

TOWN OF WHITEHALL
P. O. BOX 529
WHITEHALL, MT 59759
AUGUST 12TH, 2019

The Whitehall Town Council held their regular meeting in the Council Chambers at 207 East Legion Street, Monday, August 12th, 2019.

PRESENT: Council Members: Logan Reiff, Francine Janik, Shawn Hoagland, Roy McBride, Katy James, Gary Housman, Mayor Mary Hensleigh and Town Clerk/Treasurer Summer Fellows.

VISITORS: Dale Morse, Bridget Morse, Maxine Samuelson, Lori Young, Marty Keogh, Dana Brunet and Leonard Wortman.

Mayor Mary Hensleigh called the Council Meeting to order at 7:00 P.M.

Roll Call was taken. All Council Members were present.

The Pledge of Allegiance was recited.

IV. AGENDA APPROVAL:

Katy James made motion to approve the Agenda with Francine seconding.

THE MOTION PASSED UNANIMOUSLY.

V. APPROVAL OF MINUTES:

Francine motioned to approve the July 2019 Minutes with Logan seconding.

THE MOTION PASSED UNANIMOUSLY.

VI. REPORTS:

Mayor's Report:

Mayor Mary Hensleigh: I would just like to tell you that once and awhile, someone walks in the door that totally surprises you with positive energy. That person was Pastor Dale Brunson. He's from the Expedition Church in Livingston and he walked in and said "I have a crew here from Alabama and is there anything we can do to help out the Town?" and it was like, Wow! This doesn't happen every day. It was right before Frontier Days and I said if the crew could help pick up garbage to make the Town look nice that would be great and he said "sure". Then, I said the T.I.F.F. board was thinking we could use some benches for down town for people to sit on during the Parade and he said "sure, we can do that". They built the benches, bought the supplies and built four nice benches that are out along Legion in front of the businesses. He had it done in maybe 2 hours. It was just amazing. Then he came back and asked if there was anything else, they could do and I about died and gone to Heaven. So, I said "the Gazebo needs painting, is that something you guys could do?" "Sure." They went down there and sanded it and painted it. It only cost us two gallons of paint and the T.I.F.F. had it in their budget anyway. So, the Gazebo has been painted and we have new benches. They even came back after Frontier Days and picked up garbage again. It was just truly amazing. I've sent him a thank you and they are planning on coming back. It was a very nice thing to have happen. I Just want to thank Public Works and the Clerks. The Town puts in a lot of work for Frontier Days. It's a Chamber function but a lot of work goes on the Town's end and I really appreciate it. I thought Frontier Days was a huge success. The weather was wonderful and its always nice to have people at Frontier Days. The T.I.F.F. project of getting the sidewalks, curbs and gutters repaired are all done. It made Legion look much better. We also got the hard surfaces in over at the Rec Complex so that we now have a place to park for Liberty Place and any other person who needs handicap accessibility so that they are not getting out on gravel.

Officer's Reports:

Attorney's Report:

Ed Guza: As far as the criminal side of things, we had a trial last week on a DUI case and we had a guilty verdict on that so that was a good thing for the Town. I was told by Ryan Lorenz who handles the prosecution side of Town attorney business to expect a few more jury trials unfortunately. We always try to resolve the cases for a lot of really good reasons but sometimes it doesn't work out that way. Unfortunately, we have a few more coming up that have gone to trial. A couple other items that are under negotiations for the County to rent the Old Town Hall has concluded unsuccessfully unfortunately. So, we have a building now that we as a Town need to figure out what to do with.

Mayor: The Judge is still going to be down there.

Ed: Well, that's good.

Mary: He was going to be in there whether the or not the Sherriff's department was in there.

Ed: Ok. So just FYI, the Sherriff's department will not be in the Old Town Hall. Then, finally we are trying work with Hard Drives. Hard Drives is the company that repaved the streets in Town. From all accounts, much of the paving has failed. So, we met last Thursday with a Hard Drives representative and unfortunately the man said he was going to have to make a phone call about 15 minutes into our conversation he left for about 30 minutes. We all had things to do so we left and he was still on the phone so that spelled the end of that. He wrote us a letter where he outlined the offer to the Town. I know that the Council has authorized me to contact Hard Drives and make a demand essentially as to

