



PUBLIC MEETING

November 27, 2018
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, November 27, 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, Nicho Hash, Peter Italiano, Charles Lane, Greg McNally, Lindsay Morgan, Nancy Everson, Laura Erikson, Michael Woodel, Connie Cole, Wade Wilkison, Dean Retz, Joel Itby, Val Jaffe, Shane Whyte, