

CASCADE COUNTY COMMISSION MEETING
July 24, 2013
COMMISSION CHAMBERS
COURTHOUSE ANNEX, ROOM 111
9:30 a.m.

Notice: These minutes are paraphrased and reflect the proceedings of the Board of Commissioners. MCA 7-4-2611 (2) (b). These minutes were officially approved at the August 13, 2013 meeting. All exhibits mentioned can be viewed in the Clerk and Records office during business hours.

PRESENT:

Commission- Chairman Joe Briggs, Commissioner Bill Salina and Commissioner Jane Weber.

Staff seated with Commission –Brian Hopkins, Susan Conell, Tristan Riddell, Carey Ann Shannon, Bonnie Fogerty, and Marie Johnson.

Public: Ron Gessaman, Sandra Schwartz, Janet Enloe, Hugh Enloe, Sue Majerus, Bob Majerus, David Dickman, Rob Rung, Steve Potts, Kim Thiel-Schaaf, Cari Kent, Ellen Sievert, Neil (Jerry) Taylor, Jerry Sutich, Don Simms, and John Watts.

CALL TO ORDER: Chairman Briggs called the meeting to order.

PLEDGE OF ALLEGIANCE: The pledge of allegiance was recited.

READING OF THE WEEKLY CALENDAR: Bonnie Fogerty read the calendar.

APPROVED PURCHASE ORDERS AND ACCOUNTS PAYABLE

WARRANTS: Commissioner Weber made a **MOTION** to approve purchase orders and accounts payable checks #2213973 through #232139 totaling \$156,289.11 dated 06/30/2013. In addition, purchase orders and accounts payable checks #232140 through #232239 totaling \$636,467.79 dated 07/10/2013 through 07/12/2013. In addition, purchase orders 232240 through #232499 totaling \$631,130.51 dated 07/12/2013 through 07/19/2013.

Motion carries 3-0

CONSENT AGENDA:

Commissioner Salina made a **MOTION** to approve the consent agenda and minute entries, and routine contracts as follows;

◆Board Appointments

DUI Task Force – Kristi Jo Anderson

◆Resolution 13-49 Establishing Fiscal Year 2013-2014 Constable's Salary

◆Resolution 13-50 A joint Resolution with the City of Great Falls adopting the interlocal agreement for equal division of the 2013 Byrne Justice Assistance Grant (JAG) Program. Award \$30,898 grant funds are split equally for the purchase air cards for mobile data terminals (annual)

◆Resolution 13-51 Budget Appropriation for RSVP partial award (33%). Total amount \$35,209. (Refers to Contract 13-80 R0275653).

◆**Contract 13-104** Federal Equitable Sharing Agreement and Certification for the Sheriff's Office. (Annual).

◆**Contract 13-105** Letter of Agreement with the International Brotherhood of Teamsters, Local 2, regarding shift transfers.

◆**Contract 13-106** Agreement for extraordinary snow removal for Malmstrom Air Force Base Montana Minuteman Missile Base effective October 1, 2013 through September 30, 2018.

◆**Contract 13-107** Contract with Falls Construction Company for contracted improvements to the Vaughn Water and Sewer Districts system. Contract sum \$ 36,350.00 refers to Contract 13-19

◆**Contract 13-108** Contract with Kenco for contracted security system to the Vaughn Water and Sewer District system. Contract sum \$ 16,733 refers to Contract 13-19.

◆**Contract 13-109** Contract for services with Terry Bailey to provided training to ensure jurisdiction is complaint with DHS NIMS/ICS standard for the DES department.

◆**Contract 13-111** DES grant award modification for the Emergency Management Performance Grant (EMPG) for Cascade County. Increased funding \$14,500 total award for \$93,184.

Community Health Care Clinic

◆**Contract 13-110** Employment contract with Julie Wood M.D. effective dates July 1, 2013 through June 30,2014 annual compensation \$163,905.62 renewal.

Chairman Briggs called for Commission comments on the Consent Agenda in which there were none.

Chairman Briggs called for staff comments on the Consent Agenda in which there were none.

Chairman Briggs called for public comments in which, Scott Palmer from the Vaughn Water and Sewer District thanked the Commission and staff for their assistance in helping them with the grant to make improvements and for security of the Vaughn Water and Sewer facility.

