

## **Prairie County Board of Commissioners Meeting**

November 27<sup>th</sup>, 2024

*Prairie County Court House Commissioners Room*

*217 West Park St Terry, MT 59349*

*[www.prairiecounty.org](http://www.prairiecounty.org)*

Prairie County Board of Commissioners Todd Devlin, Christine Keltner and Dennis Teske met in regular session at 9:00 a.m. In attendance Administrative Assistant Harry McNall and Road Supervisor Todd Henry.

9:00 a.m. Pledge of allegiance, call to order. Public comment on agenda.

9:15 a.m. Conversations about various road department activities.

9:20 a.m. Commissioners discussed various business including Community Reinvestment Organization (CRO), Wind Turbines Tax Revenue and building costs, what Custer, Rosebud have done and had as returns from their projects.

10:00 a.m. Clerk & Recorder Shari Robertson provided the commissioners with Payroll.

Prairie County Voucher # 1062 \$2,497.31

Prairie County Voucher # 1061 \$20,441.03

Prairie County Voucher # 1064 \$30,125.39

Prairie County Voucher # 1063 \$17,940.39

Prairie County Voucher # 5 \$10,402.76

Prairie County Voucher # 1060 \$67,803.96

Shari informed the commissioners that Judge Bidegary moved to the Supreme Court leaving an opening in the 7<sup>th</sup> Judicial District.

County Attorney Dan Rice, wanted to make the commissioners known that any discussions through email should be included in the commissioners' meetings including land plan board communications and disclosed to make public.

10:40 a.m. Email chain with Land Planning Board, two commissioners, to be in compliance with open meeting laws, the commissioners provided the attached emails. (Exhibit A)

10:44 a.m. Commissioners sign and reviewed claims.

Prairie County Voucher # 1067 \$52,717.37

Prairie County Voucher # 1065 \$3,029.84

Prairie County Voucher # 1066 \$11,771.89

10:50 a.m. Commissioner Keltner made a motion to accept and sign “HAVA Funding Subgrant Recipient Agreement”, seconded by Commissioner Teske, “all in favor” motion passed.

11:05 a.m. Commissioner Devlin read the minutes from the November 20<sup>th</sup>, 2024, commissioners meeting.

11:19 a.m. Commissioner Teske made a motion to accept the minutes from the November 20<sup>th</sup>, 2024, commissioners meeting as corrected, seconded by Commissioner Keltner, “all in favor” motion passed.

11:35 a.m. Todd Devlin signed the Federal Lands Access Program Project Memorandum of Agreement for the Milwaukee Bridge Resurfacing and Rehabilitation.

11:36 a.m. Commissioners discussed Defense Insurance with MACo. County Attorney Dan Rice, Shane Eaton, Reene Pirtz and Todd Tibbitts, joined the meeting. Shane Eaton ask if the commission could ask MACo what situations have developers actually sued counties and under what circumstances?

Discussion on options concerning zoning, agreements, etc over wind turbines. Also discussed was the growth policy over industrial development zoning. Various examples of zoning, interim zoning, NextEra and MACo connections.

12:17 p.m. Defense Insurance will be determined at a later date. If interim zoning is implemented, the county will need defense insurance and legal advice outside of MACo.

12:28 p.m. Lunch Break

1:20 p.m. Sharla Sackman with the fair board ask if she could go ahead with Community Development Block Grant Montana Department of Commerce (CDBG) funds grant to get the architecture report done on the proposed fairground building.

1:25 p.m. Commissioner Keltner made a motion for Eastern Plains Economic Development Corp (EPEDC) to apply for the Community Development Block Grant (CDBG) Preliminary Engineering Grant for the Fair Board, as presented during October 30<sup>th</sup> meeting with Fair Board, seconded by Commissioner Teske, “all in favor” motion passed.

1:32 p.m. Commissioner Teske made a motion to accept the Eastern Plans Economic Development Corp, (EPEDC) “Community Reinvestment Organization (CRO)”, seconded by Commissioner Devlin, “open to discussion”, Commissioner Teske withdraw his motion, and moved to put it on the December 6<sup>th</sup>, 2024, commissioners meeting agenda.

1:43 p.m. Dawson County Commissioner Joe Sharbono called to talk about wind turbines. Commissioners discussed what they are looking at and what directions have been talked about. They discussed zoning options and different opinions concerning zoning and abatements.

2:06 p.m. Commissioner Keltner made a motion to accept “**Resolution 25-11 Commissioner Meeting Dates Set for Calendar Year 2025**” seconded by Commissioner Teske, “all in favor” motion passed.

