

COMMISSIONERS APPROVAL

IMAN

CHILCOTT 

FOSS 

KANENWISHER 

STOLTZ 

PLETTENBERG (Clerk & Recorder)

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

Date.....February 3, 2011

► Minutes: Beth Perkins

► The Commissioners met with Erin Gabrian from Representative Rehberg's Office for an introduction and an update at 9:00 a.m.

► The Board met for a public hearing to repeal the Ravalli County Subdivision Regulations adopted on December 23, 2010 and replace them with the Ravalli County Subdivision Regulations adopted of May 24, 2007 with certain amendments at 10:00 a.m. Present were Interim Planning Director Tristan Riddell and numerous citizens.

Commissioner Iman opened the public hearing and requested confirmation of proper legal notice. Tristan Riddell confirmed the legal notice was published in the paper of record.

Commissioner Chilcott gave a recap of the previous meetings on December 23, 2010 and January 3, 2011. The end result of the January 3, 2011 meeting was to repeal the adopted subdivision regulations of December 23, 2010 and replace them with the subdivision regulations adopted on May 24, 2007 including the amendments required by legislative changes in 2009 to make them compliant with Montana Code Annotated. The County would then function under them for a period of time while the December 23rd draft finishes the public process for a final document with an accelerated process for completion with a few months. Commissioner Iman suggested setting a reasonable process in order to have a starting point and then move forward. Public participation was limited to 10 days with the current subdivision regulations. He requested a short discussion about the process and suggested first discussing whether or not to rescind the action of December 23, 2009. He will open board deliberations first and then take public

comment on this item only if it is the will of the Board. Then secondarily, the Board will discuss what regulations should be in place due to the requirements and lastly, how to move forward. The Board concurred.

Commissioner Iman opened board deliberation for the fate of the December 23, 2010 subdivision regulations.

Commissioner Chilcott would like to repeal the regulations of December 23, 2010 in their entirety and work on them within a timeframe. He proposed a deadline of 90 days to review the December 23rd regulations line by line and amend them in a public process. He discussed a schedule for meetings in order to work on the draft regulations with transparency. He suggested in the interim to adopt the subdivision regulations of May 24, 2007 with the amendments proposed. Tristan stated the amendments were placed on the web January 3rd which is an updated copy of the May 24, 2007 regulations including only the required legislative changes from the 2009 session. Commissioner Foss agreed with Commissioner Chilcott. Commissioner Kanenwisher stated there is wide consensus there are a number of parts of the December 23rd regulations that are necessary to the function of the Planning Department and the same amount of consensus of the need for changes. He would like to repeal the December 23rd subdivision regulations and supports adopting the May 24, 2007 regulations in the interim until a working draft can be developed. Commissioner Stoltz agreed with Commissioner Chilcott for repeal. The public was not given adequate time for input. Commissioner Foss proposed a systematic approach to move forward and with public participation.

Commissioner Iman opened public comment on the matter to rescind the action of December 23rd, 2010 that adopted the current subdivision regulations.

Niki Sardot from Florence requested the Board rescind the December 23rd regulations and requested to be on the committee to re-write them.

Peter Lethenstrom asked if there has been a motion or a second to repeal and what are the amendments to be added. Commissioner Iman called for a point of order and requested comments are confined to only whether or not to repeal the action of December 23, 2010.

Teri Polumsky thanked the Board and requested repeal of the December 23rd regulations.

Patrick Ballance requested a repeal of the December 23rd regulations.

Ren Cleveland asked if the 2007 regulations were adopted with the growth policy. Tristan replied the regulations were adopted in 2000 and amended in 2007 and when the amendments were adopted the growth policy was in effect. Ran stated the County needs a growth policy. He requested the Board take into consideration of adopting a growth policy. Commissioner Kanenwisher asked if not having a growth policy scares him due to the City having one. Ren replied yes.

Judy Kline requested comments stay on the topic. She requested the December 23rd regulations be repealed.