Motion carries 3-0

AGENDA ITEM #1

MOTION TO APPROVE/DISAPPROVE 2013 COMMUNITY TRANSPORTATION ENHANCEMENT PROGRAM (CTEP) PROJECT RECCOMENDATIONS

Susan Conell Cascade County Planning Director presented the four applications submitted for CTEP funds.

1. Cascade County Courthouse Roof Renovation
2. The Monarch-Neihart Historical Group, Inc-Monarch Historical Railroad Depot
3. The Town of Cascade Sidewalks and Ramps

4. Preservation Cascade, Inc.- South Bridge Trail Access to the 10th Street Bridge (*Susan Conell stated that this project was disqualified for funding of CTEP grant money when the group was given money for the bridge to be demolished and the Federal Government still views the bridge as a demolition project and would not support funding for improvements*).

See Agenda Action Report #1 dated July 24, 2013 for more information about the above applications and planning staff recommendations.

Commissioner Weber questioned if other counties did not commit their CTEP funds, would it be a possibility that the statewide funds could go back to additional funding for Cascade County. Susan Conell did not think that would be possible.

Chairman Briggs announced that this process does not require a public hearing but he would like to give the public opportunity for feedback, therefore he would ask for proponents and opponents on the next five elements.

1. Chairman Briggs called for any proponents to the overall CTEP process and report from the Planning Department three times, in which no one came forward. Chairman Briggs called for opponents to the overall CTEP process and report from the Planning Department three times, in which no one came forward. Chairman Briggs called for any informational witnesses three times, in which no one came forward.
2. Chairman Briggs called for any proponents for the Cascade County Courthouse Roof Renovation three times, in which no one came forward. Chairman Briggs gave a synopsis of the condition of the roof at the Courthouse stating that the copper sheath roof has been an issue for many years and had to be repaired previously due to the rain gutter system that was being drained into buckets. That section was fixed and now a different section of the roof is failing. Kim Thiel-Schaaf, stated that the numbers they have for repair is soft due to the state historical regulations for repairs, and what will be required for repairs. Chairman Briggs called for opponents three times, in which no one came forward. Chairman Briggs called for informational witnesses three times, in which no one came forward. Commissioner Salina stated that Building Maintenance should have been invited to this meeting. There was some discussion on the plan for design and when the repairs would begin.
3. Chairman Briggs called for any proponents for the Monarch-Neihart Historical Group, Inc-Monarch Historical Railroad Depot. **Ellen Sievert, Historic Preservation Officer** spoke in favor of this project stating that this project fits the CTEP guidelines for transportation. She thanked the Commission for the purchase of the buildings and stated that the Monarch folks have been wonderful to work with. Commissioner Weber asked Ellen Sievert if this project

could be delayed since it has sat for many years. Ellen Sievert stated that this was a critical issue that the roof be repaired quickly and that this is the best transportation project. Commissioner Weber reminded her that this was a difficult decision. Chairman Briggs called for more proponents in whom **Sandra Schwartz member of the Monarch-Neihart Historical Group, Inc.(MNHG)** stated that this has been a long-term project for them and with the Montana Department of Transportation (MDT) moving their head quarters, it has caused more damage to the building. She emphasized that the damage needs to be repaired and that they cannot wait until next year. She stated that they do have some money to fix the roof but need to ask MDT to alleviate the run off problem created when the new MDT buildings were constructed on the east side of the Depot. The MNHG is planning to contact MDT to ask them to divert the drainage away from the Depot and to remove soil that was banked up against the Depot many years ago. In closing, she stated that this was a successful project and she is humbly asking for help and does understand the difficult decisions the Commission is facing. Commissioner Salina questioned if the MDT came forward with funding if it would cover expenditures. It was announced that the match money of \$25,000 did come from the MDT. There was some discussion about whether using Federal dollars for a match was allowed. Commissioner Weber stated that at a previous meeting, with MDT Assistant Director Wise, these funds were confirmed as state dollars (not federal funds), and the \$25,000 from MDT qualifies to be used as matching funds for a CTEP grant. Chairman Briggs asked if there were any local donations. Sandra Schwartz stated that they would be offering memberships and holding fundraisers now that they own the building. **Chris Croft member of the Monarch-Neihart Historical Group, Inc.** stated that a setback in this project would be difficult and he empathizes with the County Courthouse leaks. He pointed out that the roof of the Monarch Historical Railroad Depot has a huge gap in it. He also stated that due to its poor care it is under rapid decay and a year would make a big difference. He thanked the Commission for what they have done and appreciated any support they could give them at this time.

