



PUBLIC MEETING

January 31, 2019
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, January 31, 2019, at 9:00 AM in Commission Chambers Room 330.

Roll Call

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

Commissioner Andy Hunthausen was present. Commissioner Jim McCormick was out ill. Others attending all or a portion of the meeting included Roger Baltz, Misty Edwards, Peter Italiano, Dan Karlin, Charles Lane, Greg McNally, Spencer Starke, Clint Smith, Brent Wilcock, Carol Wilcock, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Contract Between Lewis and Clark County and the Third Element. (Dan Karlin)

Dan Karlin, Engineer, presented the contract with the Third Element to install the electrical in the pole barn storage building that was built last year to store road equipment out of the weather with electrical not included in the contract. The installation is to include fixtures, devices, boxes, conduit, disconnects, motor starters, etc. according to the plans and specifications put together by Ames Engineering, LLC and requested in a Limited Solicitation. The contract is in the amount of \$29,339 with budget authority in the current year capital improvement fund. The Limited Solicitation was sent to four electrical contractors, two responded with a difference in cost of \$9,261. Work is to be completed by April 1, 2019. Staff recommends approval of the contract with the Third Element.

Mr. Karlin explained the Limited Solicitation process and when it is appropriate to follow that process.

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 2-0 vote.

Amendment No. 1 to Task Order No. 1 Between Lewis and Clark County and Morrison Maierle, Inc. (Dan Karlin)

Dan Karlin, Engineer, presented Amendment No. 1 to Task Order No. 1 with Morrison-Maierle, Inc. for the Lake Helena Drive and Lewis Street intersection project near East Helena. The general scope of the project is to reconstruct the street pavement and gutters in the vicinity of the intersection to improve the drainage performance. The amendment is to incorporate requested changes by the Montana Department of Transportation in order to accommodate the Lewis Trail project that is sponsored by the East Helena School District. Additional revisions to the hydraulic model and modification of some design elements are necessary. Compensation for the Amendment Scope of Services is an amount not to exceed \$7,328. The East Helena School District has committed to paying for the additional costs and there is no additional cost to the County. There is no change requested in the completion date. Staff recommends approval of the task order amendment.

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 2-0 vote.

Contract Between Lewis and Clark County and JGA Architects, Engineers, and Planners, PC. (Misty Edwards)

Misty Edwards, Finance Coordinator, presented the contract with JGA Architects Engineers Planners PC for architectural and engineering services related to the Forestvale Cemetery Maintenance Building Addition project.

JGA was selected through a Request for Qualifications process that began in November, 2018. The contract is to provide civil, structural, mechanical and electrical engineering services; design development; construction documents; bidding assistance and construction administration for the project. Forestvale Cemetery plans to add on to their existing maintenance building that was built in 1972. The plans call for a roughly 1,200 square foot addition and will include space for vehicle storage, maintenance shop and tool room, a conference room, office space and a new public ADA restroom. The contract will be effective upon execution with work to be completed by winter of 2019. Staff recommends approval of the contract with JGA Architects Engineers and Planners PC for an amount not to exceed \$69,818.

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 2-0 vote.

Proposed Stonepipe Estates Major Subdivision and Variance Applications. (Tabled 1/24/19) (Applicant: Stonepipe Properties, LLC) (Planner: Spencer Starke)

Spencer Starke, Planner I, presented the Stonepipe Estates Major Subdivision and variance applications that was tabled on January 24, 2019. The proposal was first heard on December 11, 2018 and because of new information was remanded back to the Planning Board on December 18, 2018. The Planning Board met on January 15, 2019. The proposed 14 lot major subdivision is located south of York Road, north of Howard Road, east of and adjacent to Nordahl Drive and west of and adjacent to Pioneer Park Drive. The Applicant requested three variances from the Subdivision Regulations: Chapter XI.F.8 restricting lot line angles; Chapter XI.H.3 requiring Preliminary Engineering Report (PER) for road improvements; Chapter XI.H.15 requiring two routes of ingress/egress. The Planning Board recommended: approval of the Chapter XI.F.8 variance in order to give adequate space around a gas line; to

deny the Chapter XI.H.3 variance that requests an engineer's estimate in lieu of a PER; to deny the Chapter XI.H.15 variance that requests a single route along Nordahl Drive. The Planning Board recommends a conditional approval and the Planning staff agrees with the Planning Board recommendation.

Mr. Starke gave an overview of the differences between an engineer's estimate and a PER.

