

Anaconda-Deer Lodge County
Commission Work Session
6:00 p.m. Tuesday, October 13, 2015
Courthouse Courtroom

Present: Commission Chair Hart, Commissioner Mulvey, Commissioner Lux-Burt, Commission Vice-Chair Vermeire, Commissioner Smith, CEO Ternes Daniels, and County Attorney Krakowka

Others Present: Julie Hoffman, Clerk of Commission

Commission Chair Hart called the meeting to order at 6:00 p.m. and explained the Commission Rules of Procedure.

Discussion – Introduction/First Reading/Request to Set Public Hearing – Ordinance No. 244, an Ordinance Amending the Existing Cemetery Board Ordinance

CEO Ternes Daniels informed the Commission the ordinance is being amended to change Cemetery Board meetings to quarterly instead of monthly.

Julie Hoffman, who is a member of the Cemetery Board, informed the Commission the ordinance is also being amended to correct an error under “Jurisdiction.” The original ordinance stated the County will not review or advise on any matters in cemeteries located in districts 12C and 12CJ. However, when the ordinance was codified, it read districts 12C through 12J. Ms. Hoffman contacted the Department of Revenue and clarified the cemeteries are located in Levy Districts 12C and 12CJ which are located in the Big Hole.

Commissioner Lux-Burt asked whether meeting quarterly is sufficient. Ms. Hoffman noted that Carl Nyman, Chair of the Board and Jerold Forkan, Cemetery Department Head brought the issue forward.

Ms. Hoffman informed the Commission November 3, 2015 is the earliest date a public hearing could be held in order to meet the fifteen (15) day public notice requirement.

Public Hearing set for November 3, 2015.

Discussion – Resolution No. 15-26, a Resolution to Create an Account Budget for the Anaconda-Deer Lodge County Local Government Review Study Commission Board for Fiscal Year 2015-2016

CEO Ternes Daniels informed the Commission that Local Government Review Study Commissions are required to create account budgets by resolution per MCA. The ADLC Study Commission budget for FY 2015-2016 was previously approved by the Commission in September.

Item placed on the agenda.

Discussion – Resolution No. 15-27, a Resolution to Designate the Planning Director as the Environmental Certifying Official to Produce an Environmental Review Record.

CEO Ternes Daniels informed the Commission that the County must designate an Environmental Certifying Official in order to meet the requirements to receive the CDBG funds for the West Valley

Sewer Project and the Economic Development Project for the TIG Welding Lab, which will be located at Job Corps.

Item placed on the agenda.

Discussion – Request by Mary Ann Van Cleave to Remove Sewer Fees from her Property at 211 W. 6th Street

Doug Clark, Planning Director, introduced a memo (*attached to the minutes*) to the Commission that detailed the three sewer fee removal requests on the agenda and provided information for a proposed temporary sewer fee review policy. Mr. Clark informed the Commission the current sewer ordinance does a good job of outlining the procedure the County must follow to remove sewer fees. However, the ordinance does not set forth criteria or conditions to apply consistently. Staff are proposing criteria and conditions based on past experience that will serve the County's interest while at the same time be considered fair for the property owner. Per Mr. Clark's memo, *"these criteria would provide standards and conditions that would be applied consistently to each sewer fee complaint and request received by the County and that would guide Staff's investigation process and recommendations."*

Commissioner Lux-Burt believes property owners are not contributing to the building of the sewer if their fees are removed. In addition, she believes if a house is uninhabitable a homeowner will be in a much bigger hurry to fix up the house or tear it down if they are continuing to pay sewer fees.

Doug Clark informed the Commission the County set a precedent when they approved the fee removal for Dave McCarthy while he is remodeling the Alpine Apartments. He believes the County has to make a legally defensible case of why one request gets approved over another, and he noted that the liability is different with certain types of structures.

Commission Chair Hart would like to find a way to tie the sewer removal fee to making significant process on rehabbing a property or demolishing it.

Mr. Clark agreed and believes it is in the County's best interest to incentivize progress. However, it needs to be determined how much time is sufficient to make significant progress on a property.

