

**BOARD OF HEALTH
MINUTE SUMMARY**

September 14, 2016

3:00 PM

MEMBERS PRESENT:

Jeff Burrows
Michael Turner
Katherine Scholl
Dr. Wayne Chilcote

Members Absent:

Roger De Haan

STAFF PRESENT:

LuAnn Burgmuller, PHN
Carol Calderwood, MD, HO
John Palacio, RCEH
Neoma Greenfield, PHN
Chris Taggart, Minutes

COUNTY ATTORNEY'S OFFICE

Dan Browder

Guests Present:

Joyce Burr
Rachel Parkin
Brad Miller
Tim Burt
Elaine Burt
Suzanne Winegart

The Meeting was called to Order: 3:00 pm by Chairman Burrows.

I. August 09, 2016 draft minutes:

Wayne made a motion to approve the August 09, 2016 minutes as corrected.

Seconded by Katie. Public comment on motion: none. Discussion: none. **All voted "aye" (4-0).**

II. CORRESPONDENCE:

None.

III. DEPARTMENT REPORTS:

Health Officer: Carol Calderwood

Starting to get an increase of upper respiratory and GI infections.

Public Health Nurse: LuAnn Burgmuller

Continuing to receive calls on Zika. Office was really been busy during fire. Gave many back to school vaccinations, over 200 were given. Her staff did some trainings and outreach for the PHN department. The office had received a few calls about water contamination for the fire area.

Neoma Greenfield: Emergency Preparedness

Roaring Lion Fire: She was at the Red Cross Shelter/Salvation Army and went to all fire meetings. There were some issues with getting a location to collect donations. She found and set up the old Perkins/Marilyn's Restaurant. Also she got the City to waive water usage charges. This was a huge learning experience which clarified a lot of things for any future disasters, specifically to linking up agencies, contacts and receiving or giving out donations. Discussion ensued. Potentially Ravalli County could set up a bank account with one of the local banks for financial donations. Neoma will work on.

RCEH: John Palacio

Handed out monthly stats. The Fair occurred with minimal hitches. Seems like food vendors are getting used to the paperwork requirements and classes which are also required. As part of the new food code adoption by the State, people are not getting a certified food protection management class. The Extension Office will be offering this class via Bitterroot College. The junk vehicles hauler opted out of the contract. He is working with Glenda to get a tow company, and there are three potential companies pending now. Solid waste issue is covered up to a point by the State. Perhaps the BOH could think about local solid waste regulations in the future.

IV. OLD BUSINESS:

1. Long Avenue – continued

John explained that Rod did go visit the property. The trailer has been gutted. John did speak with Mr. Burt and requested a new check for the septic permit (due to first check being older than 6 months) which a new check was received. Dan Browder explained that two draft agreements have been written, Easement Agreement and Covenant and the Settlement Agreement and Release, both have a few discrepancies between Dan and Rachel, and that is the reason for today's review. No final decisions are being requested.

Easement Agreement and Covenant:

B, bullet 4:

- *A separate, 2-bedroom apartment (formerly a shop building) ("the Converted Shop"), with Ravalli County Septic Permit # SP1609131414, which permits use of the Converted Shop as a single-unit, 2-bedroom habitation.*

Rachel stated that the Burt's would like the 2 bedroom listed as a 3 bedroom. John explained that the location has a 1,000 gallon tank which is allowed for 1-3 bedrooms. John then explained that the 2 bedroom information came from the permit submitted by the Burt's. If RCEH received a request from the Burt's to increase the use, a non-deg review would be required. Dan said he would not agree to change from 2-3 because it is an alteration which was one of the issues at the beginning of all this. BOH: No changes proposed at this meeting.

