



PUBLIC MEETING
January 19, 2017
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, January 19, 2017, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Susan Good Geise called the meeting to order at 9 a.m.

Commissioner Jim McCormick and Commissioner Andy Hunthausen were present. Others attending all or a portion of the meeting included Eric Bryson, K. Paul Stahl, Charles Lane, Dan O'Malley, Christal Ness, Greg McNally, Jack Walsh, Joe Nistler, Mike Magee, Mike Hughes, Ryan Robinette, Eddie Reed, Jackie Schultz, Al Knauber, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Public Meeting Minutes: November 1, 3, 10, and 17, 2016; and December 1, 6, 27, and 29, 2016; and January 5, 2017. (Nadine McCarty)

Eric Bryson reported on the consent action item 2 a and recommended approval.

No public comment was received.

A motion to Approve was made by Commissioner Hunthausen and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Grant Application with the Montana Board of Crime Control. (Dan O'Malley)

Dan O'Malley, Lewis and Clark County Sheriff's Office Violence Against Women and Children Coordinator, presented the grant application to the Montana Board of Crime Control for the Violence Against Women Act in the amount of \$95,526.30. The grant request is in the amount of \$71,632.71 with matching funds of \$23,877.59 from the Lewis and Clark County Sheriff's Office. The grant period is July 1, 2017 through June 30, 2018. Mr. O'Malley stated that his role as coordinator is to investigate domestic violence against women and children and that he averages 5-8 cases a week. He attributes the increase in case load to an increase in drugs in the community; include an increase in methamphetamine and prescription drug use.

No public comment was received.

A motion to Approve was made by Commissioner Hunthausen and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Contract and Encroachment Agreement with WIM Corporation (Christal Ness)

Christal Ness, Ombudsperson, presented the contract and encroachment agreement with WIM Corporation for the eaves of a residential building encroaching into the utility easements on the north and south side of the building. The property is located at Lot 3 of South Forestvale No. 2 subdivision, known as 5201 Crescent Moon Drive. In order for the owner to more fully enjoy the property, the owner has requested an encroachment permit from the County to allow for the maintenance on the utility easement. Ms. Ness noted that the applicant did sign the final plat for the subdivision on July 1, 2015 which included the notation stating that no permanent structures may be placed on the utility easement. In this case, it is only the eaves encroaching into the easement. Ms. Ness also stated that there are currently no utilities in the easements nor are they expecting to install any in those easements in the future due to development constraints from the proximity to the irrigation canal. Utilities to the lots to the east are established.

Commissioner Hunthausen asked about the possibility of removing the easement if the utilities are not going to be installed instead of granting an encroachment agreement. Ms. Ness added that in many cases such as this, the inspection exhibits from the homeowner are not seen by County staff until about 5 days prior to the closing of the mortgage. With the short time constraints, an encroachment agreement is necessary. Removing the easement would mean amending the subdivision plat, which has a 65 day review period.

Mr. Bryson stated that the Planning Department has been working with builders to try and educate them on what is required and what the regulations are when constructing new homes so as to avoid encroachments. However, because the County does not have a building permit, the only way to know when a new home is being constructed is when a builder applies for a septic permit; therefore it has been difficult to educate home buyers and builders that lots do come with some restrictions.

Mr. Lane, Deputy County Attorney, added that when a subdivision is applied for they are subject to regulations that are in place at the time of subdivision approval and that they remain subject to those regulations in perpetuity.

PUBLIC COMMENT -

Mike Hughes, applicant, explained that the utility easement was overlooked during his long distance medical recovery. Mr. Hughes added that it would be advantageous to the building community if there was explicit language somewhere, such as in the covenants, providing clarification regarding eaves, set back requirements, etc.

Jack Walsh, Helena Building Industry Association (HBIA), stated that the members of the HBIA are constantly being reminded of this issue and that the HBIA tries to educate them to avoid this sort of problem. He is simply asking for assistance for the applicant on this particular issue so that the home buyers can get into their home next week.

A motion was made by Commissioner Hunthausen to approve and accept the encroachment agreement as presented. The motion was seconded by Commissioner McCormick. The motion passed 2-1 with Commissioner Geise opposing.

