

JEFFERSON COUNTY COMMISSIONERS
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ROBERT MULLEN, CHAIR

LEONARD WORTMAN

CORY KIRSCH

**PROCEEDING OF THE BOARD OF COMMISSIONERS
COUNTY OF JEFFERSON, STATE OF MONTANA
June 28, 2016**

Present: Commissioners Mullen, Wortman and Kirsch; Steve Haddon, County Attorney; LaDana Hinz, County Planner; Matthew Haus, Town of Whitehall attorney; Jack Smith, *Whitehall Ledger*; Jan Anderson, *Boulder Monitor*; Drew Dawson, Paul Backlund, Arnold Buchanan, Angel Adams, Dawn Welch, Richard Roberts, Bridget Morse

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

MINUTES

Commissioner Kirsch moved to approve the minutes of May 24. Commissioner Mullen seconded. The motion carried.

CORRESPONDENCE

Commissioner Mullen noted the receipt of a petition for the creation of a RMD in the Mockel subdivision.

CALENDAR REVIEW

6/28 MDC re-purposing meeting 3:30
DUI Task Force - 5:00
Clancy Water & Sewer board - 6:30
6/29 Survey committee - 1:30
RMDC board meeting - 3:00

COMMISSION REPORTS

Commissioner Kirsch reported that on Wednesday the State Department of Agriculture came to give a presentation regarding small businesses related to agriculture, as well as grants that are available.

Commissioner Wortman reported that on Thursday he attended a luncheon at Golden Sunlight Mine. People from the corporate offices were in attendance.

PUBLIC COMMENT

Bridget Morris, Whitehall, stated that the fence at the impound yard in Whitehall is falling down and needs to be fixed. Also, she talked to the city guys as they were filling potholes around town and asked them about the potholes on Kelly Road. They told her that Kelly is a county road. She noted that some of the potholes are very large and need to be addressed before someone damages their vehicle. Commissioner Wortman noted that Kelly Road is within the limits of the town.

Bridget stated that the County website needs to be updated. Commissioner Kirsch stated that the entire site is being revamped and the new site should be up by August.

Bridget asked about metal mines money. The bulk remains with County to help with economic development and workforce reduction, and she is wondering if it is currently being used or sitting in a fund. Commissioner Mullen stated that it is sitting in a fund at this point.

ITEMS FOR COMMISSIONERS' ACTION OR REVIEW

RESOLUTION 14-2016 AUTHORIZE SUBMISSION OF CDBG PLANNING GRANT

Commissioner Mullen read the resolution as follows:

RESOLUTION 14-2016

A RESOLUTION OF JEFFERSON COUNTY TO AUTHORIZE THE SUBMISSION OF AN APPLICATION FOR PLANNING GRANT FUNDING FROM THE MONTANA DEPARTMENT OF COMMERCE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM FOR A CAPITAL IMPROVEMENT PLAN

WHEREAS, Jefferson County is applying for financial assistance from the State of Montana's Community Development Grant (CDBG) Program to prepare a Capital Improvement Plan, and;

WHEREAS, Jefferson County has the legal jurisdiction and authority to construct,

finance, operate, and maintain its infrastructure, facilities, and buildings;

NOW, THEREFORE, BE IT RESOLVED, that Jefferson County agrees to comply with all Federal laws and regulations and the requirements described in the CDBG Application Guidelines and the CDBG Project Administration Manual;

That Jefferson County commits to provide \$16,667 in matching funds as proposed in the CDBG application; and

That the County Commissioners are authorized to submit this request to the Montana Department of Commerce, on behalf of Jefferson County, to act on its behalf and to provide such additional information as may be required.

PASSED AND APPROVED by the Board of Commissioners of Jefferson County at a regular meeting thereof held on the 28th day of June, 2016.

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

BOB MULLEN, CHAIR

LEONARD WORTMAN, COMMISSIONER

CORY KIRSCH, COMMISSIONER

Commissioner Wortman moved to adopt the resolution. Commissioner Kirsch seconded. Commissioner Wortman stated that we should have done a capital improvement plan some years ago. This grant will allow us to delineate all of our current infrastructure, as well as look at what kind of infrastructure we will need in the future. Most of the state grants that we get, such as TSEP, are used for bridges. The existence of a capital improvement plan will give us added points when we apply for other state funding. The motion carried.