what our position is and what we intend to do if they don't perform as they are supposed to. But we do have this letter and it does have an offer in it. So, before we move forward, I think the Council should look at this offer and decide if it's something they want to pursue or reject. If it's rejected then obviously that clears a path for me to say that there were problems with their performance and this is the remedy we are seeking. I can tell you what it is, it's not on the Agenda. Option 1, if Hard Drives patches 2000 square yards of chip seal on their October 15th proposal or option 2 Hard Drives pays the Town of Whitehall the cost of the proposed repairs calculated a \$1.50 per square yard. Cost, that is their cost not our cost. I think our cost was \$2.25. Anyway, a \$1.50 per square yard for the 11,000 square yards for a total of \$16,500. Since it's their cost again, you couldn't have 11,000 square yards of work done. That's just how much it costs them to do it. So, it's an offer the Town should consider of course and I'll take your direction from there. One of the things they are doing is they are really focused on the warranty period, that being the time that any problems with their product they are responsible for. We had a conversation about that. I said for example, negligence had a three-year statute of limitation and what that means is if you sue someone for negligence, you have three years to do. Arguably the work they did is failing so the work is negligent. I tried to explain that to them and in the midst of all that he had his phone call and was gone. So, we didn't get very far. That is their focus. They are focused on that one year of the warranty period as being what they feel is their responsibility and so far, nothing more. My guess is they have insurance. Maybe that would cover some of this or it won't just depends on how the insurance company looks at the problem and if they'll compensate the claim or not. That's the offer, I don't know how the Town wants to deal with it. It being an Agenda item or it being up for discussion, I'm not certain. I feel that we should at least address this offer and make a decision on that before I contact them.

Roy: Can we make a motion to discuss?

Summer: No, it's not on the Agenda.

Mary: I asked them what the window opportunity was and they said basically until the end of August and they had no time to do it. It wasn't a very productive meeting but no, we can't make a motion.

Shawn: Was first contact made with this outfit in the 12-month initial?

Ed: Absolutely, and from what I understand from Kory, and Kory of course explained details about this much better than I ever could but from what I understand, the failure started fairly soon and progressively got worse. So, taking the one-year warranty period is some what arbitrary. The problem is always underlined naming issues in the first place. It's one year, it doesn't matter. Its just going to get progressively worse and that's exactly what happened and it's all born from the same problem as I understand it.

Shawn: What's that 11,000 square yard number on the original?

Kory: So, at the time of their warranty, that's what that was. A pretty good number. They didn't come back to repair that year when they said they were going to and it has gotten considerably worse over time. So, I think at the end of their warranty period is probably correct.

Mary: And when they did offer to come back, they didn't give us any heads up and Kory said "we can't do that. We have to notify all the residents to move their cars off the street and we can't do it on a 12-hour notice". That's just not reasonable.

Roy: Not to mention, it was during Frontier Days.

Mary: Right.

Summer: We have to go door to door and hand people signs to move their vehicles. It's not an easy process. It took us a week last time with three people. Mind you we paid them \$2.25 per square yard and they wanted to come back with what their cost was so why are we not getting our \$2.25 that we paid?

Maxine: So, they have been paid?

Summer: Yes, they have been paid.

Mary: A couple of years ago.

Summer: Yes. They were supposed to come back the following summer after that and they didn't schedule us in. We kept waiting and once again, it was on them.

Kory: So, I believe part of the problem is they have changed personnel. So, we are on our third person now.

Summer: And the person who is talking with us now is the person who was running this job out here.

Roy: Ed, what do you think the chances are of being successful in this without spending the world?

Ed: I think it's clear to me that the failure on the streets is their defect and it started from the beginning and never stopped. So, there's more to than just the warranty and there was a claim made during the warranty period. I think anyone that would look at this and feel that the warranty doesn't preclude for damages. The last thing that the Town wants or needs is to get into a legation but I don't personally feel that their offer is fair and at the very least give us the cost we pay. Why give us your cost? That's not fair. It just kind of starts on the wrong foot I guess which was the reason for the meeting. Let's look at it this way, the Council has given me directive to write them and make a demand that they fix this work or compensate the Town and I'll just continue with that. I don't think there needs to be any particular Council event for that.

Mary: So, we will just move forward because its not acceptable. His offer is not acceptable.

Leonard Wortman: I may be speaking out of turn but I know that the Department of Transportation is going to do a bunch of chip sealing. I don't know if there is a way that the County can be compensated.

Francine: I know the County has done it before and they have done a great job.