Commissioner Good Geise asked about going with an engineer's estimate after it was okayed by Public Works and would that be a possibility.

Charles Lane, Deputy County Attorney stated the Subdivision Regulations requires four specific findings for the granting of a variance and he recommended following those at the last hearing. If the Commission decides to grant the variance that process needs to be gone through.

Commissioner Good Geise asked if granting of the PER variance would cause a substantial increase in public costs. The purpose of this PER is to ascertain the amount of proportionate share. If the engineer's estimate was incorrect would the County be left with the difference in the amount collected.

Mr. Lane stated there are additional concerns and the reasons for the engineering reports beyond just the proportionate share.

Dan Karlin, Engineer explained a PER and an engineer's cost estimate and is more comfortable with basing a cost estimate for a project off of a PER because there is better data to formulate from.

Commissioner Hunthausen stated in the past an engineer's estimate has been allowed due to knowledge of the roads in the area and if the variance was granted it would still be required that Public Works reviews the estimate. Mr. Karlin noted Public Works would review completely, but still prefer the geotech data included in a PER. Mr. Karlin added that the Public Works manual has a sample outline of what a PER could or should look like.

Mr. Lane stated the Subdivision Regulations states that cost or financial considerations are not a valid reason for granting a variance, nor are hardships that are self-imposed.

Commissioner Good Geise read from the subdivision variance application regarding the Applicant's response to the criteria of not being detrimental to the public health, safety or general welfare or injurious to other adjoining properties in that unrestricted access would be available to emergency vehicles on Pioneer Park Drive even though segments of it are not designated for public access. Mr. Starke noted that the documentation received thus far does not show how the Planning Department would define it as legal access either as a county road or a public access easement, nor is it dedicated in any documentation to allow for it to be permanent or recognized by the County.

Peter Italiano, Community Development and Planning Director stated if the variance on the PER is granted he would ask that the reason be expressed as to why that decision was made. Mr. Italiano stated there is a threat between the variance that would allow a decreased cost to the engineer's estimate vs. a PER and the potential cost savings that might be passed to the end user and lessor cost of housing. There is not a current iron clad mechanism to ensure the cost savings are passed along.

PUBLIC COMMENT -

Carol Wilcock, Applicant, stated the engineer estimate vs the PER is only for Stonepipe Road. At the time of the application the understanding was that Nordahl was a 60 foot public access

easement so they are not asking for a variance on Nordahl. The ingress/egress variance request is on Pioneer Park Drive.

Brent Wilcock, Applicant, stated they asked for the variance because of the experience of their engineer Tony Protheroe and they feel the engineering estimate would solve the problem.

Commissioner Good Geise asked about the unrestricted access available for emergency vehicles on Pioneer Drive and Ms. Wilcock stated the Pioneer Park Homeowners Association (HOA) documentation states that they maintain the road and that no public access will be denied.

Mr. Wilcock noted their deed guarantees between the north and south boundaries of the property on the east side that they own 30 feet of the road and should have access off of that 30 feet.

Commissioner Hunthausen stated the county needs to know the proportionate share of the Applicant on bringing all of the access roads leading to the subdivision up to standard, not Stonepipe Road. Ms. Wilcock stated that is included as part of the estimate.

Mr. Lane stated with regards to the insertions about no detriment to the public health because the access would not be restricted to emergency vehicles and the HOA covenants requiring it be kept open forever. A reason the county requires dedicated public access is because the covenants can change.

Commissioner Good Geise stated that having reviewed the staff reports, public comment from the Planning Board public hearings and at our meetings, the presentations by staff and the Applicant, and the recommendations of the City-County Consolidated Planning Board are you prepared to make a motion to approve, conditionally approve, or deny the request for subdivision approval.

A motion was made by Commissioner Hunthausen that after reviewing the staff reports, the presentations by staff and the Applicant, and the recommended findings of fact and conclusions of law and approval conditions, and after considering public comment from the Planning Board public hearings and at our meetings to conditionally approve the subdivision request with conditions of approval needed to mitigate the adverse impacts or bring the project into compliance with regulations as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise.

Commissioner Good Geise stated that the Commission has a request for variance from the requirements of the Subdivision Regulations Chapter XI.F.8 and will first consider the findings of fact for the basis of the variance request decision.

