



## **PUBLIC MEETING**

January 30, 2018  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, January 30, 2018, at 9:00 AM in Commission Chambers Room 330.

### **Roll Call**

Chairman Andy Hunthausen called the meeting to order at 9 a.m.

Commissioner Jim McCormick and Commissioner Susan Good Geise were present. Others attending all or a portion of the meeting included Roger Baltz, Ron Bartsch, Jeff Claassen, Eric Griffin, Nicho Hash, Charles Lane, Jennifer McBroom, Greg McNally, Ron Olson, Colin Phelps, Cherche Prezeau, and Nadine McCarty, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Consent Action Items**

- a. Public Meeting Minutes for August 3, 2017; January 9, and 16, 2018. (Nadine McCarty)

Roger Baltz reported on consent action item 2 a and recommended approval.

No public comment was received.

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

### **Easement Agreement between Scratch Gravel Landfill District and NorthWestern Energy. (Eric Griffin).**

Eric Griffin, Director of f Public Works, presented the Easement Agreement with NorthWestern Energy. This is an easement extension along the northern boundary of the landfill on Deal Lane; where there is currently a 10 foot easement for NorthWestern Energy. The proposal is to extend it by 15 feet to include an additional .92 acres with a total easement of 2.44 acres. The county owns 165 acres for the current landfill. Northwestern Energy proposes to pay the county for the total easement of 2.44 acres at the average price of \$2,000 per acre for a total amount of \$4,880; they rounded up to \$5,000 for the total easement. Staff recommends approval.

Ron Olson, Olson Land Services, subcontractor to NorthWestern Energy, stated the price per acre was arrived at by looking at comparable listings that were for sale and averaging the price per acre for those and applying that amount to the 2.44 acres for this easement.

Mr. Olson explained there is an existing distribution line; the poles will be replaced and double circuit the lines with the same alignment will be used and should not impact the landfill operations.

No public comment was received.

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

**Contract between Lewis and Clark County and Bonneville Environmental Foundation (Jennifer McBroom)**

Jennifer McBroom, Water Quality District Outreach and Watershed Coordinator, presented the contract with Bonneville Environmental Foundation in the amount of \$10,000 to assist in the funding for the Prickly Pear Creek Re-watering Project. The contract period is January, 2018 through December 31, 2018. The total cost of the project is \$15,220. The 2018 funding sources for the project are Bonneville Environmental Foundation for \$10,000 and NorthWestern Energy for \$5,000 with the remaining amount coming from a DEQ 319 Grant. The purpose of the project is the water purchased from the Bureau of Reclamation allows Prickly Pear Creek to remain in stream and allow irrigators to use an alternate source of water from the regulating reservoir. The Water Quality Protection District conducts stream restoration projects on Prickly Pear Creek. The result is improved fisheries and aquatic ecosystem. The benefits of these projects are a reduction in temperature, sediment, and erosion. It also benefits the junior water right holders that receive water at the end of the summer that may not have had it in the past.

An overview of the process was given: once the creek reaches 40 cubic feet per second at Wiley Road or 20 cubic feet per second at Canyon Ferry Road that triggers the Prickly Pear Water Users Association to shut off the diversion, just north of East Helena; the purchased water is transported through the Helena Valley Irrigation District canal for twenty-eight or so irrigators. About 2,000 acre-feet is purchased annually. The project is from mid June to October. In August of 2017 there was little to no precipitation without the water the creek would have gone dry.

Ms. McBroom confirmed the down stream water right holders are participating as well. Commissioner McCormick asked when natural stream flows are diverted to prevent usage, does that diminish the water right of the Agriculture producers on the stream. Ms. McBroom stated meetings have occurred with both Prickly Pear water users and the irrigators informing them the Department of Natural Resources and Conservation (DNRC) has been contacted with no formal agreement in place. Since the water is used prior to the cubic feet trigger they still use the water as intended for irrigation. At this point there is no threat that water rights will be lost. They do desire something in writing saying as such, but there is no agreement with DNRC at this time.

No public comment was received.

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

**Agreement to Establish a Lien for Off-Site Road Improvements on the Amended Plat of Lot A-1A of the H.W. Smith Minor Subdivision, Document Number 3049709, Records of Lewis and Clark County, Montana to be known as Heron Creek Subdivision Phases 1, 2, and 3 and Lien by Agreement (Applicant: Sussex Development Inc.) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the agreement to establish a lien for off-site road improvements on the amended Plat of Lot A-1A of the H.W. Smith Minor Subdivision, Document Number 3049709, known as Heron Creek Subdivision Phases 1, 2, and 3. This would be for off-site road improvements to Eames Lane and comply with the preliminary conditions of approval for the amended plat. An overview of the condition of approval for each of the first three phases was given. The segment of Eames Lane from Canyon Ferry Road to Kier Lane is to be improved to a pavement standard in accordance with and approved by the County. At the closing of the sale of

any lot, the Applicant shall deposit the sum of \$10,000 into an interest-bearing reserve account to be used strictly for off-site road improvements. A lien not to exceed \$500,000 will be held by the County on all lots until completion of the off-site road improvements have been certified by the County. A lien release will be filed for each lot sold at the closing, contingent upon the deposit of funds in the account. The Applicant will notify the Commissioners when the 32nd lot is sold. The off-site road improvements are to be completed within twelve months of the sale of the 32nd lot or commencement of platting of Phase IV, whichever occurs first. Funds and accrued interest held by the County can be used by the Applicant for to complete the off-site road improvement. This payment plan is in lieu of requiring a bond for road improvement.

