



PUBLIC MEETING

November 1, 2016
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, November 1, 2016, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Mike Murray 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 Eric Bryson, Kevin Hamilton, K. Paul Stahl, Nancy Everson, Tammy Potter, Lindsay Morgan, Jim Mitchell, Dorothy Mitchell, D. Alicia Dellinger, David T. Dellinger, Laurie DeLong, Pat DeLong, Dean Barnaby, Steve Mitchell, Sheri Mitchell, Brian Coplin, Tony Prothero, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Underwriting Engagement Letter with D.A. Davidson for Open Space General Obligation Bonds. (Nancy Everson)

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 Good Geise and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Resolution 2016-99 Revising Resolution 2016-80 Providing for the Annual Tax Levy in Mills for the Fiscal Year July 1, 2016 through June 30, 2017. (Nancy Everson)

Nancy Everson, Chief Financial Officer, presented resolution 2016-99 revising resolution 2016-80 providing for the annual tax levy in mills for the fiscal year July 1, 2016 through June 30, 2017. This resulted from a settlement between the Montana Department of Revenue and Northwestern Energy in October 2016. The affect was enough on the certified values received in August 2016 that Department of Revenue allowed the local tax and jurisdictions to recertify their tax levies, of which school districts 1, 9, 38, 45 and 4 took part in. The change ranged from .80 of the mill up to 4.78.

Commissioner Good Geise asked Ms. Everson if the property that was negotiated was centrally assessed property and if so, for an explanation of such property.

Ms. Everson explained centrally assessed properties as Northwestern Energy, Verizon, AT&T, Charter, railroads. The Northwestern settlement affected the entire state.

Commissioner Good Geise stated centrally assessed properties are often subjects of negotiation and there should not have been any level of surprise for anyone in a taxing jurisdiction.

Commissioner Murray stated the tax bills should be received late next week.

PUBLIC COMMENT-

Dora Alicia Dellinger, 3220 Ranger Drive, curious about what was done with the money that the schools have received. She questioned why we continue to give them money and not hold them accountable with received funds. She feels this shouldn't be approved.

Commissioner Murray stated they met with the three school districts and there was justification as to why they wanted their levies reappraised by the Department of Revenue. The school board sets the levies and he strongly suggested the message be sent to them. He asked Ms. Everson to explain further.

Ms. Everson stated the school districts establish their expenditure level and then levy the amount of money needed to balance the budget. When the value dropped they were going to have to make up the revenue shortfall by raising the number of mills.

Commissioner Murray asked what percentage of the tax bill goes to schools.

Ms. Everson stated about 55% goes to schools.

Commissioner Hunthausen stated the county is the tax collector for all, but 25% of the tax bill funds county government.

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

Agreement Between Lewis and Clark County and Bureau of Land Management for Law Enforcement Services. (Tammy Potter)

Tammy Potter, Sheriff's Office Finance Coordinator, presented amendment to the contract between Lewis and Clark County Sheriff's Office and Bureau of Land Management for law enforcement and dispatch services in the amount of \$13,000, of which \$3,000 is allocated for dispatch services and \$10,000 for law enforcement services. The contract period for dispatch

services is October 1, 2016 through September 30, 2017 and the law enforcement services is October 1, 2016 through September 30, 2018.

Commissioner Geise asked Ms. Potter what area is the patrolling occurring.

Ms. Potter answered there are specific patrol properties and she believes they go to the Bureau of Land Management. The dollar amount is set regardless of the number of calls.

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 Amended Plat of Lot 1A-1B of the Foster Ranch Tracts (Ranger Estates Subdivision) (Applicant: Jim Mitchell) (Planner: Lindsay Morgan)

Lindsay Morgan, Planner II, presented the proposal of a major subdivision to be known as amended plat of Lot 1A-1B of the Foster Ranch Tracts (Ranger Estates subdivision), located north of Canyon Ferry Road and adjacent to Hines Road and Ranger Drive. The applicant Jim Mitchell is proposing to divide the existing 12.33 tract into seven lots, ranging from 1.3 to 2.7 acres, each for one single-family dwelling served by individual wells, on-site wastewater treatment systems, and utilities. The property currently has a single family home with a detached garage serviced by an individual well and wastewater treatment system. Access to the existing home is via a cul-de-sac at the end of Ranger Drive. A driveway and an easement for an individual wastewater treatment drain field serving the property are located on the west end of the property. Adjacent land to the North is mostly agricultural, rural residential and Helena Valley regulating reservoir, to the East it's rural residential, to the South it's rural residential, agricultural, and to the West it's Holmberg Village Estates. The property is not zoned and no zoning is part of the proposed subdivision. The property is subject to two sets of existing covenants and appears to be in compliance. The applicant has also submitted a draft set of covenants with the subdivision application. The applicant has requested a variance from the requirement that at least two ingress-egress routes for each major subdivision and subsequent minor subdivision exists. The applicant is proposing only one ingress-egress route, that of Hines Road to Holmberg Drive to Canyon Ferry Road. The applicant is proposing to utilize the existing off-site fire protection system in the adjoining Holmberg Village Estates, a privately owned and operated water supply system, which a rural improvement district (RID) cannot be formed to maintain its operation. The applicant has requested a variance that would not require an RID for the maintenance of the off-site water system.