RESOLUTION 15-2016 DESTINY HILLS RMD FEE INCREASE

Commissioner Mullen read the resolution as follows:

**RESOLUTION NO. 15-2016
RESOLUTION INCREASING RURAL IMPROVEMENT DISTRICT ASSESSMENT
FOR DESTINY HILLS RID, JEFFERSON COUNTY, MONTANA**

WHEREAS, on February 9, 2005, the Jefferson County Commission passed Resolution 05-2005, Resolution to Create a Rural Improvement District for Destiny Hills, Jefferson County, Montana, (Resolution No. 05-2005) in accordance with Mont. Code Ann. § 7-12-2113. The RID was created for the purpose of general maintenance and improvements to Destiny Lane, Shilelagh Lane, and Bluebell Lane and other roads within the RID boundaries, including snow removal, culvert cleaning, culvert replacement, erosion control, road maintenance, establishing a gravel base on the roads, hydro seeding, and to address the issue of the northern portion of Destiny Hills Lane and rebuilding a portion of the road; and,

WHEREAS, Resolution No. 05-2005 provided for an increase in the annual assessment on a two (2) cycle with a two-thirds (2/3) vote of the landowners and homeowners within the Destiny Hills RID; and,

WHEREAS, on April 1, 2015, the Jefferson County Commission received a petition signed by more than two-thirds (2/3) homeowners and landowners within the Destiny Hills RID requesting an increase in the annual assessment from \$300.00 per developed lot or tract and \$150.00 per undeveloped lot or tract, to \$600.00 per developed lot or tract and \$300.00 per undeveloped lot or tract to fund general maintenance and improvements; and,

WHEREAS, on May 17, 2016, a public hearing on the petition was held in Jefferson City, Montana and no protests to the increase were received by the Jefferson County Commission either at the public hearing, or in writing prior to the public hearing; and,

WHEREAS, the Nona Lane homeowners who use a three-tenths (0.3) of a mile of Destiny Hills Road to access their homes shall see no increase in the assessment previously assessed under Resolution No. 05-2005; and,

WHEREAS, this Resolution, Resolution No. 15-2016, shall affect only the annual assessment for the Destiny Hills RID and in no manner is intended to change, alter or modify

Resolution No. 05-2005, except as herein provided.

NOW, THEREFORE, IT IS RESOLVED, pursuant to the petition of the Destiny Hills homeowners and Mont. Code Ann. §7-12-2161, the annual assessment for the Destiny Hills RID shall be increased to \$600.00 per developed lot or tract and \$300.00 per undeveloped lot or tract to fund general maintenance and improvements.

Dated this 28th day of June, 2016.

Jefferson County Commission

Bob Mullen, Chair

Leonard Wortman, Commissioner

Cory Kirsch, Commissioner

Attest:

Bonnie Ramey,
Jefferson County Clerk and Recorder

Commissioner Kirsch moved to adopt the resolution. Commissioner Wortman seconded. The motion carried.

DISCUSS AND DECIDE ON LEASE EXTENSION FOR BOYD ANDREW

Commissioner Wortman stated that the County has a ten-year lease agreement with Boyd Andrew that is due to expire in July. The County Attorney stated that he is still reviewing the contract; it does need some updating. This item will be tabled until the 7/12 meeting.

DISCUSS AND DECIDE ON LEASE WITH BOULDER MEDICAL CLINIC AND HEALTH DEPARTMENT

Commissioner Wortman moved to extend the lease for the Health Department. Commissioner Kirsch seconded. The motion carried.

TYLER HOLLAND AND PETE NOVICH - MACo AGENT PROGRAM PRESENTATION

Carolyn Henry, Safety Coordinator, stated that MACo has an agent program set up for worker's compensation and property/liability issues. We have been signed up for some time with another agent for worker's compensation, but she isn't happy with their help or communication.