Jan Wisniewski requested the repeal of the December 23rd regulations. He suggested instead of adopting the May 24, 2007 regulations to resort to the State code Title 76 MCA concerning subdivision regulations. If the County goes with what the State says, the County can't be held liable for subdivision. If anything else is needed, it can be added on if there is cause shown for the need to be more stringent than what the State requires. Commissioner Kanenwisher questioned the legality of adopting the State regulations. Tristan stated both the current and previous regulations are the State Code. Jan asked why are the December 23rd regulations twice as big as the May 24, 2007 regulations. Tristan stated the regulations have to include specifics of the County such as standards for roads and lots. Commissioner Kanenwisher asked if the State requires the County to adopt subdivision regulations of their own. Tristan replied yes. Jan asked if this could be looked into as a possibility.

David Merrick gave comment as the Chairman of the Libertarian party and every person he contacted in the libertarian party has requested the repeal of the December 23rd regulations.

Chris Hockman asked about the adopted December 23rd regulations and if the repeal will lengthen the process and make it more convoluted. Tristan replied for the interim – yes because that regulation would go away but they are diligently planning on adopting an updated set of regulations favored by the public.

Curtis Cook stated there are major subdivisions in process and according by the law they need to be reviewed under the current regulations when deemed sufficient. Tristan replied both subdivisions that have been deemed sufficient will be reviewed under the old “green book” regulations (May 24, 2007). Curtis stated there are several places in the statutes that refer to the subdivision regulations. For example in clustered development, there is a statute for the County to enact regulations allowing clustered development if there is a growth policy. The growth policy is inter-woven with the subdivision regulations. The State Subdivision Regulations are not actual regulations but what the counties have to include in their own regulations with specifics. The requirements of the County regulations are two pages in the State regulations. He suggested due to the amount of hard work by the Planning Department and the Planning Board for the development of the regulations, the regulations of December 23rd should not be completely thrown out. They do have the requirements included. He further suggested comparing the regulations side by side for the differences and then move forward. The Planning Department worked with the Board and the Planning Board and other volunteer boards for input. It is not something made up out of thin air and they are not twice the size of the old regulations.

Judith Stewart thanked the Board for considering repealing the December 23rd regulations and requested they do get repealed.

John Horat thanked Staff for the hard work and effort put into the development of the current regulations.

Commissioner Iman closed public comment on whether to repeal the action of December 23rd 2010 and opened board deliberations.

Commissioner Chilcott made a motion to repeal the Ravalli County Subdivision Regulations adopted on December 23rd, 2010 effective immediately. Commissioner Stoltz seconded the motion. Discussion: Tristan asked if the motion should include the adoption of the subdivision regulations of May 24, 2007 at the same time due to the drafted resolution. Commissioner Iman noted at the beginning of this hearing it was decided to take the issues one at a time. Commissioner Kanenwisher didn't see any reason as to why the Board couldn't table this discussion and then revisit for motion after discussion. **Commissioner Chilcott withdrew his motion and Commissioner Stoltz withdrew his second.** Commissioners Iman requested Board consensus to repeal the December 23rd subdivision regulations. The Board concurred.

Commissioner Iman opened board deliberation for what would replace the December 23rd subdivision regulations.

Commissioner Kanenwisher stated comment made by Jan Wisniewski deserves an answer as to if State regulations can be adopted as County regulations. He asked if it is legal to not have local subdivision regulations. According to MCA 76-3-501 (2007), it states the County shall adopt subdivision regulations. To his understanding, the State MCA is not regulation, it is a guideline to create regulation and would not make sense as county regulations. He is in favor of adopting the regulations of May 24, 2007 to replace the December 23rd regulations with certain amendments in order to finish the work on the December 23rd regulations. It has been the consensus of public comment these regulations of December 23rd were rushed into without proper public input.

Commissioner Foss stated comments were made that the documents were not compared. She stated tremendous effort was put into the adopted documents but short-circuited with the public input. Her hopes are to come out with a document that is easily understood and equitable with transparency.

Commissioner Stoltz stated he is in favor of repealing the December 23rd regulations and replace them with May 24, 2007 regulations. Public trust was lost with the December action and it needs to be regained.

