

**Anaconda-Deer Lodge County
Commission Meeting Minutes
6:00 p.m. Tuesday, September 20, 2016
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 K. Pooley, Clerk of Commission

Members of the Press: None

Commission Chair Hart called the meeting to order at 6:02 p.m. and the Pledge of Allegiance was recited.

Commission Chair Hart explained the Commission Rules of Procedure.

APPROVAL OF MINUTES

Approval of Minutes from the Commission Meeting of September 6, 2016 and the Commission Work Session of September 13, 2016

Commissioner Lux-Burt stated that the construction firm responsible for the asphalt paving in the West Valley was listed as Yeoman Construction, but it is Gilman Construction doing the work. She informed the Commission that Julie Pooley, Clerk of Commission, has already corrected the error.

Commissioner Smith moved to approve the minutes from the Commission Meeting of September 6, 2016 and the Commission Work Session of September 13, 2016 with the noted correction; seconded by Commissioner Mulvey.

Motion carried unanimously.

APPROVAL OF CLAIMS

Although there are still a few projects in the pipeline, construction season is winding down, and CEO Ternes Daniels noted that claims are more in line with the County's normal bills.

Commissioner Vermeire moved to approve claims numbered 123283 through 123442 in the amount of \$208,534.69; seconded by Commissioner Lux-Burt.

Motion carried unanimously.

REPORTS OF BOARDS, OFFICIALS, COMMITTEES

Commissioner Smith attended the Greenway Service District Board Meeting.

Commissioner Vermeire attended a RV Resort meeting, two Institutional Controls meetings and the Health Board meeting.

Commissioner Lux-Burt attended two Institutional Controls meetings and the Headwaters RC&D Board meeting in Whitehall at the old Borden Hotel. She commented that the hotel has been remodeled with rental units on the upper level and offices and a restaurant on the lower level. She also attended a ceremony on September 11th at the home of a local Marine veteran who built a memorial at his home in Mill Creek. The memorial is very impressive and it commemorates veterans. Ashes of two veterans will be spread later this week. A bench commemorating the life of John Andrews is located on the property as well.

Commissioner Mulvey attended the Hearst Free Library Board meeting.

CEO Ternes Daniels attended the Institutional Controls meeting and the Hearst Free Library Board meeting.

County Attorney Krakowka attended the DUI Task Force meeting.

Dan Manson, 15 Burning Tree Lane, Butte, MT: Mr. Manson informed the Commission he represents the County in the Institutional Controls Agreement negotiation process. He did not have anything substantive to report; however, work continues on finalizing a couple of the plans which are exhibits to the Agreement. Additionally, there are a couple of details going back and forth among the parties, the EPA and the State. He indicated it may be a couple of weeks as one of the attorneys for the EPA had a family emergency and may be unavailable for the rest of this week. He informed the Commission that the team continues to work diligently to get everything finalized and posted in advance of the next public meeting. Mr. Manson did want to take a minute and address some of the public comment. He stated that some of the amendments that will come out the next time the Agreement is posted will address some of the comments that came up at the last meeting, but he wanted to address issues that have come up in numerous letters to the editor regarding seeking a second opinion or questioning the qualifications of the team. It is not his intention to engage in writing letters to the editor or responding formally to it, but he did want to address the Commission, at least with regard to the legal end of the contract, and he wanted to go on record by stating that he does feel very confident with the agreement that is being negotiated. At the same time, he would never discourage the Commission in any way from obtaining a second opinion, and he wanted to go on record to state that. As a professional, if there are questions about the validity of some parts of the agreement or whether the agreement is a good deal, Mr. Manson encouraged the Commission if they have any doubts to obtain a second opinion, and stated he feels very strongly about that. He does not discourage it. He stated this is an agreement that is going to have to be good today, tomorrow and fifty years from now. He felt it was important to address this issue because it seems to be almost a suggestion that it is trying to be rushed through without due diligence. If it is the pleasure of the Commission to seek a second opinion, Mr. Manson supports that decision, and he will work to get information to whomever the Commission

chooses to do it. He cautioned that it may take some time to get another person up to speed to render an opinion because of all the complex provisions in the agreement and encouraged the Commission to ensure there is interim funding in place. He expects it to take some time if the Commission decides to go in this direction.

