

COMMISSIONERS PRESENT

IMAN 

CHILCOTT 

FOSS 

STOLTZ 

KANENWISHER 

Members Present.....Commissioner J.R. Iman, Commissioner Greg Chilcott, Commissioner Suzy Foss, Commissioner Ron Stoltz and Commissioner Matt Kanenwisher

Date.....November 21, 2011

▶ Minutes: Glenda Wiles

▶ The Board met at 9:00 a.m. with Kyle Barber for an interview on the Right to Ranch and Farm Board.

▶ The Board met at 9:30 a.m. with Howard Lyons for an interview on the Right to Ranch and Farm Board.

▶ The Board met at 10:00 a.m. with Frank Kucera for an interview on the Airport Board.

▶ The Board met at 10:30 a.m. with Laurie Kelly for an interview on the Airport Board.

▶ The Board met at 11:00 a.m. for a due process personnel matter concerning a Road Department Employee with the possibility of a closed door being invoked. Present was the Road Department Employee, Road Supervisor David Ohnstad and his Attorney, George Corn. Also present was County Attorney Bill Fulbright, Special Investigator Pete Clarkson, Deputy County Attorney Howard Recht, Human Resource Director Robert Jenni, Clerk and Recorder Regina Plettenberg, RC Watchdogs Lee Tickell and Maggie Wright, Bitterroot Star Publisher Michael Howell, Ravalli Republic Reporter Whitney Bermes, and a few unnamed citizens.

Commissioner Iman read the agenda item and asked if this meeting was to be a closed door under Montana Code. Howard stated a meeting can be closed if the rights of the individuals privacy exceed the public's right to know.

David waived his right to privacy and requested the meeting be held in open session.

Howard then handed out documents to the Commissioners, Attorney George Corn and David.

George cited the November 1st letter written to David, noting no such document(s) were attached or had been given to David. Now, on November 21st David is being handed the document(s)

which is evidence to be used against him. Both he and David thought this meeting was whether the Commissioners would move this issue into a due process hearing.

Howard noted the documents presented contain:

- A letter to David dated November 21st has four areas of concern and the Commissioners may decide to take disciplinary action. He then reviewed the four points made in the letter in regard to violating the Employment Policy under Sections 3.03(c) and (b).
- Also provided within the documents are Commission Minutes of August 18th and August 29th which show certain highlights, for example, a statement made on June 9th by David indicated it is unknown if the culvert was there or not. Howard noted on August 19th, Mr. Sardot indicated three culverts were taken out and the drainage is now 2" lower, as well as the asphalt beginning to crack. On August 29th the Commissioners noted due to the poor design, the culvert will need ditch lining at an estimated costs of \$46,700.
- Howard also noted a letter by Nikki Sardot published in Bitterroot Star indicates there were drainage issues and old culverts were given to her. These culverts were then replaced as part of the \$46,700 costs.
- Photo logs with a series of photographs, which he addressed specifically as numbers 6, 10, 17, 20, 25, 32, 33, 36, 38, 42, 49, 51, 66, 68, 39, 93, 113. (Replacement culverts, depths of culverts, drainage issues, asphalt cracking, deviation in road width, environmental issues, erosion, asphalt in need of replacement, slope with erosion, lack of compact testing record.). Howard noted there is concern of the failing of asphalt due to poor road bed construction.
- Financial document 10-103 Job #
- Series of documents that are taped together as a spread sheets. He noted that one of the last documents is the invoice from Roscoe Steel and Culvert.

Michael Howell called for a point of order stating the public is totally in the dark about what is being discussed because they have not documents or pictures to look at.

Commissioner Kanenwisher stated since this not a closed meeting the documents are public and will be available after the meeting.

Howard then addressed the large spread sheet starting with 7/29/2010 noting this information is to the Commissioners and it can be public for those who wish to view it.

Michael Howell made a second request to view the material.

Howard noted the date of 8/30/2010 with the amount of \$3,214.58 as well as 8/4/2010 for culverts which were never installed yet billed, which raises the question as to which culverts were installed at a later date at additional expense to the county. Howard noted this information is being supplied to the county and at this point indicates there are grounds for an investigation, and it would be the recommendation that the Commissioner consider suspending this employee with pay pending an investigation and a date be set for a hearing on that investigation. Howard stated the employee has a chance to comment with his counsel at this time.

