



## **PUBLIC MEETING**

November 15, 2016

### **MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, November 15, 2016, at 9:00 AM in Commission Chambers Room 330.

#### **Roll Call**

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

Commissioner Andy Hunthausen was present. Chairman Mike Murray was out on Board of Commissioners business. Others attending all or a portion of the meeting included Eric Bryson, K. Paul Stahl, Kevin Hamilton, Nancy Everson, Lindsay Morgan, Matt Heimel, Al Knauber, Nathan Nachtshelm, Bruce Nachtshelm, Richard Grady, Jeremy Fadness, Nate Kapp, and Nadine McCarty, Recording Secretary.

#### **Pledge of Allegiance**

Everyone recited the pledge.

#### **Consent Action Items**

- a. Engagement Letter with Dorsey for Open Space Bond Counsel. (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 Hunthausen and seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

#### **Subdivision Improvement Agreement. Northstar PUD Subdivision, Phase VI-B (Applicant: Northstar Development, L.L.C.) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the Subdivision Improvement Agreement (SIA), with Northstar Development, LLC. with consideration for collecting on the Letter of Credit, which expires on December 1, 2016. The Letter of Credit will financially guarantee the remaining improvements required under the Subdivision Improvements Agreement entered into on December 30, 2015. The Northstar P.U.D. Phase VI-B is located north of Valley View Road and west of North Montana Avenue. Preliminary approval for this phase was granted on August 16, 2005, with final approval for this phase granted on August 8, 2013. A subdivision improvements agreement was entered into at that time and remaining improvements, including the completion of the internal road network for this phase, the paving of Valley View Road, and

its associated storm water improvements, the installation of three turn lanes on N Montana Avenue, and the completion of lagoon improvements were to be completed by November 30, 2016. According to the applicant no improvements, other than the lagoon improvements have been completed since 2013.

Dan Chovanak from Northstar Development waited for the outcome of the County-initiated speed study on North Montana Avenue before considering the modification of some of the improvements required under the SIA. The study was completed on October 29, 2015; as a result the speed limit was reduced from 55 m.p.h. to 45 m.p.h. After this reduction in speed, the turn lane requirements were reviewed by WWC. Engineering to determine if a reduction in turn lanes was necessary.

The Planning Department mailed Mr. Chovanak two letters dated August 31, 2016 and October 4, 2016, notifying him of the upcoming completion date for all remaining improvements, also included a timeline for pursuing an extension of the completion date, both went unanswered. On October 31, 2016 another letter was sent to Mr. Chovanak, this time advising him approval was being sought to act on the performance guarantee, an irrevocable Letter of Credit in the amount of \$658,725.50 to expire December 31, 2016. On November 7, 2016, an email requesting a meeting to discuss the turn lane study was received by the Planning Department from Mr. Chovanak. A meeting on November 14, 2016 with Mr. Chovanak and his engineer Jeremy Fadness determined no turn lanes would be required.

A request for extension of the completion date to November 30, 2017 was submitted by Mr. Chovanak. He also requested that there not be a requirement to submit to the Commission updated engineers estimates for the remaining improvements, but be allowed to provide the same financial guarantee that was provided last year. According to the applicant the bank is working on an updated Letter of Credit, effective until December 31, 2017.

Ms. Morgan explained the current financial guarantee covers the construction of three turn lanes, and the completed study have shown that zero turn lanes are required. The applicant's hope is to be allowed to financially guarantee the amount they had last year, which is believed to be more than enough to complete the improvements due to the no turn lanes requirement. The study hasn't been reviewed, so the exact costs have not been verified. If the completion date is extended for another year with the new financial guarantee they would then hope to put before the Commission modification requests to have the three turn lanes removed from the conditions of approval, which at that time would reduce the Letter of Credit. The costs for completing the chip seal or the paving of Valley View have not been updated. The estimates are from the end of 2015 not 2013.

Ms. Morgan stated that Public Works did review the study, but it was decided to have Dowl review it as well.

#### PUBLIC COMMENT -

Jeremy Fadness, WWC Engineering, stated he was brought in for the turn lane analysis only. Since the speed limit change, the actual traffic was evaluated at each one of the intersections. With the subdivision at full build out and now no plans for a school, the traffic out of the subdivision will be a lot less. It was determined turn lanes were not required at all three intersections. Also ran through the MDT turn lane analysis and all three intersections were below the line requiring left turn lanes. The extension is to buy more time for the County to review the provided study and if approved, to start the modification process to remove the turn lanes from the requirements. The developer would like to complete the paving of Valley View next year.