Chairman Briggs called for opponents three times in which no one else came forward. Chairman Briggs called for informational witnesses three times in which no one came forward.

4. Chairman Briggs called three times for any proponents for the Town of Cascade Sidewalks and Ramps in which no one came forward. Chairman Briggs called three times for any opponents for the Town of Cascade Sidewalks and Ramps in which no one came forward. Chairman Briggs called three times for any informational witnesses for the Town of Cascade Sidewalks and Ramps in which no one came forward.

5. Chairman Briggs called three times for any proponents for the Preservation Cascade, Inc.- South Bridge Trail Access to the 10th Street Bridge in which no one came forward.
Chairman Briggs called three times for any opponents for the Preservation Cascade, Inc.- South Bridge Trail Access to the 10th Street Bridge in which no one came forward.
Chairman Briggs called three times for any informational witnesses for the Preservation Cascade, Inc.- South Bridge Trail Access to the 10th Street Bridge in which no one came forward.

Chairman Briggs stated that he appreciated everyone's testimony and called for a Motion.

Commissioner Salina rewrote the **MOTION** to deny the application from the Preservation Cascade, Inc. as they are ineligible for CTEP funds: also to deny the Town of Cascade project as they are eligible for other federal grants and he directed staff to work with the Town of Cascade on future Transportation Alternatives Grant submission. I further move that the remaining two projects be prioritized as #1 Cascade County Courthouse Roof and #2 Monarch Historical Railroad Depot, and that the projects be submitted one at a time to the Montana Department of Transportation in order of priority until the CTEP funds have been expended. **Motion carries 3-0**

Commissioner Salina also stated that beyond this motion he would commit to working with the towns of Monarch and Neihart to complete the Monarch Depot project and to assist in any manner possible. In addition, he committed the County to managing the Courthouse roof CTEP project to the best of their ability to use the minimum amount of funds necessary.

Commissioner Weber stated that this was a difficult decision. The Courthouse is a very historically important building to the County. It also, houses the people that serve you, the County, the State and the Court systems. She also stated that although she has been very supportive of the Monarch Depot project, she is concerned that submitting both projects at this time commits most of the CTEP funding. She believes the County needs to know the total final costs for the Courthouse Roof project before committing all the CTEP funds, otherwise the roof project might only get half way finished. She also stated she would personally speak with Mike Wherley, MDT Coordinator of the CTEP and TA programs to determine whether he would consider directing funds to the Monarch Depot if any extra money was available for their project.

Chairman Briggs echoed both Commissioners and reminded the Public that the Courthouse was a building for general use and that he is not minimizing the Depot building, it is just a statement of physical fact the Courthouse roof has to be fixed. He also wanted to remind them that when you are repairing a one hundred year old building and that things can come up.

There was further discussion about when these funds would be available and what funds would be available.

Chairman Briggs thanked Susan Conell on her work with these projects and called for a vote on the motion. **Motion carries 3-0**

Chairman Briggs apologized to the public who may have not received the answer they wanted, then excused those who chose not to stay for the next public hearing for agenda item #2.

AGENDA ITEM #2

PUBLIC HEARING FOR PROPOSED ZONE CHANGE FOR DAVID AND SANDY DICKMAN

Chairman Briggs recessed the regular commission meeting at 10:25 a.m.

Public Hearing

Chairman Briggs opened the public hearing at 10:25 a. m.

Reading of the Public Notice

The reading of the public notice was waived without objections and made part of the record (see exhibit "A").

Staff Presentation

Tristan Riddell read the synopsis found in the Action Agenda Report dated July 24, 2012. In addition, he read this summary for the record.

Written Testimony

Tristan Riddell also provided written testimony for the record that includes; Planning Board Minutes (see exhibit "B"), Location conformance permit application (see exhibit "C") and correspondence (see exhibit "D").