CEO Ternes Daniels thanked Dan Manson, WET, Carl Nyman, and the Commissioners for a great job and sitting through a grueling two plus years of this. She thanked Mr. Manson for his legal expertise and noted that he is also an environmental engineer. She stated it is unfortunate that the County did not do its due diligence in 1994 when it entered into what she would say was a really bad agreement which is still in existence today. She thinks from the work that Dan, Carl and WET has been doing the County is poised to move this community forward with a good agreement and get going. She hopes the community will move the agreement forward.

County Attorney Krakowka asked Mr. Manson if the issues facing Butte with its Superfund negotiations are going to affect us in Anaconda. He read in the Montana Standard that the State is pulling out of negotiations with ARCO. Mr. Manson informed him that the same people are working on our agreement so it may impact the availability of some of the players and the timing.

Commissioner Lux-Burt thanked Dan Manson, stating that he has been so good to work with and that he is a man of integrity. She really appreciates that, and she believes it takes integrity to say "hey if you want another opinion, do it." She appreciates all he has done and what WET and Elizabeth and Dave Erickson have done. Commissioner Lux-Burt stated that she is on the negotiating committee but she knows little about science, it is the subject she avoided so she is certainly the least qualified of anyone to be on it. She certainly appreciates the wisdom that has been shared and all of the hard work. Commissioner Lux-Burt has been in hundreds of hours of meetings, but stated that they have been in thousands. Commissioner Lux-Burt got a note in her box from Jim Flynn who was the head of Fish and Game and he wrote the following:

"Dear Ms. Lux-Burt: I am writing to express my support for the approval of the proposed agreement between ADLC and BP. It appears to be a reasonable path to the future for our county. Hopefully a decision soon can end the bickering and we can take the first steps down that path to the future. With best wishes, Jim Flynn."

Commissioner Lux-Burt appreciates it, and she thought all of the Commissioners got one but did not. She really appreciated it, and it seemed like a good time to do it.

Commission Chair Hart thanked Dan Manson and stated it will be interesting to see when everything will be included in the final draft so that once it is received there will be ample time for the public to digest everything. He asked if the agreement and exhibits were available at the library and CEO's office. CEO Ternes Daniels indicated it was available. Commission Chair Hart wants the public to be able to look at it and then get the next public meeting scheduled. Dan Manson indicated there will be some modifications to the agreement and exhibits that will address some comments that were made at the public meeting, but a redlined version will be provided in order to see the changes. Commissioner Lux-Burt also noted there was an ad in Friday's Leader announcing that hard copies of the agreement and exhibits are available at the library and CEO's office.

Carl Nyman, Superfund Coordinator tagged onto a few things that Dan Manson and everyone said. Mr. Nyman noted that one of the things to remember in setting the context and as CEO Ternes Daniels alluded to is that when the County entered into the 1994 Agreement, it did so with the best the County Attorney could offer at the time in addition to all of the other duties he had. The County Attorney did not have the staff and had more of a population to deal with. He thinks the individual did the best he could but there is just a limit one comes into with any agreement in terms of expertise, experience and background. Perhaps things should have been changed back then, but more importantly, Mr. Nyman thinks the County learned from it. Jim Kuipers, former technical advisor and Becky Guay, former CEO set the stage for the County to be adequately funded in order to have technical and legal expertise the County needed. Mr. Nyman stated there was no question at the beginning that Jim and Becky were the absolute best and the people we needed in this situation to get the County where it needed to be. It was just as true as Jim saw that phase culminate that he recommended WET, and Becky recommended Connie. As Connie likes to say, "it took the radicals to get things where they needed to be and the moderates to negotiate and reach an agreement." Mr. Nyman believes we ended up with the best people in the country with Dan Manson, Dave Erickson and Elizabeth Erickson. He stated they have represented this community and fought for it and people will never see or understand how they have immersed themselves and tried to bring it forward for the good of this community, and it is exactly where they wanted to be. Mr. Nyman noted that when this state was reached he wanted all of the Commissioners to be comfortable with what they had done and know that no stone was left unturned. Mr. Nyman stated that if you look at the opposition and where it is coming from, on one hand you have some people who want to build an aquatic center and they want the IC Agreement to fund that aquatic center. He stated it was never going to happen and never will happen. He added that people think Atlantic Richfield owes us billions not millions and that is not even in the same stratosphere as where we need to be. On the other hand, there are a couple of individuals who were part of the problem back in the 1990's and early 2000's when they worked for the county. Mr. Nyman said they wanted to stick it to Atlantic Richfield then and want us to continue to do it and continue in those negative ways that existed in the past. If you take that away, what are we hearing? Not a lot, according to Mr. Nyman. He informed the Commission that not one person no matter their background or interest has been able to offer up more information to bring forward to Atlantic Richfield and the agencies to indicate that the County deserves more. They want us to look, and as Dan said if the Commission chooses to do so, the team is not opposed to doing it. Mr. Nyman explained that Mr. Manson has studied the Agreement extensively and if there was anything out there that was remotely possible in terms of getting a better agreement, Mr. Manson would have brought it forward. Until someone offers something specific, Mr. Nyman stated there is nothing to go on. Conversely, he asked the Commission to contrast this with what the team has brought forward – an agreement that provides funding for the program and maintenance for the golf course and the other parcels received in 1994. In addition, it lets the County move forward with redevelopment in the community and provides a helping hand to get started in redevelopment in any aspect we choose. Mr. Nyman knows it will never be enough, but it is something. He has heard from several people who have not gone public who have urged him to "not point us in the wrong direction" and "don't allow this community to stand with its hand out forever." Mr. Nyman has always believed this since he became involved with this community 25 years ago – it is up to us to do what we want to do to see what we can make happen for this community. He grew up in an era where that was foreign thinking, and the Anaconda Company provided everything. He stated that those days are over. He informed the Commission everything has been negotiated for, and it is a very good agreement that allows us to

