

RESOLUTION NO. 3-2015

A RESOLUTION CREATING A SPECIAL DISTRICT TO BE KNOWN AS THE "FERGUS COUNTY RECREATION DISTRICT"; AND SPECIFYING THE BOUNDARIES OF THE DISTRICT; THE TERM OF THE PROPOSED DISTRICT; THE MANNER OF ADMINISTRATION OF THE PROPOSED DISTRICT, INCLUDING PROVISIONS FOR ESTABLISHMENT OF THE BOARD; THE MANNER OR METHOD OF FUNDING OF THE DISTRICT, INCLUDING PROVISIONS REGARDING THE KINDS OF PROPERTIES TO BE ASSESSED; AND PROVIDING FOR DISTRIBUTION OF COPIES HEREOF

WHEREAS, the Board of Commissioners, on August 15, 2014, passed Resolution No. 23-2014, calling for a referendum on the creation of a special district to be known as the "Fergus County Recreation District", whose proposed purpose was to fund rehabilitation and construction activities of the City of Lewistown (the "City") swimming pool, and for consideration of funding other recreational facilities and activities operated by the City, and;

WHEREAS, the proposed special district, as submitted to the voters, would be organized pursuant to the provisions of Title 7, Chapter 11, Part 10, Montana Code Annotated; and

WHEREAS, at the general election held on November 4, 2014, the voters of the proposed district approved the ballot measure by voting in favor of creation of the Fergus County Recreation District, and now pursuant to the provisions of law cited above, and pursuant to the referendum provisions, the Board of Commissioners by passage of this Resolution orders creation of the special district known as the Fergus County Recreation District.

NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

1. Creation and Boundaries of District: There is hereby created a special district to be known as the Fergus County Recreation District whose boundaries are coextensive with the boundaries of the Fergus High School District, shown on the map attached hereto and incorporated herein by this reference.

2. Purpose of District: As authorized by section 7-11-1002, Montana Code Annotated, the Fergus County Recreation District is formed and authorized to perform a "limited number of functions" which are as follows:

A. To provide funding for renovation and/or construction activities to the Lewistown swimming pool facility.

B. To provide financial support, with any excess revenues received beyond debt service for the swimming pool renovation and/or reconstruction, to the Lewistown swimming pool and/or the Lewistown Civic Center.

3. Term of District: The term of the Fergus County Recreation District shall be for 20 calendar years, or a term including 20 full years of special levies to fund the proposed activities or improvements, whichever term is longer.

4. Administration of District: The Fergus County Recreation District shall be administered by an appointed board of five members, with all such board members being appointed by the Fergus County Commissioners. Two of the board members must reside within the city limits of the City. Two of the board members must reside within the District, but outside the city limits of the City. One of the Board members must be a County Commissioner.

In recognition of section 7-1-201, Montana Code Annotated, the following additional provisions shall apply to administration of the District:

A. The Board shall be authorized to adopt bylaws to govern their affairs, but all bylaws must be in accordance with law and with all Fergus County policies; and further the bylaws must be approved by the Board of Commissioners. The bylaws must also be in accordance and not contrary to the provisions of the voter approved referendum and the Fergus County Charter.

B. The term of each board member shall be for a period of two years. The terms of the non-commission members shall be staggered, such that every year (after passage of three years) an appointment will be made for a city resident and for a district resident who lives outside the city limits. However, at the time of the initial appointments one member residing in the city limits will have an initial term of three years, and one member residing within the district, but outside the city limits, will have a term of three years.

C. The board members shall not be paid wages or a salary for time spent in their duties. However board members may be reimbursed for authorized and pre-approved expenses, such as mileage and per diem. Reimbursement for such expenses shall be pursuant to Fergus County policies.

D. The board may not pledge the credit of Fergus County or the City, or impose a tax unless such is specifically authorized by law. However, it is understood that the District voters have not only authorized creation of the

District, but have also authorized a method or manner of funding the district as described below.

E. The board shall not be authorized to hire employees or staff persons.

F. A majority of members present at any meeting shall constitute a quorum for the transaction of business. Action may be taken by a majority vote of members present.

G. The board shall provide for the taking and keeping of written minutes, which shall include all action taken, and shall include the final vote on all action and the vote of each member.

H. The board shall provide for the date, time, and place of regularly scheduled meetings, and such information shall be provided to the Board of County Commissioners. As required by Section 7-11-1021(4) Montana Code Annotated, the board shall submit an annual budget and work plan to the County Commission for review and approval.

