



PUBLIC MEETING
January 24, 2019
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, January 24, 2019, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Jim McCormick called the meeting to order at 9 a.m.

Commissioner Susan Good Geise and Commissioner Andy Hunthausen were present. Others attending all or a portion of the meeting included Roger Baltz, Marni Bentley, Nancy Everson, Peter Italiano, Charles Lane, Drenda Niemann, Audra Zacherl, Spencer Starke, Alan Hughes, Greg McNally, Brent Wilcock, Carol Wilcock, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Vendor Claims Report for Week Ending January 25, 2019. (Marni Bentley)
- b. Memorandum of Understanding Between Lewis and Clark County and Missouri River Task Force. (Leo Gallagher)
- c. Memorandum for Record. (Drenda Niemann/Nancy Everson)

Roger Baltz reported on the consent action items 2 a-c and recommended approval.

No public comment was received.

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

Match Agreement Between Lewis & Clark County and Western Federal Lands Highway Division. (Audra Zacherl)

Audra Zacherl, Assistant Director of Public Works presented the Match Agreement from Western Federal Lands Highway Division Federal Lands Access Program (FLAP) which is granting Lewis and Clark County funding for improvements to York Road for the purpose and need of preserving driving surfaces and enhancing safety along forest highways. The improvements will include a crack seal and a chip seal on York Road from the York Bridge, 6.4 mile to the end of the asphalt.

In March of 2016 Lewis and Clark County submitted a proposal for this project to the Federal Lands Access Program. The purpose of the Agreement is to document the intent of Lewis and Clark County to meet its match requirements for the project. Total project costs are estimated at \$495,268 with a local match amount of 13.42% or \$66,465. The match amount is to be budgeted from the Road Infrastructure fund in fiscal year 2020. Project completion is expected in the summer of 2019. Staff recommends approval of the Match Agreement.

Ms. Zacherl gave an overview of the FLAP funds used since 2012 with approximately \$30 million done in projects and \$1.5 million in match money.

No public comment was received.

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

Match Agreement Between Lewis and Clark County and Western Federal Lands Highway Division. (Audra Zacherl)

Audra Zacherl, Assistant Director of Public Works presented the Match Agreement from Western Federal Lands Highway Division Federal Lands Access Program which is granting Lewis and Clark County funding for improvements to the Gates of the Mountains Road for the purpose and need of preserving driving surfaces and enhancing safety along forest highways. The improvements will include a crack seal and chip seal from Interstate 15, 2.51 miles to the Gates of the Mountains Marina.

In March of 2016 Lewis and Clark County submitted a proposal for this project to the Federal Lands Access Program. The purpose of the Agreement is to document the intent of Lewis and Clark County to meet the match requirements for the project. Total project costs are estimated at \$203,062 with a local match amount of 13.42% or \$27,251. The match amount is to be budgeted from the Road Infrastructure fund in fiscal year 2020. Project completion is expected in the summer of 2019. Staff recommends approval of the Match Agreement.

No public comment was received.

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

Match Agreement Between Lewis and Clark County and Western Federal Lands Highway Division. (Audra Zacherl)

Audra Zacherl, Assistant Director of Public Works presented the Match Agreement from Western Federal Lands Highway Division Federal Lands Access Program which is granting Lewis and Clark County funding for improvements to the Rimini Road for the purpose and need of preserving driving surfaces and enhancing safety along forest highways. The improvements will include a chip seal on Rimini Road from US Hwy 12, 6.5 miles to the end of the asphalt placed in the summer of 2016.

In March of 2016 Lewis and Clark County submitted a proposal for this project to the Federal Lands Access Program. The purpose of the Agreement is to document the intent of Lewis and Clark County to meet its match requirements for the project. Total project costs are estimated at \$373,440 with a local match amount of 13.42% or \$50,115.65. The match amount is to be budgeted from the Road Infrastructure fund in fiscal year 2020. Project completion is expected in the summer of 2019. Staff recommends approval of the Match Agreement.

Ms. Zacherl explained the project on Rimini Road in that Western Federal Lands Highway Division completed the first step of laying the asphalt in 2016 and the chip seal is to finish the project.

No public comment was received.

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

Proposed Stonepipe Estates Major Subdivision and Variance Applications. (Applicant: Stonepipe Properties, LLC) (Planner: Spencer Starke)

Spencer Starke, Planner I presented the proposed 14 lot major subdivision to be known as Stonepipe Estates, along with three variance requests. The subdivision is a 20 acre lot located north of Howard Road, east of and adjacent to Nordahl Drive, south of York Road. There is a proposed onsite septic system, individual wells and a paved internal access road.

On November 20, 2018 the City-County Planning Board (CCPB) considered the application for the proposed major subdivision. New information was found after-the-fact concerning Nordahl Drive, also known as O'Connell Road. Staff found that the road formerly known as O'Connell Road had been vacated in 1972. After considering the new information on December 11, 2018 and December 18, 2018, the County Commission remanded the information to the CCPB for a public hearing. On January 15, 2019 the CCPB held a public hearing to consider the new information and recommended the following: approval of the variance request from Chapter XI.F.8 restricting lot lines angles, unchanged from November 20, 2018; variance from Chapter XI.H.3 requiring Preliminary Engineering Report (PER) for road improvements, the applicant is requesting an engineer estimate in lieu of a PER and CCPB recommended denial; denial of the variance request from Chapter XI.H.15 requiring two routes of ingress and egress with an updated findings of fact and conclusion of law. The status of Pioneer Park Drive is dedicated as an access easement and staff's analysis determined it does not meet the legal requirements.

