

March 2, 2016

The Lincoln County Board of Commissioners met for a regular session on March 2, 2016, in the Lincoln County Courthouse, Libby, Montana. Present were Commissioner Cole, Commissioner Mark Peck, Commissioner Greg Larson, and Clerk & Recorder Robin Benson.

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

8:45 AM Tracy McIntyre/RFQ Ksanka Creek Project:

Tracy submitted a draft of Request for Qualifications for Engineering Services for the Ksanka Creek Project to attain a preliminary engineering report. After meeting Pam Smith, DNRC last week in Helena, Tracy was happy to report that the DNRC Watershed Planning Grant was awarded \$50,000 not \$40,000 as originally reported. Tracy has submitted a RAC proposal for the remaining funds of 20,000 and now Tracy is seeking permission from the commission to move forward with procuring engineer services for the Ksanka Creek Restoration Project. Tracy has requested advice from the County Attorney to determine if she can do a limited solicitation for this project.

Commissioner Larson commented that he thinks it's a great project, but wanted to know if we do not get the RAC funding, what will the cost to the county be? Tracy said that if we do not get the RAC funding, then we would pare down the project to meet the \$50,000 already awarded.

Tracy briefly discussed other funding opportunities and timelines for various economic development projects.

Motion by Commissioner Peck to move forward with the RFQ process pending County Attorney approval. Second by Commissioner Larson and so ordered upon unanimous consent of the board.

9:15 AM USFS Monthly Update: Meeting Cancelled

10:00 AM Annex Usage/Justice Court Report 2015: Present were Justice Court Judge Jay Sheffield and Krista Nemeroff, Eureka via Vision Net, and Alan Gerstenecker.

Justice Court Judge Jay Sheffield submitted a report on 2015 Justice Court Statistics and Eureka Annex Usage. When the part time Eureka Justice Court closed on December 31, 2014, a number of interested groups asked Judge Sheffield to compile annex usage statistics. The report reflects a full year's documentation to represent annex usage for calendar year 2015. The new Vision Net System has completely eliminated people's wait time. During 2015, the video conference system was used 52 times (average one appearance per week) to accommodate 39 individual users for some aspect of their criminal or traffic case. The system has worked exceptionally well, allowing Judge Sheffield to conduct the initial appearance and then provide the person with any necessary documents, all in real time. A secure drop box has been installed for any documents that may be necessary for the person to sign in Judge Sheffield's presence. The video conference system was also utilized by law enforcement officers seeking time sensitive search warrants, particularly at night and on weekends. It was utilized five times by the Eureka Police Department and twice by the Montana Highway Patrol in 2015. The new Vision Net System has proven to be so effective that it virtually eliminated the need for clerks and the Judge to travel to the annex. In 2015 Judge Sheffield heard only four cases in the annex courtroom. The report states that Judge Sheffield and his staff worked very hard to assure that the consolidation was completed seamlessly and with minimal inconvenience to the public. The report states that Judge Sheffield is extremely pleased with both the results achieved and the positive feedback we continue to receive from the community. *The report submitted detailed statistics on caseloads, civil case filings. Temporary Orders of Protection, online payment program and is available in its entirety in the Clerk & Recorder's Office.*

Commissioner Peck said roughly speaking; he sees approximately \$100,000 in savings and an increase in income of \$20,000 to \$30,000 with improved service. Judge Sheffield and Sheriff Bowe stated there have been no complaints about the service. Commissioner Larson this is just the first cost saving measure and that there will be other savings measures implemented from technology advancements in the future.

10:30 AM Administrative Issues:

- **Contract from the Western Montana Area VI Agency on Aging, Inc.** The purpose of the contract is to establish and operate the USDA, Food and Nutrition Services, Commodity Supplemental Food Program and to provide supplemental foods and nutrition education to eligible persons through state or local agencies. The commodity program in Troy needed to find a new location for distribution. The Troy Baptist Church will now conduct the distribution. **Motion** by Commissioner Peck to sign contract as submitted. Second by Commissioner Larson and so ordered upon unanimous consent of the board. The term of the contract is from October 1, 2015 through September 30, 2016
- The Commission signed a letter to Tyann Hermes offering their congratulations on being chosen by the Montana Ambassadors as the **"2015 Entrepreneur of the Year"**. The award will be presented to Tyann Hermes at the Montana Ambassador's Annual Conference on March 10 & 11, 2016 in Great Falls.
- The Commissions signed a letter offering their congratulations to Adeline Roesler-Begalke for her outstanding performance in winning the county spelling championship at the **County Spelling Bee**. Adeline will represent Lincoln County in the State Spelling Bee competition to be held in Billings, Montana, on Saturday, March 19, 2016.
- The Commission signed a letter to Jim Mayo to express appreciation for his service to the **Lincoln County Port Authority**. Mr. Mayo served as chairman of the Port since its inception in 2003, and was chairman of the entire history of the Port Authority.
- The Commission read the minutes for February 24, 2016. **Motion** by Commissioner Larson to approve minutes as corrected. Second by Commissioner Peck and so ordered upon unanimous consent of the board.