Commissioner Hunthausen stated in the past an RID has been created only for the infrastructure that extends onto the new subdivision when a subdivision wants to use a private water supply system. Ms. Morgan answered it has been done before. There is a connection between this water supply system and Canyon Ridge, located South of Holmberg and an RID was created for the components of the connection. For this subdivision they are proposing to utilize the water supply as an offsite source, but not providing a connection.

Commissioner Hunthausen asked for an explanation of how we got to a variance request regarding Ranger Drive and the difference between an access easement and a public access easement, of which the public has been using for sometime.

Ms. Morgan stated the section south of this subdivision down to Canyon Ferry Road is the concern. The west side of Ranger Drive is dedicated to the public, but the other 30 feet on the east side is dedicated as an access easement. It hasn't been determined if it's private or public, it's just known that no where is it listed as public dedicated.

Commissioner Hunthausen stated the public, or residents have been using the easement. Ms. Morgan answered the residents are currently using it and would be able to continue to do so. But the applicant would have to have a variance, as the letter of regulations specifically states the easement must be public.

Mr. Stahl stated that until about 5 years ago, a road was considered public if it served 2 or more residences. However, that policy changed 5 years ago and we can no longer make the legal presumption that those roads are public access roads. Roads that are labeled as access easements offer no opinion about whether they are public or private easements. There needs to be a court decision to legally determine if the easement is public or private.

Ms. Morgan clarified the west side of Ranger Drive paperwork was completed, but had never been recorded as being public. As a result both sides of the road are access easements.

Commissioner Murray inquired about the status of the agreement between Wolfe Water Systems, owner of the Holmberg Village public water supply, and Ranger Estates allowing Ranger to fulfill subdivision requirements.

Ms. Morgan answered she isn't aware of the status of the agreement. She noted it is required if an offsite water system is used, that permission be granted from the owner of the system. The applicants are in the room as well as the engineer and they maybe able to give an update on the status.

Ms. Morgan stated in the Planning Board's October 18 public meeting, the subdivision was conditionally approved with a vote of 5-0. Also, with a vote of 4-1 they recommended denial of the variance regarding the ingress-egress routes. The variance related to the fire protection RID requirement they recommended approval with a vote of 3-2.

Commissioner Hunthausen asked for an explanation on the reason for the denial of the variance regarding the ingress-egress routes.

Ms. Morgan stated granting of the variance would be detrimental to the public health and safety of other adjoining properties. Because of the particular physical surroundings of the specific property involved, there would not be any hardship to the owner if the regulations were enforced. It would not cause a substantial increase in public costs and would not place the subdivision in non-conformance with adopted regulations.

Commissioner Good Geise asked for a clarification on the 3-2 vote regarding the fire protection variance application

Ms. Morgan answered that the granting of the variance would not be detrimental to public health or safety of other adjoining properties. Due to the physical surroundings of the specific property an undue hardship to the owner would result if the regulations were enforced. It would not cause a substantial increase in public costs and would not place the subdivision in non-conformance with adopted regulations.

Ms. Morgan wanted to clarify that on the transmittal memo in finding number two they stated it would not result if these regulations were enforced, it should be corrected to state it would result if the regulations were enforced.

Commissioner Good Geise asked for clarification as to why people voted a certain way.

Ms. Morgan stated she doesn't have the specifics. She will look into that and provide Commissioner Good Geise with the answer.

Break/Reconvene.

Tony Prothero, Engineer, Shedhorn Engineering, LLC, P.O. Box 151 Clancy, MT, representing Mr. and Mrs. Mitchell, presented the proposal as well as the declaration of public access and utility easement. He stated with regards to water usage on this property, the combined appropriation from all seven lots would have to be looked at to determine if a water right is required. If the combined appropriation exceeds 10 acre feet of water per year a right would be required. The restriction of lawn sizes will keep the total combined appropriation within the limit, therefore no beneficial water use permit would be required. Mr. Prothero stated with regards to the fire protection variance, he understands there is a new set of subdivision regulations being developed. Under these new regulations this type of offsite water source will not require a variance. He clarified there will be no connection or modification to the Holmberg Village water system. It would only be utilized if the water tankers, during a fire, would need to refill.