Mr. Fadness stated the cost estimate was conservative and it covers the turn lanes, the chip seal, the lagoons, the paving of Valley View Drive. If the turn lane requirements are removed the estimate would be even more conservative. At the time of the modification process the cost estimates can be updated. His understanding is the developer wants to get the improvements done and hopes to not request another extension.

A motion was made by Commissioner Hunthausen to table consideration of this action until the December 13, 2016 public meeting with the provision that an extension request, updated engineer's estimates for the remaining improvements, and new performance guarantee be submitted to the County at or prior to that meeting. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Ms. Morgan stated Dowl would have less than a month to reevaluate and provide a new estimate. It might not be completed by the December meeting. The bank is currently working on a Letter of Credit for the same amount.

Commissioner Hunthausen stated it seems the updated estimates would be to make any changes if things such as asphalt or diesel prices changed since the initial projection and there wouldn't be engineering changes. Just need up-to-date figures.

Mr. Bryson stated if Dowl agrees that the turn lanes are not necessary the SIA amount would be sufficient. If Dowl determines turn lanes are necessary, it would be difficult to say if the current SIA is sufficient as it is based on estimated 2015 projected costs for 2016 for work to be completed in 2017. The bank process of issuing a new Letter of Credit can take about 30 days even for simple changes. He stressed the importance of the notices to the applicant 90, 60, and 30 days prior to expiration are so the Commission can have all the necessary information before the decision is made to take the money and make the improvements, or allow for the extension of the SIA with a new financial guarantee. The motion is fine, but a lot needs to come into place before December 13th.

**Petition to Discontinue a Segment of Leslie Avenue (Applicant: Nate Nachtsheim) (Planner: Matt Heime)**

Matt Heime, Planner I, presented the petition to discontinue a segment of Leslie Avenue within the syndicate addition of Helena. The proposed discontinuance is located south of and adjacent to Country Club Avenue and west of and adjacent to Joslyn Street. This segment was omitted from the original conditional preliminary approval to discontinue certain streets in the Syndicate Addition granted on May 26, 2016 due to an issue regarding the available right-of-way for work on the Country Club Avenue/Joslyn Street intersection. The Draft Findings of Fact are mostly comments from agencies that comments were solicited from, including two objections, both from the City of Helena Public Works Department, the Traffic Division and the Engineering Division. In the conditions of approval the applicant would be required to provide a Certificate of Survey showing the discontinued segment of Leslie Avenue and the retention of a utility easement on the segment.

There were no records to be found at both the County Environmental Health Department and the City Sanitarian's office related to the alleged failing septic system and part of that drain field being located on the property in question.

Kevin Hamilton received a letter from the City Public Works Officer stating they are concerned as there have been issues with the drain fields located around the property and they requested that the County not abandon this section of the road at this time.

Commissioner Hunthausen stated it is the owner's responsibility to maintain and meet regulations on the septic system whether it's public right-of-way or private. The abandonment of this section of Leslie Avenue still would leave the owner with that responsibility.

Mr. Bryson stated if there is a drain field in the easement several things would be required by the County before the permit issuance: an encroachment, verification the drain field is working adequately, a septic permit verification showing the drain field location, and sanitarians would look at replacement drain field opportunities. The abandonment of the easement still leaves the property owned by the applicant.

Christel Ness, Ombudsman, stated the septic system will be part of the upcoming survey related to the abandonment of the road, to include the determination if the system is functioning, is there room for replacement area, or will further action be required of this building with the city to hook up to city sewer. All surveys must be approved by both the Survey Review Committee and the Environmental Health Department. Before the survey can be recorded exemptions have to be received from the Subdivision and Planning Act as well as the Sanitation and Subdivision Act.

#### **PUBLIC COMMENT -**

Nathan Nachtsheim, property owner, stated the process was started when the rest of the road abandonment occurred, Kelly Cougar's was approved and this portion was not. The septic works well, it's been pumped and tested, cameras have been sent down it to find out the exact location, the drain field works and does not interfere with anyone else.

Commissioner Good Geise wanted to make sure the objection of the city noted as part of the public comment period.

