

COMMISSIONERS APPROVAL

IMAN JR

CHILCOTT

FOSS SF

STOLTZ

KANENWISHER

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

Date.....December 13, 2011

► Minutes: Glenda Wiles

► The Board met at 8:30 a.m. to interview Bob Frost for the Planning Board position. Commissioner Iman was not present for this interview.

► The Board met at 9:00 a.m. to discuss the November 16th memo from Deputy County Attorney Dan Browder in regard to Montana Statutes on Personal Property Tax Cancellation. After discussion it was determined that the Commissioners have no authority to cancel any personal property taxes until they are five years delinquent, and if the property were being sold (see attached memo).

- The Board met at 9:30 a.m. for various administrative matters which included the following:
- Final Close out for Pantry Partners - RCEDA Director Julie Foster was present to present the final close out document/draw #8 in the amount of \$23,979.99. **Commissioner Foss made a motion to have the proper signatures placed on this draw request and conditional close out documents. Commissioner Chilcott seconded the motion and all voted "aye". (5-0)**
 - Change Order #1 for DJ Electric at Road Shop for rehabilitation - Commissioner Iman noted code violations for electrical were discovered during the rehabilitation of the road shop and therefore this change order is necessary for replacement of wiring. This change order will be for time and materials as noted in the contract. **Commissioner Chilcott made a motion to approve Change Order #1 with DJ's Electric. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)**
 - Decision on Dog licensing dollars - Glenda noted she has received several checks as well as cash for dog licenses. She asked the Commissioners if they wanted these dollars placed in the Animal Control Fund in light of not having a Animal Control Officer to enforce the dog licensing. Present for this discussion was Peg Plat and Barb Ormiston, past members of the Animal Control Board, Sheriff Chris Hoffman, RC Watchdog Maggie Wright, Treasurer Marie Keeton, Bitterroot Star Publisher Michael Howell and Ravalli Republic Reporter Whitney Bermes. Discussion included the current Ravalli

County Ordinance for licensing dogs, possible use of the Animal Shelter for licensing, future allocation of the Animal Control Budgeted funds, Sheriff's Office enforcement and issuing dog licenses. **Board concurred: the County is suspending selling dog licenses until a review of the Ordinance is made which might result in repeal and or amendment, in the meantime the Sheriff's Office will continue to respond to deal with dog issues with the resources available (truck and budgeted monies).**

- **Commissioner Chilcott made a motion to continue the administrative agenda until after the meeting with Human Resources and Chief Financial is completed. Commissioner Foss seconded the motion and all voted "aye".**

► The Board met at 10:25 a.m. with Human Resource Director Robert Jenni and Krista LeCoure of Western States Insurance relative to the issue of county health insurance. Robert noted some insurance companies have not bid the insurance based on the losses and open claims. Blue Cross and Blue Shield has come in with a quote that is approximately 15% higher than this current year. Krista explained insurance pooling, stop loss payments and the various options available including deductibles. **It was agreed that Robert will take a couple of the options that looked best to the Commission, place them on a comparison sheet for the employees to review until Monday at 2:30 p.m. when the Commissioners will make a final decision on what Blue Cross/Blue Shield option to offer the employees.**

Robert also presented an Employee Action Form for signature. **Commissioner Kanenwisher made a motion to execute a release agreement for the former Animal Control Officer. Commissioner Foss seconded the motion and all voted "aye". (4-0) Commissioner Chilcott was not present for this vote.**

► The Board met at 11:15 a.m. with Public Health Nurse Judy Griffin. Present at this meeting was PHN Staff Keri McKillip and Donna Parmenter. Human Resource Director Robert Jenni, Chief Financial Officer Discussion included job descriptions, pay grade, hours and available budget for administrative staff as well as a part time nurse. **Commissioner Kanenwisher made a motion to fill the Administrative Assistant position with a Grade 7. Commissioner Stoltz seconded the motion and all voted "aye" (5-0).**

► Continuing of Administrative matters:

- **Commissioner Chilcott made a motion to approve the DUI Overtime Service agreements with RCSO, Stevensville PD, Department of Corrections, Darby PD and MHP. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**
- **Commissioner Chilcott made a motion to approve the minutes of October 31st to November 4th as corrected. Commissioner Kanenwisher seconded the motion and all voted "aye" (5-0)**
- **Commissioner Kanenwisher made a motion to sign the Fair Housing Guarantee - Exhibit 10-B.3b HOME Program Annual Certification for Rental Housing as filled out by Cardinal Properties for Cedar Grove Apartments and Willow Creek Apartments. Commissioner Foss seconded and all voted "aye".**

▶ The Board met at 11:50 a.m. with Road Supervisor David Ohnstad to review and make a decision on the Lake Como Pavement Preservation Project. **Commissioner Chilcott made a motion to approve the scope of work for Lake Como Pavement Preservation Project. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)**

▶ The Board met at 1:00 p.m. to interview Bob Cron for the Park Board.

