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CORY KIRSCH, CHAIR

LEONARD WORTMAN

BOB MULLEN

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
April 25, 2017**

Present: Commissioners Kirsch, Wortman and Mullen; LaDana Hintz, County Planner; Steve Haddon, County Attorney; Jan Anderson, *Boulder Monitor*; Ken Vivrette, Russ Ayers, Drew Dawson, Paul Backlund, Ken Vivrette, Shawn & Shannon Gardner, Mike Cearlin, Ed McCauley, Marilyn McCauley, Bob Kirk, Duke Cromrich, Sandy Goehring, MC Goehring

The meeting was called to order and opened with the Pledge of Allegiance.

MINUTES

Commissioner Wortman moved to approve the minutes of March 28. Commissioner Mullen seconded. The motion carried.

CALENDAR REVIEW

- 4/25 Clancy Water & Sewer meeting - 6:30
- 4/26 Joint meeting with Madison County Commissioners - Whitehall - 10:00
TIF Board meeting - 2:00
- 4/27 Road department job interviews - 9:00
Survey review committee - 1:30
RMDC finance committee meeting - Helena - 2:30
RMDC board meeting - Helena - 3:30
- 5/02 Head Start meeting in Whitehall - 6:00

COMMISSION REPORTS

Commissioner Mullen reported that on Saturday he attended the legislative fun ride at the fairgrounds, which was well attended. Commissioner Wortman stated that the ride was put together on short notice and gave us an opportunity to showcase some of the recreation opportunities around Boulder.

Commissioner Mullen reported that on Monday he attended the Center for Mental Health meeting in Great Falls. They are doing well financially; they have over \$1 million that they need to invest. They are in the process of converting to a care coordination model versus a case management model, a different category that they can bill for. They currently have almost 30 positions vacant, after an 8% turnover in the first quarter.

Commissioner Wortman reported that on Thursday he attended the Safety Fair and Jefferson River Rally in Whitehall, which was very well attended.

Commissioner Wortman reported that he was in the Whitehall office Monday morning, and a couple people stopped in to discuss a variety of topics. Also, the Kountz Road bridge should be open this week.

Commissioner Kirsch reported that he attended the DUI Task Force meeting Tuesday night. They are trying to get more junior members. The Task Force will be getting more breathalysers for the Sheriff's Department.

Commissioner Kirsch reported that he and Doug Dodge went to the Riverside facility and did a program tour and reviewed the facility. He stated that they have a good program out there.

PUBLIC COMMENT

Drew Dawson stated that HB 387 passed on 3rd reading today. This bill keeps MDC open and provides \$500,000 to the community.

SUBDIVISION REVIEW

PRELIMINARY PLAT REVIEW - LOT 28A PINECREST #4 COUNTRY HOME - AYRES MINOR - CLANCY

LaDana Hintz, County Planner, had previously presented the Commission with her staff report for their review. This will be a one lot split of a parcel in the Pinecrest subdivision approximately 5.6 acres in size, creating two lots 3.6 and 2 acres in size. There is currently a dwelling and well and drain field on one lot, and a dwelling and well and drain field will be constructed on the new lot. The subdivision is accessed by Pinecrest Road, which was named a county road by resolution in 2002. The road does not meet County standards.

The developer had requested three variances to the road standards, and it seems reasonable to grant the variances. The lot will have its own well and this will need to be reviewed by DEQ. The developer has submitted a weed management plan, and met with the weed supervisor this morning.

LaDana stated that Shingle Creek does flow through the area, both above and below ground, so the developer will need to contact the Conservation District if they plan to do any work adjacent to the creek.

LaDana recommended that preliminary plat approval be granted.

Commissioner Wortman stated that he has no questions; they have gone over this subdivision quite a bit. He moved to grant preliminary plat approval. Commissioner Mullen seconded. He asked if there needs to be a separate motion on the variances. LaDana said that a separate motion is not required, noting that if the Commissioners don't approve of the variances, they don't approve the subdivision.