Tyler Holland stated that they have been working with Madison County. July 1 is the start date for new insurance year.

Commissioner Wortman stated that he likes the idea of having a more local agent.

This will be placed on the July 12 agenda for a decision.

DISCUSS AND DECIDE ON PLACING THE QUESTION OF THE FORMATION OF A WHITEHALL AREA AMBULANCE DISTRICT ON THE NOVEMBER BALLOT

Commissioner Mullen called for additional comments from the public.

Arnold Buchanan presented list of questions, which he read into the record. (Attached)

Dawn Welch stated that she is a rural resident and she stated that this wasn't her issue until it was brought to her front door. She feels that people need to do their homework and study the issue. She said that if this were good for the community, it would have brought people together.

Matt Haus, attorney for the Town of Whitehall, stated that he understands the appeal of pushing this off the desk and not dealing with it, but that ended when petition process failed. At this juncture, the only decision is to make the determination under Montana law - public convenience and necessary. However, there are too many questions to make the decision at this time. We don't know how the fee is supported and we don't know anything about the district. He asked when the deadline is to put this on the November ballot; if it is September or October, there is no reason to rush to make a decision at this time. The Commissioners stated that they believe the deadline is in early August. Matt stated that if that is the case, he can't see why the Commissioners are rushing to make this decision, if we still have time to gather information. There are so many questions and the information that has been provided to the Commission so far are mainly letters in support or opposition to the district. That helps for the determination if the petition would be successful, and but that didn't happen. What troubles him is that he left the last meeting, after there wasn't any true facts or data provided to the Commission and went into the office the next morning and told his paralegal to call the Commission because there would be a number of materials that are submitted between that meeting and the next. That proved to be true. He stated that you have to ask yourself why is that happening and should it be the way that things happens; that things are gathered likely before that meeting, but they are provided where the public doesn't get a chance to review them. It is not how this process should work. Also, the fact that they had to do a public records request, which he received yesterday - if he hadn't done the public records request he never would have seen those materials, the public hasn't seen those materials and the decision isn't until August. It gets back to the question of why we are making

this decision now if we don't have these basic facts. He is asking the Commissioners to take time and gather more facts.

Dawn Welch stated that the attorney made a really good point, there has been no information. Last week's *Ledger* had a description of the boundaries, so she found out what the boundaries are less than a week before the decision is to be made; that isn't acceptable. There is no public opinion, it is not posted in a public place, how is the public going to make an informed decision on this.

Steve Haddon, County Attorney, stated that he has to clarify the record. When the public comment was taken at the meeting in Whitehall, the boundaries of the district were discussed at that meeting. The insinuation that something is being hidden is just inaccurate.

Dawn stated that she wasn't able to attend that meeting and didn't know about it until afterward. What she is talking about is publicly available information, in a public place that people have access to for their own research.

Angel Adams stated that she has been a part of the district since it started. She wants to make a couple points. First, this is not about the town residents, but about the county residents. This is about the county residents having a vote on their EMS care. Secondly, they have had information out since July of last year. There have been articles in the paper, there have been booths, presentations at the theater, the information has been out there. She noted that this isn't about the Commissioners forming the district, but putting the question on the ballot for the people to make the decision. Also, some information can't be decided until after the district is formed, because the elected committee is who makes the policies and procedures. It is very clear that Whitehall ambulance and the town government does not want county input. She has been at several meetings and has been told that her opinion doesn't matter. There has been petition tampering, etc.

Arnold stated that they gave very good presentations, but they are not accurate, and the fact is that the petition failed. He wants this stopped today because he doesn't feel that information is available.

Commissioner Mullen asked Arnold why he feels that they wouldn't be a viable entity, as there are over twice as many people in the service district than there are in Whitehall.

Commissioner Kirsch stated that Arnold has been very vocal in the process and asked him if the district isn't formed, what the solution is to the ambulance fiasco in Whitehall. You have two-thirds of the population being serviced by the City and these two-thirds don't have any representation. Arnold stated that isn't true; anytime they want to talk to the Council, they just need to come to a City Council meeting. They have the same chance for input, they just can't vote. Commissioner Kirsch stated that that is the point; they don't get to vote. Also, he was at a City Council meeting where the ambulance medical director came to talk to the Council, and was given just two minutes to speak. To him, that isn't communication. Arnold stated that is

because he didn't sign in ahead of time and noted that he himself was given the same time frame to talk.