Commissioner Chilcott requested Tristan review the proposed amendments with a further amendment to remove the references of the growth policy. Commissioner Iman stated Staff has worked very hard to develop the regulations and it was nixed without proper public input. He requested Tristan review the State regulations that are mandated.

Tristan stated in the 2009 legislature, three major bills were passed that had a direct effect on the local subdivision regulations: SB 305, SB 310 and HB 486. The changes that are going to be implemented are as follows:

- Subdivisions with more than 50 lots will have an 80 working days time period to render a *decision*.
- If no decision is made by the Ravalli County Board of Commissioners within the timeframe (35 working days for a minor subdivision, 60 working days for a major under 50 lots and 80 working days for a major subdivision with more than 50 lots) the County is required to pay a per month prorated share per lot of the cost to the developer for continuing to go through the process up to the full amount the developer paid to the County (full refund).
- The County must use funds collected on capital facilities specific to those specific capital facilities. For example, funds collected for road pro rata shares must be used specifically for that road.
- Variances need their own public hearing for major subdivisions. Minor subdivisions need a public meeting.
- When the Board makes a decision, the Planning Department issues a preliminary plat decision (written record) within 30 calendar days and the Planning Department must get the document to the developer within those same 30 days.
- Appeals must be made within 30 days from the date of issuance for preliminary plat decisions.
- Parkland dedication is not required for minor subdivisions.
- State Law allows boundary line relocation and aggregation. The changes include specifics to aggregation.
- Term freeholder has been changed to real property owner.

Commissioner Iman opened public comment for the adoption of the “green book” for the interim period.

Niki Sardot stated she has a problem with these 2007 regulations. She brought her subdivision through with these regulations and was held up for six months due to the need to prove the county road was a county road. She asked if a landowner still has to prove a county road is an actual county road. She suggested adopting the State regulations today for interim regulations until new ones can be adopted.

Chris Hockman asked when the “green book” was enacted. Tristan replied the last amendment was done May 24, 2007, originally adopted in 2000. Commissioner Chilcott clarified the “green book” was originally adopted in 2000 with several amendments between 2000 and 2007. Commissioner Iman asked Tristan to review how sufficiency requirement occurs and why the changes are needed. Tristan replied in order to be sufficient for public review; you are required to submit specific materials to the County that the public has a chance to review in order for a fair decision. Since the regulations change, some of those elements change. You would have to submit additional information that normally, you wouldn’t have to submit in the initial application. Chris stated regulations are needed to specify certain operating procedures for the County in order to comply with the regulations set by the State. Tristan replied in the Montana Subdivision and Title Act 76 of the State code, you shall adopt subdivision regulations.

Jake Kammerer noted for record Rich Weber wrote the State Subdivision regulations and they were not meant to be used as actual regulations but rather guidelines to establish regulations.

Keith Kubista requested to clear up the issues, repeal the December 23rd regulations and to adopt the "green book" in the interim with the legislative requirements and move forward.

Judy Kline agreed with Mr. Kubista. She requested assurance that the WUI was not snuck in the "green book". Commissioner Kanenwisher assured her there nothing which was covertly shipped in which was not previously there..

Patrick Ballance agreed with Commissioner Kanenwisher that you can't adopt the State regulations as County regulations. He encouraged the Board to reinstate the 2007 documents in the interim until a new draft can be compiled.

Dan Floyd stated if the Board adopts the previous regulations, consideration needs to be made for the change in attitude. The December 23rd regulations are punitive especially the small subdividers and family transfers. It makes criminals out of the small guy. The County should be trying to work with people to solve their problems. He stated if the Board adopts the May 24, 2007 regulations, the County Attorney should review them under MCA 76-3-511 because of items that don't meet the criteria within the section specifically item 4 for family transfers. Commissioner Iman noted for record that Dan Floyd stated in a previous meeting, that the majority of meetings aren't held in compliance with State law for availability to the public. Dan clarified his comment was that meetings have to be at times all people can have input. The meetings need to be held at times other than business hours and have to be convenient for the public. Those who work during the day need to have meetings at night in order to be able participate.