▶ The Board met at 1:33 p.m. for a discussion on amending the Flood Plain Regulations by Ordinance. Present at this meeting was Fish & Game Agent Chris Clancey, Deputy County Attorneys Howard Recht and Dan Browder, Flood Plain Administrator Eric Anderson, Planning Administrator Terry Nelson, RC Watchdogs Maggie Wright & Lee Tickell, Environmental Health Director Lea Guthrie, Ravalli Republic Reporter Whitney Bermes and numerous citizens.

Dan Browder indicated while working on the codification process he found some inconsistencies between the regulations and Administrative Rules of Montana. A fair amount of changes have been drafted, mostly clarifications compliance with MCA and Administrative Rules. Therefore a public hearing will need to be held in order to make any of these changes.

The Board then made a review of this draft prepared which included public comment.

▶ Commissioner Stoltz attended a Fair Commission meeting at 3:00 p.m.

▶ Commissioner Iman attended a Bitterroot Conservation District meeting at 8:00 p.m.

Ravalli County Attorney

205 Bedford Street, Suite C ♦ Hamilton, MT 59840 ♦ (406) 375-6750 ♦ Fax (406) 375-6731

County Attorney:

Bill Fulbright

Deputy Attorneys:

John Bell
Daniel Browder
T. Geoffrey Mahar
Ryan Weldon
Angela Wetzsteon

MEMORANDUM

TO: Board of County Commissioners
CC: Marie Keeton, Treasurer
Deb Reesman, DOR

FROM: Daniel Browder, Deputy 

DATE: November 16, 2011

RE: Personal property tax cancellation

In a Board of County Commissioners ("BCC") meeting on July 19, 2011, local staff of the Montana Department of Revenue asked the BCC to investigate whether it has authority to suspend or cancel certain delinquent personal property taxes. DOR staff described several tax assessments in which it appeared that a business was never actually in operation. Because the business owner never responded to DOR's inquiry, DOR is statutorily required to assess personal property tax based on industry averages. Because the taxpayers never responded, all appeal rights have lapsed. Thus, the question is raised whether the BCC may cancel the delinquent taxes.

There appear to be two potential avenues for the BCC to cancel personal property taxes: Title 15, Chapter 16, Part 7, and Title 15, Chapter 24, Part 17. I contacted DOR's Deb Reesman, Treasurer Marie Keeton, and County CFO Klarryse Murphy, and none of those individuals were aware of any other local government that has actually acted to suspend or cancel delinquent personal property taxes.

Title 15, Chapter 16, Part 7

Under Part 7, the BCC has authority to cancel certain personal property taxes. Those taxes must be (1) at least 5 years delinquent, and (2) they must be "taxes that are not a lien on the real estate." § 15-16-701, MCA. Deb Reesman believes that "not a lien on the real estate" refers to taxes that are assessed and billed separately from real property. According to Ms. Reesman, the taxes at issue in the current situation are billed and assessed separately from real estate so they are "not a lien on the real estate." However, the taxes at issue are not yet five years delinquent. The statutes of Part 7 may provide an opportunity for the BCC to cancel these tax bills once they are five years delinquent.

In the event these personal property taxes become five years delinquent, the BCC can use the process described in Part 7 to cancel the taxes: (1) Before the first Monday in June, the Treasurer prepares a list of



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delinquent personal property taxes showing the information listed in § 15-16-701(1), MCA; (2) within 30 days of receiving the list, the board shall examine the list and make its order cancelling the taxes on the list.

Title 15, Chapter 24, Part 17

For the BCC to act under the authority of Part 17, the suspension or cancellation must be to encourage sale and utilization of dormant commercial assets. The BCC may suspend personal property taxes on commercial property "to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension." Section 15-24-1701, MCA. Then the BCC may cancel the suspended delinquent taxes "[i]f a purchaser of the commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase."

I don't believe Title 15, Chapter 24, Part 17, applies to the circumstances described in the BCC meeting, but if so, then the BCC would have authority to cancel taxes as described.

STATUTES

Title 15, Chapter 16, Part 7

15-16-701. Personal property taxes five years delinquent -- real property taxes ten years delinquent -- list.

(1) (a) The county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county, on or before the first Monday in June of each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for 5 years or more. The list must show the following:

- (i) the name and address of the delinquent taxpayer;
- (ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any; and
- (iii) the date the taxes became delinquent.

(b) The list prepared under subsection (1)(a) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

(2) (a) At the time the list is prepared as provided in subsection (1)(a), the county treasurer may prepare in triplicate and submit to the board of county commissioners of the county a list of the real property taxes that have been delinquent for 10 years or more. To be included on the list, the tax lien for each property must have been sold at a tax lien sale under chapter 17, which includes the county as purchaser of the tax lien under 15-17-214, at least 3 years before preparation of the list. If prepared, the list must show the following:

- (i) the name and address of the delinquent taxpayer;
- (ii) the amount of the delinquent taxes, plus interest, penalties, and costs, if any;
- (iii) the real property identification number;
- (iv) the legal description of the property;
- (v) the date the taxes became delinquent; and
- (vi) the date of the last tax lien sale on the property.

