

November 2, 2016

The Lincoln County Board of Commissioners met for a regular session on November 2, 2016, in the Lincoln County Annex, Eureka, Montana. Present were Commissioner Cole, Commissioner Larson, Commissioner Peck and Clerk and Recorder Robin Benson.

Commissioner Cole opened the meeting with the **Pledge of Allegiance**.

9:30 AM Intercap Loan Resolution: Present were Tracy McIntyre, Ric Kesling, Nikki Meyer, Lisa Oedewaldt, Caleb Soptelean, Dallas Wamsley, Wendy Drake and Chris Nelson.

Commissioner Larson expressed concerns about county process not being followed explaining that bids were received prior to the resolution being signed, bids were not advertised in the paper of record, and there were no discussions with the commission for approval. Commissioner Cole apologized stating not advertising in the Kootenai Valley Record was an oversight on his part. Commissioner Cole said the bids were advertised in the Tobacco Valley News for two weeks and he was hopeful the project could move forward at a faster pace.

Commissioner Larson mentioned other concerns in relation to not following county procedures that it may have a direct effect on the audit due to process not being chronologically correct and how it impacts other county employees.

Commissioner Peck asked when the bids were let out and Tracy stated the bids went out June 29, 2016. Reflecting on the minutes and past discussions Commissioner Peck said there were decisions made to move forward with the resolution with conditions and those conditions have not been met, specifically an agreement with the Rodeo Association of their financial obligation vetted through the county attorney for approval. Commissioner Peck went on to say that in all the public meetings, there was no discussion on letting of bids. Commissioner Peck said it is a viable project, but it is a county project and he is troubled that something went out to bid without formal discussion and approval. Commissioner Larson commented there is much benefit to the Town of Eureka and those discussions also need to take place and feels without those agreements in place, the county is being asked to write a blank check.

Tracy explained the bid process and having invoices in place before the Intercap Loan could be approved. Lisa said that she is reading from the requirements for all Intercap Loans and the county cannot incur bills for work being done before the loan approval. There was discussion on requirements for the Intercap Loan vs. county process and Commissioner Peck explained that it is county policy that funds cannot be expended without approval.

Dallas explained that it is her job to keep records of all county bids and all county bids get audited every year. Speaking specifically of the fairgrounds project, Dallas said she has no records of bids for the fairgrounds project, procurement procedures were not followed, advertising requirements were not followed and commission approval is not reflected in the minutes. Dallas feels strongly that because the process was not followed, she will receive a negative mark on her audit for tracking county bids; it is not a mark against Tracy it is a mark against the county. Even if Dallas receives all the paperwork for the bids that went out, it is the process that will be looked into by the auditor. Dallas suggested a meeting with Tracy and Wendy to ensure county policy and procedures are followed moving forward.

Commissioner Cole said with all the comments, he is willing to withdraw his request and pull the bleacher portion part out of the project and that invoices for work incurred will be the responsibility of the Tobacco Valley Rodeo Association with commission approval. Commissioner Larson felt that would be a good way to clean up what's been done and alleviate any legality the county may entail and to move forward slower and more procedurally. Commissioner Peck said he would like more time before making any further decisions regarding this project. Commissioner Cole suggested tabling this issue for now to give time for review and get it back on the agenda next week for further discussion.

10:00 AM IT Staffing: Present were Ric Kesling, Dallas Wamsley, and Caleb Soptelean.

Ric negotiated with Frontier Communications and has reduced the county phone bill by \$500 per month for phone service to Lincoln County Offices; this is a great savings. The Frontier Contract will need to be signed by the commission. There was a brief discussion about the phone tree and how it works. There have been complaints about difficulties for the public to reach departments.

Ric said it is time to advertise for a new employee before he retires and strongly encouraged the commission to promote Ernie Anderson to IT Director and advertise for the position currently held by Ernie as the Senior Technology Specialist. Commissioner Peck said that for key positions, he feels we owe it to the citizens to open up the IT Director position to the public. Ric stressed the importance of the IT Director position to have institutional knowledge of the county system; it could take up to a year before a new IT Director attains the knowledge to perform his duties. Commissioner Peck said it is a better public process to advertise for Director Position giving opportunity for both the public and Ernie to apply.

Commissioner Cole said that as we all know the county has authority to move employees within departments.

Commissioner Larson commented that Ernie already has the trust of the departments and technical skills so he feels comfortable to promote Ernie and fill the lower position. Commissioner Larson went on to say that it is better for Lincoln County to promote Ernie because he is already perfect for the job than to break someone new into the entire county system. **Motion** by Commissioner Larson to promote Ernie Anderson to IT Director upon Rics retirement and advertise for the Senior Technology Specialist. Second by Commissioner Peck, motion carried unanimously. Commissioner Peck stated he voted in favor of this decision because he supports Ernie Anderson personally but disagrees with the process; believes key positions should be opened up for public process.