Curtis Cook stated State regulations are not regulations but rather guidelines. It is important for the Board to include the County Attorney's Office to ensure compliance with State statutes.

Michael Howell speaking as the publisher of the Bitterroot Star stated the majority of complaints regarding the subdivision regulations adopted on December 23rd 2010, were about the public process. It was two years of work and only 20 days or so for the final review. If the Board is going to adopt the old regulations with changes just heard, it would make this meeting the first meeting of those changes. Tristan replied the changes were discussed at the January 3rd meeting and were posted online since then. Michael questioned adopting the May 24, 2007 without being properly vetted. Commissioner Chilcott pointed out the amendments that are being proposed to the "green book" have been through the public process in the State Legislature and have been discussed and utilized as policy without revision.

Judith Stewart requested clarification. She would like public meetings to go through the regulations line by line for total understanding and clarification.

Teri Polumsky stated everyone in this room, no matter which side of the issue, is tired of the bickering and complaining in this county for the last 10 years. She asked if it is possible on the 2010 version, to go online and highlight the areas that need to comply with State law. The other areas are discretionary and those are the items which cause the arguments. It would be a huge help to the public.

Ren Cleveland stated online is fine but there are people who do not have access to a computer. He requested better transparency of the drafts and availability. Tristan replied the Planning Department is opened from 9 a.m. to 5 p.m. and copies are available to the public.

Lee Tickell stated the subdivision process was discussed last night at the Planning Board meeting. He clarified the seven criteria would be included in the regulations and kept with the adoption of the May 24, 2007 regulations.

William Menager questioned the changes in the floodplain analysis from the old regulations to the new regulations. Tristan stated when the "green book" was adopted, it was adopted with a portion of Chapter 3 describing the floodplain analysis submittal incorrectly and a hearing was held for the correction to be adopted. The only changes to the "green book" are the legislative changes.

Curtis Cook stated there was reference made of consensus prior to the meeting by the Board and requested clarification. Commissioner Iman replied it was how to conduct this meeting in a manner to stay on point and within the published agenda. Commissioner Chilcott stated during the January 3rd meeting, the options were discussed and the consensus was already arrived then for how to conduct this meeting. Commissioner Kanenwisher stated the consensus was how to go about making the decision not what the decision would be.

William Menager verified the process was discussed during the January 3rd meeting.

Commissioner Iman closed public comment and opened board deliberation.

Commissioner Kanenwisher stated many items that are not liked can be pointed out in the "green book". The question is where to start and whether it is with the "green book" with amendments or the December 23rd regulations. What should happen is to move forward with the December 23rd regulations in order to get to a fully vetted document.

Commissioner Chilcott asked if a clarifying document is needed with the "green book" for the references of the growth policy. Commissioner Kanenwisher stated a clarifying document is not needed because the growth policy is doesn't exist. Commissioner Foss stated the Board has tried to look at this from every possible angle. Her original thought was to start with the December 23rd document because it was better in many ways for predictability and solving problems that has brought legal action. The reality is for the least amount of impact to the people who would be most impacted (currently in review);

this is the way to go. Public policy would be better served if we start with a document that is not the law of the land today. We are erasing the action of December 23rd not the documents in order to move forward.

Commissioner Stoltz reviewed both documents. He believes the best option is to adopt the “green book” with the legislative requirements. He is in favor of reviewing the regulations of December 23rd line by line with the public so that the public understands the contents for transparency and clarity.