2:10 p.m. Commissioner Teske made a motion to accept **Resolution 25-12 “Setting Holidays- Office Hours- Payroll Dates & Time Sheet Deadlines for Calendar Year 2025”**, seconded by Commissioner Keltner, “all in favor” motion passed.

2:12 p.m. Commissioner Keltner made a motion to accept, **Resolution 25-13 “Setting Claim Due Dates for Calendar Year 2025”**, seconded by Commissioner Teske, “all in favor” motion passed.

3:00 p.m. Public Comment.

Shane Eaton: State Land Board of Montana will be having another meeting about Prairie County state land December 16<sup>th</sup>, 2024. Shane read a letter, that he suggests the commissioners send to the Montana Land Planning Board before their next meeting. (Exhibit B). Shane also provided a copy of a “good neighbor” agreement with NextEra and pointed out some major issues with the agreement. He provided a procedure for Interim Zoning, provided by his personal council, and provided the commissioners with examples of steps needed and documentation.

Todd Tibbitts read his observations and concerns over interim zoning, and urges the commissioners to pass Interim Zoning, and write a letter to the State Land Board, and suggests a feasibility study and stated that he believes the county’s legal council should be available at these meetings.

Renee Pirtz expressed concerns about the wind turbines effects, and Interim zoning would be justified. Provided examples of issues with other wind turbines and new technologies that make them obsolete.

Commissioner Devlin: just a note that NACo National Association of Counties made a resolution to support nuclear development energy, and it’s still on the books today. MACo, had NextEra on the site, and when it was discovered that the logo was still on the site, it was taken down, because taking money from them would have been illegal, it has since been removed.

Steve Phipps: We can’t stand in the way of industry development, but you can control how they do those developments. He gave examples of how oil development is controlled through zoning and legislation. Question can we stop them? Can you hold development for a year? Do Interim Zoning, to show that you can deal with them.

Tylene Eaton, finds it hard to believe that MACo would make such a huge oversight.

Commissioner Devlin, I trust them, and I believe them. I took a trip to Helena and found out what had happened, and MACo took it down.

Sheila Dixon, also supports Interim Zoning.

Commissioner Devlin ask Tylene Eaton to check with the county health board and see what can be addressed for health.

Shane Eaton: Who would support a letter to the Montana Land Planning board, and all present 15 people raised their hands in support.

4:00 p.m. Does the Land Planning Board have any liability insurance. Commissioner Devlin read County Attorney Dan Rice's response to that question. The board is an advisory board and nothing more, and if you keep that on schedule you will be okay.

4:40 p.m. Commissioner Teske made a motion to proceed with the land use plan and update the county growth policy, seconded by Commissioner Keltner, "open to discussion", "all in favor" motion passed.

Lon Reukauf. I suggest we use Jerry Grebenc with Great West Engineering to help with the growth plan policy.

Todd Tibbitts (Land Planning Board) made a motion to hire Jerry Grebenc with Great West Engineering to help develop an update to the Prairie County Growth Policy, seconded by Lon Reukauf "all in favor" motion passed.

Commissioner Devlin made a motion to, hire Jerry Grebenc with Great West Engineering to help develop a update to the Prairie County Growth Policy and land plan, seconded by Commissioner Keltner, "all in favor" motion passed.

Lon Reukauf explained what he found through legal advice, suggests that the wind turbines are not grandfathered in until actual construction. Lons unofficial opinion what does it do to our insurance?

Shane Eaton said that his legal council could not find any cases where Interim Zoning has been enacted that the counties had been sued if they followed the process. Also, his council said that leasing is not the beginning of the project.

Various discussions on zoning and variances.

Lon Reukauf: National Environment Policy Act (NEPA) requirements from State of Montana and BLM, would be open to litigation over NEPA. There would be a good option for landowners to get together and challenge the NEPA process on Bureau of Land Management (BLM), State, and Federal Energy Lines.

Arron Martinson, Zoning needs to move forward because it will be for future and current developments.

Lon Reukauf started the discussion on a scoping letter. There were different opinions on the need and approach of a scoping letter.

Lon Reukaf: Received quotes from two law firms of what it would cost per hour to have them represent the county in the zoning process. Lon also ask if the land planning board members have to work for free?

Commissioner Devlin, went over open meeting laws, concerning emails.

Todd Tibbitts made a motion to hire Racheal Buzanowski, and Katie Holliday Attorneys at Law to assist with a scoping letter along with public meeting for information gathering, seconded by Renee Pirtz "all in favor" motion passed.

Commissioner Teske made a motion for the land planning board to hire Racheal Buzanowski, and Katie Holliday Attorneys at Law, seconded by commissioner Devlin, "all in favor" motion passed.