Clerk / Treasurer's Report:

Summer Fellows: About the same for me. I've been working on the audit, books and Court stuff. At some point in time, I'll probably have to go spend a day with Debbie over in Boulder and get with Dennis' old Clerk and do some book keeping for Clerk of Court stuff. Just to make sure I'm doing it right.

Roy: When is the auditor supposed to be in?

Summer: They don't ever come in. Every once in awhile they do but what I do is let them access my Black Mountain so they get their reports that way. I'm waiting to hear from the auditor right now between the 16th and the 18th. I'm not saying it's going to be easy but it's going to be a breeze compared to this last one. Quickly what happened was there was a bunch of old payroll checks that were cancelled. Just mistakes we made that didn't get cancelled in that period. I was new enough at my job I wasn't sure. I created quite a mess with our payroll checks. It was \$20,000 but now it's down to \$7,000 so there are three people now through Black Mountain who are working on it as far as fixing the problem for all Town's and Cities.

Public Work's Report:

Kory Klapan: The sidewalks up and down Legion are done. Handicap spots at the Rec Complex are done and signs. We had a broken sprinkler water line along Whitehall. I've got three breaks on the main line at the Rec Complex that I'm still working on. We shut the water pivot off and Dave cut it two weeks ago. The first Lagoon cell, cell one is sitting at 6 feet. Cell 2 is at 2 feet and cell 3 is at 5 feet so what that sums up to is 3 feet to discharge on the field is about nine more passes. So, we are sitting pretty good there honestly if we are going to compare to last year. Last Monday night, they filled up the tinder and couldn't get the hydrant to turn off so I ended up shutting that off. That may be a case of digging up the hydrant. It's been rebuilt three or four times from what I understand but I think we've got bigger issues than just rebuilding it. But I will tear into that and see where we are at.

Francine: Question on the fire hydrant, when was the last time all of them were exercised?

Kory: I exercise at least a third a year. Two years ago, I did the whole Town. Last year, I got about a third done which is right on my schedule.

Francine: Ok.

Kory: Pump 1 in the Lift Station quit pumping last Friday. I did come into Town yesterday and broke into it and there was a burnt wire going to it, I replaced it, reset it and it seems to be working just fine. I think maybe it was just a loose connection. At the Cemetery we've had 6 burials in the last two weeks.

Fire Chief's Report:

Mary: I don't think the Fire Chief is here but I just want to say the Fireman's Breakfast during Frontier Days was absolutely delicious and I know how much hard work you guys put into that but it was a great crowd and it was just a wonderful breakfast. Do you have anything to add Summer?

Summer: Just that another year down and we'll do it again next year of course.

Sheriff's Report:

No report.

Committee / Board Reports:

Planning Board:

Lori Young: I apologize I don't have the minutes from our last meeting. We had our meeting last Monday night and all Board Members were present. We had quite a bit on our Agenda. Chad and Jill Murphy at 9 Whitetail Drive had a privacy fence at 64 feet long and 6 feet tall. We passed it with a Variance to meet the setbacks. Colton Anderson at 34 Rocky Mountain Drive had a storage shed to put in his backyard was passed. Cliff's Automotive Center 402 North Pyfer Street to put the existing fence back up was passed. Wendy Williams 105 South Division Street had a storage shed that was Tabled due to the documents that were submitted were not complete and she was not present at the meeting. Randy Anderson at 107 A Street storage shed that was passed and Simon Bowland at Pyfer Community Tracks Variance for Lot sizes to build on that was Tabled. Our next meeting was going to be on September 3rd on a Tuesday due to the Holiday.

Recreational Complex Board:

No Report.

Pool Board: No Meeting.

Trees, Parks and Cemetery: No Meeting.

Water/Sewer/Garbage: No Meeting.

Streets/Alley/Sidewalks: No Meeting.

T.I.F.F.: No Meeting.

CTAC: No Report.

VII. Public Comment:

No Comments.

VIII. Consent Agenda:

Development Permit

Simon Bowland/ 105 West Yellowstone/ lot size variance/ tabled.

Colton Anderson/ 34 Rocky Mountain Drive/ Storage Shed/ approved.

Chad Murphy/ 9 Whitetail Drive/ privacy safety fence with height variance approved.

Randy Anderson/ 107 A Street/ Storage Shed / approved.

Cliff's Automotive/ 402 North Pyfer/ putting existing fence back in/ approved.

Wendy Williams/ 105 South Division/ shed/ tabled.

Business License

Dove Concrete Works.

Logan made a motion to approve the Consent Agenda with Shawn seconding.