CEO Ternes Daniels remarked that Doug Clark has done a good job at systematically looking at the ordinance to come up with criteria to evaluate sewer fee removal requests. She believes the three requests before the Commission are compelling. Mr. Clark's memo and recommendations provide some guidance. She believes the process will evolve over time through resolution or perhaps through amending the ordinance.

Van Cleave Sewer Fee Removal Request

Doug Clark informed the Commission water to the property has been turned off for some time. Dusty McKenney, Building Inspector, went out to the property and reported that it is uninhabitable and does not have any plumbing fixtures. Mr. Van Cleave is working on the property, but very slowly. Based on the fact that the Commission approved the fee removal for the Alpine Apartments, he recommends the Commission approve the Van Cleave request as well. He suggested the fee be removed for a defined period of time.

CEO Ternes Daniels recommended if the policy discussed tonight is used as the basis for the decision, that it be included in the memo to the property owner.

Rose Nyman, 121 E. 3rd: Ms. Nyman personally knows of the property and informed the Commission the property owner has been working on it for the past seven years. Her understanding is if you are hooked up to the sewer, you pay the fee. She noted that on the last piece of property she bought she had to pay someone else's past due bill and a reconnection fee.

Item placed on the agenda.

Discussion – Request by Wilfred Nordholm to Remove Sewer Fees from his Properties at 7 & 9 Cedar Street

Doug Clark informed the Commission this is a 4-plex broken up into quarters. Mr. Nordholm is the owner of the property and currently the only tenant. One-half of the unit is unoccupied and service is turned off. He occupies the other two units which are fully plumbed and have one water service connection. He does not intend to rent out the other units in the future.

Commissioner Lux-Burt feels the Commission is rewarding both of these property owners for having uninhabited properties.

Mr. Clark noted the precedent set by granting the fee removal to Alpine Apartments.

Commissioner Vermeire argued the difference is that Alpine Apartments are being remodeled and the other two are sitting there with nothing being done to them.

Mr. Clark informed the Commission that Staff wrestled with that issue because the ordinance does not lay out criteria. The County needs to be able to legally justify why one decision is okay and the other is not. He suggested adopting a resolution that states what the County's motivating factors are.

County Attorney Krakowka believes adopting a resolution is a good idea.

Mr. Clark recommends the removal of the sewer fee for two years.

Item placed on the Agenda.

Discussion – Request by Robert Wallis to Remove Sewer Fees from his Property at 508 Cedar Street

Doug Clark informed the Commission no structure exists on the property as it was demolished and it will only be used as yard space.

Rose Nyman, 121 E. 3rd: Ms. Nyman noted that Mr. Wallis is her neighbor. She informed the Commission he poured concrete into the sewer line.

Item placed on the Agenda.

Discussion – Agreement between Anaconda-Deer Lodge County and Butte Teamsters Union Local #2 (Clerical Teamsters) July 1, 2015 – June 30, 2017

CEO Ternes Daniels reviewed the proposed changes to the contract. She noted changes to the standard language regarding cashing out personal days and banked holidays; language regarding the Health and Welfare Plan; the Term of the Agreement; and a 2% increase in salary and a .10 increase in County contributions to the retirement fund.

Commissioner Lux-Burt would like the word "Eve" added to Christmas on page 4 of the agreement.

Item placed on the agenda.

Discussion – Agreement between Anaconda-Deer Lodge County and Butte Teamsters Union Local #2 (Detention Teamsters) July 1, 2015 – June 30, 2017

CEO Ternes Daniels informed the Commission the County has an agreement with the Detention Teamsters. She informed the Commission an additional \$50.00 has been added to the clothing allowance. However, there is an issue with longevity pay and the agreement is not ready to come before the Commission for a vote.

Item to be placed on a future Work Session agenda.

Discussion – Award of Bid for the Anaconda-Deer Lodge County RDU3 Storm Water Plan, AFFCO Storm Water Ditch Upgrade Project

Steve Anderson informed the Commission the re-bidding of this project took place on October 8th. Four bids were received, with the lowest bid submitted by H&H Contracting in the amount of \$549,901.25. This was approximately \$111,000 less than the engineer's estimate. Mr. Anderson recommended the Commission accept the bid from H&H Contracting.

Commissioner Lux-Burt was sorry to see that Jordan Contracting did not bid on the project but noted that H&H has done a great job on the waterlines project.