10:30 AM Administrative Issues: Present were Dallas Wamsley, Tina Oliphant and Caleb Soptelean, Libby via VisionNet.

- The Commission read the minutes for October 26, 2016. **Motion** by Commissioner Larson to approve the minutes as submitted. Second by Commissioner Cole, motion carried.
- Tina Oliphant said she is ready to close out a BSTF planning grant for the TEDD District on the Kootenai Business Park. The grant was work conducted for the county, so she is requesting acknowledgement that the work is

complete and is satisfactory. Commissioner Cole said he would email Alyssa Townsend-Hudders, BSTF Program Specialist for the State.

- Dallas informed the commission that money for flex reimbursement was a total of 150,000 payable to Lincoln County. As soon as she visits with the county auditor, the money will be disbursed back to county departments.
- Per Commission request, Robin submitted a draft resolution for the creation of a Citizen Budget Committee to research and prioritize services provided by Lincoln County. The committee will include citizens from Libby, Troy, and Eureka as well as elected officials and appointed staff. Robin will email the draft resolution to the Commission and all comments will go to Commissioner Peck for any changes, additions or corrections.
- Robin said she received an email from Hank LaSala regarding a newspaper story that gave the appearance to be from a commissioner meeting but was not reflected in the minutes. Robin said her concern is the public perception of having a meeting that was not posted on the agenda. The story is reflective from a reporter asking questions but there was no discussion and was not included in any public comment. The commission agreed unanimously that there is not much that can be done because reporters will always ask questions and are entitled to do so.

11:00 AM **Public Comment Time:** There were no public comments.

11:30 **Domestic Violence Outreach Coordinator:** Present were Barbara Guthneck, Cookie Haidle and Jamie Brebner via VisionNet.

Barbara presented a handout to the commission for review regarding domestic violence statistics in Lincoln County and the need for an Outreach Coordinator. The handout states that Lincoln County has one of the highest fatality rates for domestic violence in the state. Libby Community Interagencies, Inc. dba Lincoln County Crisis Solutions is requesting \$11,000 to contract an Outreach Coordinator for one year. The contractor would educate the public about domestic violence and empower the public to take immediate action to stop and prevent domestic violence. The contractor would also promote the domestic violence crisis line and shelter, increase the number of victims calling, the number of volunteer helping and provide a fundraiser for further outreach and for funds to help domestic violence victims. Commissioner Cole agreed we have a domestic abuse problem in Lincoln County. Commissioner Peck commented on cohesive/coordinated efforts with other organizations/agencies that provide similar services such as the victim witness advocate, mental health agencies, sheriff and county attorney departments and the public health department.

Commissioner Cole feels there may be a hole in the process regarding who we acknowledge as the person that is hands on at the time a domestic violence issue occurs. The county health department is opening up to domestic violence services and everyone present agreed there needs to be better coordination. Commissioner Peck commented that although he hates to mention it, this is a community issue and it always boils down to money and where it will come from. Commissioner Cole asked what is driving domestic violence to increase. Cookie said she feels that meth is one of the worst drugs ever to enter this country and feels it is a significant contributor to the rise in domestic violence.

Commissioner Cole said the county will take the request under advisement and take the time to see if there is a place in the county budget for this purpose. This issue will be placed on next week's agenda for further discussion. Jamie expressed that it would be beneficial to get qualified speakers to educate the public about the statistics and how to help victims of domestic violence instead of ignoring it. Jamie agreed that all agencies should work together and coordinate efforts.

1:00 PM **EMA Update:** Present were Lisa Oedewaldt, Kirk Kraft and Mike Fraser.

Communications update: Mountain Top move is completed and the generator project is underway. Kirk and Lisa are compiling a study to discuss communication gaps within the county and determine solutions and prioritize projects. The study will include cost of upgrading the equipment and expanding sites to reduce the gaps.

EMA is finalizing agreements with Crown Castle to allow T-Mobile into our Black Butte shelter and lease tower space for our trunked system. Lisa stated the way it is set up will be an even exchange. Agreements are at the county attorney's office for approval. Kirk said that there will be a final phone conference then the 911 equipment upgrade RFP will be released.

Kirk and Lisa attended a Local Emergency Planning Committee (LEPC) workshop in Helena and they feel Lincoln County is on track with what EMA is doing. The Planning/Review Committee just finished reviewing the Emergency Support Functions ESF section of the EOP and will be working on the incident specific section next.

Commissioner Cole asked if there are any anticipated issues for winter. Kirk said he is expecting above normal snow accumulation, so we will have to see what the winter brings during the winter season and during spring runoff.