11:00 AM Public Comment Time:

Larry Dolezal said he was in attendance to observe the meetings and procedures. Commissioner Larson said the *Public Comment Time* is a time set aside each week by the commissioners to listen to public concerns and comments on issues of importance to them.

11:30 PM **Lisa Oedewaldt/Planning Department:** Present were Deb Blystone, Donna White and Larry Dolezal.

Graham Family Transfer: The property is described as Tract 2A in Section 34, T31N, R31W and borders Sheldon Flats Subdivision, Libby, off Lost Treasure Rd. The Lincoln County Planning Department received a request from Kootenai Surveyors, Inc. on behalf of his client Jay & Judy Graham to transfer a portion of their property to their sons Jacob and Justin, and retain a parcel for themselves. The Graham's have owned the property since 1994 and has not gone through any exemption or prior splits. The Planning Staff has reviewed the request and recommends approving request to use exemption. **Motion** by Commissioner Larson to accept the Graham Family Transfer subject to planning staff recommendations. Second by Commissioner Peck and so ordered upon unanimous consent of the board.

1:00 PM **Brent Faulkner/Discussion 24/7 Sobriety Program Fees:** Present were Sheriff Roby Bowe, Undersheriff Brent Faulkner, Donna White, Larry Dolezal, and Krista Nemeroff, Eureka via Vision Net.

The Lincoln County Sheriff's Office would like to expand the 24/7 Sobriety Program services provided to the courts by offering drug testing & monitoring capabilities. At present, the Sheriff's Office only monitors for alcohol use. The Lincoln County Attorney and Justice of the Peace have identified this would be a value-added addition to county services, particularly as related to sentencing agreements. This technology is being used throughout the nation, but in particular by North Dakota as part of their 24/7 sobriety program. Tracking of the drug monitoring program would be accomplished using the same web based IntoxiTrack software used for the alcohol test. The fee for the drug patch program is not regulated by state statute and is currently left to each agency to decide. The Sheriff's Office has analyzed and itemized program costs to determine appropriate program monitoring fees. The Montana Highway Patrol 24/7 Program State Coordinator strongly supports this addition to Lincoln County capabilities. **Motion** by Commissioner Peck to approve Resolution No. 962 adopting the proposed 24/7 Sobriety Program Drug Patch Monitoring Fees as follows pending approval from the County Attorney:

Standard Screen-\$55.00 per drug patch screening

Expanded Screen-\$95.00 per drug patch screening

Second by Commissioner Larson and so ordered upon unanimous consent of the board.

1:15 PM **Board Vacancies Appointments:** Present were Donna White and Larry Dolezal.

Clerk & Recorder Robin Benson named the board vacancies that were advertised followed by the applications and letters of interest received. Only people who submitted applications or letters of interest were appointed. It is worthy to note that all people who submitted applications or letters of interest were appointed. Appointments were as follows:

Motion by Commissioner Larson to appoint Tom Hall and reappoint Jerry Heyman, Ron Hvizdak, and Shawn Vandeberg to the **Eureka Fire Service Area Board**. Second by Commissioner Peck and so ordered upon unanimous consent of the board.

Motion by Commissioner Larson to reappoint Mike McMahon and Dawain Burgess to the **Trego/Fortine/Stryker Fire Service Area Board**. Second by Commissioner Peck and so ordered upon unanimous consent of the board.

Motion by Commissioner Peck to reappoint Bill Sullivan to the **Upper Yaak Fire Service Area Board**. Second by Commissioner Larson and so ordered upon unanimous consent of the board.

Motion by Commissioner Larson to reappoint Coral M. Cummings and Jim Germany to the **Libby Park District Board**. Second by Commissioner Peck and so ordered upon unanimous consent of the board.

Motion by Commissioner Larson to reappoint Jennifer Richardson to the **Troy Park District Board**. Second by Commissioner Peck and so ordered upon unanimous consent of the board.

Motion by Commissioner Larson to reappoint Herb Cargill to the **Bull Lake Fire District Board**. Second by Commissioner Peck and so ordered upon unanimous consent of the board. Herb Cargill submitted a Declaration for Nomination and Oath of Candidacy Form within the filing dates for Fire District Elections. Herb Cargill was the only applicant, therefore he serves another term on the board through acclamation.

