

MINUTES OF COUNCIL MEETING
September 7, 2023, 7:00 p.m.
TOWN OF VIRGINIA CITY, MONTANA
Elks Lodge & Zoom Meeting

Council Present: Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, Greg Jorczyk

Absent: None

Staff Present: Timber Baceski Clerk/Treasurer, Shane Leach PWD, Eric Barsness HPO

Absent: None

Public Present: Alyson Young, Beverly Penninger, Jack Waller, Sheri Jarvis, Ed Guza (via Zoom)

1) Call to Order: Meeting was called to order at 7:00 pm by Justin Gatewood, Mayor

2) Mayor and Commissioner's Reports/Comments:

a) Mayor Gatewood thanked the business owners for another successful tourism season, noting that they are the backbone of our community.

3) Public Comments

None.

4) Clerks Report:

a) Clerk Timber Baceski has begun sending documents to the accountants for the audit of FY22-23. Clerk Baceski has also been working on the budget for FY23-24, part of which is being presented tonight. Resort Tax remittances for 2023 are still significantly down, though many remittances are still missing.

5) HPO/HPAC Report:

a) HPO Barsness reported that he, Clerk Timber Baceski, and PWO Shane Leach have been working on organizing/streamlining the permit application process by creating a document for applicants that includes a short description of the process, a checklist for the supporting documentation needed within an application, and definitions for architectural/construction terms that a layman may not know. This document will be seen by the Council once finished.

b) HPO Barsness reported that he, Butch Frediani, and Mark Jacobs pitched a Task Force that has been approved by the Madison County Commissioners. The Task Force will have representation from across the county and focus on preservation of historic buildings in Madison County, though presently there are only three members, mentioned previously, and the current focus is on the Madison County Courthouse. HPO Barsness toured the Courthouse recently. HPO Barsness noted that it was dry as a bone with no indication

of water, though an odor was present, which he attributed to the carpet. A report will be written and presented to the Madison County Commissioners, explaining the observations made during this tour.

c) Mayor Gatewood added that he was in attendance at the Madison County Public Health Meeting last Tuesday, where Dan Allhands made two remarks regarding the courthouse: first, that the smell was terrible inside the Courthouse and that it wouldn't be right to have anybody working within the building; second, that \$12,000 has already been spent for mold mitigation.

6) New Business:

a) Development Permit Application – Virginia City Rural Fire Department (Flag Pole)

MOTION: To approve the Development Permit Application for the Virginia City Rural Fire Department (Flag Pole) and to waive the \$35 application fee. Motion made by Justin Gatewood; Seconded by Dave Bacon. **The question was called.** **The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

b) Development Permit Application – Becky DiGiovanna (Handrail for Fairweather Inn)

i) The current handrail is 30 inches tall; however the State code requires them to be 42 inches tall. The applicant, Becky DiGiovanna, would like the design to reflect how it looked back in the 1950's and 1960's. HPAC wanted the balusters to be saved, though there was no way to do it and still be compliant with State requirements. The application was approved unanimously by HPAC.

MOTION: To approve the Development Permit Application for Becky DiGiovanna (Handrail for Fairweather Inn) as presented. Motion made by Amy Grice; Seconded by Dave Bacon. **The question was called.** **The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

c) Development Permit Application – Waller/Ruppel (Fence)

i) The applicant, Jack Waller, is proposing a fence to the side of the house to contain dogs. The project is under the maximum for fence height, as the property is not a corner lot. A picture of the proposed fence, given to the Council, will be added to the application packet.

MOTION: To approve the Development Permit Application for Waller/Ruppel (Fence). Motion made by Dave Bacon; Seconded by Justin Gatewood. **The question was called.** **The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

d) Development Permit Application – Lance Otto (Windows)

i) The applicant, Lance Otto, is proposing windows on the west side of the house for now; he will submit another application in the future for the other windows. The trim color will change to gray from the existing yellow color.