David and Sandy Dickman submitted a zone change request for property located off Gibson Flats Road. The subject property consists of three separate parcels totaling 12.6 acres currently zoned "SR-1" Suburban Residential. The applicant has requested the property be rezoned as "A" Agricultural. Current Cascade County Zoning Regulations prohibit the creation of new parcels under 20.00 acres within the Agricultural zone district. The re-zone, if approved, would result in the creation of three non-conforming lots.

The property is currently being used for a light manufacturing and assembly operation. This use has not been authorized by the Cascade County Planning Division and has been deemed an illegal use in accordance with the Cascade County Zoning Regulations.

The property formally housed the Mickey's Packing Plant. According to the applicant, the packing plant shut down in January of 2008. In January of 2011 the applicant requested and received a Location/Conformance Permit to construct a barn on the subject property. The permit was granted and the approved barn has been constructed and is currently being utilized to house the non-conforming light manufacturing and assembly operation.

The applicant is trying to rectify the situation by completing a zone change and subsequently applying for and obtaining a Special Use Permit, which would allow for the light manufacturing and assembly operation to legally occur on the Agricultural zoned parcel(s).

The request was reviewed in accordance with the review criteria established in Section 14.1.1.6 of the Cascade County Zoning Regulations. Staff determined that the request failed to meet five of the eleven criteria and has thus recommended denial of the zone change request.

Staff determined that the proposal fails to comply with the five goals listed in the growth policy (Criterion 1), fails to secure safety from fire and other dangers (Criterion 2), fails to promote public health, safety and general welfare (Criterion 3), fails to show that the zone change request considered the character of the district and its suitability for particular uses (Criterion 8), and fails to encourage the most appropriate use of land throughout the jurisdictional area (Criterion 10).

The Planning Board held a public hearing on the zone change request on April 16, 2013. During the hearing the Board heard from Planning Staff, the applicant and the applicant's legal counsel. The Planning Board disagreed with the conclusions reached in the staff report and found that the proposal met each of the required criteria to allow for the zone change.

At the conclusion of the hearing, the Planning Board unanimously (6-0) passed a motion recommending approval of the zone change. The Board based this decision on the fact that the property had previously been utilized for commercial purposes, the fact that there are a number of properties with agricultural uses in the surrounding area, the fact that the property is located within an area known to have drainage and flooding issues and is therefore not necessarily suitable for residential development, and the fact that the proposed zone change would be in harmony with the growth policy, among other things.

In closing Tristan Riddell stated that Staff has provided the Board with two motions for consideration. (See Action Agenda Report for motions provided). And that concludes the staff report and I will gladly answer any questions.

Call for Applicant

Dave Dickman approached the Commission stating he began the process of purchasing the property 2008, at that time he has worked with DEQ to clean up the property, and lagoons. His final closing date was on July 29, 2009. He then used the yard for his construction, gravel and excavation business and hired an engineering firm to help him with this. Then on August 29, 2009, the County rezoned the property without his knowledge to Residential. He stated that the Meat Packing Plant has been there since the 50's and the property was not

meant to be residential. He requested that the property be put back as Agricultural so he can continue to do what he was doing.

Commissioner Weber questioned the application for the barn and asked if it was built for Ag purposes or if he changed, his mind after the barn was built?

Dave Dickman stated the barn was built to store and sell hay out of. Then in 2009 they had a poor year for hay and he was able to lease the barn to a Rocky Mountain Structures which built small storage shed and chicken coops. He said that there were no sales of the storage sheds or coops from this property just the construction of the storage sheds and coops. Under Brian Clifton's suggestions, he went to the Planning Department to get a special use permit. He filled out the application and then he believed it was Susan Connell, who informed him that he did not need a special use permit. Dave Dickman also stated that he did get a state electrical permit from Cascade Electric but he did not know that he needed a State of Montana building permit on commercial building. He said he was working with a person from Helena that told him to hold off until the hearing and that he had no problem issuing him the State of Montana building permit. He affirmed that he was trying to do everything to follow the law.

Commissioner Weber affirmed that his original intent was to sell hay out of the barn, in which Dave Dickman stated yes.

Commissioner Salina affirmed that Dave Dickman changed his uses due to a poor hay crop and asked if this year was a good hay crop and if the barn would be used to store and sell hay this year. Dave Dickman stated that there was no hay in the barn. Commissioner Salina also asked if the process went smoothly with the Planning Department, in which Dave Dickman said it went well. There was further discussion as to whether it was indicated on the application for building the barn that Dave Dickman would be using it to sell hay out of and not just storing machinery. Dave Dickman stated he just stated he would be building a barn and asked if he should have specified his use for the barn.