Commissioner Iman acknowledged the request for information at the end of meeting. He also commented that he and other Commissioners have not had access to this information until this meeting nor have David and his Attorney. Howard stated George Corn was provided a copy of the road department file and while the photos were not there, the financial information was there as well as the minutes.

George stated they had picked up the 4" stack of documents from the County Attorney's Office that was from the road file, but they did not have all of the information provided here today until 30 minutes ago. And 30 minutes is hardly any notice. He stated it is important for him and his client to review them and he is unclear of the recommendation of what the future hearing will be on. He asked if they would be advised of the notice or is this letter the alleged offenses that we are respond to.

Howard stated if the Commissioners take action, you may issue a due process letter, and that addresses the violation of policy and the copy of the grievance policy and what the Employees rights are. If the Employee wants a follow up hearing, then that date and time can be noticed. Right now the Commissioners have the necessary documents to make that notice.

Commissioner Iman stated this issue is way over his head and he wants counsel to weigh in on this even more before any decision is made. Commissioner Iman stated he would defer to the Counsel of the Employee.

George stated he is unclear how this will work with the grievance policy as it leaves out the one part that the employee is notified of the evidence against him, which is provided in writing. It has now been provided in the last thirty minutes, reviewed very quickly, yet the Commissioners are being asked to make a decision and they don't even know what the decision is. He felt this is improper notice.

David stated when he left town on Friday October 28th he had been given no notice, no indication of any concern nor were there any questions of the Upper Woodchuck Road, or any other road. He was 1,300 miles away visiting his mother. Two days later he received a phone call from Robert Jenni noticing him with a November 7th due process meeting. Then on Friday, November 4th he received the letter addressed to him but in care of his 86 year old mother. The letter stated the Commissioners are holding a meeting on November 7th to determine if disciplinary measure should be taken, and he can attend in person or by phone. David stated he is outraged by that Board action and feels it is inexcusable, particularly when he comes now and finds all of this information, photos taken by someone by the name of Pete Clarkson. He felt this information present is a list of bizarre accusations which the Commissioners have not even seen until now? He asked who makes these accusations.

Commissioner Kanenwisher stated he wishes to take an action.

Michael Howell called for a point of order. Commissioner Iman stated he will allow that point of order. Michael stated the Commissioners do not have ability to take any action at this point; an agenda is prepared and posted for notice of topics to be discussed and actions to be taken, but this agenda notice is insufficient in two ways, the content and the posting.

Michael also noted if this is a continuation of the meeting for a Road Department Employees, then he received the notice at 4:09 p.m. Friday afternoon, and it was not in the Ravalli Republic on Friday. So someone knew at that time it was the road department supervisor that would be discussed but that is not in the agenda. He stated he talked to three people over the weekend and they thought it was another road employee. Michael asked the Commissioners why they would want to mislead people on who the meeting is about, plus it is insufficient notice, and the public does not know what the issues are, nor does David. He stated the last time the Commissioners tried to have a meeting David was not even here, and the Commissioners also gave a late Friday notice.

Michael addressed the issue of the 48 hour notice and opinion of the Attorney General as well as Judge Hagel in Rosebud County. That opinion addresses that the notice must be given since public participation in government is a constitutional mandate. Michael felt the Commissioners should resolve any doubts whether a decision is of significant public interest or as to the adequacy of notice for citizen participation. He felt the agenda was intentionally vague and could only be found on the web over the weekend. He stated for the record, if the Commissioners proceed and take action at this meeting they will be in their third law suit.

Commissioner Kanenwisher made a motion to suspend David Ohnstad with pay pending an investing and execute the due process letter with Chair signature. Commissioner Stoltz seconded the motion. Discussion of the motion: Commissioner Kanenwisher stated at some point the Commissioners must decide when to move forward on an issue that has been brought to them. This due process letter informs the Employee of that process and today we are deciding to go forward with that process. He stated until today we had no idea if that decision would be made. So we have to have a meeting in order to decide to proceed. That meeting was noticed to the employee. George Corn was also given that notice. And the Commissioners have to start somewhere. In regard to the timing of an employee's vacation, the county has business regardless if someone has vacation, so we did the research, we then waited, and we then noticed the meeting with 48 hour notice. He stated we were not sneaking around and we have done everything we can do. The point now is whether we have enough to investigate the matter further.