4. **Rights Are Cumulative.** *The rights granted by Grantor to Ravalli County by this Agreement are cumulative. Any conflict between provisions of this Agreement shall be interpreted to grant Ravalli County the broadest rights and privileges in limiting Grantor's use of the Property.* [BURTS WANT THE PREVIOUS SENTENCE DELETED] *In the event of any conflict between the provisions of this Agreement, the Settlement Agreement and any and all permits regarding the Property, the more restrictive term shall apply. (section in blue added at BOH & delete yellow highlighted)*

Rachel stated that the Burt's request that the 2nd sentence be removed. Dan explained that because we have multiple agreements and permits, he would like to change this sentence to breakdown the differences between those agreements and permits. Rachel requested that the language be changed and not be removed. Let the language specify the use of the property, not limit it. Katie feels the existing language is appropriate and should stay. Dan suggested changing the language to read "in the event of any conflict between provisions of this Agreement, the Settlement Agreement and any and all permits regarding this Property, the more restrictive term shall apply". Rachel stated she nor her clients has seen the permit yet. John went to retrieve the permit. BOH proposed at this meeting: change to Dan's suggested language and delete 2nd sentence.

#2b Grantors grant Ravalli County the right to inspect the part of the Property other than the Northern Trailer, including any occupied structures on the Property, during the County's regular business hours, with the following notice to Grantor:

*At least 24 hours (Burts want 48 hours) from the time of a telephone call in which a County representative speaks to Tim or Elaine Burt; at least 36 hours (Burts want 48 hours) from a telephone call in which a County representative leaves a phone message for Tim or Elaine Burt; or three business days from the date of mailing a Notice of Inspection to Tim and Elaine Burt (e.g. if the Notice of Inspection goes out by US mail on Sept. 1, the County may inspect on Sept. 4). A Notice of Inspection shall be mailed to Tim or Elaine Burt at 3773 Last Best Place, Missoula, Montana, 59808, or by phone at (406) 396-9400. (Burts ask to clarify this section applies only to the house) ****(Possibly remove from easement and covenant document and leave in agreement)***

Rachel stated that the Montana Residential Landlord-Tenant Act requires 24-hour written notice to tenants, so 24-hour notice would not allow that and proper notice would still potentially be difficult with 36-hour notice if the Burt's were on vacation, for example. She requested to change from the current 24 hour notice to 48 hour notice, and the current 36-hour notice to 48-hour notice. Rachel and the Burt's complained that this notice provision would potentially last in perpetuity and would not be fair to future owners and would reduce the value of their property. Dan agreed that it may not be fair to burden all future owners with potential inspections when only the Burt's violated the regulations. Dan proposed that the inspection provision could be removed from this document and left in the Settlement Agreement. BOH proposed at this meeting: remove sentence #2 completely and add this section to the Settlement Agreement.

Settlement Agreement and Release:

I. SETTLEMENT AGREEMENT

The parties have agreed to settle the above entitled matter on the following terms:

A. Admission: The Burts admit that they violated the Wastewater Regulations.

Rachel stated that the Burt's want A deleted. Dan feels this is important to leave in. Rachel said this would be a civil claim going forward as an admission claim and they insist on a non-liability clause be considered as that clause is standard in other legal agreements. Dan explained that an enforcement action for violation of county regulations is fundamentally different, the damages are fines not compensatory. It is important that the citizens see that the County is serious on regulation enforcement. An admission helps serve that purpose. Rachel said this is a public document and due to the Burt's agreeing to inspections and pay the fines, the admission is somewhat implied. Mick pointed out that this draft is already a public document. Mick asked Dan how strong is the admission implied throughout the remaining portion of the document if 1A was removed. Dan stated that an admission of liability would help the County go back and litigate these violations if the Burt's breached the Settlement Agreement. . Rachel said this agreement will be signed and if they breach the agreement they are in breach of agreement and appropriate actions would follow. BOH: No changes proposed at this meeting.

b. Inspections:

Ravalli County, by and through an authorized representative or agent, shall be allowed to inspect the Northern Trailer any time during business hours without any notice to the Burts or any other person or entity.

The Burts shall allow Ravalli County, and its agents or representatives to inspect the Property, including the inside of occupied structures during business hours and after providing notice. Notice shall be considered adequate as follows: at least 24 hours (burts want 48 hours) from the time of a telephone call in which a County representative speaks to Tim or Elaine Burt; at least 36 hours (burts want 48 hours) from a telephone call in which a County representative leaves a phone message for Tim or Elaine Burt; or three business days from the date of mailing a Notice of Inspection to Tim and Elaine Burt (e.g. if the Notice of Inspection goes out by US mail on Sept. 1, the County may inspect on Sept. 4). A Notice of Inspection shall be mailed to Tim or Elaine Burt at 3773 Last Best Place, Missoula, Montana, 59808, or by phone at (406) 396-9400.