Chairman Briggs asked Dave Dickman if he had any further information to enter into the record, in which he stated the did not.

Chairman Briggs invited Dave Dickmans' legal representative Steve Potts to speak. Steve Potts stated that last December when they spoke with the Planning staff that the proposal to rezone the property was really their idea and that he was surprised when he saw the staff report with had some negative aspects because this was planning's idea to solve the problem.

Commission Salina asked Steve Potts to clarify if the Planning staff aided in the procedure by showing the avenue that should be taken or offered an opinion that the barn was a good idea? Steve Potts stated no to the first

question and that the barn was already there for the second half of the question. Commissioner Salina also looked to Susan Conell for some clarification in which she stated that at the time they thought that was the best avenue because Dave Dickman was to planning to purchase 20 acres of property from Bestwina to bring forward the rezoning proposal with a conforming lot size but with ongoing litigation on that subdivision he was unable to purchase the additional land.

Steve Potts also stated that if you were to look at the property and the equipment yard to the right you would have no idea that the property would have been zoned residential especially with a packing plant that has been there for 50 years. He also stated that he has not had time to look at the minutes from the Planning Board meeting but did notice that current zoning may have been created in error so he believes that the zoning change they are requesting is consistent with the zoning regulations.

Chairman Briggs encouraged legal staff to assist at any time if they have advice for the Commission.

Dave Dickman requested to speak, and then stated that Cascade County taxes on the building are being taxed commercial. Commissioner Salina stated that two of the commercial buildings are the old packing plant that has been in operation.

Tristan Riddell mentioned that there is no evidence to determine if there was a continuing commercial use in the two existing buildings (other than the barn) such that commercial use could be grandfathered in as those two structures. He also reminded everyone that this is not the issue at this time and that the purpose of this hearing was to determine whether to rezone the land in question, not whether prior uses are legal, non-conforming uses.

Chairman Briggs mentioned that this brought up an interesting point on an important issue they had when he as Commissioner in the past was working on the zoning in 2009; he knew at the time that there might be inconsistencies between the zoning and the actual land use. He stated his view that the zoning on the property in question may not have been changed in 2005 or 2009 had the ongoing uses of the property been known. In order to be certain of the relevant facts he requested that Tristan Riddell do a detailed time line of the uses on the property in question that might clarify things and influence his decision.

There was further discussion on whether the existing meat plant was non-conforming and if it could have continued as non-conforming use.

Commissioner Salina highlighted a few of the other commercial businesses in the area; Liberty Electric, Bait Shop and Equipment Sales were mentioned.

There was further discussion amongst the Commission and staff to have a sure time line to proceed later.

Brian Hopkins suggested that the Commission fully review the Planning Board minutes that were presented by Tristan Riddell as (exhibit "B").

Call for Proponents

Chairman Briggs called for the Proponents three times, in which no one came forward.

Call for Opponents

Chairman Briggs called for the Opponents three times, in which no one came forward.

Call for Informational Witnesses

Chairman Briggs called for the Informational Witnesses three times, in which no one came forward.

Close of the Public Hearing: Chairman Briggs closed the Public Hearing at 10:57 a.m.

Reconvene the Regular Commission Meeting

The regular meeting was reconvened at 10:57 a.m.

Call for a Motion:

Commissioner Weber made a **MOTION** to defer action as staff is directed to provide additional information specifically develop a time line for final action to be taken at a special meeting held July 29, 2013 at 9:30 a.m.

Motion carries 3-0

PUBLIC PARTICIPATION IN DECISIONS OF BOARD AND ALLOWANCE OF PUBLIC COMMENT ON MATTERS THE COMMISSION HAS JURISDICTION, ON ITEMS NOT COVERED BY TODAY'S AGENDA. No public comment was given.

ADJOURNMENT: The meeting was adjourned at 11:04 a.m.

NEXT MEETING DATE:

All meetings are held in the Commission Chambers at the Courthouse Annex. The next meeting will be a work session meeting that will be held on Wednesday, August 7, 2012 at 2:00 p.m.