Appeal of the Denial of a Contract and Encroachment Agreement for Joe Nistler. (Christal Ness)

Christal Ness, Ombudsperson, presented the appeal of a denied contract and encroachment agreement between Lewis and Clark County Public Works and Joe Nistler. On December 9, 2016, Eric Griffin, Director of Public Works denied an encroachment agreement for Joseph Nistler for the septic tanks, sidewalk, landscaping, and the retaining wall that is encroaching into the platted Public Access Easement, known as Smallwood Court. Section 3 of the Lewis and Clark County Public

Works Manual allows an encroachment into a public road right of way at the discretion of the Public Works Director. In this particular case, Mr. Griffin denied the encroachment permit. Section 15 of the Lewis and Clark County Public Works Manual provides for an Appeal Procedure from that decision to the Board of County Commissioners.

Ms. Ness stated that this subdivision, Broadwater Estates, is a 63 lot major subdivision and the plat was recorded on July 11, 2006. The last amended plat for the subdivision was recorded on September 6, 2016 for the purpose of eliminating a portion of the drainage easements and to relocate a drainage easement to create building locations.

Joe Nistler, applicant, stated that this encroachment agreement is for his own private residence in a subdivision where he has previously constructed 7 homes. The lot has a drainage easement on the northern boundary which he stated he is pushed right up against. To the south there is a 35' tall hill that has been carved out to the maximum grade without eroding and the house is pushed up against that hill as far as it can go. Mr. Nistler stated that he put the septic tanks in the front of the house because there is no room anywhere else on the lot to locate them due to the location of the house and the drainage easement as well as the hard and rocky soil conditions in the northwestern corner of the lot making it impossible to dig.

Mr. Nistler added that the roads in the subdivision are not where they were supposed to be due to the rocky conditions and that no accurate as-builts were done making it difficult to lay out a home. Ms. Ness stated the engineer's seal is a guarantee that the road meets specifications. The engineer that stamped the plans for this road is now out of business.

Commissioner Hunthausen asked if the plat should be amended to correct the road. Mr. Bryson stated that the solution would be to modify the plat to have the physical roads delineated in reference to the parcels. Modifying the plat would provide clarification to lot owners in that subdivision.

Ms. Ness added that Broadwater Estates is on a public drain field. Each home has two septic tanks; a main septic tank and a level two septic tank but not a drain field. DEQ does not site a septic tank; they only show where the drain field and the well are to be located. Broadwater Estates is on public water so the water line and the septic line both go down the road right of way.

Commissioner McCormick asked what points were used for staking the home if the builder did not use corner pins. Mr. Nistler stated he used the edge of the road as reference but that the road is not where it is supposed to be according to the plat. He added that the covenants only state you need a 25' front yard, which by using the edge of the pavement gave him 28'. He feels that his septic tanks would be outside of the easement if the road was where it was supposed to be.

PUBLIC COMMENT -

Ryan Robinette, Hardrock Road Building & Utilities, stated that he entered into a contract for the roads for the subdivision in 2006-2007. Many of the roads were already in existence at that point as well as some of the infrastructure. The existing roads were not up to county standards which required bringing in a lot of fill and changing some road directions to bring those roads to standard.

A motion was made by Commissioner Hunthausen to table the item to the regularly scheduled meeting on Thursday January 26, 2017. The motion was seconded by Commissioner McCormick. The motion passed 3-0.

Resolution No. 2017-7 Rescinding Resolution No.1993-117 Closing a Portion of Lewis and Clark Pass Road (Applicant: Ron Ingersoll) (Christal Ness)

Christal Ness, Ombudsperson, presented the resolution rescinding Resolution No. 1993-117, which closed a portion of Lewis and Clark Pass Road to motorized traffic. On November 17, 2016 the

Commissioners approved the reestablishment of motorized traffic on a portion of Lewis and Clark Road, subject to one condition. Ron Ingersoll was to post signs noting the private status of other roads that intersected Lewis and Clark Pass Road; this condition has been completed. There will not be any improvements made to the road. Staff recommends rescinding Resolution 1993-117.

No public comment was received.