Clerk & Recorder Robin Benson announced that three candidates filed Declaration for Nomination and Oath of Candidacy forms for two available positions on the **McCormick Fire District Board**. They are: Dean Gerald Braaten, Kathy Humberg, and Owen Openo. Therefore, an election will need to be held. Fire District Elections are held in conjunction with the school election on May 3, 2016.

1:45 PM **Brett McCully/Libby Creek Trail Extension (Old Haul Road):** Present were Donna White, Harold Etienne, and Larry Dolezal.

Brett McCully is seeking the Commission to sign a letter in support of a project for Lincoln County Port Authority and their grant submission to the Recreational Trails Program of the Montana Fish, Wildlife & Parks. Lincoln County supports the objectives of this project to enhance a dormant and blighted section of road along the Libby creek. The County authorizes the Lincoln County Road Department to contribute manpower and equipment in the equivalent amount of \$20,000 to meet the in-kind requirement. The County supports this grant application and believes it will catalyze additional plans to expand area trails. Commissioner Peck expressed concerns about not allowing motorized traffic and he would like to see that option remain open. Brett said the only concern is maintenance. Brett said there are no stipulations for motorized vehicle use and there are no other easements on this portion of road. **Motion** by Commissioner Peck to sign letter of support as submitted. Second by Commissioner Larson and so ordered upon unanimous consent of the board.

2:00 PM **TRFD Public Hearing:** Present were TRFD Board Member Harold Etienne, Election Administrator Leigh Riggelman, Larry Dolezal, Lisa Oedewaldt and Deb Blystone.

Harold gave a brief history of the Troy Rural Fire District and said the district was formed in 1975. The Commission expressed their appreciation for the work being done by the fire district. Commissioner Larson asked if a new subdivision is required to become a part of a fire district. County Planner Lisa Oedewaldt said it is not a requirement in Lincoln County at this time. After conferring with Board Member Harold Etienne, Election Administrator Leigh Riggelman requested to postpone the TRFD approval until a later date to give time to review the petition further. It was determined

that some of the properties requesting annexation were missed from the petition submitted, therefore, a new Resolution of Intent will come before the commission for approval. Harold said he is working on another petition and will be submitting it soon.

2:30 PM Kirk Kraft and Lisa Oedewaldt/EMA Update: Present were Sheriff Roby Bowe, Donna White and Larry Dolezal.

Kirk briefed the commission on Local Emergency Planning Committees (LEPC) EMA has been holding regarding training and exercise, planning, public information, and emergency response. EMA is working with departments for continuity of government and planning to ensure all departments are ready to conduct business if there came a time departments have to leave their county building.

Communications: Moving forward on Meadow Peak, but making sure King Blue and Pinkam are a priority.

Kirk has been conducting training with Troy User Groups organized by Troy Dispatch.

Lisa is submitting the annual EMPG Grant paperwork and is working on HSGP grants. Commissioner Cole signed assurance forms that there will be no construction.

Kirk requested a second credit card for Lisa Oedewaldt since her and Kirk are consistently traveling to different locations. The commission approved a second credit card for Lisa Oedewaldt.

3:00 PM John Rios/CVFS: Present were Lisa Oedewaldt, Kirk Kraft, John Rios, Robert Mast, Bill Clark, Sandy Clark, Bob Henline, Donna White, and Alan Gerstenecker.

John asked about a request that was submitted to the commission dated February 2, 2016. The request was given to the county attorney for an opinion. Commissioner Peck said the opinion from the county attorney was received today and the Commission will send a letter to John Rios in acknowledgment as soon as possible.

John said his main concern pertains to 7-33-2125 and 7-33-2101 M.C.A. specifically how those statutes are being interpreted. John feels that if we interpret the law as described by the Elections Department and the Commission, then the people do not have equal and fair representation. John feels that 7-33-2125 (a) refers to 40% of the owners in a proposed area. The Elections Department and the Commission have interpreted it as 40% of the acreage. John is requesting the Commission to reconsider their interpretation of 7-33-2125 (a).

Commissioner Larson read from a portion of a Summary Judgement Cause No. DV 13-259 from the Montana Nineteenth Judicial District Court, Lincoln County as follows: "Respondent is correct when it argues these statutes are clear and unambiguous and must be enforced as written. In 7-33-2101, which sets the minimum for qualifying landowners, "40%" refers to acreage or value, not to the number of landowners." Commissioner Peck agreed that he has never seen the statute interpreted any differently and that his moral line is to follow the law. The sitting District Court Judge has ruled. Commissioner Peck went on to say the only person that can overturn the District Judge ruling is the Supreme Court and that this is the law in Lincoln County. Commissioner Peck told John that we are just going to have to agree to disagree. Bill Clark asked about how the signatures were counted. Leigh stated that she counted the signatures on the petition and letters that were submitted by property owners requesting annexation.