Angel Adams stated that she would like to clarify the equipment issue. She said that all five ambulances and equipment in them were purchased by PULSE. The funds were raised by PULSE members personally, or donated. They have one garage at this time and have land donated to construct a new facility.

Matt stated that listening to the testimony today, to him, it all goes back to necessity. There is not a lack of ambulance services; they have two licensed services fighting to provide services, so where is the necessity. Commissioner Kirsch stated that for him, it goes back to representation. Matt stated that there doesn't seem to be that concern for other services, such as wrecker services.

Commissioner Wortman stated that there has been talk that this is going to break the Whitehall ambulance, and asked Matt his thoughts on this. Matt stated that this isn't anything that he knows for sure, but if you look at the area it would be tough for two services to be viable. He feels that the goal is for the district to be formed and then to absorb the Whitehall ambulance. Commissioner Wortman asked if the district isn't formed, and things continue on as they are currently, what is different. Matt stated that if the district is formed, there could, in theory, be a rotation in the area. It is his understanding that if the district is formed, the district will cover the calls within the district and the Whitehall ambulance will only cover calls within the Town of Whitehall. Outside of the Town of Whitehall, in theory, there could be rotation set up. If this district is formed, it is his understanding that there will be no rotation. Commissioner Mullen asked if they will rotate calls within the Town of Whitehall. Matt stated that they wouldn't, because he believes that there is a requirement. Commissioner Mullen stated that it should be quid pro quo; it seems like only one entity would be sharing.

Matt stated that he sounds like a broken record, but asked how that impacts the decision of public convenience and necessity. If there was a true overwhelming support for this, that is the petitions. He is concerned, from some the comments that the Commissioners have made, that factors are coming in of whether it might be a good idea or it feels like a good idea, instead of the determination they need to make today.

Commissioner Kirsch asked Matt that if it stays how it is today, is he saying that the Whitehall ambulance will most likely serve, on a rotational basis, the people outside the city limits. Matt stated that has been in discussions of what they would like to do. Commissioner Kirsch stated that goes right back to representation; they are getting serviced by the city entity with no representation for the services outside of the city limits. That concerns him. If he lived outside of the city limits, he would want to have a say. He knows that they had a committee that the town council didn't listen to; to him that is a necessity to get that fixed. Matt stated that in most areas, there is no representation in your ambulance service. You have a unique situation here where through the efforts of the townspeople, they have created a local ambulance service. He feels that they are applying a burden to the Whitehall ambulance service that isn't applied

anywhere else. The state licensing makes sure that people are properly licenced and follow the rules of care.

Commissioner Mullen stated that we have the opportunity, if this were to pass, to create an entity in which the people in the district did have a voice. He asked if that isn't better than where they have no voice at all. Matt stated that it isn't 50-50 do I think one is better than the other; the issue is public convenience and necessity. Necessity is the determination that the Commissioners have to make today. He noted that we have two properly licensed services fighting to provide service; he doesn't see how they can find necessity when that is the situation. Commissioner Mullen stated that if the residents outside of Whitehall make the decision that they do not want to utilize the Whitehall ambulances services, doesn't that make this a necessity. Matt stated that this goes back to the very low threshold that there was for the petitions - 25%. If there is an overwhelming support, the petition process would have worked.

Commissioner Kirsch stated that he thinks that is something that has something to do with Whitehall. He stated that Matt has heard everything that went on with the petition and that, to him, is taking away the right not to have fear when you are signing a petition. Matt stated that the allegations have gone back and forth to the point that you don't know what is true and what isn't. He said that he heard today that there was a complaint filed, but he hasn't seen it. His assumption would be that if a complaint had truly been filed, there would have been an investigation and his office would have heard about it. Commissioner Kirsch stated that Whitehall has a history of intimidation, and the proof is on the walls of the city offices. People shouldn't be afraid to sign a petition; that is intimidation.