Commissioner Kanenwisher made a motion to repeal the current set of subdivision regulations approved on December 23, 2010 and adopt the previous set of regulations of May 24, 2007 with amendments as published in the public notice. Commissioner Chilcott seconded the motion. Discussion: Commissioner Chilcott noted two big subdivisions are in review and budget is coming up. He requested setting a target date of 90 to 120 days for completion of a draft. All voted “aye”. (5-0)

Commissioner Iman stated a deadline needs to be discussed. Commissioner Kanenwisher stated 90 days is a realistic goal which would make it May 9th with the consideration of an additional week since the Board will be attending the MACo Conference next week. He suggested doing the review in sections, take comment and then move forward. Tristan stated one hour meetings are not going to suffice and suggested three hour meetings. Commissioner Foss expressed her concern with making the meetings more available to the public and requested the meetings be every other week for public participation in the evening or a Saturday. Tristan suggested publishing a legal notice for the public and would welcome written comment starting now. Commissioner Iman suggested taking a few chapters at a time allowing two weeks for comment, public discussion, Commissioner public meeting for additional comments, and then publishing it for a total of 4 weeks. Discussion followed regarding a timeframe, legality, evening meetings and the opportunity to review the draft when time is available for working sessions with transparency.

Commissioner Chilcott requested a point of order. He stated a resolution needs to be adopted to formalize the Board’s decision to rescind the December 23, 2010 subdivision regulations and replace them with the May 24, 2007 subdivision regulations. He then read a resolution prepared by the Planning Department. Commissioner Kanenwisher opposed adopting the resolution due to the content referencing MCA. Commissioner Iman suggested utilizing the remainder of this meeting to tweak the resolution to specifically reflect today’s decision without MCA reference. The Board concurred.

Commissioner Iman recessed for 15 minutes. (1 hour, 45 minutes into the hearing)

Commissioner Iman reconvened the hearing and requested public comment for Resolution No. 2663.

Ren Cleveland stated the growth policy needs to be implemented.

Keith Kubista suggested the policy and legislative issues be made available to the public so they may see it is a requirement.

Patrick Ballance stated leapfrogging the process may be fine but whether it needs to be by chapter may not be necessary. He suggested starting with the non-argumentative areas in order to move forward with the more contentious issues. Tristan agreed with Mr. Ballance. He suggested lumping the non-argumentative chapters in the effort to save time. Commissioner Iman requested Tristan to identify specific items such as guest homes that would require a majority of time to discuss. Commissioner Foss suggested the public submit written comment for consideration.

Bob Memmer stated during the comment period, all comments should go to the Planning Department for sorting prior to actual Board meetings for better organization and flow.

Niki Sardot suggested both evening hours and Saturday workshops so everyone has a chance to participate and give comment.

Chris Hockman requested not having the Planning Board involved in the process since they already were involved with the development of the December 23rd regulations.

Commissioner Iman closed public comment and opened board deliberations for Resolution No. 2663.

Commissioner Chilcott in recognizing Commissioner Kanenwisher's concern with the first Whereas, recommended replacing it with "Whereas, the Ravalli County Subdivision regulations are intended to describe the procedures and requirements necessary to divide land and to record plats and surveys with the County, and;". Discussion followed regarding the original first Whereas clause and Montana Code.

Commissioner Chilcott made a motion to adopt Resolution No. 2663 to repeal the Ravalli County Subdivision Regulations adopted on December 23, 2010 and replace them with the Ravalli County Subdivision Regulations adopted on May 24, 2007 with certain amendments and replacing the first Whereas clause presented to the Whereas clause previous mentioned as "the Ravalli County Subdivision regulations are intended to describe the procedures and requirements necessary to divide land and to record plats and surveys with the County". Commissioner Stoltz seconded the motion and all voted "aye". (5-0)

► Commissioner Iman went to the Road Department regarding the engineer inspection and report from the fire at 3:00 p.m.

SIGN IN SHEET - COMMISSIONERS MEETING ROOM

PLEASE PRINT YOUR NAME LEGIBLY

THANK YOU!

DATE: 2/3/11

MEETING: _____

KEITH KUBISTA

LILYA McALISTER

Judy Kline

Glenn Kimball

JAKE KAMMERER

Dean Walrod

Niki SART

Chris Hochman

Curtis Cook

Peter Lethenstrom

Ren Cheveland

Jean Kammerer

Jan Wisniewski

Judge Bill Stewart

Robert Fowler

William Menager

Cheryl Walrod

DAVID A. MERRICK

Teresa Palmberg

Ken Clark

Bob Memmer