Steve Anderson is confident H&H will do a great job as they have done many projects in the area.

Item placed on the agenda.

Discussion – Request by Anaconda-Deer Lodge County Law Enforcement to Utilize County-Owned Property in the Mill Creek TIFID for a Shooting Range

Chief Tim Barkell informed the Commission that Law Enforcement has been trying to establish a gun range strictly for law enforcement for several years. Currently, they utilize one on the west end of town. However, they cannot use shot guns and must pay a fee.

Detective Steve Barclay informed the Commission that Law Enforcement worked with Doug Clark, Carl Nyman and Wayne Wendt and found some property in the Mill Creek TIFID. The TIFID Board is supportive of the plan. The shooting range will be used to train officers.

Carl Nyman, Superfund Coordinator, informed the Commission the County has owned the property for 21 years and it has never been developed. If it is selected for development in the future, it can be leveled. The site has natural buffering and it drains toward the creek. The TIFID Board asked that the

public be notified that a shooting range is going in. Although no one lives in the area, people do own land in the area. Mr. Nyman explained the County has equipment which was procured through Homeland Security that needs to be put to use. Wayne Wendt, Road Foreman believes he can work on the shooting range during the winter. In addition, Mr. Nyman suggested going through the Major Development Permit (MDP) process in order to have public involvement in the process and make sure everyone is on the same page.

CEO Ternes Daniels is aware that law enforcement has been looking for a permanent shooting range for some time. She likes the idea of going through the MDP process in order to ensure there are no surprises and that everyone is aware of what is going on.

County Attorney Krakowka asked if the shooting range will accommodate long-range shooting. Detective Barclay stated the maximum they need is 100 yards.

Commissioner Lux-Burt agreed with Mr. Nyman and CEO Ternes Daniels with regard to going through the MDP process. She noted that on a recent tour of the road projects with Wayne Wendt, he pointed out the site from the highway and it seems like an isolated area.

Commission Chair Hart had concerns regarding line of sight for stray bullets. Detective Barclay assured the Commission that the berms will be high enough in that regard.

Item to be placed on agenda to move forward with the MDP.

Discussion – Montana Tobacco Use Prevention Program Summit Grant Application Request for Tri-County Tobacco Prevention Olympics

CEO Ternes Daniels referred to Katherine Basirico's memo which explains that the Tobacco Use Prevention Program focuses on outreach to youth. The Summit Grant would help cover costs associated with the first annual Tri-County Tobacco Prevention Olympics. The event would provide activities and educational materials. The maximum award amount for the grant is \$4,000.

CEO Ternes Daniels informed the Commission the grant is due October 19th. Ms. Basirico is providing this information to the Commission and requesting to move forward with the application.

Item placed on agenda.

Discussion – Montana Tobacco Use Prevention Program Policy Grant Application Request for Tobacco Free Parks

Katherine Basirico's memo explains that the Policy Grant focuses on potentially creating a smoke or tobacco free policy in one or more of Anaconda's local parks. The maximum award amount for this grant is also \$4,000.

Rose Nyman, 121 E. 3rd: Ms. Nyman spoke in favor of perhaps designating a smoking area in the parks. However, she does not believe smoke-free parks are fair and is not comfortable with this.

Commissioner Lux-Burt would like to go through with the application but noted the County needs to come up with a policy.

Item placed on the agenda.

Discussion – Agreement between Beaverhead County Health Department and Anaconda-Deer Lodge County Health Department to Extend Services of the Special Nutrition Program for Woman, Infants and Children (WIC)

CEO Ternes Daniels referenced Katherine Basirico's memo and noted that although program numbers are up, grant dollars are down a bit. This year's total WIC funding is \$79,087.00 with the satellite contract at \$25,308.00.

Item placed on the agenda.

Discussion – Contract between Anaconda-Deer Lodge County and Vauthier Ferguson to Maintain all Aspects of the Anaconda-Deer Lodge County Website

CEO Ternes Daniels informed the Commission the contract includes website maintenance and training.

County Attorney Krakowka informed the Commission he has reviewed the contract and noted a few items that need to be addressed. This includes language regarding indemnity, attorney's fees in section G; and termination of the agreement.

Commission Chair Hart requested these items be remedied before next week. He likes the idea of the website being maintained by the same firm who developed it.