5:30 p.m. Commissioners adjourned the meeting.

Signed this 6<sup>th</sup> day of December 2024



Todd Devlin, Commissioner

ATTEST:



Shari Robertson, Clerk & Recorder

---

**Fwd: PCLPB November 27 meeting agenda with commissioners 4 pm**

---

From Dan Rice <PCATTY@prairiecounty.org>  
Date Mon 11/25/2024 11:52 AM  
To Aria Walters <a.walters@prairiecounty.org>

Daniel Z. Rice  
Prairie County Attorney  
P.O. Box 564  
217 W. Park Street  
Terry, Montana 59349  
(406)635-4529  
(406)635-2026 (Fax)

The preceding e-mail message (including attachments, if any) contains information that is confidential, may be protected by the attorney-client, work product, or other applicable privilege, and may constitute non-public information or trade secrets. The e-mail is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this e-mail, please notify the sender, and destroy all copies of this transmittal. Please do not forward this message without the express approval of Daniel Z. Rice. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

----- Forwarded message -----

From: **Dan Rice** <[pcatty@prairiecounty.org](mailto:pcatty@prairiecounty.org)>  
Date: Fri, Nov 22, 2024 at 10:59 AM  
Subject: Re: PCLPB November 27 meeting agenda with commissioners 4 pm  
To: Tracey Dion <[mtlandhome@gmail.com](mailto:mtlandhome@gmail.com)>, Karen Alley <[kalley@mtcounties.org](mailto:kalley@mtcounties.org)>  
Cc: Lon Reukauf <[lonreukauf@gmail.com](mailto:lonreukauf@gmail.com)>, <[clerksoffice@prairiecounty.org](mailto:clerksoffice@prairiecounty.org)>, Todd Devlin <[mtdevlin@gmail.com](mailto:mtdevlin@gmail.com)>, Renee Pirtz <[rpirtz7@gmail.com](mailto:rpirtz7@gmail.com)>, <[ToddTibbetts@hotmail.com](mailto:ToddTibbetts@hotmail.com)>, Jerry Grebenc <[jgrebenc@greatwesteng.com](mailto:jgrebenc@greatwesteng.com)>, <[keltner@midrivers.com](mailto:keltner@midrivers.com)>

Thanks Tracey. I too will be unavailable that late in the day on Wednesday, as I have children returning from college midday, and we have plans that afternoon in our home.

I am happy to weigh in on the "liability" issue per Tracey's request. The Planning Board is advisory only, and as long as the Board is acting in that advisory capacity, they are not subject to liability for their recommendations to the County Commissioners. Acting outside of the authority of the Planning Board could subject the individual members to personal liability, uncovered by the County or by its "insurance" with MACO (which is technically a "risk sharing pool," but it functions the same as insurance for purposes of this discussion). The County Commissioners are the decision makers on all issues being discussed here, with the Planning Board making recommendations to the Commissioners. As such, it is the County Commissioners who can and should consider obtaining land

use defense coverage for the County in litigation arising from decisions made on the County's behalf, to the extent such coverage is available. MACO does offer *defense* coverage for land use, but does *not* offer *indemnity* coverage for land use. Any judgment against the County arising from a land use liability exposure would be paid by the County's general fund, to the extent available, and any additional amounts would be imposed on the taxpayers as a "judgment levy" (which is not subject to voter approval). Any outside coverage that the County may find for land use will almost certainly require that the insurance provider review and approve any policy or ordinance documents which are set to be approved by the County, to ensure that the same are lawfully adopted or enacted, as insurance will not agree to be contractually bound to defend and indemnify against unlawful policies or ordinances which create a risk of liability to the County.

As I noted in the last meeting, the Planning Board does not have the authority to contract on behalf of the County, for contract attorneys, or for planning contractors, or otherwise. Those contractor recommendations must be routed through and approved by the County Commissioners. As the Planning Board does not have such authority, it would be improper for the Planning Board to be soliciting legal opinions on behalf of the County from outside firms, and all such requests for legal opinions, through proposed outside legal counsel, must be routed through the County Commissioners. Reliance on legal counsel is generally a defense to personal liability as well as a trigger for defense coverage, in the event a member were to incur liability or named in litigation for acts outside of the course and scope of their duties, but only if that legal counsel is in-fact legal counsel for the parent entity. Actions taken on the advice of counsel not representing the insured entity provides no such protections.