The agreement would allow the applicant to postpone the completion of the off-site road improvements to Eames Lane and create the incremental payment plan to fund such improvements. A Lien by Agreement has also been prepared for consideration and would be established at final plat. It has not been determined, administratively how the lien would be released. Mr. McNally proposes that each time a lien release be done it would be placed on the agenda as a consent item.

Commissioner Good Geise stated she is concerned that having a lien on property that the County could potentially end up owning the property. Charles Lane, Deputy County Attorney, stated he can look into the consequences if so desired. It gives options to get the money back out of the property and the lots could be sold. The history of this subdivision does go back to when the market was booming and then took a down turn. At that time there were a lot of road issues; this lien agreement is a result of discussions between the county and the developer and has been occurring for quite sometime. Mr. Lane explained the idea for the County to hold the lien, rather than a bank was for control and the ability to enforce the agreement to get the roads improved. If the bank held the lien, their interest would be in the money and not necessarily in improving the road. Mr. McNally stated the condition was established in 2012 when the applicant requested modifications to the preliminary conditional approval of the subdivision and accepted by the Commission. There was a considerable amount of discussion at that time.

Commissioner Hunthausen stated at the time the developer and the county were trying to find a solution to guarantee the cost of the improvements to Eames Lane. The money was unavailable to the developer. There were multiple extensions and changes and they were trying to find a way to get this subdivision done. As the lots were sold a portion of the sales would be banked for road improvements. The question was how would that be guaranteed and the solution became the lien being discussed now. It was an alternative way to accomplish the road improvements.

Mr. McNally confirmed this was a subdivision application submitted back in 2007 and was indicated within that application the applicant's intent had been to make Eames Lane a paved road.

Commissioner McCormick stated if the the County put a lien on the property for the discussed reasons it would then have to be released in order for financing or a sale transaction to get clear title to the property. Mr. Lane confirmed the land would be encumbered and up to the bank whether a mortgage would be provided.

Mr. McNally referenced the undefined administrative process for the lien release and again proposes it be done as a consent action item. There could be a potential buyer and the process will be in place; the money will be in the bank before the lien is released.

Peter Italiano, Director of Community Development and Planning, stated that often times when local government is tasked with administrative responsibilities there is an additional fee assessed. If this is permitted by MCA five percent is fairly common, it would come off the top. If allowed by statute and desired by the Commission he would recommend the cost of the per lot assessment plus five percent.

Mr. Lane stated there is a lot to do with establishing an administrative fee. In the past there has been litigation surrounding this development and would face an argument from the developer in assessing a fee for this. If the Commission would like legal to explore this they can provide guidance and the risks associated.

Mr. McNally referenced the draft partial release of lien by Lewis and Clark County and the extent of what will be documented.

Cherche Prezeau, 314 N Last Chance Gulch, stated this issue does have a lot of history and was brought before the Commission in 2012. At that point the developer had requested \$8,000 per lot for more lot sales. Commissioner Brown amended the request to \$10,000 per lot for fewer lots so the county could be paid back more quickly. In the event there was a breach of some kind the county would move forward with a foreclosure process. This is not anticipated to happen. If that were to happen there would be no reason to improve Eames Lane as the reason for improvement was due to the significant increase in population. She anticipates there would not be significant cost to the Commission as they prepared all of the documents with input of K. Paul Stahl and Michelle Peterson-Cook of the County Attorneys Office. She added that she anticipates the developer would prepare the lien releases as part of the closing process so there would not be significant administrative time or cost to the County. At closing they would have the lien release and the payment. She is not sure each lien release would have to come before the Commission but will have to discuss with Mr. Lane.

Mr. Lane stated it is appropriate to have the lien release as a consent action item just for having the County Commissioners release it as a procedural step.

Ron Bartsch, 16 Wapiti Lane stated the reasoning for this mechanism came about because of the necessity to pave Eames Lane due to the increased population from the subdivision. The lien insures a guarantee for the County that they will get their money for the improvements. He requested that if they lien agreement is put in place that the release be handled through the title company and not be placed on a Commission agenda as a consent item. He is concerned that adding the step of approval of the lien release at a Commission agenda will slow the closing process.