On January 15, 2019 the CCPB amended their conditions of approval, findings of fact, conclusions of law and recommended conditional approval. Staff recommends conditional approval based upon the findings of fact, conditions of approval and conclusions of law as recommended by the CCPB.

Commissioner Good Geise asked for the difference between the PER and the engineering estimate and Mr. Starke gave an explanation of the differences.

Greg McNally, Planner III gave an extensive overview of the requirement associated with offsite road impacts and the exaction to offset the cost of the impact, referred to as proportionate share and bringing a road up to standard. Mr. McNally noted the engineer's estimate would not include the amount of detail seen in a PER that has a lasting affect.

Mr. Starke gave an overview of the discovery of Resolution 1972-1 that vacated O'Connell Road that changed the findings of fact on the status of Nordahl Drive as a public access easement and the proposed condition of approval that the applicant demonstrate that Nordahl Drive can constitute legal access.

Commissioner Good Geise requested a side-by-side comparison of the PER and an engineer's estimate to have a clear picture of the differences.

Peter Italiano, Director of Community Development and Planning stated the Planning Department will work with the county engineer to provide the requested information.

Charles Lane, Deputy County Attorney, noted the Subdivision Regulations spell out the criteria for granting a variance and in addition to the reports make sure the conditions are articulated for granting a variance that includes undue hardship.

Brent Wilcock, 3600 Pioneer Park Drive stated the PER is very expensive and part of the reason for asking for the variance is their confidence in a very experienced engineer Tony Prothero. A PER would be considered an undue hardship.

Carol Wilcock, 3600 Pioneer Park Drive stated they have requested reasonable variances. The first to ensure no one builds over the pipeline, the second the PER does not provide any further engineering information than the estimate, it is just a longer, costlier detailed format that would be an unnecessary hardship for them and the engineer. The PER is for the benefit of the county at their expense. The road that they have to build would be paved and no RID is anticipated. The last variance regarding Pioneer Park Drive, no one else has ever been required to ask for a variance to access the road. Mrs. Wilcock noted a list of roads that have been built off of Pioneer Park Drive. According to the CCPB denying of the variance does not cause anyone a hardship and is false. At the time of their application Nordahl was considered a 60 foot public access easement. Since the legality of the access on Nordahl has been brought to question they did not want to start with another application for a variance. The obscure notation on the one survey came up almost two years into the project. Mrs. Wilcock noted the 1973 survey provided by the Nordahl's shows a 60 foot easement. If clarification of which survey is legal, recorded and platted is not possible, they would appreciate conditional approval so a legal solution can be found so all of the residents on Nordahl have legal easement.

Commissioner Hunthausen noted the legal status of both Nordahl Road and Pioneer Park Drive is unclear and the Commission has to make decisions based on the regulations currently in place.

Mrs. Wilcock stated they realize the upgrade of the laws is why they have to request a variance and that denying it would be an undue hardship and would not create an unsafe situation for Pioneer Park. They understand no one can block the road and public access has to be granted. And Mr. Wilcock wanted to know how they could be denied their 30 feet of the road to access their own property.

Commissioner Hunthausen stated if a road is not dedicated to public access the Commission may not have legal authority to grant a variance. According to the regulations the burden of establishing the nature of the road is upon the applicant.

Mrs. Wilcock noted the unclear status of why the roads have multiple owners with unclear legal access issues is a county challenge and if it was known from the beginning that they would not have access and the variance was not a possibility the purchase would not have occurred.

Mr. Wilcock asked how the legal status of the road would be determined and if it has to go before a court.

Mr. Lane strongly recommended to the applicant that they consult an attorney with experience in land use about the options for establishing legal access for both roads.

Commissioner Good Geise asked Mr. Lane if the action of the Commission regarding the variance whether approved or denied in any way determines the status of the road and Mr. Lane noted the Commission cannot establish the status of the road.

PUBLIC COMMENT -

Heather Lay, resident of East Helena and a real estate professional in the Helena area, stated there are several legal actions prior to Stonepipe Estate applicants and after that are intertwined.

The County making decisions on access and variances does impact the area property owners as homeowners are forced to spend a lot of time and money establishing whether they have the right to do what they may with their land. The subdivision would create affordable property that is considered for first time home buyers. When the land was first purchased Nordahl Drive was considered a public road.

Lewis Smith, Attorney with the Smith Law Firm, stated he represents Janet and Beth Strandberg who own Lot 41 that abuts Howard Road and Nordahl Drive. Mr. Smith has researched the matter and concurs there are issues with the legal status of Nordahl Drive and gave an extensive overview of the abandonment of the county road in 1972 and a private drive since that time and the access easements affiliated with Lot 41. Information obtained from the CCPB indicated that Mr. Nordahl has been maintaining the road. Presently, Mr. Smith does not see that there is any access available to the applicants off of Nordahl Drive.

Commissioner Good Geise asked Mr. Smith about his view on the variances as presented. Mr. Smith noted there is no objection to the variance on Pioneer Park Drive, but would object to granting a variance on property that does not have legal right to access the road.

Mr. Wilcock stated if the Standberg's have legal documentation they would welcome the information.

Mr. Lane asked for clarification on the variances and Mr. Starke restated the three requested variances.

Discussion was had between Mr. Lane and the Wilcock's on the variance request to have a single ingress/egress route.

A motion was made by Commissioner Susan Good Geise to table the item to January 31, 2019 and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

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 10:29 am.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Jim McCormick, Chair


Susan Good Geise, Vice Chair


Andy Hunthausen, Member

ATTEST:


Paulette DeHart, Clerk of the Board