MOTION: To approve the Development Permit Application for Lance Otto (Windows). Motion made by Amy Grice; Seconded by Dave Bacon. **The question was called.** **The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

e) Site/Zoning Permit Application – McMahon (House)

- i) The application presented was not complete. Missing components include: DEQ approval for the water main extension, completion of the application form, calculation of square footage (including deck), application fee paid, and ISF paid for both water and sewer.
- ii) Councilmember Amy Grice noted the importance of meeting with Town Staff, specifically the HPO, prior to the submission deadline to ensure an understanding of what is needed.
- iii) Sheri Jarvis asked the Council if the short building season is taken into account when considering deadlines for application submission and noted that perhaps all correspondence between the Town and an applicant should be done in writing. Mayor Gatewood responded that Town Staff tries to accommodate applicants with efficient communication, which often includes communicating over the phone or in person.

MOTION: To table the Site/Zoning Permit Application for McMahon (House) until the missing components mentioned in 6ei are submitted. Motion made by Justin Gatewood; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

f) Revocation of Motion Regarding the Penninger Site/Zoning Permit Application from August 2023

- i) This agenda item is in regard to a motion that Mayor Gatewood made at the last Town Council Meeting, which dealt with the guest house on the Penninger Site/Zoning Permit Application. The passed motion would have allowed a second habitable structure on a septic system that only has six lots allocated to it. Town Code requires four lots per habitable structure when a septic system is in place. Mayor Gatewood took full responsibility for this error.

MOTION: To withdraw the motion made at the August Town Council Meeting regarding the guest house, detached, from the Penninger Site/Zoning Permit Application. Motion made by Justin Gatewood; Seconded by Dave Bacon.

- ii) Beverly Penninger referenced the appendix that covers septic systems in the Town Code, noting that she spoke with Jim Jarvis, author of the document, and he mentioned that the appendix wasn't applicable if the septic system can handle multiple structures. Mayor Gatewood responded, noting that he was present during the writing of the appendix and that the language within the appendix cites the purpose of the four-lot-rule being to encourage lower density, preserve open space, minimize environmental impact, and reduce the demand on the Town water supply. Sheri Jarvis asked how multiple structures that have a total of three bedrooms differ from one structure with four bedrooms. Mayor Gatewood responded that a second habitable structure would require its own water hookup, and that there are limited water hookups available given the capacity of the system. Councilmember Kacey Smart added that the four-lot-rule is based on State rules for septic systems. Mayor Gatewood noted that Sheri Jarvis' argument is worthy of discussion and could be revisited, but that the Council cannot create or change policy on the fly.

MOTION: To withdraw the motion made at the August Town Council Meeting regarding the guest house, detached, from the Penninger Site/Zoning Permit Application. Motion made by Justin Gatewood; Seconded by Dave Bacon. **The question was called.** The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

g) Site/Zoning Permit Application – Penninger/Young (House)

i) HPO Barsness noted that HPAC did not like the breezeway presented to connect the structures. HPAC felt that it was too commercial. HPO Barsness added that if the buildings were closer together it would be more feasible, but that twenty feet for a breezeway seemed like too much.

ii) Councilmember Greg Jorczyk brought up that there are numerous homes around town that have a breezeway, one of which is near his home, and asked what is different about the presented breezeway that would warrant it being denied. HPO Barsness answered that the issue is not with the use of a breezeway, but rather with the length of the one presented. HPO Barsness suggested that a design that utilizes a trellis could work better for a lighter visual effect, but also noted that HPAC thinks breezeways are overused as a loophole. Councilmember Greg Jorczyk disagreed, adding that times are changing and that in many other places a connected foundation or concrete slab is enough to deem multiple structures as one. Councilmember Greg Jorczyk emphasized that the applicants have been transparent with their plans for the property and suggested that the Council come up with a solution.