move forward. Mr. Nyman stated that if the County does anything less the County is being held hostage.

Elizabeth Erickson with WET reiterated what Dan Manson said and informed the Commission that if they feel they need a second opinion on the technical side, she is totally behind that. She has every confidence in the agreement that has been negotiated and will help in every way, shape and form. Ms. Erickson addressed Commission Chair Hart's comment regarding the agreement being available, noting it is available at the Chief Executive's Office and the library. She stated there will be pieces that will be updated as the plans become final. When everything is final there will be an ad in the paper informing people as to the status of the documents. The documents will be available for two weeks before setting another public meeting. She acknowledged it has taken a little bit longer to get all of the documents as the team thought the reviews from the agencies would happen sooner.

UNFINISHED BUSINESS

Approval of the Revised Technical Memorandum to the Natural Resource Damage Program (NRDP) for Anaconda-Deer Lodge County's Groundwater Restoration Plan (GWRP) Phase V/Year 5 – 2017 Projects

CEO Ternes Daniels informed the Commission that Alden Beard provided a good overview of this memorandum and the steps for moving forward at last week's Work Session.

Commissioner Smith moved to approve the Revised Technical Memorandum to the Natural Resource Damage Program (NRDP) for Anaconda-Deer Lodge County's Groundwater Restoration Plan (GWRP) Phase V/Year 5 – 2017 Projects; seconded by Commissioner Mulvey.

Motion carried unanimously.

Approval of the West Valley Sewer Extension Phase 2 Construction Contract Change Order No. 4 for Additional Asphalt for Streets in the West Valley

CEO Ternes Daniels believes this was a challenging project, but it came in under cost which gives the County the ability within the contingency fund to get this additional work done. The streets to be paved were heavily used and are in need of repair.

Commissioner Mulvey moved to approve the West Valley Sewer Extension Phase 2 Construction Contract Change Order No. 4 for Additional Asphalt for Streets in the West Valley; seconded by Commissioner Vermeire.

Motion carried unanimously.

Approval of the Amendment to Task Order No. 3 to the Contract between Anaconda-Deer Lodge County and Tilman Consulting to Provide Administration of the West Valley Sewer Extension Project Hook-Ups for Private Property Owners

Kathie Miller with the Anaconda Leader had a question last week regarding the date in the contract. CEO Ternes Daniels clarified the date is May 2016. Again, the CEO stated this has been one of the most challenging projects and quite a seasoned team has worked on the project. She encouraged the Commission to support the task order.

Commissioner Smith moved to approve the Amendment to Task Order No. 3 to the Contract between Anaconda-Deer Lodge County and Tilman Consulting to Provide Administration of the West Valley Sewer Extension Project Hook-Ups for Private Property Owners; seconded by Commissioner Lux-Burt.

Motion carried unanimously.

