Commissioner Rice seconded that the minutes of the November 29, 2021 meeting be approved with changes. A verbal vote was taken and the motion carried unanimously.

**Public Comments on Subjects Under County Jurisdiction Not on Agenda**

Chairman Jackson brought up the Certificate of Substantial Completion for the Rock Creek Bridges project for discussion. Signatures are required on this document and Bob Ferris is very happy with the end result of this project.

MOTION: Commissioner Rice moved and Commissioner McGinley seconded that Chairman Jackson sign this certificate of Substantial completion for the Rock Creek Bridges project. A verbal vote was taken and the motion carried unanimously.

**Discussion & Action ~ Should County Join Statewide Opioid Settlement Agreement**

County Attorney Jed Fitch joined the meeting and began the discussion. He reviewed the original letter for those present. The deadline for joining is January 2, 2022. Our share of the take is a percentage which would be .6841 of the \$80 million. There may be some ties or restrictions as to how we could spend the money.

After brief discussion, the following motion was made:

MOTION: Commissioner McGinley moved and Commissioner Rice seconded that Beaverhead County join the settlement.

Jed said that if this motion passes, Tracy will help register on this site.

A verbal vote was taken and the motion carried unanimously.

**Discussion & Action ~ Resolution 2021-30 – Reassignment of Cases for Prosecutorial Assistance**

County Attorney Jed Fitch remained in the meeting and began the discussion by stating that this has to do with what has happened since his seizure and illness. Thorin Geist was hired to help the county out during this but now he has moved on. He is, however, willing to finish out some of the cases that he began with and that is the reason for this resolution.

After brief discussion, the following motion was made:

MOTION: Commissioner McGinley moved and Commissioner Rice seconded that Resolution 2021-30 – Reassignment of Cases for Prosecutorial Assistance be adopted. A verbal vote was taken and the motion carried unanimously.

A copy of the Resolution can be viewed below:



110357 Fee: \$ 0.00 File: 2021-30 Page: 1  
BEAVERHEAD COUNTY Filed 12/13/2021 At 4:53 PM  
Stacey Reynolds, Clerk and Recorder  
By: *[Signature]*

### RESOLUTION 2021-30

#### RESOLUTION FOR REASSIGNMENT OF CASES FOR PROSECUTORIAL ASSISTANCE

**WHEREAS**, due to a medical emergency, and the ongoing cancer treatment of the Beaverhead County Attorney, Jed C. Fitch, during the months of March to November 2021, and the vacancy of the permanent Deputy County Attorney position, a contract to assist in felony prosecution was entered between the Beaverhead County and attorney Thorin A. Geist who was part of the Cotner Law Firm; and

**WHEREAS**, Thorin A. Geist was thereby appointed as a Special Deputy Prosecutor of Beaverhead County, and paid from the budget for the permanent deputy salary; and

**WHEREAS**, Thorin A. Geist, on November 19, 2021, accepted a position with the Attorney General's Office, Prosecution Services Bureau, as of November 29, 2021; and

**WHEREAS**, Beaverhead County thus ended its contract with the Cotner Law Firm for the services of Thorin A. Geist on November 19, 2021; and

**WHEREAS**, a request for assistance on a portion of the cases that Thorin A. Geist was handling upon his transition to Prosecution Services Bureau was made by Beaverhead County Attorney Fitch, and agreed upon by Prosecution Services Bureau, a portion of the cases were retained by Beaverhead County Attorney Fitch to complete the prosecution thereof; and

**WHEREAS**, Montana Code Annotated Section 7-4-2705 authorizes Beaverhead County to employ special counsel in the prosecution of criminal cases; and

**WHEREAS**, each of the cases listed below were, and are, being prosecuted by Thorin A. Geist at the time of his transfer to Prosecution Services Bureau, and each case is at its own stage of completion, varying between facing final sentencing, up to pending trial; and

**WHEREAS**, it is desired and deemed appropriate that Thorin A. Geist, now in the service of the Prosecution Services Bureau, and upon his agreement, as well as the agreement of the Prosecution Services Bureau Chief Dan Guzyski, that Geist now be appointed a Special Deputy County Attorney of Beaverhead County to continue the prosecution he began or joined earlier in the following cases, identified below by name of Defendant and existing cause number.

Defendant Name	District Court Cause No.	Current Status
Alexander, George Andrew	DC-21-4013	
Bissette, Louisa	DC-20-3961	
Bjornson, Stacy	DC-15-3672	
Blacktail, Elijah	TBD	Investigative file to be charged.
Bulltail, Hunter	DC-21-3999	
Burnett, Trypp Alesander	DC-20-3930	
Carlin, Lee Thomas	DC-21-4014, DC-21-4017	
Cervelli, Dylan T.	DC-20-3964	
Cruz, Eric Brian	DC-21-3996	
Estes, Dennis Howard	DC-21-4025	Set for Sentencing
Evans, Jaden Todd	DC-20-3962	Set for Sentencing
Faulk, George Harrison III	DC-20-3955	
Green, Seth Andrew	DC-21-4019	
Hargrove, John Wesley	DC-20-3957	
Hazelwood, Gemma	DC-21-4023	
Hill, Chad	DC-20-3960	
Jester, Angela Sharon	DC-21-3994, DC-21-4035	