Francine: I'm just curious on the small lot what they are asking what's left for them to do that to get a variance?

Lori: He wanted to get a variance on that property so that he could pass that variance on to the potential buyer but he didn't know what structure would be put on there. So, it's hard to pass something when you don't know what they are going to do to the property. We are not saying it's not buildable.

THE MOTION PASSED UNANIMOUSLY.

IX. PRESENTATIONS

None.

X. Unfinished Business:

A. Discuss Business License, Nuisance, Streets, Alleys and Sidewalks. (tabled)

B. Discuss and vote on first reading of an Ordinance addition to Chapter 38 for Recreational Vehicles Inside of Town Proper.

Mary: This was sent to Ed and it has all the revisions that were requested at the last meeting and it has been approved by both Francine and Katy.

Francine made a motion to approve with Katy seconding.

THE MOTION PASSED UNANIMOUSLY.

XI. New Business:

A. Discuss and vote on moving the Court and Board Meetings down to Old Town Hall. (Jefferson County Sherriff's Office has declined on leasing the building.)

Roy made a motion to approve with Logan seconding.

Francine: Wait, I missed the discussion what the cost going to be moving all the meetings down there?

Mary: Town Council meetings will stay here. Only Board Meetings will be moved down there.

Logan: There's no opportunity to lease it out or sell it? Should we keep advertising about it?

Mary: There's no place to put the Judge. We are required by law to have a City Court and now we have to have the Judge on a platform and all these new rules and because of the minimal cost of that building because it's already paid for, that seems to be the best place to put it.

Francine: Are we going to offer it up for community meetings as long as they don't interfere?

Mary: It's the same as here. It's always open for community meetings.

Summer: Once again, we will probably put the records in the jail cell and have it locked and keep that door locked and have the Judge use just the main room.

Francine: Are we going to have fire protection in there? I mean, it's pretty limited in there if we are going to put all the records back in there.

Summer: It would just be the Court records.

Francine: Ok.

Summer: And there are still some Town records down there we intend on keeping that we can't dispose of so we can continue to keep old records there as long as we own the building if the Council so chooses.

Gary: Oppose. If this passes, then our Board meetings will be down there?

Mary: No.

Gary: Well, that's what you said.

Francine: The Board meetings.

Gary: That's what I mean, Planning Board...

Mary: But not the Council Meetings. Just Boards.

Gary: Ok but, we use these maps here now. Will we move them down there?

Mary: Everything the Boards need will be moved down there.

Summer: Well, I need those maps too and we really don't have a way to duplicate those because they are really old.

Mary: But I suppose the Chairman could come in before the meeting and get them if needed.

Discussion continues.

THE MOTION PASSED UNANIMOUSLY. Except for Francine who opposed.

B. Discuss and vote on Ordinance Traffic and Vehicles Chapter 38-2 traffic laws adopted.

Mary: Has the Committee met?

Francine: The Committee has not had time to meet yet no.

Francine motioned to table item B with Katy seconding.

Logan: Can we discuss this?

Francine: There's no motion to discuss on tabled items.

Mary: I don't think so.

Summer: Hold on. It was a 3-3 vote though. 3 people said no and 3 people said yes.

Roy: I was waiting to see if we could talk about it.

Summer: I understand that. Right now, it's a tie motion.

Mary: But there's no item on the table.

Summer: That's fine but there is a tie. Break the tie Mayor.

Mary: Motion to table.

Shawn: We're going to do this again huh?

Francine: Just for you.

Shawn: Why?

Francine: Because I haven't had time to research it.

C. Discuss and vote on Resolution of Intent for the Town of Whitehall being annexed into the ambulance district to be put on the November ballot.

Francine motioned to have the Town annexed into the district with Katy seconding.