The rights of inspection described herein shall remain in effect unless or until this Agreement is terminated by mutual agreement of the parties.

BOH proposed at this meeting: add clarification of inspections for the interior of the main house (two story) only with a sunset clause on inspections.

d. Use of the Main House: *The framed house on the Property ("the Main House") shall be used only as a single family residence. The Burts shall [BURTS WANT: "exercise their best efforts to"] ensure that only two rooms in the Main House are used as bedrooms.*

e. The Burts shall [BURTS WANT: "exercise their best efforts to"] ensure that no violations of the Wastewater Regulations occur on the Property so long as they, or any person or entity with which they are in any way associated, are owners.

Rachel explained that the Burt's want "exercise their best efforts" added. Dan explained that "best efforts" is a nebulous term. Rachel said the Burt's do not live on the property but would have an obligation to fix the problem as soon as possible. BOH: No changes proposed at this meeting for either #d or #e.

h. Payment of Penalties: The Burts shall pay eight thousand four hundred dollars (\$8,400.00) in full and final settlement of the fines assessed by Ravalli County for the alleged septic, permitting and health code violations described in the Compliance Order, subject to the terms of the General Release set forth in Section II below.

Rachel suggested removing "health code violations". BOH proposed at this meeting: remove "health code".

C. Event of Default of this Agreement. Any violation of this Agreement and Release, and any violation of the Negative Easement Agreement and Real Property Covenant shall be an Event of Default under this Agreement, whether the Burts are in possession of the Property or any third party is in possession under a lease or other agreement, and regardless of who or what entity is responsible for the Event of Default, and regardless of whether the Burts believe another party is at fault. [BURTS WANT THIS PARAGRAPH DELETED]

Rachel stated that the Burt's want this section removed as her clients feels this section is not necessary. Dan feels it should stay in. BOH: No changes proposed at this meeting.

D. County's remedies upon an Event of Default. These following remedies are not exclusive but are cumulative and in addition to any remedies now or hereafter allowed by law.

- a. The County may seek enforcement of the County's Wastewater regulations.
- b. The County, at the County's option, may prohibit occupation or use of the Property until any violation is remedied to the County's satisfaction.
- c. The County may seek judicial enforcement, through injunction or otherwise.

Termination: This Agreement and Release shall remain in effect unless the parties agree in writing otherwise, or until a court with jurisdiction rules it terminated. [BURTS WANT THIS PARAGRAPH DELETED]

Rachel stated that the Burt's want this section removed as her clients feels this section is not necessary. Dan feels it should stay in. BOH: No changes proposed at this meeting.

G. Indemnification. The Burts shall indemnify and hold harmless Ravalli County and its agents, employees, officers, successors and assigns, for all claims, suits, demands, actions, proceedings and for judgments, damages, losses, debts, liabilities, penalties, fines, costs and expenses (including reasonable attorneys fees) arising out of any claim by third parties related

this Agreement. The Burts' duty of indemnity shall include the duty to defend any such claim and to pay the cost of such defense, but the Burts shall consult with Ravalli County concerning the conduct of the defense insofar as the choice of attorneys and other related matters. Ravalli County, in its sole discretion, may choose whether Declarant shall defend Ravalli County as described above, or whether Ravalli County shall defend itself and require Declarant to bear the cost of such defense as described above. [BURTS WANT THIS PARAGRAPH DELETED]

Rachel explained that the Burt's want this section deleted and then said this is reverse of most settlement agreements. This section does not buy the Burt's any peace. Dan said you do not want to foresee every potential claim so this is a broad statement. He was thinking if there was ever a slander of title lawsuit, the County should not be required to pay for representation. He does think it is too broad and could be removed without a lot of additional liability. The danger of a third party lawsuit is very low. You cannot assume 100% liability from any lawsuit. BOH proposed at this meeting: Dan to re-word this section.