I. The board, pursuant to section 7-1-201(2)(c) Montana Code Annotated, shall be authorized to exercise all powers necessary, proper, and incidental to the operation of the district, so long as the exercise of such power and authority is in keeping with the expressed purposes of the district as set forth in paragraph 2 above.

The board will enter into an interlocal agreement with the City and the County which will provide for the City designing, constructing and financing the rehabilitation or reconstruction of the City swimming pool, funded, in part, by contributions and, in part, by issuance and sale of City revenue bonds (the

"Bonds") the debt service and reserves of which are to be provided by the assessments described herein. The assessments will be collected by the County Treasurer with County taxes. The County Treasurer will establish a special fund for the District and will invest the funds therein as required by law. The board shall insure that the City receives funds collected from such assessments in a timely manner so as to be able to timely pay the Bonds. This duty shall include delivery and remittance to the City any necessary funds for a bond reserve account, or other such required accounts.

After providing for payment or remittance to the City the necessary funds for repayment of the City's Bonds in a timely manner, the board may direct such excess assessments for support of "the City swimming pool and/or the Lewistown Civic Center" as required by the referendum passed by the District voters.

J. The board shall have the power to hear and decide complaints from taxpayers, as to whether or not their property qualifies as a "dwelling unit", as defined below. Any taxpayer disagreeing with the board's determination will retain all statutory rights and remedies, including the right to pay taxes under protest, and to avail themselves of the statutory procedures applicable thereto.

K. The board shall have the authority, and the obligation, to maintain regular contact with the Montana Department of Revenue to assist the Department in insuring that the list of properties subject to assessment is current and accurate in accordance with this Resolution.

5. Financing of the District: The proposed district will be funded by an assessment on all dwelling units located on residential or commercial property within the district of no more than \$35.00 per year, for a term of 20 years; such being deemed sufficient to retire the principal amount of \$1,456,000.00, plus interest over the term of 20 years.

A. The voter approved method of assessment described in the foregoing paragraph, is a method legally adopted and authorized by the District voters, and in turn, this Resolution. Section 7-11-1024, Montana Code Annotated provides that assessments may be made against each lot or parcel equally, if the benefits derived from the improvements are "substantially equivalent". The Board of Commissioners does find that the benefits to be received by the dwelling units throughout the district are "substantially equivalent". Further, the statute provides that assessments may be made based "upon the character, kind and quality of service for a residential or commercial unit", or property, taking into consideration a variety of factors. The Board of Commissioners determines, in accordance with Section 7-11-1024(3)(b) Montana Code Annotated, that the District recreational service provided by the assessment relates to only those properties where people who use those services dwell, or may dwell, and thus the assessments are associated with properties based on dwelling units thereon.

It is the position of the Board of Commissioners that in this statute, the Legislature intended to grant full flexibility and discretion to local governments to arrange for financing of special districts.

B. Furthermore, Fergus County is a charter government, and vested with self-governing powers. Thus, the Board of Commissioners, by passage of this resolution, is authorized and relies upon its self-governing powers to describe and authorize the method of assessment provided for herein, and to provide the necessary detail therefore.

C. In keeping with the voter approved method of assessment, the following terms and conditions shall apply:

(1) The assessment shall be an annual amount of \$35.00 on each "dwelling unit" located within the district boundaries. A dwelling unit is defined as any building or other structure, or portion thereof, including mobile homes, apartments, or cabins which are suitable for human occupancy; and which have a source of heat. The heat source may be electrical, gas, wood burning, solar, or some other means of providing warmth to the unit. A property is not excluded as a dwelling unit because of a lack of plumbing or water service or fixtures, or a lack of cooking fixtures or equipment.

(2) The assessment will be authorized whether or not the dwelling unit is occupied.

(3) The assessment will be authorized only on property, real or personal, which is classified by the Department of Revenue as either residential property or commercial property. Assessments will not be made against dwelling units classified as exempt property by the Department of Revenue.

(4) The assessment will not be made against dwelling units which are classified by the Department of Revenue as "unsound", for an entire tax year.

BE IT FURTHER RESOLVED that upon passage and approval hereof, the Fergus County Clerk and Recorder shall provide a certified copy of this resolution to the local office of the Department of Revenue and a certified copy to the City of Lewistown; and

BE IT FURTHER RESOLVED that the Board of Commissioners is committed to providing all applicable information to the public, and in this regard, copies of this resolution and any other relevant information shall be provided to local news organizations.

PASSED AND APPROVED this 9 day of January, 2015.

BOARD OF COMMISSIONERS:


SANDY YOUNGBAUER


ROSS BUTCHER


CARL SEILSTAD

ATTEST:


RANA WICHMAN, Clerk & Recorder