Duke Cromrich stated that he is a resident of Pinecrest for 46 years. Has been a building contractor for over 30 years. He stated that his reason for being here today, in his experience when you start giving variances in rural area, it opens the floodgates. He said that Pinecrest is one of the few subdivisions in north Jefferson County that isn't over developed. Some of the lot owners up there, himself included, bought additional lots to keep from overcrowding. He doesn't want someone knocking on his door in the future saying that he has to pay for road improvements.

Ken Vivrette stated that he has one comment; this is a really old subdivision and the Ayers didn't create this environment. He suggested that maybe the homeowners need to get together and discuss a maintenance district. If something is proposed, the Ayers have agreed not to protest it.

Commissioner Mullen stated that as far as the variances go, they are all for existing road issues.

The motion carried unanimously.

ITEMS FOR COMMISSIONERS' ACTION OR REVIEW

ROCKY ROAD DISCUSSION

Commissioner Wortman stated that as people are aware, a locked gate has been installed on Rocky Road. He used Rocky Road when he was a child, and always assumed that it was a public road. He and his parents purchased property in Section 4. In the late 80s the first subdivision was developed out there and at that time moved the physical location of Rocky Road to what it is now. It went up to his parent's property and further to property that he and his parents owned. His sister acquired their parent's 20 acres and due to financing, needed another 5 acres, which he gave to her. This required a new survey, which clearly showed a 60 foot public easement through the property. Some years later, Buster and Megan Bullock purchased the 25 acres from his sister and did a minor subdivision to split the property into two parcels. There was the same notation on that survey, of a 60-foot public easement. He stated that the Commission has gotten numerous calls from people concerns with the locked gate.

Commissioner Wortman stated that there was a court case done in secret. There was a confidentiality clause that no one could talk about it. He has some concerns, because he is not sure how a judge can take away public access to a road without notice to the public. For full disclosure, he has had a lot of involvement with this issue and will take part in the discussion, but he will recuse himself from the vote.

Commissioner Mullen noted that we have had a short discussion at a road meeting previously, and Shannon Gardner was very forthcoming and provided court documents. He wants the record to reflect that she has been involved in assisting us.

Commissioner Kirsch called for comments from the public.

Bob Kirk stated that he lives on Rocky Road, but he was told when he bought his place that he could not use the road. He understands that state law doesn't allow a gate unless all parties agree to a gate. When the gate was installed, it was put right next to a cattle guard, which is a safety hazard. If this is a public access, he would like to see the gate open.

Jennifer Wise stated that she knows that there are two sides to every story, but her thing is that she has lived there and used the road for 25 years, in fact, she named the road. She doesn't necessarily have a problem with gates, she deals with them when McCauleys have their cattle there. Her problem is with the location; she can't cross a cattle guard to open a gate as she had recent back surgery.

Buster Bullock stated that he has no skin in this game. He wants the Commission to know that he sold the property to the Gardners and there was no doubt in his mind that everyone knew that the road was a public access road. The road has been there many years.

Ed McCauley stated that he is here with his sister Marilyn. They submitted a letter to the Commission and County Attorney last November that gave a detailed history of the road. The gate is a hindrance to the use of the road. The gate was never there before, but on the property boundary. He noted that the county approved the subdivisions, first the Wortman and then the Bullock. The county has spent some time on this; the Commissioners, County Attorney, and the Clerk & Recorder. There is an expectation that road will be open, especially when there is no cattle to keep in or out. He isn't sure about a secret deal, but we will prevail if the County does not.

Shannon Gardner stated first of all, the court case was not secret; they spoke to Emmet McCauley numerous times regarding historic placement of fences, etc. They found out through the case that what they have is a landlocked easement; the portion from Coyote Trail to their property is not public. Based on that they proceeded to court and were awarded quiet title in May 2013. In addition to that, Mr. Felska was granted the subdivision with just one way in and out, via Rodeo Trail. Anyone buying property in there should have been notified that they didn't have use of Rocky Road, as stipulated in the court case. It is up to the realtors to inform buyers. In addition to this, the County was provided a historical map as part of the court case.