Paul Backlund, Clancy resident, stated that after listening and hearing about this for the past six months, he is interested that the people of Whitehall are so interested in denying county residents the right to vote on an issue. That is what we are talking about right now - are we going to let the people vote on it or aren't we. The power should rest with the individual, not the town of Whitehall. Commissioner Kirsch stated that this is what concerns him a huge amount - why not let the people decide. Why try to cut them off or put pressure on the Commissioners not to put this on the ballot. Matt pointed to current events and the Brexit vote in the UK. He stated that people were voting without all of the facts. If this goes on the ballot without all of the facts, people could make a very well-intentioned vote and then find that there was no basis for the fee and it ends up being doubled or tripled in the coming years to support the ambulance. And what if you effectively kill the Whitehall ambulance during that time and there is no second option but to continue to raise fees to support the only remaining ambulance service. Commissioner Kirsch stated that before they split, the ambulance service functioned for years and years as one of the best in the state, and actually putting money into the Whitehall coffers. Now, they form a district, put the Whitehall ambulance out of business and suddenly they can't make ends meet with the small fee that the district puts in. He asked if that makes sense. Commissioner Kirsch stated that he thinks a lot of the questions that Matt has for the Commissioners are questions that the district trustees will have to figure out if the district is formed. If the district is formed, the city and the county will be out if it and it will be up to the trustees to draw up by-laws and make a determination on the fee. Matt stated that to him, it feels like an admission that this is going to

be put on the ballot and the voters aren't going to have any idea what they are voting on.

Paul Backlund stated that we have three Commissioners that are very thoughtful, they have legal support with them today, with respect to the legality of this process. What he does know is that the residents in the Whitehall area have been throwing rocks at each other this for many months and there is no resolution. He stated that both sides needs to draw up information to support their position and let people do the research. It makes the most sense to put this on the general election ballot, rather than running a special election at some time in the future. Elections are expensive, and he is going to be paying a part of that expense, even though it doesn't affect him. He doesn't see why there is such a fight against putting this to a vote; people will have three months to research the issue. He can't understand why the town of Whitehall is spending so much money to fight against people's right to vote on this. Matt stated that he is not asking the Commissioners to deny this, but to wait to gather more information and have an informed decision.

Commissioner Mullen asked Steve what are the methods to get something on the ballot. Steve stated that the way he reads it, there are three ways, if you receive 25% support from those in the district, the Commissioners can place it on the ballot, if you receive 50% support the Commission can create the district by resolution, or the Commission can pass a resolution authorizing that a referendum be placed on the ballot.

Dawn stated that the Commissioners do not need a petition to place this on the ballot, and that is why she wrote the letter that she did. In her letter she stated that she hopes that this doesn't make it onto the ballot, as there just isn't enough information. She said that she would like to point out a time line; the Commissioners have known about this for a really long time. She just found out about this from a friend of hers that the Commission met recently. She would like the Commission to table this and consider the facts.

Commissioner Wortman stated that he has seen this unfolding for some time, and quite frankly, he is sick and tired of it. This is one of the stupidest things he has seen for a long time. He was a County Commissioner in the 1990s and he saw the same type of feud going on at that time with the same family and he thinks that this is a continuation of that. He thinks that there is fault on both sides and they all should be ashamed of themselves. He woke up in the middle of the night a few weeks ago from a dream about some poor guy lying in the middle of the road while the two ambulance crews were in a fist-fight over who was going to get to save him. He doesn't think that it is too far-fetched. To him it is like having a bunch of third-graders in a sand box. He has been taken to task a couple times by the mayor and the city clerk for not being more involved. He has been invited to attend a file opening, to look at inventory, etc. He has felt for some time that the Commission would be involved at some point and was advised not to get involved at that time. Has attended a meeting of both sides. There have been accusations of theft; when we found out that the County Treasurer may have embezzled funds, we immediately stepped back and had someone from the outside come in and investigate. We didn't run around accusing her for months, we stepped back and let someone investigate and get to the bottom of the issue. If someone feels that items have been stolen, then someone from the outside should come in and do