A motion to Approve was made by Commissioner Hunthausen and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Acceptance of a Public Road Easement for Rimini Road. (Christal Ness)

Christal Ness, Ombudperson, presented the acceptance of the dedication of three portions of Rimini Road as county public road easements that were left out of the original road designation. Ms. Ness stated that the US Forest Service contacted the County regarding research they had conducted on Rimini Road. Based on historical documents and recent boundary line relocations, the Forest Service and the County were able to craft a County Public Road Easement for 3 specific portions. The portions are located at the very south end of Rimini Road.

Commissioner McCormick asked if the county is currently maintaining and plowing that section of Rimini Road. Ms. Ness stated that she was unsure if the County maintains that specific portion of road but added that this portion is probably seasonal as there are no homes up there.

No public comment was received.

A motion to Approve was made by Commissioner Hunthausen and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Request for Amendment of a Subdivision Improvements Agreement for Canyon Ridge Subdivision, Phases 1 and 2 and the Final Plat Application and Subdivision Improvements Agreement for Amended Plat of Canyon Ridge Subdivision, Phase 1-Lot 2A-2. (Canyon Ridge Subdivision, Phase 3). (Applicant: T & M Planning Group, LLC) (Planner: Greg McNally)

Greg McNally, Planner II, presented the amendment of a subdivision improvements agreement (SIA) for the Canyon Ridge subdivision, Phases I and II and consider a final plat application and Subdivision Improvement Agreement for the amended plat of Canyon Ridge subdivision, Phase I-Lot 2A-2 (Canyon Ridge Subdivision, Phase 3), creating 42 single family lots and one open lands space lot. The applicant, T&M Planning Group, has requested an amendment of the SIA to coincide with the final platting of Phase III and a partial release of the financial guarantee as a result of some of the completed improvements. The SIA was entered into on December 17, 2015 and extended on July 19, 2016. The applicant has not yet completed the following improvements: seeding of ditches, swales, ponds, etc; management of a Montana Pollution Discharge Elimination System permit; installation of approach permits in accordance with MDoT requirement; installation of asphalt surfacing of extensions of internal access roads; and, application of street identification and traffic control signs. Mr. McNally noted that the approaches onto Canyon Ferry Road have been installed and are in use; however, MDoT has yet to inspect the installed approaches and will not do so until spring when weather conditions approve. Also noted was that street identification and traffic controls signs had been installed but not with approved posts so the applicant will have to replace the posts with approved ones in order for that improvement to be met. The applicant requests that the Commission amend the current SIA to allow the completion of all improvements by July 2017. The remaining improvements for Phase I, II and III are estimated to cost \$123,596 as noted by Jeremy Fadness, PE. The applicant has provided a letter of credit in the amount of \$166,855.

Mr. McNally also noted that the applicant has also met the condition of approval for cash in lieu of parkland. Based on an appraisal, the applicant will make a cash payment of \$16,034.67 in lieu of 2.36 acres of parkland dedication. The applicant also intends to make a request to use that money

to help fund actual improvements in the parkland including an irrigation well, an irrigation system and topsoil and grass for a .5 acre portion of the property. This proposal received unanimous approval from the Parks Board.

No public comment was received.

A motion to Approve was made by Commissioner Hunthausen and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Board Appointment. (Eric Bryson)

Eric Bryson, CAO, presented the board appointment to the Lewis and Clark County DUI Task Force and recommended the re-appointment of Jayson Zander as the Helena Police Department Representative to a term that expires December 31, 2019.

No public comment was received.

A motion was made by Commissioner McCormick to re-appoint Jayson Zander to the Lewis and Clark County DUI Task Force. The motion was seconded by Commissioner Hunthausen. The motion passed 3-0.

Eric Bryson, CAO, presented the board appointment to the Planning and Zoning Commission and recommended the re-appointment of Peter Pocius to a second term that expires December 31, 2019.

No public comment was received.

A motion was made by Commissioner Hunthausen to re-appoint Peter Pocius to a second term on the Planning and Zoning Commission. The motion was seconded by Commissioner McCormick. The motion passed 3-0.

Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

Adjourn

There being no further business, the meeting adjourned at 11:33 a.m.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Susan Good Geise, Chair



Andy Hunthausen, Vice Chair



Jim McCormick, Member

ATTEST:



Paulette DeHart, Clerk of the Board