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Johnson, Kerry Samuel	DC-20-3936, DC-20-3948, DC-21-4024	
Kateley, Keidel Blackie	DC-21-4016	
<b>Defendant Name</b>	<b>District Court Cause No.</b>	<b>Current Status</b>
Koch, Danielle	TBD	Investigative file to be charged.
Landon, Samuel Shayne	DC-21-4020	
Lybbert, Winslow	DC-21-4031	
Myers, Miles Xavier	DC-18-3820, DC-18-3822	Set for Sentencing
Nelson, Daniel	DC-21-4009	
Nelson, Fred Allen	DC-21-4005	
Orejudo, Dominick Balanon	DC-21-3988, DC-21-3990	To be Dismissed/Pending Sentencing
Rand, Brian Burton	DC-21-4006, DC-21-4007	Set for Change of Plea
Schryver, Jordan	DC-21-3985	
Speer, Jonathan	DC-21-4010	Waiting for PSI/Sentencing Imminent
Staley, Kevin Roy	DC-21-4001	
Staley, Kristy Brown	DC-21-4002	
Stevens, Eric Jeffrey	DC-21-3995	Inpatient Treatment / Sentencing Imminent
Troupe, Ridge Cormack	DC-21-3991	
Vanduinen, Cristina	DC-21-3936	Waiting for related trial to be sentenced.
Vielle, Trace Ty	DC-21-3993	
Wardlow, Madison Faylee	DC-21-4008	Set for Change of Plea
Womack, Jon Timothy	DC-21-3986	Waiting for PSI/Sentencing Imminent

and  
**WHEREAS**, The Beaverhead County Attorney consents to such arrangement for the sole responsibility of prosecuting the above-referenced cases by Assistant Attorney General Thorin A. Geist, and/or fellow members of the Prosecution Services Bureau;

#### IT IS HEREBY RESOLVED:

That Assistant Attorney General, Thorin A. Geist, is hereby appointed as Special Deputy County Attorney for Beaverhead County for the purpose of handling prosecution of the aforementioned cases through resolution of those matters.

#### IT IS FURTHER RESOLVED:

That under the terms of this agreement, witness fees and expenses, jury costs, and other normal costs associated with trial will be the County's responsibility as with all other prosecutions. As is reasonable, Beaverhead County will also be responsible for travel costs accumulated by Assistant Attorney General Thorin A. Geist in conjunction with his prosecution of these cases.

DATED THIS 13th day of December 2021.

ATTEST:

*[Signature]*  
Stacey Reynolds  
Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS

*[Signature]*  
C. Thomas Rice, Commissioner

*[Signature]*  
Michael J. McGinley, Commissioner

*[Signature]*  
John H. Jackson, Commissioner

**Discussion & Action ~ Review Letter from Sweetwater Estates HOA**

Landowner Rich Long, Planner Rob Macioroski, Clerk & Recorder Stacey Reynolds, Deputy Clerk & Recorder Tina Caron and Secretary for the Sweetwater Estates Home Owners Association Gary Gerth joined the meeting.

County Attorney Jed Fitch remained in the meeting and began the discussion by stating that he received a letter from Rebecca Jones (President and Board member of Sweetwater Estates Board of Directors) addressing a subdivision called Dancing Winds which is very near Sweetwater Estates. Jed reminded everyone that there are three forms of local government which are Cites, Counties and HOA's. He cannot represent HOAs as he is the County's Attorney.

At issue here is the preliminary plat approval that says that the emergency exit is a road that goes through an earlier subdivision. Jed advised that this is a *private legal matter and should be handled in the private sector*; this is not a matter for the commissioners.

Sweetwater Estates has a sign on the road entrance that says that subdivision roads are private but that is incorrect; they are public. He will help draft a letter of response from the commissioners addressing this letter.

When the Dancing Winds owner bought the land, the easement on the Sweetwater and Ten Peaks roads went along with it; because that land retains the easement right. Easements don't stay with the original land owners, they pass with the land.

Commissioner McGinley said that we need to keep the future in mind for the subdivisions that are most likely coming down the road. Mike asked if there is an agreement in place to share road maintenance to which Rob replied yes. Mr. Long has been working with Mr. Towery on that.

Mr. Gerth commented that as of now, there hasn't been any compensation for road maintenance or even any negotiations.

Jed reminded him that this is a private legal matter between the HOA and the landowner, but could be considered at the final plat approval with the commissioners.

Mr. Gerth said that the road has become heavily traveled by the public to access the canal for whatever purpose. He also stated that there has also been a bit of a weed problem.

Jed stated that there could be a lot of potential legal issues here that are quite complicated because the canal has some superior easement rights across some private property.