Item placed on the agenda.

Discussion – 2015-2016 MACO/CRS Inmate Excess Medical Insurance Program Renewal

CEO Ternes Daniels informed the Commission the County has paid out \$11,020.01 in premiums and \$107,359 in medical expenses since August 2013. An inmate must incur over \$10,000 in expenses before the insurance kicks in. The County is currently waiting on reimbursements for three inmates. She noted the coverage does not include dental or prescriptions.

County Attorney Krakowka agreed that keeping inmates is extremely expensive. Each time a judge sets a bond or sentences someone, he must determine how much of a risk the person is to the community. He believes holding on to an inmate is cheaper than letting them go and believes expensive medical bills are worth someone's life.

Commission Chair Hart believes the insurance is a benefit to the County as it provides a cushion. It is a safety blanket if the County has a prisoner that has catastrophic medical expenses.

Item placed on the agenda.

Discussion – Appointment of a Member to the Hearst Free Library Board of Trustees (one vacancy to fill the remainder of Richard Verstraete's term through February 21, 2016)

Commissioner Lux-Burt commented that Mary Lynn McKenna will be great on the Library Board or any board.

Item placed on the agenda.

MISCELLANEOUS

CEO Ternes Daniels informed the Commission that Law Enforcement has put out the call for bids for a new police package SUV. It is the goal to purchase one new vehicle a year for law enforcement.

Chief Tim Barkell informed the Commission in past years Bison Ford has provided the vehicles. However, Dee Motors is able to provide the same vehicle for \$300 less than Bison. The specs have also been provided to Anaconda Motors.

Item placed on the agenda.

PUBLIC COMMENT

Rose Nyman, 121 E. 3rd: Ms. Nyman informed the Commission the property at 500 Alder, which was sold at a tax deed auction, has undergone an amazing transformation. Everything has been painted, and the neighbors are thrilled with the improvement to the property.

ADLC PUBLIC MEETING CALENDAR

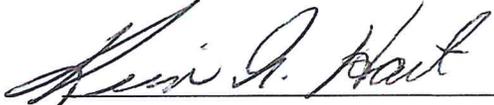
Commission Chair Hart read the ADLC Public Meeting Calendar.

Meeting adjourned:

Commissioner Lux-Burt moved to adjourn the meeting. The meeting adjourned at 7:47 p.m.



Julie Hoffman
Clerk of the Commission



Kevin A. Hart
Commission Chair



MEMORANDUM

TO: Board of Commissioners
CC: Connie Ternes-Daniels, CEO
FROM: Doug Clark, Planning Director
DATE: October 9, 2015
RE: Criteria Recommendations for Reviewing Sewer Fee Removal Requests

BACKGROUND INFORMATION

During the last several months, the Planning Department has received an increased number of requests by property owners to adjust sewer fees for various parcels. The three most recent of these requests accompany this memo and include the following:

Mary Ann Van Cleave – 211 W. 6th Street
Wilfred Nordholm – 7 & 9 Cedar Street
Robert Wallis – 508 Cedar Street

After reviewing these requests the Planning Department recognized the need to propose some standards that could serve as consistent standards for reviewing these types of requests and also conditions for approving these types of requests. This memo is intended to serve both as a cover memo for the three requests before you tonight and also as a guide for a temporary sewer fee review policy until such time that the County adopts formal standards for evaluating removal requests.

With the increase of the County sewer fees Staff has seen an increase in requests to have sewer fees removed from properties. While the Staff has tried diligently to review these requests fairly and consistently, the requests noted above have revealed the challenges that can arise in reviewing these cases fairly and consistently. County Code §20-124 indicates that the County has an interest in seeing that rates are considered fair, reasonable and equitable, and part (b) this section even provides clear on procedures for how sewer users can challenge the County's assessment of sewer fees, and notes that when a complaint is brought before the County that the County shall "investigate" the complaint and provide to the Commission a "report with recommendations to the Commission." Once the Commission has reviewed the complaint and the report, if the Commission is convinced that an adjustment is warranted they may, by resolution, adjust the sewage rates for that user.