Commissioner Good Geise asked if there is an agreement in place.

Mr. Prothero stated there is a signed agreement and he has a copy with him. He also pointed out that the nearest hydrant in Holmberg Village is approximately 700 feet from Ranger Estates. The capacity of this hydrant exceeds 1,000 yards per minute, well within the requirement of 250 gallons per minute for this type of subdivision. With regards to the road variance, Mr Prothero stated that Ranger Drive was originally developed by Mr. Mitchell in the 1990s to meet the necessary conditions necessary for approval to support a subdivision such as this. Mr. Prothero stated an agreement with the previous owners was prepared to convert the properties to public. All adjacent property owners agreed, except for Mr. Stifler's property. He also understands the Dellinger's might not support the public granting of this access easement. The easements were never recorded under advice from the county. He also noted there is future development potential and the approval of Ranger Estates would enhance that ability.

PUBLIC COMMENT-

Dora Alicia Dellinger, 3220 Ranger Drive, stated their property is adjacent to the lots listed in the subdivision proposal. During her research, she found in 2008 the voters approved a bond to conserve our natural resources, specifically water. She referenced the updated growth policy from 2015, including charts showing all the denser populated areas, within the rural areas, as well as how many areas had failed. She is very concerned about the future growth, our children, and the preservation of our land and the wildlife.

Commissioner Hunthausen asked Eric Bryson to explain the 2008 Open Space Bond, the specifics of the \$10,000,000 and use of it for the purchase of conservation easements or partnering to purchase properties that is put into conservation.

Mr. Bryson stated that since the adoption and board approval of selling \$10,000,000, a little under \$2,000,000 has been spent. Bonds in the amount of \$3,000,000 were sold right after the adoption and are currently in the process of selling additional bonds. The use of the bonds is restricted and has only been used under the provisions of the open space bond, therefore, funds have never gone to anything like the adoption of the growth policy.

David Dellinger, 3220 Ranger Drive, represents approximately six individuals, who researched the proposal and are in agreement that the subdivision shouldn't be built as proposed. He referenced the adopted growth policy of 2015, that was passed in March 2016, and stated the proposed

subdivision violates this policy. We are in a rural growth area. The standards for the rural growth area, as listed in policy 1.1, states adopting a minimum lot size of 10 acres in a rural growth area will address concerns, such as water availability, road conditions, and rural fire protection. With regards to the private road status of Ranger Drive, in 1996 the county staff declared the road private and was listed in the staff findings when a subdivision like this one was denied. At that time it was only four lots. He referenced the planning board's recommendations that stated there is a moderate risk for water depletion. A water monitoring agreement was reached prior to the building of Holmberg Estates, how can this subdivision be put in without these constraints. He referenced chapter 5 of the rural growth density controls, where it states we must limit density to address concerns, which contradicts the county statements in March 2016. He stated are we going to violate the growth policy. If an exception is allowed now, this policy will continue to be violated, as future subdivisions will leapfrog in. Reference was made to property to the south of the proposed subdivision that went to court and was able to leapfrog in to the regional growth area because policies were not enforced. Water rights and other concerns of current residents do not seem to factor in. He stated people need to feel like they are being heard. He thinks that it needs to be taken into consideration that of the people in Foster Ranch tracts, whose covenant covers the proposed land, five are in opposition and the two who are for it stand to receive financial benefits.

Commissioner Good Geise stated that the planning staff of Lewis and Clark County is respectful, professional, and helpful.

Mr. Dellinger agreed that Mr. McNally and others have been very respectful. He noted they do seem to have an agenda of pushing forward and not stopping to hear.

Commissioner Hunthausen asked Ms. Morgan if all signatures can be seen when letters are sent in.

Ms. Morgan answered yes all signatures are visible on received letters.

Commissioner Hunthausen stated the new growth policy that was passed in March is a guiding document, not regulatory. Before implementation there has to be a strategy, develop regulations around it and a public process to approve the regulations before they can be implemented. The regulations are not yet implemented.

Ms. Morgan stated that is correct, no county initiated zoning has been implemented that would be part of implementing the plans of the updated growth policy.