iii) Alyson Young added that she and Beverly Penninger were only given the option of the breezeway, expressing her frustration that it was now potentially being taken off the table. Mayor Gatewood made a correction to that statement, explaining that there were three options: connect the two structures entirely, have no guest house, or have a breezeway. Mayor Gatewood also noted that not all breezeways are created equal, and that there is a substantial difference between a breezeway that is twenty feet long and a breezeway that is eight feet long.

iv) Sheri Jarvis mentioned that the concept of a breezeway has often been used because the cost of hooking up to water/sewer is so prohibitive and expressed that she does not believe breezeways are overused.

v) Mayor Gatewood asked if there is any historical evidence of breezeways in Virginia City. HPO Barsness responded that there is certainly historical evidence of breezeways in other parts of the country, but that he couldn't think of an example in Town off the top of his head.

vi) Ed Guza, attorney for the Town of Virginia City, weighed in on the issue. Ed Guza noted the importance of consistency with what the Town Council decides in these types of situations. Historically, when the Council needed to interpret the appendix, only one structure was allowed per four lots. Ed Guza stated that the concern on a legal basis is that if we defer consistency, it opens up the potential for multiple structures being placed on lots with less than four lots per structure in the future. Ed Guza noted that Ordinances need to be abundantly clear, though, and the vague nature of this appendix could be looked at in the future. Ed Guza finished by emphasizing the need to be consistent and noting that what is being requested by the applicant is inconsistent with what has been done in the past.

vii) Sheri Jarvis asked that before the Town Council makes a decision, they consider that when the applicants first applied for a Site/Zoning Permit in a desolate area of Town with no historic zoning regulations, the applicants were told by a Council Member that while HPAC approved the application, the approval from the Town Council would “ruin the Town of Virginia City”. Sheri Jarvis urged the Council to take into account how the applicants have been treated and look at the human factor.

viii) Beverly Penninger explained the timeline of events that have led to this Council Meeting. Beverly Penninger met with HPO Barsness on June 7th and asked for advice on the project. HPO Barsness advised Beverly Penninger to look at Jackie Lafever's home as an example. At the Public Works Board Meeting on August 2nd, Beverly Penninger was advised to look at a deed restriction, which was denied at the August 3rd Town Council Meeting. Following that meeting, Beverly Penninger met with HPO Barsness again to discuss the 7-10 unresolved details as directed by the Town Council. HPO Barsness was unable to answer the question regarding the water meter as it wasn't in his wheelhouse. Beverly Penninger then called Mayor Gatewood to seek clarification on the water meter, and was told that due to the septic system, a second water hookup would not work. Mayor Gatewood suggested a breezeway during that phone call. Beverly Penninger stated that she and Alyson Young have agreed to everything that has been suggested to them, but months later there is still no approval.

ix) Mayor Gatewood responded that the Town has tried to accommodate the applicants as best as possible, noting that the Council did not have much time to review the application prior to the August Council Meeting.

x) Mayor Gatewood suggested that the applicants work with HPAC over the next two weeks to come up with a design that is satisfactory, then bring the application back for the Special Council Meeting taking place on September 21st. Mayor Gatewood noted that the applicants should include the design for the garage, as that has changed from the initial Site/Zoning Permit Application, the full site plan, and clarity on water hookups.

MOTION: To table the Site/Zoning Permit Application for Penninger/Young (House) until the Special Council Meeting on September 21st. Motion made by Justin Gatewood; Seconded by Kacey Smart. The question was called. The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

h) Demolition Permit Application – Town of Virginia City (Cinderblock Bathrooms at Tennis Court)