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While the current sewer ordinance provides a procedure for Staff to follow, it does not provide any specific criteria or standard on what constitutes a fair investigation of the request. While our past investigations have generally revealed circumstances that lend themselves to “common sense” recommendations, not all cases lend themselves to obvious recommendations. Furthermore, with no formally adopted objective criteria by which to conduct our review, the County puts creates a greater potential risk of appearing arbitrary if not actually being arbitrary. To avoid the potential risks associated with appearing arbitrary in reviewing these cases, Staff would like to recommend some criteria for reviewing these cases in a manner that is fair, consistent, and is as objective as possible.

It is important to recognize that ADLC Code §20-124 effectively serves as an appeal process for sewer users that affords them appropriate due process for addressing grievances. In that sense it places the Commission in what is commonly referred to as a “quasi-judicial” role where the Commission can exercise appropriate discretion in determining whether the standards of the ordinance should apply to a specific situation. This is somewhat similar to the role that the Board of Adjustments plays in reviewing whether or not the application of specific DPS standards is “fair” to a property owner given a set of circumstances that is particular to that property. However, even with the Board of Adjustment, when a request for a variance is heard, the Board has to review that request against specific criteria as appropriate to the request. For instance, one of the most important criteria the Board of Adjustment has to meet is the ability to show that granting a variance won’t result in special privileges to the property owner that are not afforded to others. Or, in other words, the Board of Adjustment has to find that in granting approval of a request that they would afford the same benefit to any property owner making a similar request under similar circumstances. If the Board can meet that criteria every time, they minimize the possibility that anyone can successfully accuse the County of being “unfair”. The criteria recommended in this memo is intended to serve the same function for Commission that the variance criteria serves for the Board of Adjustment. The criteria would provide standards and conditions that would be applied consistently to each sewer fee complaint and request received by the County and that would guide Staff’s investigation process and recommendations.

PROPOSED CRITERIA AND CONDITIONS FOR INVESTIGATING, RECOMMENDING AND APPROVING REQUESTS TO REMOVE SEWER FEES

The following is based on Staff’s past experience in reviewing these requests and making recommendations to the Commission. Each proposed criteria or condition will be accompanied by some contextual information for why that particular criteria or condition has been proposed and how the proposed criteria or condition serves the County’s interest. While Staff feels that these suggestions are “common sense” and are the best approach given Staff experience, we also recognize that there may be better approaches once the Commission has had had time to review and ponder the recommendations.

Proposed minimum criteria that should be met prior to Staff recommending the removal of fees.

- 1. At least one of the following should be demonstrably true upon investigation by Staff...**
 - a. The property contains no usable sewer service line.
 - b. The property contains no structures requiring sewer services

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- c. If the property contains structures, the complainant must show that one of the following is true:
 - i. the property has no actual usable sewer connection;
and/or
 - ii. that there is no need or ability to discharge grey water (irrigation for the sake of maintaining landscaping and gardens excepted) into a City sewer line;
and/or
 - iii. existing structures contain no plumbing fixtures;
and/or
 - iv. is not ~~un~~inhabitable and no water service connected or turned on.

The general reasoning behind these criteria should be apparent in most cases. Where a sewer service line exists, the potential for discharge to the sewer also exists. Even in cases where a house has been disconnected from the sewer main or fixtures have been disconnected within the house, as long as water is available on site and a sewer service line exists, there is the potential that a complainant could re-connect any or all of those items and discharges, in which case the user should be paying their fair and equitable amount.

In cases where a complainant cannot meet any of these criteria they would have to present a very compelling reason for why this fee should be removed. That said, in cases where a structure is truly unoccupied and/or unused, the owner can typically provide some evidence of that fact. The existence of a structure and a service line though does not mean that either are or have been used. However, in those cases where a user intends to declare that the sewer will not be used, Staff is recommending the following conditions be applied to effectively guarantee that the sewer cannot be used.

Proposed general conditions applying to the removal of fees...

1. **Water services on the property must be discontinued during the period for which the sewer fees are removed, as follows:**
 - a. For properties on which a sewer service line and the potential for discharge exists that are also served by County Water, the property owner shall sign an acknowledgement that the County may turn off water service to the lot and is not required to provide water service to the parcel until such time that the proper sewer fees have been reapplied to the property.