Ed: I was asked to look into the drafting of a Resolution. One of the questions I asked at the last two meetings was what is the legal authority for the Town to vote such a Resolution and put such an item on the Agenda for a vote of the people. So, I researched it and came up with 7-11-1023 of the Montana Code and that section should be in your packets. And it talks about the governing body being able to change the boundaries made special district by resolution. The governing body in this case is not the Council. My understanding of that it would be the County because that is the governing body of this Special District. There's another way to do it and the boundaries may be altered by petition after confining the requirements for petition by dividing into different sections and that's 7-11-1003. That's the section of the code that discusses the creation of that Special District. You can alter a Special District and change the boundaries of it through the original process that was utilized to create this Special District in the first place. I didn't find anything that was specifically said that a Town can vote on a place of Resolution to eventually have a vote of the people. So, I called Bonnie, our Clerk of Court and Clerk Recorder and talked to her about this and she said if there was a Resolution being passed by the Town, her job is to submit it to the State and get it placed on the ballot. But she said as what that item is, that is not her responsibility. She acts on a Resolution. If there is a Resolution, she moves forward. But what has actually been resolved, that's not her job. So, I gave Leonard a phone call and sent him the two sections of the Code and we haven't had a chance to talk since then. And I see he has his Code book there so maybe he will enlighten us all. You can tell me I'm wrong but, I haven't been able to find the legal mechanism for the Town to do. It sounds like it needs to be a grass roots effort or an effort by the County and County Commissioners by Resolution to take that action on their own. That's what I found so I don't see the legal basis to do what is on the Agenda right now.

Mary: What did you find Leonard?

Inaudible speaking from Leonard Wortman.

Mary: It might be helpful for those watching if you go up to the microphone.

Leonard: I spent some time with our County Attorney about this and he's rather confused also. There's nothing we can find in the Statues, like Ed said it's confusing. The County Commission would be the ones to alter the boundaries. Steve also has an issue with the County Commission telling another Governing entity what they need to do. Steve had a call in to some attorneys with some expertise in District issues. One of the options we are looking at would be a simple request from the Town for the County to look at putting this issue on the ballot. I assume there's an upcoming election this year?

Mary: Yes.

Leonard: The other issue we would have is whether the City would have to vote on it or the entire District would vote on it. So, that was a question Steve was trying to get answered. We talked about there is no case law for us to act on a request from the City to do that. However, that's generally how case law comes about. In light of the lack of guidance from the Legislature I don't know what other kind of options there are.

Mary: So, if the Council voted on this and moved forward, it wouldn't be against the law to let it be on the ballot and to let the People of Whitehall decide yes or no and get this answered once and for all.

Ed: I think my answer to that is it probably is. If the Legislature has said this is the avenue you must take to alter your Special District as said forth in the Code, if you did something else to try for the same result, I think you would be up for a challenge. There isn't anything that allows for the avenue that Leonard was talking about. There is 7-11-1023 that talks about how to do it. So, in my experience if you do something outside what the Code says, that would be a very challengeable event. I would imagine there is a lot of cost involved to just simply putting a vote to the people and ligation is obviously expensive too. If it were up to me, I'd want to come up with a path before we possibly do something, especially due to the contentious nature of this particular issue, this could very well be challenged. It would be my suggestion to table it.

Francine: Can we request that the County research it and go ahead because we are going to miss out if we table this too much.

Mary: We have a motion and second on the Floor that we need to vote on so you can make a new motion.

Francine: Ok. I'm just curious if that would it be alright with Ed if we just go ahead.

Summer: Can you just make a motion and tell another Governing body to move forward?

Francine: No, we would request them to move forward.

Leonard: We could definitely look at doing something like that. This is going to be a deeper issue because the northern Madison County would like to be involved and would like to be included in the District also. I assume the process is going to be the same for everyone.

Roy: I have a question that I don't know can be answered, why doesn't the District just send out their workers and take a petition around Town and send it to the County. Does that give them the avenue they need Ed?

Summer: It has to be someone in the Town.

Leonard; If you were going to petition it would need to involve the entire District not just the Town. I'm not positive about that.

Summer: What does that cost the County?

Leonard: It's not a great deal unless you have to print an entire page.

Mary: Do we have a motion?

Gary: For what?

Summer: Of putting it on the ballot in November.

Francine and Katy made a motion to approve putting the District on the November ballot with Logan, Gary, Shawn and Roy opposing.

MOTION FAILED.

Mary: Do you want to put in a motion to request?

Francine: Yes. I was just trying to formulate my wording. I move that we request the County, which is the Governing body of the Jefferson Valley Ambulance District to begin the process of changing the boundary to include the Town of Whitehall.

Katy: I second.

Mary: Discussion?

Logan, Gary, Shawn and Roy voted no.

XII. BILL/ CLAIM APPROVAL LIST TO BE SIGNED BY ALL COUNCIL MEMBERS

Shawn made a motion to approve the bills with Logan seconding.

XIII. Adjourn:

Francine made a motion to adjourn the meeting at 7:46pm.

Mayor Mary Hensleigh

Date

Town Clerk Treasurer

Date