Approval to Submit the Application to Montana Department of Natural Resources & Conservation (DNRC) for the 2017 Tree City of the Year Award

CEO Ternes Daniels had nothing further to add with regard to this item.

Commissioner Lux-Burt moved to approve the submittal of the application to the Montana Department of Natural Resources & Conservation (DNRC) for the 2017 Tree City of the Year Award; seconded by Commissioner Mulvey.

Motion carried unanimously.

Approval of Resolution No. 16-35A, a Resolution Amending the Mill Levy for Anaconda-Deer Lodge County for Fiscal Year 2016-2017

As reported last week, CEO Ternes Daniels informed the Commission that Michael O'Rourke, County Superintendent of Schools, inadvertently misrepresented the mills. It had no effect on the County's budget.

Commissioner Vermeire moved to approve Resolution No. 16-35A; seconded by Commissioner Lux-Burt.

Motion carried unanimously.

Appointment of a Licensed Addiction Counselor Representative to the DUI Task Force to Fill the Remainder of Michelle Heald's Term through March 16, 2019 (Tobin Frizzell, LAC has requested appointment)

Outside of Mr. Frizzell's letter and his interest in serving on the Task Force, CEO Ternes Daniels had nothing further to add.

County Attorney Krakowka had the opportunity to talk with Mr. Frizzell again at the DUI Task Force meeting, and he believes he will be a good fit.

Commissioner Mulvey moved to appoint Tobin Frizzell, LAC as a Licensed Addiction Counselor Representative to the DUI Task Force to Fill the Remainder of Michelle Heald's Term through March 16, 2019, seconded by Commissioner Lux-Burt.

Motion carried unanimously.

Approval of the Special Event Permit for the Anaconda High School Homecoming Parade

Commissioner Lux-Burt indicated the insurance is in order, and it will be a fun event as always.

CEO Ternes Daniels informed the Commission the parade will be held on September 30th from 3 p.m. to 4 p.m.

County Attorney Krakowka attended the last football game with his kids and believes the Homecoming Parade is a positive event for kids to participate in.

Commissioner Vermeire moved to approve the Special Event Permit for the Anaconda High School Homecoming Parade; seconded by Commissioner Mulvey.

Motion carried unanimously.

Approval of the Special Event Permit for Accelerate Anaconda's Reverse Angle Parking Demonstration to be held September 22nd through September 24th on the south 300 block of Main Street

CEO Ternes Daniels stated that Adam Vauthier gave a great overview last week; however, in keeping with these kinds of events she thought it needed a Special Event Permit.

County Attorney Krakowka is looking forward to the parking demonstration and stated that Adam Vauthier can get people to go to any lengths to not have to parallel park.

Commissioner Vermeire moved to approve the Special Event Permit for Accelerate Anaconda's Reverse Angle Parking Demonstration to be held September 22nd through September 24th on the south 300 block of Main Street.

Motion carried unanimously.

Acceptance of the Resignation of Bill Willing from the Airport Board and Authorization to Advertise the Vacancy to Fill the Remainder of the Term through July 10, 2017

Commissioner Vermeire tried to contact Bill Willing. He left a message for him, but Mr. Willing did not call him back.

CEO Ternes Daniels also tried to contact him several times, including today but was unsuccessful. She thinks he may be out of town and would really like to have a conversation with him.

If the Commission wants to allow more time before making a decision to advertise the vacancy, County Attorney Krakowka informed them it is within their discretion noting, however, that Mr. Willing stated in his letter he no longer wants to be on the board. He asked if there are enough members on the Airport Board to keep it going without Mr. Willing. Commissioner Vermeire indicated it is a seven-member board and there are currently two vacancies (this includes Mr. Willing's vacancy).

Commissioner Lux-Burt moved to table Bill Willing's resignation from the Airport Board for an additional two weeks; seconded by Commissioner Vermeire.

Motion carried unanimously.

NEW BUSINESS

Approval of the Grant Agreement between the Urban Renewal Agency/Tax Increment Finance District (URA/TIFD) and the Grantee to Assist with Its Project

County Attorney Krakowka informed the Commission the agreement originally came before him, but it did not have enough information. An agreement must have terms of acceptance and consideration but this agreement did not, and it was not aligned for what the URA/TIFD would be giving the grantee money for. The County Attorney revised the agreement to include Attachment A, which is the application the grantee fills out to request the money from the URA/TIFD.

