

To: Cooke City Silver Gate Colter Pass Sewer Board

From: Concerned Citizens of the Valley 838

RE: Written Public Comments about Meeting Processes and Roles

Date: December 19, 2023

Dear Sewer Board Directors:

Thank you for serving our precious community as Sewer Board (SB or Board) directors. We all recognize that it is a difficult, time-consuming, and often, a thankless job. The Board's success is critical to the economic future of our valley and the viability of our community.

Please accept our written comments based on several recent meetings. We observed and heard statements about what constitutes a public meeting, an apparent affirmation that information should not be shared with the entire SB concurrently through email more than 48 hours prior to a meeting out of fear that doing so would constitute an "un-noticed" public meeting, and that the Board could no longer pursue a discussion topic into logically related areas if those extensions were not specifically and explicitly on the agenda (i.e. noticed to the public). The MSU Extension Agent was called upon to provide advice spontaneously on these matters many times, and, in some cases turned the course of the meeting and cut off vital discussion even when the topics were clearly interrelated and not proposed for executive action.

To be sure, we have faulted the prior SB for lack of public notice and honoring the public's right to know and participate during meetings. And, our past requests for public records went unanswered. Despite these shortcomings, we opted to take a forward-looking approach.

Since taking office, the SB has made great strides in making SB activities and meetings more transparent and accessible to District members. We see dramatic improvements in trying to adhere to your legal obligations as public officials, particularly with respect to the public's right to know and participate. As members of the public with a vested interest in the outcome and success of the sewer project, we appreciate the ability to participate remotely and obtain meeting materials and documentation of SB business through the website. We applaud those efforts and have confidence that you are "paying it forward." These improvements build our trust in your work and the trust of your neighboring District members.

However, we see confusion about generally sharing information with the entire SB concurrently so all directors are kept fully informed and can perform their elected duties. The same information does not seem to be readily shared and broadly available to all directors. We also see reluctance in distributing meeting materials concurrently by email earlier so that directors can adequately prepare for meetings. We have observed valuable discussion getting cut off out of discomfort, fear, or for the sake of keeping meetings short -- precisely when it is needed the most. This hampers your ability to function well and cohesively as a board.

We encourage you to reach out to your attorney. It seems helpful to discern between actions that create a public record subject to release (e.g. an email) and actions that constitute a public SB meeting (deliberations and voting). And, because the extension agent is often solicited to act as an apparent parliamentarian, with an ambiguous though active role influencing how the discussion progresses, we encourage the presence of your attorney at all future SB meetings so he/she can more appropriately advise you in these matters as they arise.

Our sense is that an email from Triple Tree Engineering to all SB directors concurrently, without any “reply all” or any subsequent action by SB members to discuss, deliberate or take action simply creates a public record that a citizen is then legally entitled to see upon request. It would not constitute an unannounced public meeting so long as SB members did not engage with one another as a quorum to discuss, deliberate, or act as a body. If a single email forwarding information or meeting materials to the entire SB concurrently without directors responding to each other thereafter were construed as an unlawful meeting, then many of Montana’s elected and appointed bodies are having unlawful meetings.

State law defines the term *meeting* broadly. Meetings are the “convening of a quorum” of the subject public agency “to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.” Mont. Code Ann. § 2-3-202. The key fundamental principle is that SB directors should not take actions that would transform concurrent receipt of information by email into an electronic meeting. Observing this distinction is a matter of SB director training and proper conduct as elected officials, not a matter of guarding against fear and preempting a “reply all” that limits information flow. We encourage a meaningful discussion with your attorney about how to regularly disseminate information and meeting materials to all SB directors so everyone is fully informed and can participate in meetings from a place of knowledge, not just asking questions.

Our sense is that the SB can continue discussing an agenda topic, pursuing greater details and interrelated topics when no executive action is planned on the threshold topic. The SB can exercise sound judgement to have robust discussion about the project. It is simply not possible to anticipate every twist and turn on complex topics and place every related tangent formally on the agenda. It is imperative that the SB freely discuss issues and concerns and explore the tangents to better understand the opportunities and constraints. You must explore possible courses of action, identify alternatives to effectively guide the project and direct your contractors. Cutting off the discussion and postponing it to a future meeting has resulted in decisions not getting made, some decisions getting made by default because it was not brought back, and still others being made without full vetting to understand possible implications.

The SB could also create a standing agenda item entitled “Work Session Discussion, No Executive Action” or similar. Clearly, more time is needed to engage with Triple Tree Engineering during the public meetings, consistent with state law. The SB can utilize this time to have important discussions during a noticed meeting and explore the interrelated topics, with no expectation by SB directors or the public that decisions will be made that day. Alternatives are to: (1) not have detailed project discussions; (2) only one or two directors discuss it on the side and maybe set a direction without the full Board; or (3) risk an improper electronic meeting or inadvertent quorum elsewhere. None of the alternatives is desirable and all could be costly.

The “work session discussion” itself will inform next steps. Sometimes, the outcome will simply be a deeper understanding for having had the discussion. Other times, a decision will be needed, which can then be properly placed on a future meeting agenda.

Thank you for considering our observations and comments.

Respectfully Submitted,

Concerned Citizens of the Valley