Kirk briefly discussed a continuity plan for county buildings. EMA has put together a questionnaire for department heads, so EMA would like to be on the agenda for a portion of the next department head meeting.

1:15 PM **Troy Property Appraisals:** Present were Lisa Oedewaldt, Dallas Wamsley, Deb Blystone and Mike Fraser.

Commissioner Larson submitted appraisals completed by Brad Kelch for the two properties. Properties are both in Troy. Appraisals came in within the realm of what they should be. **Motion** by Commissioner Peck to accept appraisals as written and authorize Commissioner Larson to move forward with negotiations with the property owners. Second by Commissioner Larson, motion carried unanimously. Properties are located in Sec. 13, T31N, R34W on Sunrise Road in Troy.

1:30 PM **Planning Department:** Present were Lisa Oedewaldt and Mike Fraser

- Subdivision Improvement Agreement (SIA Release), McShea's Meadows: **Motion** by Commissioner Larson to approve the SIA Release for McShea's Meadows subject to Planning Staff recommendation and conditions. Second by Commissioner Peck, motion carried unanimously.

- Subdivision Improvement Agreement (SIA Release), Cielo Lindo Estates #2: **Motion** by Commissioner Peck to approve the SIA Release for Cielo Lindo Estates #2 subject to Planning Staff recommendation and conditions. Second by Commissioner Larson, motion carried unanimously.

1:45 PM **Mike Fraser/Callahan Creek:** Present were Lisa Oedwaldt, Mike Fraser, Jeff Larsen and Fred Simpson. Mr. Fraser said he received notice from FEMA indicating they could not read the Floodplain Study. The removal should be completed early November. The summary within the fish study is all Lincoln County needs to do is remove material to allow the stream the same natural flow and provide quiet areas for the fish. The storm water prevention plan will be completed within the next two weeks. Mr. Fraser said he will monitor during the construction phase. The Right of Entry forms went to the County Attorney for approval. The county will need to determine who will be visiting with the landowners to receive signatures. There was a brief discussion about options for surveys to be conducted to provide elevation of the floodplain for those landowners

Lisa expressed concern by the county attorney that the county cannot take away from private business. If this work or removal of the material is over 50,000 it would have to go out to bid. This is the consideration when discussing what role the county road departments may provide. It is not the road departments primary job to work within stream restoration..

2:00 PM **Public Hearing/Steed/Glen Lake:** Present were Nikki Meyer, Greg Steed, Cheralyn Steed, Tiffan Hall, Marianne Roose, Rick Vredenburg, Richard Carter, Dian Cater, Joel Arbic, Shantala Ramaiah, Fred Simpson, Amy Guth and Jeff Larsen. Greg Bonilla was present via phone conference. Lisa Oedwaldt was present via VisionNet. Commissioner Cole recused himself from the public hearing.

Commissioner Peck opened the public hearing in the re-review of the Lakeshore Construction permit Application No. 2013-11-25-RC located at the end of an easement on property with the address of 306 Glen Lake Dr., Eureka, MT. Commissioner Peck stated the discussion will pertain to the Lakeshore Permit Application and records between November 25, 2013 (the initial submittal) and March 4, 2014 (the Governing Body Decision) ONLY and that no new or previous records or information will be discussed or considered. Commissioner Peck continued by explaining today's procedure as follows: Each side will get ½ hour to present their case, which will need to include any rebuttal time within their respective ½ hours. Lisa Oedwaldt will track the time for each side. Richard Carter & the Easement Holders will go 1st and the Steeds will follow. Please make sure if you want to rebuttal any discussions to make sure to leave time within your ½ hour.

Commissioner Peck said the (5) Criteria for decisions to be based upon are per M.C.A. 75-7-2 as follows:

1. Materially Diminish Water Quality
2. Materially Diminish Habitat for Fish or Wildlife
3. Interfere with Navigation or other Lawful Recreation
4. Create a Public Nuisance
5. Create a Visual Impact Discordant with Natural Scenic Values

Shantala Ramaiah on behalf of Richard Carter and the easement holders stated the purpose of the lakeshore regulations is to keep the integrity of the lakes. Ms. Ramaiah submitted an exhibit for the commission to review. We are here to evaluate the criteria of the easement request, noting that the easement group includes four professional engineers. Ms. Ramaiah explained why they meet the water quality criteria and commented that wildlife and fish is protected by the design below the structure. What is very applicable is navigation in the regulations allowing the public to navigate or get around. It is a small dock and does not constrict navigation. A safe clearance is provided with plenty of space for navigating in; space accommodates four boats. Ms. Ramaiah continued saying that you cannot speculate public nuisance that it needs to be shown or proven first. Safety is the biggest issue commenting on the large boulders.

Greg Bonilla stated the exhibit submitted by Ms. Ramaiah cannot be used by the board of county commission as a means to make any findings or consider due to the fact that it was not part of the original permit process.