Commissioner Iman questions whether or not the employee had opportunity to receive the information. He asked counsel if there was sufficient notice, and if this motion is in compliance with the published policies

Bill Fulbright stated the Commissioners are in compliance and Commissioner Kanenwisher stated this is the first step in order to decide if the Commissioners want to investigate the complaint and set a hearing date.

Commissioner Foss stated this is just a first small step in deciding whether to move forward.

George stated a meeting of due process will give his client an opportunity to be heard. Also David needs to be given the time to review these documents which include the photo logs that were not in his road department file.

Commissioner Chilcott felt this process is similar to a court action in that the attorney does the investigation, brings forth the complaint and then it goes to court. He felt it was important for the employee to be given the information so he can respond.

George stated the Commissioners are casting dispersions upon David's reputation even if they decide to suspend him with pay, and Commissioner Chilcott has used a criminal analogy which this is not.

Commissioner Chilcott stated they hear things from employees, some things are not credible, but when they receive something that is credible they must move forward. Today's meeting is credible, so it is the Employees opportunity to defend himself and it is not disciplinary.

Commissioner Kanenwisher stated the employee waived those rights to privacy. Again, the Commissioners have to start somewhere. This is simply a question of whether we have a hearing.

George stated if David had these documents he could have responded today.

Howard noted there must be a meeting in order for the Commissioners to decide to issue the letter that might lead to the process. If the Commissioners decide to issue this letter, the employee will be informed of his rights and it will give him the chance to respond. David now has the documentation known to the County and a date and time should be set in order for appropriate action to be taken given these serious concerns. He noted the Commissioners are fully empowered to take the next step.

George asked if the letter is specific to the charges as Howard just spent 30 minutes going over the charges, chapter and verse, making specific allegations that David needs to be able to respond to.

Commissioner Chilcott stated the letter indicates the charges.

David asked who Pete Clarkson was. Commissioner Chilcott stated he is a special investigator for the County Attorney's Office. David asked if the Commissioners had seen this document prior to this meeting. He also asked if the Board decision would be based on the road file that was removed from his office.

Commissioner Kanenwisher stated David was fully aware of what has been going on for the last several months, noting we had someone look into this issue and now there is a letter to move forward with the due process.

Commissioner Foss stated they had several conversations about this so David has to be aware of this.

Dave reiterated the letter he received at his mother's house indicated there would be a meeting to determine if disciplinary action should be taken in regard to his employment with the county in regards to Upper Wood Chuck Road. He asked if that is what they consider a due process letter, noticing it did not have all of the documents attached that are being presented here today.

George commented if the County Attorney had this documentation on November 1st why would they not share it prior to this meeting on the 21st?

Commissioner Kanenwisher stated they are having this meaningful discussion now.

Commissioner Stoltz stated it is time to call the question.

Commissioner Iman asked the County Attorney if the letter to David Ohnstad with today's date gives the same notice as the one given to David when he was in Minnesota or they two separate letters as his concern is that the personnel policy addresses proper notification.

Howard stated the due process notice is the document today for the vote right now.

Commissioner Kanenwisher noted they could not send the letter before today as they have to meet today in order to do that.

George addressed the suspension portion of the letter stating that is unwarranted because David has been a loyal employee for seven years, he has had several grants awarded to the county for road improvement, has helped the county receive the Small Public Employer of the Year for health and safety and Work Safe Montana has used Ravalli County as a model to the rest of the counties in Montana. George then listed the grant dollars from Westside Road in the amount of \$850,000, Willow Creek in the amount of \$350,000, East Fork Road in the amount of \$4.1 million and several others. Yet the Board considers suspending him for \$50,000 that the Commissioners decided to spend on Upper Wood Chuck and to treat him differently from other employees. He stated there is no violation of insubordination, or unlawful activity, as he has not done any of that. He stated there is no reason to suspend him if they want to investigate him.

Commissioner Chilcott asked Human Resource Director Robert Jenni if the county has guidelines or thresholds for suspension. Howard stated there are no written guidelines, but the concern of the Commissioners is the use of public monies for the work being done on public roads and the pattern and practice of spending this amount of money on a road that was fixed less than a year ago. The allegations, whether accurate or not addresses the Personnel Policy for falsifying records and false statements, engaging in insubordination and not performing activities. This is what the Board is looking into if they so chose.