Robert Boardman stated that he has half of 25 that Buster owned. When he bought the property, they did a title search which showed a 60 foot right-of-way and the power company had an easement as well. He stated that the road was open when he bought his property and still should be. He noted that the Gardners have to cross his property to get to theirs.

Marv Goering stated that he lives on Coyote Trail and wants to offer support to the people above the locked gate. He noted that he was an EMT/firefighter for 16 years, and he realizes the importance of quick access in case of an emergency. He doesn't think that there should be a locked gate on the roads.

Commissioner Mullen asked Shannon what kind of notice was given to people before the court case. Shannon stated that it was via a telephone call, to inform them that they were pursuing legal action regarding the road. Upon review of everything, since they couldn't find anyone that had legal access through the road, her attorney didn't feel that they had anyone to notify. Ms. Wise's deed states "as road presently exists", which is to the best of everyone's research not where the road presently is. There are no other filed deeds that would have crossed her property. Commissioner Mullen noted that Mr. Boardman mentioned a 60 foot right-of-way, and asked if that exists. Shannon stated that if you look at the survey, they put "present traveled way", which went straight through and there was an old wagon trail, and that was where the easement technically was on the survey. Since then, the road that Mr. Felska put in somewhat follows that, but it deviates from the actual survey, which he admits in the lawsuit.

Commissioner Wortman asked the Gardners why they felt that the road needed to be cut off. Shannon stated that initially, they just didn't want the subdivision owners speeding past their house, then they found that no one had a legal right to cross their property. That is when they decided to seek legal action.

Shannon noted that this had been discussed at numerous Commission and Planning Board meetings, and no one was sure that this was road public road.

Commissioner Wortman stated that a decision needs to be made at some point, and suggested that this be placed on the agenda in two weeks for a decision.

DESIGNATE POLLING PLACES AND APPOINT ELECTION JUDGES FOR SPECIAL ELECTION

Commissioner Kirsch read the polling places as presented by the Election Administrator. Commissioner Mullen moved to make those the official polling places for the special election. Commissioner Wortman seconded. The motion carried.

Commissioner Mullen moved to appoint the election judges as submitted by the Election Administrator. Commissioner Wortman seconded. The motion carried.

APPOINT FIRE DISTRICT TRUSTEES

Commissioner Kirsch read the list of fire trustees to be appointed. Commissioner Wortman moved to appoint the trustees as presented by the Clerk and Recorder. Commissioner Mullen seconded.

APPOINT ELECTION AUDIT BOARD

Commissioner Wortman moved to appoint Nancy Heide, Kevin Keeler and Jenny Rafferty to the election audit board. Commissioner Mullen seconded. The motion carried.

DISCUSS AND DECIDE ON FIXING BLEACHERS AT THE FAIRGROUNDS

Commissioner Wortman gave some background on the issue. He stated that during the process of putting the cover over the bleachers and trying to figure out how to attach them, they were told that some of the risers on the bleachers were unsafe and needed to be replaced or repaired. The original estimate was \$45,000 to \$55,000 to repair the bleachers. We were going to have Golden Eagle Construction solicit bids and come up with a fix for the bleachers. We were working on funding and talked with the Intercap program. We were told to estimate high, so we requested an additional \$60,000. He stated that this morning he got an estimate from the architect, which was substantially higher than amount we requested. He also talked to one of the principals on the project, and they want a second opinion on the work required. He doesn't feel that we can make a decision today.

Steve Haddon, County Attorney, asked if, in subsequent communications with the architectural firm, there was any discussion about them putting some skin in the game. He thinks that they are all aware of his opinion. He questioned why this was not identified when the project was first engineered.

DISCUSS AND DECIDE ON PIPESTONE/JEFFERSON SLOUGH PROJECT ISSUES

Commissioner Wortman stated that the Kountz Road bridge should be open this week. They are working on the slough modification project this week, which is biting into the contingency fund. The project is looking good. Also, the Sugar Beet Row project is supposed to be underway today.

MEETING ADJOURNED

ATTEST:

**BONNIE RAMEY
CLERK AND RECORDER**

CORY KIRSCH, CHAIR

LEONARD WORTMAN, COMMISSIONER

BOB MULLEN, COMMISSIONER