A motion was made by Commissioner Hunthausen to approve the draft findings of fact related to this proposal. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Commissioner Hunthausen reviewed the highlights in the findings of fact: the applicant is the sole property owner adjacent to the subject street segment, it is not part of the zoning district, part of the street has already been discontinued adjacent to this property, Northwest Energy does not have a problem with the discontinuation, the City Planning does not have a problem, but City Engineering commented that they want the whole area looked at in relation to the intersection and complete all road issues rather than one segment at a time, City Sanitation comment was already discussed in relation to the septic system.

A motion was made by Commissioner Hunthausen to approve the proposed discontinuance of a portion of Leslie Avenue adjacent to Lot 12, Block 195, within the Syndicate Addition of Helena in Section 23, T10N, R04W, P.M.M. Lewis and Clark County, Montana, be Conditionally Approved. This conditional approval is in accordance with the criteria set forth in Title 7, Chapter 14, Part 26, MCA, based on the findings of fact in the staff report, and subject to the draft conditions of approval. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

Commissioner Hunthausen requested discussion of the draft conditions of approval. The applicant shall provide a Certificate of Survey showing and including the discontinued segment of Leslie Avenue; the retention of a utility easement, and a reference to the resolution that documents the street discontinuance. The second draft condition is that the applicant shall file the Certificate of Survey that contains the information required under Condition of Approval #1 with the Clerk and Recorder within one calendar year of this preliminary conditional approval.

Commissioner Good Geise stated the Certificate of Survey will include responses to all the earlier voiced concerns.

**Resolution 2016-96 Approving Funding of the Open Lands Program Gehring Ranch Conservation Easement Project (Sponsor: Prickly Pear Land Trust) (Planner: Matt Heimel)**

Matt Heimel, Planner I, presented Resolution 2016-96 approving the funding of the Open Lands program, Gehring Ranch Conservation Easement project in the amount of \$1,000,000.00. On October 4, 2016 the Citizens Advisory Committee (CAC) voted 10-0 affirmatively to recommend that the project receive funding of \$1,000,000.00 for the 2,888 acres conservation easement. The bond criteria mentioned in that motion were to conserve working farms and ranches; protect habitat for fish and wildlife; protect water resources and water quality; preserve open lands and natural areas; and manage growth and development. On October 13, 2016 at the regularly scheduled public meeting, the County Commission opened a public comment period. As of November 7, 2016, two comment letters were received. The sponsor has indicated there are some outstanding required items for the level 2 application to be included in the appraisal and has requested that this item be reconsidered on November 29, 2016.

**PUBLIC COMMENT-**

Richard Grady, PO Box 547 Canyon Creek, stated he spoke with Mr. Gehring, he feels like there is a breakdown in communications as he was not aware of what the County Attorney had put together until last Friday. He brought it to his attention. He thinks the due diligence is important, especially when you are talking about \$1 million. It's a lot of money and he wants Bill to feel comfortable everything is done right. He voiced his concerns of the railroad right of way and he does not see any agreement; a pipe in the baseline report needs to be addressed, the Lincoln Telephone Company put in another right of way after the baseline was done because of what he explained the expansion and some other issues.

Nate Kopp, Project Associate with Prickly Pear Land Trust, stated he wanted to reiterate what Matt and Rick indicated. They received the County legal comments this past Wednesday and are addressing those details. In addition one of the contingencies upon your decision is receipt of the final appraisal; they are still waiting for the appraisal. He has spoken to the appraiser this week and she says she is working on it and they should have it soon. They anticipate it ready to go on November 29th.

Deputy County Attorney K. Paul Stahl stated he will make it a priority to arrange a meeting with the County Attorney's office, the Open Lands Citizens Advisory Committee, and the Commission to provide guidance and direction on this item.

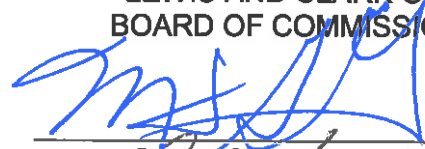
A motion was made by Commissioner Hunthausen to table this item to December 1, 2016 at the regularly scheduled meeting. The motion was seconded by Commissioner Good Geise. The motion Passed on a 2-0 vote.

**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 9:56 a.m.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS



Susan Good Geise, Chairman



Andy Hunthausen, Vice Chair



Jim McCormick, Member

ATTEST:



Paulette DeHart, Clerk of the Board