A motion was made by Commissioner Hunthausen that after reviewing the recommended findings of fact on the variance request and after considering public comment from the Planning Board public hearings and at our meetings to approve the findings as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed the variance findings of fact related to the side lot lines shall be at substantially right angles to street or road lines, and radial to curved street or road lines and read the six findings.

Commissioner Good Geise stated that the Commission has a motion on the table to approve the findings of fact. The motion Passed on a 2-0 vote.

After reviewing the adopted findings of fact and after considering public comment from the Planning Board public hearings and at our meetings Commissioner Hunthausen moved to adopt a conclusion of law that based on the findings of fact: the granting of the variance would not be

detrimental to public health, safety, or general welfare or injurious to other adjoining properties; because of the particular physical surrounds, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if these regulations were enforced; the granting of the variance would not cause substantial public costs; the approval of the variance would not place the subdivision in non-conformance with adopted zoning regulations or applicable adopted plans.

A motion was made by Commissioner Hunthausen that after reviewing these four variance criteria to adopt a conclusion of law that the Applicant has demonstrated that the requested variance meets all four of the standards named in Section II.B.1 of the Lewis and Clark County Subdivision Regulations. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact and conclusions of law to approve the requested variance from Chapter XI.F.8. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Commissioner Good Geise stated that the Commission has a request for variance from the requirements of the Subdivision Regulations Chapter XI.H.3 and will first consider the findings of fact for the basis of the variance request decision.

A motion was made by Commissioner Hunthausen that after reviewing the recommended findings of fact on the variance request and after considering public comment from the Planning Board public hearings and at our meetings to approve the findings as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed the variance findings of fact related to an engineer's estimate versus a PER and read the five findings.

Commissioner Good Geise stated that the Commission has a motion on the table to approve the findings of fact. The motion Passed on a 2-0 vote.

After reviewing the adopted findings of fact and after considering public comment from the Planning Board public hearings and at our meetings, Commissioner Hunthausen moved to adopt conclusion of law based on the findings of fact: the granting of the variance would not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties; because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if these regulations were enforced; the granting of the variance would not cause a substantial increase to the public costs; approval of the variance would not place the subdivision in non-conformance with adopted zoning regulations or applicable adopted plans.

A motion was made by Commissioner Hunthausen that after reviewing the four variance criteria, to adopt a conclusion of law that the Applicant has demonstrated that the requested variance meets all four of the standards named in Section II.B.1 of the Lewis and Clark Subdivision Regulations. The motion was seconded by Commissioner Good Geise.

Extensive discussion was had between Commissioner Hunthausen and Commissioner Good Geise on the variance criteria.

Commissioner Good Geise stated the Commission has a motion on the table to adopt the conclusions of law. The motion Passed on a 2-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact and conclusions of law to approve the requested variance from Chapter XI.H.3. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Greg McNally, Planner III, stated if conditions of approval are provide on the project he would like to suggest the following language for consideration: the Applicant will not be required to prepare engineer estimates or to contribute to the cost of improving the impacted road. If however, the impacted road is not certified or documentation is not provided with the certification, the following is required and would then list the impacted roads.

Mr. McNally stated the last part of Condition No. 6 that discussed the cost of improving all road segments could be struck and add in the following: the cost of improving the above described road segments shall be determined by an engineer's estimate that is certified by an engineer licensed in the state of Montana. This estimate shall reasonably determine the cost associated with offsite road improvements and any costs directly attributable to the subdivision. Estimated costs shall not be older than six months. At the time of final plat application the estimated costs shall be submitted to County Public Works for review and approval.

A motion was made by Commissioner Hunthausen to amend the motion to include the language read by Mr. McNally and amend Condition No. 6 as stated. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

A motion was made by Commissioner Hunthausen to add the amended Condition No. 6 to the variance approval. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Commissioner Good Geise stated that the Commission has a request for variance from the requirements of the Subdivision Regulations Chapter XI.H.15 and will first consider the findings of fact for the basis of the variance request decision.

A motion was made by Commissioner Hunthausen that after reviewing the recommended findings of fact on the variance request and after considering public comment from the Planning Board public hearings and at our meetings to approve the findings as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed and read the eight findings of fact related to at least two different ingress/egress vehicular access routes, and to provide standard legal and physical access.

A motion was made by Commissioner Hunthausen to amend the motion to include in the findings of fact that there is a covenant that allows for emergency access on Pioneer Park Drive. The motion was seconded by Commissioner Good Geise.