an investigation. He takes offense that we have been accused of holding back information and doing things behind closed doors. Everything we get is public information and people are welcome to come into the office and look at it. The only information we have gotten since the last meeting are comments in favor of and opposed to placing this on the ballot. The people that want this on the ballot feel that this is a necessity. We have received written and verbal comments regarding the ambulance crew who have saved loved ones' lives and are known and trusted. That, and the representation that Commissioner Kirsch spoke of. He has been at several meetings where the city council gave people just two minutes to speak, but they themselves spoke at length. In contrast, at the meeting in Whitehall and at this meeting, people are given ample opportunity to speak, and more than once, because this Commission wants to know what people are thinking. He understands that some people in Whitehall don't want the district formed, but the right to vote is the most basic right that we have in the country, and to take away that right is wrong. He doesn't know that creating the district is the right thing to do, but he feels that the people who are going to be affected by it should be able to decide. There has been a lot of talk about the petition that failed. If there truly was no support for it, then it will go down in defeat on election day.

Commissioner Mullen stated that he feels the same way. He feels that this issue should have been resolved in Whitehall. It shouldn't have been something that made its way to us; Whitehall could have done a lot of things to act like a community and pull people together, but that hasn't happened. Both sides have continued to point fingers and pound on each other. He has heard Matt say that he would like us to look at more information, but he isn't sure that there is more information to be had. We have gotten letters from residents supporting both sides, but there is no new information in them.

Commissioner Wortman stated that he would like to say one more thing about public notice and people not knowing. He said that we have this issue all over the county; the paper of record is the *Boulder Monitor*, but we publish in both county papers and send agendas to the post offices. The County can't afford to mail a letter to every county citizen on every issue.

Steve stated that he thinks that it is important for the Commission's consideration that the drop-dead date for getting something on the ballot is July 25.

Commissioner Mullen stated that Whitehall is a very good community of people and he doesn't feel that this is going to heal until a definite decision is made and people can move on. It has been gut-wrenching to watch this from afar and hear all of the nasty things that are being said.

Commissioner Wortman stated that one of things about being in this position is that we have to make decisions. There will be a lot of people that will be unhappy with his decision on this, but he was elected to represent everyone. As he said, he isn't sure that the creation of the district is the right thing to do, but he believes that the people who will be affected by the district should have the right to make that decision.

Steve stated that anyone who in this room that was also at the meeting in Whitehall - at the close of that meeting he suggested that both sides be invited to take part in mediation, which the County would pay for, to see if any common ground could be reached. He received a cc of a letter from the PULSE attorney to town, opening the door to that mediation. The Commission received a copy of the letter from town attorney stating that they need more information. It seems to him to be the same loggerheads that this whole process seems to be at. Someone needs to start the conversation. He just wanted this on the record of the lengths the Commission has gone to.

Commissioner Wortman moved to order a referendum on the creation of a rural ambulance district on the November ballot. Commissioner Kirsch seconded and stated that making a decision now or two weeks from now, the discussion needs to be the same. The ambulance district will need to gather information to present to the voters so that they can make an informed decision. Angel stated that there are some grey areas that can't be decided until the district is formed and the board makes policies and procedures; by-laws will need to be written.

The motion carried.

DISCUSS RE-ESTABLISHING BOARD OF ADJUSTMENT

Steve Haddon, County Attorney, stated that we do, by law, need to have a County Board of Adjustment, according to §76-2-221, MCA. The board of adjustment rules on variances to zoning regulations. The reason the Commissioners can't serve in that capacity is that the Commission is the next step in the appeal process if people disagree with the board of adjustment's decision. The board is made up of five people that are appointed by the Commission. Steve stated that to be on the safe side, we should put a notice of intent to form a board of adjustment, have a comment period, then advertise for members. He said that he will work on drafting a resolution.

MEETING ADJOURNED

ATTEST:

BONNIE RAMEY
CLERK AND RECORDER

BOB MULLEN, CHAIR

LEONARD WORTMAN, COMMISSIONER

CORY KIRSCH, COMMISSIONER