MOTION: To table the Demolition Permit Application for the Town of Virginia City (Cinderblock Bathrooms at Tennis Court) until there is further discussion. Motion made by Justin Gatewood; Seconded by Amy Grice. The question was called. The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

i) Second Reading of Draft Ordinance 03-2023 to Amend the Town's Water and Sewer Code to Provide a Mechanism for Inhabitants Outside the Town's Corporate Limits to Obtain Water and Sewer Services from the Town and Establishing a Rate for Such Users

i) Ed Guza, attorney for the Town of Virginia City, gave his opinion on the Draft Ordinance. Ed Guza noted that the Draft Ordinance would allow anyone outside of Town limits to connect to the water/sewer system. After mulling it over and discussing it with Mayor Gatewood, Ed Guza would rather see the Town make decisions for hookups outside of Town limits on an individual basis. Ed Guza suggested that the Town Council view each applicant in an individual capacity and view what terms would be necessary for the individual to hook onto the system. In this specific situation with the Madison County Variance Application, an interlocal agreement between the Town and the County made more sense. Ed Guza recommended not moving forward with the Draft Ordinance.

MOTION: To deny the Second Reading of Draft Ordinance 03-2023 to Amend the Town’s Water and Sewer Code to Provide a Mechanism for Inhabitants Outside the Town’s Corporate Limits to Obtain Water and Sewer Services from the Town of Virginia City . Motion made by Justin Gatewood; Seconded by Dave Bacon. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

MOTION: To have a recess. Motion made by Justin Gatewood; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

*** RECESS CALLED AT 9:00 PM ***

MOTION: To recommence the meeting. Motion made by Justin Gatewood; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

*** MEETING RECOMMENCED AT 9:07 PM ***

j) Variance Application – Madison County (Sewer Connection at Placer Loop)

i) The application does not specify the location or duration of the sewer connection; however, both are covered in the Interlocal Agreement, which is the next agenda item.

MOTION: To approve the Variance Application for Madison County (Sewer Connection at Placer Loop), contingent upon the approval of an accompanying Interlocal Agreement with Madison County. Motion made by Justin Gatewood; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

k) Virginia City – Madison County Interlocal Agreement

i) Ed Guza, attorney for the Town of Virginia City, defined an Interlocal Agreement as an agreement between government agencies to share in whatever resource the agreement discusses. It is a way for agencies to step outside their normal operations and work together to benefit both agencies. Ed Guza explained that in this case, the agreement is between Madison County and the Town of Virginia City in an effort to provide the County with a wastewater system and allow them to hook onto the Town’s system. The agreement sets out guidelines for the hookup to the Town system and provides a timeframe to allow this hookup to occur, as well as specifying how the relationship between the Town and Madison County will unfold over that time period. The agreement provides incentive for the County to address concerns with the Madison County Courthouse and deal with the problems there that led to the displacement of employees, while also allowing the modular building, which currently sits atop the Town’s sewer line, as a temporary facility for Madison County employees.

ii) Councilmember Amy Grice voiced concern that the County may react to the requirement of completing the unfinished design elements on the Annex Building. Mayor Gatewood agreed, noting that it would be a negotiation. Ed Guza added that anything could be changed within the document, and that the purpose of having it on the agenda is to allow the Town, with the assistance of Ed Guza, to start forming the document and move it forward.

iii) Councilmember Dave Bacon suggested that the Town add a requirement of reporting progress to the Town. Councilmember Greg Jorczyk suggested having the County submit a progress report on the 1st of each month.

l) Resolution 2023-09 to Certify the General Fund Mill Levies and Permissive Mill Levies for the Town of Virginia City for Fiscal Year 2023-2024

MOTION: To approve Resolution 2023-09 to Certify the General Fund Mill Levies and Permissive Mill Levies for the Town of Virginia City for Fiscal Year 2023-2024. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called.** **The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

m) Resolution 2023-10 for Authorization to Submit MCEP Infrastructure Planning Grant Application - Wastewater

MOTION: To deny Resolution 2023-10 for Authorization to Submit MCEP Infrastructure Planning Grant Application - Wastewater. Motion made by Dave Bacon; Seconded by Justin Gatewood. **The question was called.** **The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

n) Resolution 2023-11 for Authorization to Submit MCEP Infrastructure Planning Grant Application - Water