Commissioner Good Geise asked Mr. Bryson to confirm that when open space projects come forward for consideration there is a very thorough process allowing many opportunities for public comment.

Mr. Bryson answered the eligibility process for open lands conservation easements, or sale of property for that reason, is extensive and lengthy. There is a citizens advisory group that has public meetings open to participation, a due diligence phase, formal 30-day public comment period. This is all separate from the subdivision review.

Commissioner Hunthausen referenced the large subdivision to the south that was referenced as part of a lawsuit. That subdivision went through all the normal appropriate channels. The project subject to a lawsuit was down near the corner of Canyon Ferry Road and Lake Helena Drive.

Mr. Bryson stated Canyon Ridge subdivision did go through the appropriate channels.

Mary Martorana, 3267 Holmberg Drive, asked if there would be financial responsibility of the proposed tract to maintain the roads. She has been told in the HOA meetings there would be no financial responsibility requested from the new subdivision for the maintenance of Holmberg Drive.

Lindsay Morgan answered the developer would be required to pay a percentage of impact fee at final approval for roads within Holmberg that provide access to the proposed property. The would pay their percentage of impact on those roads specifically. The county could at a later time do improvements to just those sections. Another condition of approval is a waiver of the right to protest the formation of an RID for roads. That condition is not specific. The third condition is a specific requirement by the developer to create an RID prior to final approval of this subdivision, but only talks about road improvements within Ranger Estates.

Dean Barnaby, 3280 Ranger Drive, stated the addition of the six homes in Ranger Estates will have little effect on the neighborhood compared to the three major subdivisions near completion or in development. He noted the Holmberg Estates, about 108 single family homes and two 4-plex condos, is near completion and there has been no dramatic change in his water levels over the last year, nor the other three wells being monitored. Regarding the traffic concerns, commercial traffic with trailers currently use the streets of Holmberg Estates and extra traffic from Ranger Estates would be minimal in comparison. Ranger Estates has no effect on the wildlife corridor. The corridor is already blocked with Holmberg Village Estates on the west of Ranger Drive and Canyon Ridge subdivision directly south of the proposed subdivision.

Laurie DeLong, 3911 Valley Drive, daughter of Jim and Dorothy Mitchell, referenced the flyer distributed to residents of Holmberg Estates on October 27, 2016 listing the impact Ranger Estates would have on the neighborhood and giving them an opportunity to sign a petition opposing the subdivision. She stated the flyer contained many misleading statements and references, including impact on wildlife, tapping into the Holmberg Estates water supply with no liability, and 600% increase of septic tanks/leach fields. All of which she referenced information from the staff report to support her statement. With regards to Ranger Drive it is an existing road built to Peccia standards in the 1990s. The documentation showed part of the road connecting to Canyon Ferry Road as an access road and the upper part as a public access road. At that time a distinction between the two wasn't necessary. But over the years it has become significant and signatures were obtained from all properties except one. She asked for an approval of the ingress-egress variance on Ranger Drive. She commented on the reference that additional expense would be necessary for hiring firefighters, it's a volunteer fire department. She also stated the rural growth plan is a recommendation, not yet a law and there isn't a violation. She believes Ranger Estates subdivision would have minimal impact.

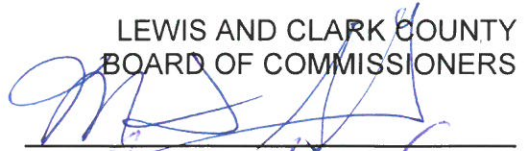
A motion was made by Commissioner Hunthausen to keep the public record open and extend the public hearing to the regularly scheduled meeting on Thursday, November 3, 2016 and seconded by Commissioner Good Geise. The motion passed on a 3-0 vote.

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

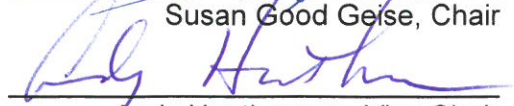
Adjourn

There being no further business, the meeting adjourned at 11:17 am

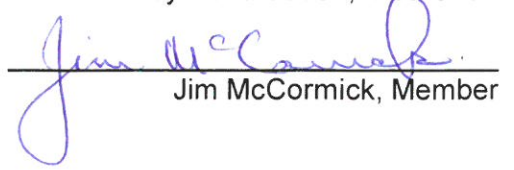
LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Susan Good Geise, Chair

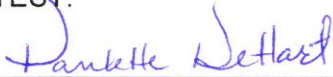


Andy Hunthausen, Vice Chair



Jim McCormick, Member

ATTEST:



Paulette DeHart, Clerk of the Board