Commissioner Peck said that up until the day of the public hearing, a letter can be submitted by property owners to opt out.

3:30 PM LCRFD/Intent for Annexation: Present were Lisa Oedewaldt, John Rios, Kirk Kraft, Donna White, Bob Henline, Alan Gerstenecker, and Leigh Riggleman.

Commissioner Cole read Resolution No. 963 in its entirety. Leigh gave an overview of the summary submitted. Total number of properties has changed due to properties that were not included in Steve Lauer's initial submittal.

Calculations of percentages have not changed. It was determined that in accordance to 7-33-2125 M.C.A., the criteria has been met. Commissioner Peck clarified that up until the time of the public hearing any property owner can submit a letter to opt out. If a property owner wants to be removed from the petition it has to be submitted to the Elections Department 20 days prior to the Public Hearing (March 10 by 5:00 PM).

Motion by Commissioner Peck to approve Resolution of Intent No. 963, with a Public Hearing scheduled for March 30, 2016 at 6 pm in the Ponderosa Room located at City Hall, 952 East Spruce Street in Libby. Second by Commissioner Larson and so ordered upon unanimous consent of the board. Resolution No. 963 replaces and completely nullifies Resolution No. 959.

4:00 PM Dan Denning/Grizzly Bear: Present were Donna White, Bob Henline, and Alan Gerstenecker. Allen Payne, Glen Bailey, Walt Kirby, LeAlan Pinkerton, and Dan Denning were on the phone.

Dan said the purpose of the discussion is that Bonner and Boundary Counties in Idaho are sharing similar concerns and there is the possibility they may want to join Lincoln County as interveners.

Boundary County Commissioner Dan Denning shared his recent discussions about a current AWS lawsuit filed to "up list" the grizzly bear to endangered and Lincoln County possibly intervening in the case. Lincoln County legal representative Allen Payne then gave some background on the issue including previous legal action by Alliance for the Wild Rockies and whether or not Lincoln, Bonner, and Boundary counties, want to be interveners in the lawsuit. Payne said that the singular issue is Alliance challenging the decision by U.S. Fish and Wildlife that the grizzlies in Yaak-Cabinet ecosystem were no longer eligible to be listed as endangered. Payne said that Lincoln County would have good standing in court to challenge Alliances stance. Commissioner Denning feared that if the grizzly bear was "up listed", it would require designation of critical habitat which could have a huge negative effect on all counties. Commissioner Peck said he saw three possible options: do nothing, participate as amicus, or to come in as interveners. Commissioner Denning asked what the cost would be as interveners. Payne said it's a record review case so it wouldn't be as expensive as a full lawsuit but it wouldn't be inexpensive either. Commissioner Peck said there was discussion previously of \$25,000-\$50,000 which Allen Payne said was his best guess. Commissioner Larson wondered about Kate Kendal's DNA study and if that can be used to argue the endangered status request. Payne said that would be up to the courts. Denning wondered if there was a date that Boundary and Bonner county need to decide by to be interveners. Payne said that it would be beneficial to decide as soon as possible. Payne said that if you are an intervener rather than amicus you get the better bang for the

buck. The current lawsuit's goal is to set aside the decision USFW made that the grizzly were no longer threatened or endangered and force USFW to list the grizzly as endangered. Commissioner Denning said going forward from here, the commissioners from Lincoln, Boundary and Bonner counties would have to sit down and discuss how they want to proceed. An eventual endangered listing would lead to creation of recovery areas which Commissioner Peck said would turn great areas of Lincoln County into de facto national parks. Commissioner Peck asked what should be done from here. Allen Payne said he would meet with each county's board of commissioners to discuss their own goals. Commissioner Peck asked if it would be beneficial for the three counties to meet together. Commissioner Denning agreed that it would be beneficial and Bonner County Commissioner Glen Bailey asked if a fact sheet could be written up to look at which Allen Payne agreed to do. The commissioners were all in agreement that a face to face meeting to discuss the issue would be beneficial. Commissioner Peck agreed to be the point of contact for Lincoln County to coordinate a sit-down meeting.

5:00 PM **Meeting Adjourned**

LINCOLN COUNTY BOARD OF COMMISSIONERS

Mike Cole, Chairman

ATTEST: _____
Robin A. Benson, Clerk of the Board