Rob reminded everyone that one of the requirements that the Planning Board did was that a large reflective sign (3X4) be installed on the south side of the bridge stating "This road is for emergency use only" to curb the constant use by the public. Of course, Gary said it is almost impossible to keep gates closed when the general public uses them.

Deputy County Attorney Jennifer Morgan joined the meeting.

No action was taken on this agenda item today.

**Discussion ~ Requested Modification of Speed Limit Ordinance**

County Attorney Jed Fitch remained in the meeting and began the discussion by stating that a request has been made regarding Munday Lane. They would like to expand this speed limit of 25 mph to almost the entire length of Munday Lane.

The commissioners need to decide whether to pursue a new ordinance or not.

Commissioner McGinley does not think that any county road needs to be set at 25 mph. Passing an Ordinance is quite a process including public hearings.

**Discussion & Action ~ Easement Boundary of Ten Mile Road in Vicinity of Proposed Solar Farms**

Jed Fitch and Tracy Sawyer remained in the meeting and Jed began the discussion. The road across the flat is slightly off in one or two areas on the map. The issue becomes, according to MCA 7-14-2622, that the District Court can declare that the easement of the road is 30 foot from the center line of where the road is. That could be the final result in this situation. The attorneys for the solar farm are worried that the



boundaries are not clearly defined and they don't want to build where there is a county easement, so the question remains; where is the boundary?

An agreement may need to be drawn up. Commissioner Rice asked if the road can be the marker? Jed mentioned that a possible survey might need to be done and does not advise any action today. If a survey is done, the solar farm folks will foot that bill. Tracy will be working on this with Jed and will most likely be on the agenda in the near future.

#### **Discussion ~ Report on Finalization of Easement Agreement near Fire Station in Wisdom**

Clerk & Record Stacey Reynolds and Jed Fitch remained in the meeting and Jed began the discussion. Jed referred to Stacey for documents and information on this subject. This is about the old creamery in Wisdom. Through a series of division and most likely errors, it did not have a legal access. So, an attorney for the insurance company named David Steel met with the land owners. The easement to all the other property that was official, went across an unbelievable messy, cherry stem of property. The commissioners are familiar with this.

The county has legal easement across this property. Payment was made by insurance company to buy that access, but our easement is not exclusive. The legal access exists now and is filed in the Clerk & Recorder's office.

There is not access for water, sewer or power through this same area and Wisdom water and sewer has issues with this. Even though the legal access is done; there could be more issues in the future as everything about this is very complicated.

#### **Discussion ~ Report on Easement Extinguishment Process Concerning Telecommunications Site in Centennial Valley**

Jed Fitch remained in the meeting and began the discussion. He will meet with attorney Jacy Suenram soon because she represents the Duffner family. Through a course of events too long to explain, the county may have to abandon that site easement and the road easement. This still needs to be worked out and Jed will ask Double C Ranch to sign off on the easement abandonment.

Stacey will get the name and address of the owner of Double C Ranch and forward on to Jed.

#### **Discussion ~ Combining Precinct 8 with Central Election – Closing Grant Polling Place**

County Attorney Jed Fitch, Deputy County Attorney Jennifer Morgan, Clerk & Recorder Stacey Reynolds and Chief Judge in Grant Bev McDougal joined the meeting. Stacey stated that it has always been an issue getting election judges for Grant. She would like to close the Grant polling place and combine Precinct 8 with the polling place here in town at the Lutheran Church.

There are so few folks that actually vote at the polling place in Grant that it's not really worth it to have it. Bev has "begged" for election judges in the past because there just is not enough interest.

Jed thinks that this is doable but he will do more research.

Stacey will send a letter out to the Precinct 8 residents asking for their input and then a Public Hearing will take place on January 24, 2022.

#### **Recess**

At 12:00 noon, Chairman Jackson recessed the meeting. At 1:30 p.m., Chairman Jackson reconvened the meeting with Commissioner McGinley, Commissioner Rice and their Assistant Cindy Decker present.

#### **Discussion & Action ~ New Fee Schedule for Sheriff's Department**

Sheriff Paul Craft was unable to attend this meeting so this item is tabled until next Monday.

**Tyler Caron ~ Present Eagle Scout Project**

At this time, Tyler Caron presented his project to the commissioners and to obtain their approval of his project to become an Eagle Scout. His project is to make a memorial garden in a section of Chris Kraft Park on Overland Road. He will be planting trees and shrubs and erecting a walking path as well.

After the presentation was completed, the following motion was made:

MOTION: Commissioner McGinley moved and Commissioner Rice seconded that Tyler be encouraged and allowed to continue on with this project. A verbal vote was taken and the motion carried unanimously.

**Unfinished Business/Other Topics of Discussion**

Planner Rob Macioroski joined the meeting to say that Madison County has hired a new Planner so he won't be helping them quite as much.

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 \$243,019.32, beginning with check #208543 and ending with check #208656. 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 3:00 p.m. for the Solid Waste Board meeting.

Attest: \_\_\_\_\_

Clerk of the Board

Approved: \_\_\_\_\_

Chairman of the Board