Fred Simpson representing Greg and Cheralyn Steed said the decision needs to be based on the regulations in 2010. M.C.A. 76-10-103 pertains to maintaining public health, safety and welfare and said there needs to be consideration of the comment by Judge Prezeau as to the danger of the steepness. Mr. Simpson stated the ladder is very steep, unsafe and feels strongly that at some point someone will get hurt. Mr. Simpson said criteria No. 1 & 2; diminish wildlife habitat and water quality is not of concern, but does feel that navigation and public nuisance is a concern. By reading the legal definition, if this dock is allowed will create a public nuisance. Mr. Simpson spoke briefly of the procedural history and that there needs to be real clear evidence as to why the planning staff historically in records stated issues about health, safety and navigation.

Rick Vredenburg introduced himself and gave a brief bio of his experience as a realtor and selling lakeshore properties. Amy Guth asked if Mr. Vredenburg can comment now when he did not comment during the prior history. Amy said this should not be part of the presentation. Greg Bonilla asked Mr. Vredenburg what he is going to offer to the proceeding. Mr. Vredenburg said he is speaking on the infrastructure and improvement down at the lake does impact value on the surrounding lots and devalues property. Mr. Bonilla said the easement is not the issue; this proceeding is strictly about the dock. Mr. Vredenburg said he has never seen this situation, a dock placed in an easement this small between two properties. Mr. Vredenburg said his opinion based on years of experience as a realtor especially experience in selling lakeshore properties; a 30 or 40 percent decline in adjacent property values.

Jeff Larson, professional engineer gave a brief history of qualifications and experience also stating his concern with the steep ladder and feels strongly someone is going to eventually get hurt; definitely a safety issue. Mr. Larson noted the regulation of a permanent structure below the high water mark is a safety hazard and is against the regulations and that lakeshore is defined as 25 feet above the high water mark.

Greg Steed discussed he loves the lake and his family have been there for 10 years. Mr. Steed said there has never been a permit granted to place or a development that fills the lakefront from side to side which he feels affects the value of the Sanguins and Steed properties. Mr. Steed said he has opposed the application from the beginning but without malice saying it is about recreational rights and integrity of the lake.

Greg Bonilla commented that he is unable to hear most of the conversation. Mr. Bonilla asked if there was a comment about the volume of people using the dock, any fact finding or study on use by people. Mr. Bonilla asked Jeff Larson specifically if he knows how many people will be using the dock. Jeff Larson said he is a retained expert, not a volunteer. Joel Arbic said he has been dealing with this for 10 years and feels the complaints are speculative, without specific facts. Ms. Ramaiah agreed and acknowledged the ladder design only became unsafe when the boulders were put in. Ms. Ramaiah said she feels navigation is a non-issue and is just made up.

Amy Guth stated for the record that there is only the 5 criteria to be discussed and considered; cannot add criteria and feels strongly that 90% of information discussed today by the Steed group is important to them but are not part of the 5 criteria for the commission to base finding or decisions on.

Joel Arbic discussed his opinion regarding the attitude of one family who does not like the idea, stating that we are good people and we bought the property.

Marianne Roose said she sat on the board of commissioners when the decisions were made. The commission put in a lot of time, research, and site visits. Mrs. Roose said she personally contacted property owners and safety was the main concern. Mrs. Roose stated for the record that Mr. Klinke is a cousin to her husband.

Amy Guth commented that the easement was sold by Mr. Klinke to the property owners with the right to build a dock and Mr. Klinke made money off of selling the easement to the easement holders.

Mr. Steed commented that he has opposed the permit without malice; the purpose is maintaining the value of the lakeshore property.

Commissioner Larson asked who put in the boulders. The Steeds put in the boulders by co-application to the county to restore the bank.

Commissioner Peck commented that since Judge Prezeau was brought up, he would like to get an opinion about the public nuisance. Amy Guth commented the Montana Supreme Court has ruled that you cannot speculate on public nuisance; that is unlawful.

Commissioner Peck said this is obviously a horribly complex situation, but will base his ruling on only the 5 criteria.

Commissioner Peck said he would like to spend time to compare what was said today, against what is in writing. Mr.

Bonilla said it is in the board's best interest to have Commissioner Larson make a motion to table until next week. Mr.

Bonilla informed the Board of Commissioners that they cannot speak to anyone, including each other about the substance of the application but they could speak to staff about procedural issues. **Motion** by Commissioner Larson to table this discussion until next week. Second by Commissioner Peck, motion carried.

3:00 PM **Meeting Adjourned:**

LINCOLN COUNTY BOARD OF COMMISSIONERS

Mike Cole, Chairman

ATTEST: _____

Robin Benson, Clerk of the Board