(b) The list prepared under subsection (2)(a) may not include real property taxes that remain uncollected because of bankruptcy or litigation.

(3) The board of county commissioners may enter an order that permanently and prospectively cancels real property taxes on parcels identified by the county treasurer or the board as being solely used for road purposes and that otherwise meet the requirements of this section.

(4) At the time the list is prepared as provided in subsection (1)(a), the county treasurer shall prepare in triplicate and submit to the board of county commissioners of the county a list of all contractual obligations owed to or held by the county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

- (a) the name and address of the person or persons who entered into the contractual obligation;
- (b) the name of the contractual obligation, as "seed loan", "feed loan", or "promissory note", as applicable; and

(c) the date of obligation, the date when the last payment became due, the date of the last payment on the obligation, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1).

15-16-702. Cancellation of taxes and obligations -- filing of lists. (1) Within 30 days of receiving any list prepared under 15-16-701, the board of county commissioners shall examine the list and make any necessary corrections. After examining the list, the board shall make its order canceling all personal property taxes and contractual obligations contained in the list or lists, as corrected, that are required by this part to be canceled and, subject to subsection (2), canceling real property taxes.

(2) The board may cancel any or all delinquent real property taxes contained in the list prepared under 15-16-701 as corrected under subsection (1) of this section. If the board cancels any real property taxes under this subsection, the cancellation must be included in the order provided for in subsection (1).

(3) The order made under subsection (1) must be included in the board's minutes. The order and minutes may include only a reference for the proper identification of any list included in the order. When the order is made, the original or a copy of the list or lists, as corrected, must be filed with the records of the board. One legible copy of any list included in the order must be filed with the county clerk and recorder as a public record, and one legible copy of any list included in the order must be filed with the county treasurer as a permanent record of the treasurer's office.

15-16-703. Adjustment of accounts after cancellation. Upon notification of the order for cancellation, the county clerk and recorder and county treasurer shall adjust their taxes-receivable accounts to conform to the order of cancellation.

15-16-704. Certain unpaid taxes uncollectible -- stricken from records. All unpaid taxes constituting a lien on real property in the state, levied and assessed against real property which have remained delinquent more than 10 years prior to July 1, 1976, whether the levy be by general or special assessment or by the state or any county, city, or political subdivision of the state, are hereby declared to be uncollectible and stricken from the respective tax records.

Title 15, Chapter 24, Part 17

15-24-1701. Suspension and cancellation of collection of certain property taxes on commercial property -- subordination of county tax lien -- local government discretion. (1) The governing body of a county or consolidated local government unit may suspend collection of delinquent property taxes on commercial property to facilitate the purchase and continued operation of a business utilizing the commercial property if the property has not been used in a business for 6 months immediately preceding the date of suspension.

(2) The governing body may refuse to suspend delinquent taxes if it determines that the purchase of the commercial property is not an arm's-length transaction or if the purchase otherwise appears to be a restructuring of ownership for the primary purpose of escaping payment of delinquent property taxes or if the governing body determines the suspension is not in the best interest of the county.

(3) If the purchaser is obtaining financing as a part of a purchase agreement, the purchaser may request and the governing body may grant a subordination of the suspended tax lien to the financing. The request must include an operational plan, levels of employment, and other factors the governing body may consider important in determining if subordination of the county's tax lien position is in the best interest of the people of the county. Subordination does not diminish any other claims of tax lien as established by this section.

(4) If a purchaser of the commercial property continuously utilizes the property in a profit-oriented, employment-stimulating business for 3 years from the date of purchase, the governing body may cancel the collection of the suspended delinquent property taxes. The governing body may not cancel the suspended delinquent property taxes if the purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction.

15-24-1702. Resolution to suspend or cancel delinquent taxes. (1) In order for the governing body to grant a suspension or cancellation of delinquent property taxes pursuant to this section, it shall adopt a resolution after:

- (a) providing notice, as set forth in 7-1-2121;
- (b) holding a public hearing; and

(c) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes, and the governing body shall consider the information before reaching a final decision.

(2) The resolution must state that the suspension or cancellation is in the best interest of the people of the county or consolidated local government, based on full disclosure of all pertinent financial information by the new owner as required by the local government.

15-24-1703. Application of suspension or cancellation. The suspension or cancellation of delinquent property taxes pursuant to this part:

(1) applies to all mills levied in the county or otherwise required under state law, including levies or assessments required under Title 15, chapter 10, 20-9-331, and 20-9-333;

(2) does not apply to assessments made against property for the payment of bonds issued pursuant to Title 7, chapter 12.