II. RELEASE OF CLAIMS

Performance of the terms of the Settlement Agreement as outlined above shall constitute satisfaction of the demands contained in the Compliance Order regarding the Property, and shall entitle Releasees to a full [BURTS WANT "AND FINAL"] (dan not ok with addition) release of all claims arising from the [BURTS WANT "alleged"] (dan says ok) violations contained in the Compliance Order.

Rachel said the Burt's want "and final" release and "alleged" violations. Dan is not comfortable with "final". Rachel said the Burt's are buying their peace with these agreements. No point in doing a settlement unless it is a full and final release. BOH proposed at this meeting: do not add "and final" but do add "alleged".

A. Release Of Claims: *The undersigned Releasors acknowledge that upon performance of the above terms and conditions, and receipt of the above sum of money, this Agreement and Release fully [BURTS WANT "and forever"] (Dan keep as is) releases and discharges Releasees, Releasees' heirs, personal representatives, successors, assigns, agents, partners, employees and attorneys from any and all fines, actions, claims, causes of action, demands, or expenses for damages or injuries arising out of the violations described in the Compliance Order. [BURTS WANT THE FOLLOWING SENTENCE DELETED: This Release does not limit fines, actions, claims, etc. for conditions or violations not listed in the Compliance Order, or for any condition or violation that was concealed (actively or by omission) by the Burts. (Dan ok with removal, restatement of state law)]*

Rachel stated that the Burt's want "and forever" added and the last sentence of this section removed. Dan disagrees with addition of "and forever" but is ok with the removal of the last sentence. BOH proposed at this meeting: do not add "and forever"; ok to remove last sentence.

Fines:

BOH consensus: fine payments were to start on October 01, 2016 but due to these agreements not being completed and agreed to, BOH will allow the postponement of the October 2016 payment and have the Burt's make a double payment on November 01, 2016, for the October and November 2016 payments. The Burt's agreed.

Dan to email me out Draft 2 of each agreement on or before October 5, 2016. Same with any changes proposed by Rachel.

2. 293 Luby Lane – update and closure

John visited the property on July 5, 2016 (deadline for completion was July 1, 2016). The two mobiles are now connected. Joyce Burr stated the well is in and the wall insulation is in. Next is the floor insulation. Nobody lives in the extra trailers. She then asked if they had an emergency situation, could she get a two week exception to have someone stay in one of the extra trailers. Jeff said no, not per the language of the agreement. She then asked if she had a change and she requested it beforehand to the BOH. John said the agreement states she could always request it beforehand. This is now a closed item.

3. 1567 Winsett Way – update and closure

John said the subdivision review was recorded, he did apply for a septic permit and the fine has been paid. This is now a closed item.

4. Non-Pharmaceutical Intervention (Previously named Isolation and Quarantine Control Measures) ***Need Signature: Neoma

Neoma will get letters of concurrence from agencies involved.

Mick moved to approve BOH Resolution No. 3 for the adoption of the Non-Pharmaceutical Intervention (NPI) Standard Operating Policy and Procedure Guidelines, as presented. Seconded by Katie. Public comment on motion: none. Discussion: none. **All voted “aye” (4-0).**

V. NEW BUSINESS:

1. Truck Wreck Protocol – Neoma

Neoma corrected contact phone numbers.

Katie moved to approve the September, 2016 Version 3 Truck Wreck Protocol (TWP) as presented and to be executed with the BOH Chairman's signature. Seconded by Wayne. Public comment on motion: none. Discussion: none. **All voted “aye” (4-0).**

VI. Public comment

Brad Miller: last year he had 3 groundwater monitoring sites. The groundwater was too high in all of them. He spoke about his BOH denied variance due to him farming. This year, he has 7 groundwater sites. All again failed but they came close to passing. He asked what the chances would be to request and receive a variance now on the new failed results. Jeff said apply for a variance and go through the process.

VII. Next Meeting: October 12, 2016 at 3:00 PM

VIII. Adjournment:

Mick made a motion to adjourn the meeting at 5:30 PM. Seconded by Wayne. All voted “aye”. (4-0)