Commissioner Iman asked if the Commissioners could suspend and investigate or investigate and not suspend. Howard responded yes.

Commissioner Stoltz called for the question.

RC Watch Dog Lee Tickell stated he is a member of the media and wanted to make two points. First that it seems to be a common practice to notice the agenda late on Friday afternoon, i.e. noticing it at 4:08 p.m. is not adequate notice because when they see the changes on Monday, they have three hours to find out what occurs on Monday's calendar. He also noted there is not citation of the MCA that the meeting may be closed, and no notice of potential decision, so that too is inadequate notice and does not allow any meaningful participation with the person

receiving irrevocable harm. Lee felt the public is being cut out of the process as they don't have any documents to review. He felt the county is not following their own process and is setting them up for a costly law suit.

Public comment was now closed.

Commissioner Kanenwisher stated he placed this on agenda on Friday at 0830 a.m. There was no attempt to be nontransparent and the Board continued this meeting. Commissioner Chilcott stated the Board canceled the earlier meeting with David, they did not continue it. He asked Howard if there was proper notice of this meeting.

Howard stated there was more than 48 hour notice and the MCA does not require specific notice, but it does allow a person's right to privacy noting the individual right of privacy has prevailed in the Montana Supreme Court, and thus the county did not notice the name of the employee. There are a couple of matters that need to be considered if the Board votes affirmatively. The first of which is the need to set another date for the hearing which will give the employee ample opportunity to respond, and secondly if the Road Department is going to be overseen by the Commissioners then they will need to decide who will oversee the Road Department during the suspension..

Commissioner Kanenwisher amended his motion to have the next meeting occur on December 5th. Commissioner Stoltz seconded the motion. Discussion of the motion: Howard suggested they not have a meeting for 30 days as two weeks might not be enough time for David to review the information presented.

Commissioner Kanenwisher then amended his motion to have the next meeting on the 21st of December. Commissioner Stoltz seconded the motion. Discussion of the motion: George stated he is gone all next week and pointed out there is a great deal of material he needs to review which includes going back into the lawsuit that was dismissed with prejudice in Judge Haynes Court. He also will want to know if Attorney Alan McCormick was asked about this. And in regard to the Commissioners decision to spend another \$50,000 on this road, he will want to review the issue with Blahnik Paving. George asked if the next meeting could be held on January 20, 2012. Commissioner Iman indicated his concern over suspending David with pay for two months when the operations of the Road Department are ongoing. He felt it is important for the daily operation of the Road Department to continue as it is in the best interest of the county. Commissioner Kanenwisher stated there are a number of other ways to make sure the daily operations are met. Commissioner Chilcott expressed his concern over the necessity of suspension. He wants to know what the rationale is behind that suspension. His preference is to amend the letter of today, adding the word "may" (have violated) because everyone is innocent until proven guilty. It was suggested a firm date be decided upon.

Commissioner Kanenwisher then withdrew his motions. Commissioner Stoltz withdrew his second of the motions.

Commissioner Chilcott made a motion that the Commissioners amend the letter presented here today, making it specific to due process, and on the first four items to change the

language to read "you may have violated" with the next meeting date of January 20, 2012 at 9:00 a.m., and to remove the language suspending David with pay, and to leave David in employment, with Ravalli County performing an investigation into the following actions listed in the current letter. Commissioner Foss seconded the motion. Discussion of the motion: Commissioner Kanenwisher asked if the motion could include adding the Chair's signature to the letter. Commissioner Chilcott stated he would accept that as a friendly amendment. All voted "aye".

Commissioner Kanenwisher then made a motion to execute the letter with the signature for the chair and to send the letter. Commissioner Foss seconded the letter. Discussion of the motion: George stated they have not seen the letter so it is hard to comment. All voted "aye".

Commissioner Kanenwisher asked if this letter is now a public document and if so we can make comment on it since the meeting was open. Howard stated it is a public document and the employee waived his right to privacy, but no one should disparage the employee.

The meeting was adjourned.