Commissioner Lux-Burt noted a minor grammatical correction to the agreement. She also questioned Attachment A. Julie Pooley, Clerk of Commission, explained that it was attached to the agreement as an example. The Commission had previously approved the five applications the URA/TIF developed for interested parties to submit to request grant funds. Depending on the type of project, the appropriate application will be attached to the grant agreement as Attachment A.

Commissioner Mulvey moved to approve the Grant Agreement between the Urban Renewal Agency/Tax Increment Finance District (URA/TIFD) and the Grantee to Assist with Its Project; seconded by Commissioner Smith.

Motion carried unanimously.

MISCELLANEOUS

Institutional Controls Agreement

Commissioner Vermeire added to Dan Manson's comments by noting that he thought the term Global Settlement would scare people. However, what it boils down to and in a nutshell, this is basically an agreement which specifies that ARCO is going to hire Anaconda-Deer Lodge County to run its Institutional Controls program. He added that through negotiations, the County was able to eliminate a lot of the liability that came with the 1994 conveyed properties, which is a bonus. ARCO saw the shortfall with the golf course, which is a cover for an elaborate storm water control system. ARCO

recognized the short fall of it and is going to give money to help out the golf course. For doing this, Anaconda-Deer Lodge County gets a bonus – the Community Enhancement Fund. Commissioner Vermeire thinks of this as another agreement and feels we would all be fooling ourselves if the Agreement does not get revisited again, noting that the ROD (Record of Decision) has had three revisions for what the EPA wants done here. Down the road, he believes there will be amendments to this Agreement. He explained that the Agreement does not relieve ARCO of any responsibility, and the Agreement is to maintain the remediation that is already in place and to ensure the cap is maintained. If the County sells some properties and someone starts digging and comes across another beryllium vault, that is out of our hands and is not covered by the Agreement – it falls to ARCO. Commissioner Vermeire reiterated that by no means is this a global settlement – it is an IC Agreement and just another agreement that alleviates the liability from the 1994 Conveyance Agreement, shores up the Old Works Golf Course, and provides money for the Community Enhancement Fund. He believes it is a win-win situation.

Head Start Personnel Manual

Commissioner Lux-Burt asked for an update on the Head Start Personnel Manual. CEO Ternes informed her it is still being reviewed. She met with Gail Mickey and it is in the process of being finalized. In addition, the County's personnel manual had the same issue and discussions are taking place with MMIA to get the issue resolved.

Special Commission Meeting Request for DPPHS Amendment 2 to Task Order 16-07-5-01-081-0

CEO Ternes Daniels informed the Commission this was received in the office today. It has to be signed and returned to DPHHS by September 29th. As such, she respectfully requested the Commission hold a Special Meeting immediately following next week's Work Session to take action on it. Commission Chair Hart scheduled a Special Meeting on September 27th to consider this item.

PUBLIC COMMENT

Rose Nyman pointed out that Commission Chair Hart did not call for public comment under Reports of Boards, Officials and Committees. She sincerely appreciated Mr. Manson's and Mrs. Erickson's visit, as she has been getting a lot of calls, and it helped clear up some questions. She stated it was unfortunate it was not on the agenda because she thinks some of the public would have liked to attend. Last week a copy of the Institutional Controls Agreement was available at the library without the exhibits. She did see the ad in the paper noting its availability with the exhibits. She understands that the legislature allows charging for documents but believes the public should be able to access copies of the agreement and exhibits without being charged. Mrs. Nyman thinks as Americans, we need to occasionally remind ourselves of our Constitution, the Amendments and our Freedom of Speech, noting that we have a right to comment and a right to our opinions, and if those rights are taken from us then we might as well move to Canada. She stated that it is important to remember no matter who we are or our station in life we have a right to free speech.

ADLC PUBLIC MEETING DATES

Commission Chair Hart announced the public meeting dates. He asked Julie Pooley, Clerk of Commission, if a location has been determined for the October Golf Course Authority Board Meeting. She informed him she will get a hold of Mike King, Board Chair, to get this information.

ADJOURNMENT

Commissioner Lux-Burt motioned to adjourn the meeting. The meeting adjourned at 7:01 p.m.


Julie K. Pooley
Clerk of Commission


Kevin A. Hart
Commission Chair