Commissioner Good Geise stated there is a motion on the table to approve the findings of fact. The motion Passed on a 2-0 vote.

After reviewing the adopted findings of fact and after considering public comment from the Planning Board public hearing and at our meetings, Commissioner Hunthausen moved to adopt the conclusions of law based on the findings of fact and the four criterias: the granting of the variance would be detrimental to public health, safety, or general welfare or injurious to other adjoining properties; because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would not result if these regulations were enforced; the granting of the variance would not cause a substantial increase in public costs; the approval of the variance would not place the subdivision in non-conformance with adopted zoning regulations or applicable adopted plans.

A motion was made by Commissioner Hunthausen that after reviewing the four variance criteria to adopt a conclusion of law that the Applicant has not demonstrated that the requested variance meets all four of the standards named in Section II.B.1 of the Lewis and Clark County Subdivision Regulations. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen stated it is clear by the findings and the facts that there are not two legal ingress/egress routes to the subdivision and it is imperative to maintain that standard and it is on the Applicant to determine the legal and physical access to their subdivision.

Commissioner Good Geise asked if the adopted findings would support the conclusion of law and Commissioner Hunthausen noted that Nordahl Drive is not dedicated to the public as it was eliminated by Resolution 1972-1. Legal access to the property is necessary.

Commissioner Good Geise stated there is a motion on the table to adopt the conclusions of law. The motion Passed on a 2-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact and conclusions of law to deny the requested variance from Chapter XI.H.15 and seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Commissioner Good Geise stated that the Commission will now consider the findings of fact for the impact criteria and subdivision regulation requirements.

A motion was made by Commissioner Hunthausen that after reviewing the recommended findings of fact on the impact criteria and subdivision regulations requirements and after considering public comment from the Planning Board public hearings and at our meetings to approve the findings as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed the findings of fact related to the impacts and touched on some: the fourteen individual wells, as a combined appropriation qualifies as exempt wells under the Department of Resources and Conservation rules; mail box facilities will be established; there will be utility easements along proposed internal access roads, installed underground utilities unless otherwise determined by provider; subdivision is designed to accommodate the Yellowstone Pipeline; proposed internal access road constructed to County standards; traffic impact study has been submitted with an estimated 133 new daily trips; status of Nordahl Drive and Pioneer Park Drive; Stonepipe Estates is located within the East Helena Valley Volunteer Fire District; proposed cash in lieu of parkland dedication; impacts to natural environment, wildlife and habitat are standard; under public health and safety, the area is rated as a Zone 1, the highest designation for predicted average indoor radon levels; sufficient water, however water quality concerns are present; the subdivision does not meet all subdivision requirements but can be brought into compliance with conditions of approval; provisions for adequate access and the impact on the list of roads.

Commissioner Good Geise stated there is a motion on the table to approve the findings of fact on the impact criteria. The motion Passed on a 2-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the adopted findings of fact and after considering public comment from the Planning Board public hearings and at our meetings, to adopt a conclusion of law that the proposed Subdivision will have adverse impacts on the review criteria and will not be in compliance with regulations. I further move to adopt a conclusion of law that the following conditions of approval, as recommended by the City-County Consolidated Planning Board, and if amended by the Commission will mitigate the impacts and bring the project into compliance with regulations. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed some of the conditions of approval to include: a weed plan; DEQ review for water and wastewater systems; final plat to show all easements and restrictions; approach permits onto county roads; creation of an RID to maintain fire protection water supply and one to maintain internal access road; mitigation of impacts on the natural environment, wildlife and habitat; signing plan for street identification; compliance with Subdivision Regulations and survey requirements; provision for adequate utilities; certification of or proportional share payments on access roads; obtaining legal access off of Pioneer Park Drive and Nordahl Drive; compliance with zoning regulations.

Commissioner Good Geise stated there is a motion on the table to adopt the conclusions of law. The motion Passed on a 2-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact on the impact criteria and subdivision regulations requirements and after considering public comment from the Planning Board public hearings and our meetings to approve the conditions of approval as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Commissioner Good Geise stated the Commission is now prepared to act on the subdivision application as a whole.

A motion was made by Commissioner Hunthausen that after reviewing the adopted findings of fact and conclusions of law and the adopted conditions of approval, and after considering public comment from the Planning Board public hearings and at our meetings, to conditionally approve the subdivision request subject to the adopted conditions of approval as recommended, amended and including the actions taken on the variances and the conditions of those variances. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 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 10:58 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