Commissioner Good Geise asked Mr. Bartsch if he had any opinion on an administrative fee being assessed. Mr. Bartsch stated in every transaction he has been involved with he has never had a lender come back and issue an administrative fee on a lien release. The title company doing the work does charge a fee for managing the transaction because they are the entity tasked with collecting the money, filing the necessary paperwork and managing other tasks.

Mr. Bartsch stated at the time this subdivision was created it was understood that it would not happen overnight and it was decided they would proceed as a 6 phase subdivision. It was established that the commission would review the subdivision through all of the phases. This lien agreement applies to the first three phases.

#### PUBLIC COMMENT -

Jeff Claasen, 5545 Kier, asked the Commission what will happen when September arrives but less than 32 lots have been sold and the road is still the same as it is now.

Commissioner Hunthausen responded that she hopes the developer will move forward in good faith regardless of the number of lots sold but that issue will need to be handled at a later and more appropriate time.

Mr. Bartsch stated the trigger point for the county regulations is the 32 lots so prior to that all that would be required, per County standards, is a gravel road. The money is already earmarked for the improvements of that road and cannot be used for anything else. If final the three phases are platted today, 70 lots will be available for sale.

A motion was made by Commissioner McCormick to approve the agreement to establish a lien for off-site road improvements.

Mr. Lane stated he would like an opportunity to discuss with Mr. Bartsch and Ms. Prezeau would like to request at least a few days to discuss.

Commissioner McCormick withdrew his original motion to approve.

Mr. Bartsch stated he is surprised because years have been spent on these documents and sees this as another delay. He does have a client waiting to buy a lot.

A motion was made by Commissioner McCormick to table the item to the next regularly scheduled meeting Thursday, February 1, 2018. The motion was seconded by Commissioner Good Geise. The motion passed on a 3-0 vote.

**Final Plat Application and Subdivision Improvements Agreement for the Amended Plat of Lot A-1A of the H.W. Smith Minor Subdivision, Document Number 3049709, Records of Lewis and Clark County, Montana to be known as Heron Creek Subdivision Phases 1, 2, and 3. (Applicant: Sussex Development, Inc.) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the final plat application and subdivision approval agreement for three phases of the Lot A-1A amended of the H.W. Smith Minor Subdivision, known as Heron Creek Major Subdivision Phases 1, 2 and 3. The applicant, Sussex Development, has submitted an application for final plat approval of three phases of the Lot A-1A Amended of the H.W. Smith Minor Subdivision. The preliminary approval for these three phases is for 65 lots; 61 lots for single family dwelling; 1 lot for open space, stormwater management and drainfield for public wastewater treatment system; 1 lot dedicated to the County as parkland; 1 lot for public wastewater treatment system; and, 1 lot which has preliminary approval for three additional phases. The applicant is also proposing to enter into a subdivision improvements agreement to financially guarantee the installation of the remaining improvements.

Mr. McNally gave an overview on the history of this subdivision. Preliminary approval for this subdivision was granted on September 18, 2007 subject to 27 conditions of approval. The preliminary approval conditions were modified by the Commission, at the request of the Applicant, on November 6, 2008; February 28, 2012; September 10, 2015; and, April 21, 2016. A final plat application was submitted in 2014 but it wasn't quite ready at that time to be presented to the Commission for approval. The final plat that is being presented today for approval has had significant review by Planning Department Staff as well as the review committee.

The applicant is proposing to enter into a Subdivision Improvements Agreement (SIA) to complete his conditions of approval. This includes two remaining improvements that are incomplete: the wastewater treatment system; and the fire protection improvement which involves the installation of a pond as well as hydrants and pumps needed to provide water for fires and protection. The financial guarantee in total is 125 percent of the estimated costs with a Letter of Credit in the amount of \$376,011.73 which is good until November 1, 2018.

This subdivision has a set of covenants to be filed with each phase; however, because the first three phases will be final platted at the same time, one set of covenants have been prepared and will be filed for all three phases. The applicant is aware of this and has reviewed the covenants.

The property as proposed reviewed by DEQ has several shared wells, generally one well for every two lots, and those have been documented on the final plat. DEQ is requiring a shared well-water user's agreement to be filed with every lot that is sold.

Ron Bartsch, applicant, thanked the Commission for their consideration. He stated most of the fire system is installed with plans to be completed by the summer of 2018.

No public comment was received.

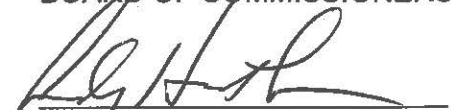
A motion was made by Commissioner McCormick to table the item to the next regularly scheduled meeting, Thursday, February 1, 2018. The motion was seconded by Commissioner Good Geise. The motion passed on a 3-0 vote.

**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 10:32 am.


LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Andy Hunthausen, Chair

  
Jim McCormick, Vice Chair

  
Susan Good Geise, Member

ATTEST:

  
Paulette DeHart, Clerk of the Board