MOTION: To approve Resolution 2023-11 for Authorization to Submit MCEP Infrastructure Planning Grant Application - Water. Motion made by Justin Gatewood; Seconded by Kacey Smart. **The question was called.** **The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

o) Planning Board Vacancy

i) The Planning Board will be seeking a new chair following the unfortunate passing of the former chair, Bobbi Dirks. This person must be a property owner. The position will be advertised.

p) Reassembling of the Public Works Board

i) The members of the Public Works Board have not changed in a long while, putting the Board out of compliance with the Town Code. To meet Town Code, the Board should contain three members at large in the community, one Town Council member, and the Public Works Director. Skip Hissong, Phil Brook, and Jim Jarvis will be removed from the existing Public Works Board.

ii) Mayor Gatewood nominated Scott Petersen to serve on the Public Works Board for a term of three years.

MOTION: To appoint Scott Petersen to serve on the Public Works Board for a term of three years. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called.** **The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

iii) Mayor Gatewood nominated Roger Williams to serve on the Public Works Board for a term of three years.

MOTION: To appoint Roger Williams to serve on the Public Works Board for a term of three years. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called.** **The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.**

iv) Mayor Gatewood nominated Robert Erdall to serve on the Public Works Board for a term of three years.

MOTION: To appoint Robert Erdall to serve on the Public Works Board for a term of three years. Motion made by Dave Bacon; Seconded by Kacey Smart. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

v) Mayor Gatewood nominated Kacey Smart to serve on the Public Works Board for a term of two years as the Town Council Representative.

MOTION: To appoint Kacey Smart to serve on the Public Works Board for a term of two years as the Town Council Representative. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

vi) Mayor Gatewood nominated Shane Leach to serve on the Public Works Board for a term of one year as the Public Works Director.

MOTION: To appoint Shane Leach to serve on the Public Works Board for a term of one year as the Public Works Director, to be automatically renewed each year provided he is still employed by the Town. Motion made by Kacey Smart; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

q) Update on ARPA Water Project

i) A pre-construction meeting will be held on September 14th at 11:00 AM. Any members of the Council are welcome to attend, though it will need to be known ahead of time if more than two Council Members will be present so the meeting can be noticed appropriately.

7) Public Works Report:

Public Works Officer Shane Leach has resumed work on the Warming Hut and is still looking for volunteers. Windows and doors for the Warming Hut should arrive in roughly one week. PWO Leach is working to form a plan for the removal of the asphalt at Pace Park, which should be done by the end of the month. PWO Leach has a Regulatory Weed class coming up on September 21st and the Water Operator class on October 10th. Both classes will take place in Bozeman.

8) Consent Agenda:

a) Minutes from August 3, 2023

MOTION: To approve the Minutes from August 3, 2023 as presented. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

b) Invoices and Checks August 2023

MOTION: To approve the checks for the month of August 2023. Motion made by Amy Grice; Seconded by Dave Bacon. **The question was called.** The motion passed by voice vote, Justin Gatewood, David Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

c) Accounts Payable, Receivable, Adjustments and Checks August 2023

MOTION: To approve the Accounts Payable, Receivable, Adjustments, and Checks for August 2023. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

d) Bank Reconciliation for July 2023

MOTION: To approve the Bank Reconciliation for the month of July 2023. Motion made by Kacey Smart; Seconded by Dave Bacon. **The question was called.** The motion passed by voice vote, Justin Gatewood, Dave Bacon, Amy Grice, Kacey Smart, and Greg Jorczyk in favor. None opposed.

e) Great West Draw

None.

9) Public Comment:

None.

10) Adjournment

MOTION: To Adjourn. Motion made by Dave Bacon; Seconded by Amy Grice. **The question was called:** Motion was passed by voice vote, all in favor. None opposed.

ADJOURNMENT:

Meeting adjourned at 10:19 pm.

Respectfully submitted and attested,

Justin Gatewood
Mayor

Timber Baceski
Clerk Treasurer