Another important item of note, is that it appears that there are emails which have been circulating among the full Planning Board and County Commission regarding pending land use matters. Any such emails are potentially a violation of Montana's public participation and open meeting laws. All business of the Planning Board and Commissioners needs to be conducted during properly noticed public meetings. While one Planning Board member may certainly discuss matters with another, as there is no quorum present during that discussion, any "group email" type discussions should be avoided, and to the extent the same may inadvertently occur, should be hard copied, disclosed at the next meeting, and copies attached to the meeting minutes for that meeting - to ensure public disclosure of the same. The best practice for staff sending out information-only emails (agendas and the like) to all members of a government body is to use the "bcc" function, to protect from the possibility of a "reply all" message which violates open meeting laws.

As there is a quorum of the Commission as well as of the Planning Board on this email chain, this email chain should be hard copied, and attached to the upcoming minutes for each entity; along with any such similar email discussion among a quorum of either board.

Public participation and open meeting claims carry the potential for attorney fees to be awarded. As a nearby example, the City of Miles City was sued over a land use matter a handful of years back. The City won every substantive claim on the land use matter, however, there was some relatively trivial information withheld from the public by a staff member during the proceedings related to the land use matter. The Court denied all claims made by the plaintiff against the City on summary judgment, with exception of their public participation claim, finding that the staff member should have disclosed the information to the public. The Court awarded the plaintiff \$200,000 in attorney fees related to the public participation and open meeting claim. The City was forced to impose a judgment levy on the taxpayers to pay such fees. We as a county should be avoiding any such possibility of open meeting

Exhibit A

and public participation violations to the full extent possible, and should be ensuring that all quorum business of the Board is conducted through the public process.

I understand that my advice on these issues may be unpopular, however, on this or any other matter for which I advise the County, my role is to make every effort to protect the County and taxpayers from incurring liability. That said, I am merely an advisor, and not a decision maker - as are *all* of the individuals on this email, aside from the County Commissioners. As always, I am confident that the County Commissioners will make whatever decisions are necessary and prudent, and in the best interests of the County and its residents, on all of these issues as we move forward. We are truly blessed to have an experienced and competent group of individuals leading our county as Commissioners, and they are the individuals who are tasked with shouldering these often difficult decisions.

Regards,

Daniel Z. Rice  
Prairie County Attorney  
P.O. Box 564  
217 W. Park Street  
Terry, Montana 59349  
(406)635-4529  
(406)635-2026 (Fax)

The preceding e-mail message (including attachments, if any) contains information that is confidential, may be protected by the attorney-client, work product, or other applicable privilege, and may constitute non-public information or trade secrets. The e-mail is intended to be conveyed only to the designated recipient(s). If you are not an intended recipient of this e-mail, please notify the sender, and destroy all copies of this transmittal. Please do not forward this message without the express approval of Daniel Z. Rice. Unauthorized use, dissemination, distribution, or reproduction of this message is strictly prohibited and may be unlawful.

On Fri, Nov 22, 2024 at 9:58 AM Tracey Dion <[mtlandhome@gmail.com](mailto:mtlandhome@gmail.com)> wrote:

Thank you, Lon. I am not available to attend the meeting on November 27th at 4:00 p.m. due to previous commitments that were carefully planned a long time ago to coincide with a Thanksgiving holiday weekend.

I am including Dan Rice on this email thread as he is the county's legal advisor and he plays an important role in any discussions the county is having.

The commissioners or the county attorney can answer questions about insurance. Please remove my name from this agenda as I will not be present at the meeting.

Thank you,  
Tracey

Best regards,

Tracey Dion, Montana Real Estate Broker  
(406)855-1696 (cell)



cc  
Exhibit ~~A~~ B

Montana State Land Board Members:

Prairie County Commissioners recommend that the Montana State Land Board deny the "Option to Lease Agreement" application being offered by Glendive Wind, LLC to lease School Trust Lands in Prairie County. Citizens of Prairie County have demonstrated overwhelming opposition to the project; and quite frankly, an unprecedented number of citizens attending public meetings have shown up to offer such opposition. The opposition points reflect adverse impacts to the public health, public safety, public morals, general welfare, agriculture production losses, loss of wildlife for hunting and hunting income, property value losses, and the destruction on the open space and view shed of Prairie County to name some of the top concerns.

As Commissioners, we hold the voices of our citizens in the highest regard; and as the Montana State Land Board, Prairie County respectfully requests that you do the same and deny the application to Glendive Wind, LLC.

ATTEST:

BOARD OF COUNTY COMMISSIONERS,  
COMMISSIONERS

\_\_\_\_\_  
Shari Robertson, County Clerk and Recorder

\_\_\_\_\_  
Todd Devlin, Presiding Officer

\_\_\_\_\_  
Dennis Teske

\_\_\_\_\_  
Christine Keltner