--or--
 - b. For properties on which a sewer service line is connected to habitable or usable plumbed structures that are served by private well, the property owner shall agree to either disconnect the well or allow the County to lock-out the well, or otherwise guarantee that the property owner and/or occupant will not discharge any grey water into the sewer or no the property.

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This recommendation is based on the fact that generally there is a relationship between water in and water out on a site. Consequently an agreement by the property ability abide by this condition and allow the County to control water service in these cases not only suggests the sincerity of the complainants claim but would guarantee that the sewer was truly not used.

- 2. Any fee removal should be for a one (1) year tax period and must be renewed at the end of that period.**

Staff is recommending this because the County does not want to encourage people to simply turn off all their services and "mothball" property. In Staff's experience, so far, in most cases the people requesting removal of sewer fees have indicated that they are working on rehabilitating the house or structure served by the sewer lines. In those cases the County removing the sewer fee for a period is a way to encourage investment into the property and structure itself by removing an unnecessary financial burden on the property owner. In theory, money spent on unused services can be better used to fix up properties. That said, the County cannot afford for properties to be mothballed and not contributing a fair share to County services indefinitely. That is why Staff recommends the option of removal on one hand, but would also recommend a time limitation on the other. The County might also want to consider a maximum number of years this might be available to a single-property that has existing served structures.

- 3. If property owner attempts to re-establish water service to the lot prior to the completion of the year for which the sewer fee has been removed, the property owner shall be responsible for all sewer fees for that year.**

The reason behind this recommendation is two-fold. First, to discourage people from trying to change their fee status on a regular basis as a way to avoid paying their fair share simply on the basis of convenience to the property owner. Ultimately, either a property or structure should generally be recognized as being sewer users or not. While fees vary according to use types (residential, commercial, etc) and those fees are assessed based on the average contribution of a use-type, once the use is established as being present and available to the property owner, the County has to operate the sewer full-time and year-round; consequently, the County's ability to cover its costs for that service shouldn't be penalized because a user chooses for convenience to use a property part-time or at their convenience.

While there are cases, as noted above, where it could be considered both "fair" and in the County's best interest to remove a fee for a period on a property that has been an historical user, that interest has limits and shouldn't be easy to abuse. Staff believes that putting a minimum of a one-year commitment on a fee removal request provides evidence that the user is not requesting this merely out of convenience. The second rationale behind the one-year minimum is that it should minimize the amount of time that Staff must expend reviewing these requests. As things are currently managed, these requests take a significant commitment of Staff time. That cost should not be taken lightly.

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That said, Staff recognizes that there are perhaps other ways to discourage people from requesting fee removal and/or making Staff's ability to address these things more efficient. For instance, if the sewer fees were billed with the water fees, then those billing items could be managed by a single department and would make it easier for Staff to address efficiently. However, unless changes were made to the sewer billing a year-long minimum commitment seems appropriate.

4. **The property owner must be paid current on all water and sewer bills for the property prior to removing the fees.**

This is being recommended so that these types of requests are not used as a way to avoid paying existing fees for a longer period of time. It would also discourage the possibility that a property was sold and the new owner ended up being responsible for undisclosed fees. Another potential way to address this is to allow people to have the fees removed regardless of current sewer and water account statuses but then not allow re-establishment of water-services without all back fees being paid at time of water request.

Note: In cases where a property is requesting a removal of fees because a structure has been eliminated, Staff recommends that the County allow that fee removal to be indefinite and until such time that a new demand is developed on the site. In these cases, the control mechanism that the County has is the development and building permits. The Planning Department can enact a policy that ensures that the development of any new plumbed structures automatically triggers a review of the assessed sewer and solid waste units on the property.

As Staff continues to review its current review processes we will likely develop some additional recommendations in regards to how the ordinance could be easily modified to provide some level of administrative review and approval and limit the amount of times or circumstances that these types of requests would have to go before Commission. For instance, Staff is currently considering whether continuing to approve these requests "by resolution" is the most appropriate method, or whether the ordinance could be modified to allow that changes in policy and procedures for review and approval be adopted by resolution so as to avoid unnecessary Commission time with routine requests that could be handled administratively. In the meantime Planning Staff, as well as the Treasurer, Water, and Roads Staff are prepared to continue addressing this matter, as appropriate.