► The Board met at 1:58 p.m. with a presentation by Commissioner Kanenwisher for a discussion (no decision) concerning Strategic Economic Planning for Ravalli County. Present at this meeting was RCEDA Director Julie Foster, Planning Administrator Terry Nelson, Bitterrooters for Planning Chair Kelsey Milner, Planning Board Member Jan Wisniewski, Airport Board Members Fred Haaskamp, Dave Hedditch, Citizens Howard Lyons and Bill Menager as well as Ravalli Republic Reporter Whitney Bernes.

Commissioner Kanenwisher stated numerous examples will be brought forth today. He is not necessarily an advocate for them, but rather they are used for discussion purposes and to get the thought process going.

Commissioner Kanenwisher presented a power point presentation called Strategic Economic Planning with the first steps of: Identify, Assess and Report. He also addressed the following:

- Purpose: to provide comprehensive and or baseline information for government agency use when considering criteria for state or federal programs or planning. To provide industry with an accurate picture of opportunities within Ravalli County and to provide county government with accurate information for economic development and business recruitment efforts.
- Possible Outcomes: Identify public resources (natural resource utilization), Identify public infrastructure (County, State and Federal Infrastructure asset and opportunity); identify private sector production and functional clusters; identify and prioritize opportunities for interagency planning. And to provide research and planning services which small businesses lack.

Commissioner Kanenwisher stated the purpose of this planning is for Jobs and then addressed the Project Development Process which includes defining the areas of focus/interest, the collection of factual data and to assess and interpret the data. He indicated if the Commissioners decide to go forward with this economic planning another meeting will need to schedule and he suggested they task the Planning Department with project development assistance. The

Commissioners should also appoint a steering committee comprising of two Commissioners, the Planning Administrator, the RCEDA Director, and three citizens, totaling a seven person committee. He noted this is a long time commitment and in his mind the Planning Board can establish a public folder which would house the resources which can be shared between organizations.

Commissioner Kanenwisher also addressed initial questions for the steering committee such as the major component industries in Ravalli County. Other issues might include water as infrastructure as well as a natural resource, if so what are the market, regulatory, use trends and how will they affect current use?

Commissioner Chilcott addressed the RCEDA that was developed in 1997 noting some of the inventories and analysis have already been done. Discussion included the Comprehensive Economic Development Strategy (CEDS); Bitterroot Economic Development (BREDD) was formed for Mineral, Missoula and Ravalli Counties as well as Dr. Swanson's economic assessment of the valley in 2002.

Julie stated they have quite a bit of data but it takes time and money to put the data together for something useable. Many businesses don't have time to develop something as they need the quick economic benefit.

Terry stated the Planning Department can help gather, compile the data and put it into a form that allows people to share it.

Public Comment:

Kelsey Milner stated planning for more than subdivisions is important. He sees this as comprehensive planning it is a good move. Kelsey likes a living document as things change.

Ron Ehli is a local business person and House Representative asked how the State could help but noting it is important not to reinvent the wheel so to speak.

Commissioner Chilcott indicated the State can reinstate the rural development officers (an outreach to local government helping them understand what grants and resources are out there).

Commissioner Foss stated while regional development is important so are the local communities, and the local communities are being left out.

Jan Wisniewski stated we need to swim in our own waters, we did not vote for the officials in other counties, so keep things local.

Commissioner Chilcott stated sometimes counties are vying for the same businesses, and many times Missoula County comes to our county taking our business development away from us.

Commissioner Kanenwisher stated the answers are not always government issues; they are free market, entrepreneurial issues.

Rob McCoy is in construction and is out of a job. He asked if anyone has looked at hemp products as he has. He finds that hemp can be used for bio fuels, textiles, papers, rope etc. One acre of hemp is twenty acres of trees, with less chemical usage, and it is bio degradable. 1% of Montana lands could be developed for hemp (not cannabis). Canada has been doing well on this, and he feels it is an untapped resource.

Fred Haaskamp stated businesses need transportation, source of employees and communications etc.

Bill Menager started his business has been hampered by governments regulatory burdens. He cannot put up the monies to meet these federal and state burdens in order to sell his product. Rob McCoy concurred with this.

Commissioner Iman stated in regard to the regional approach, while Missoula County is a bigger primary player; Ravalli County governs more people than Missoula County if the City of Missoula is taken out of the mix.

The next meeting is set for November 28th at 10:00 a.m.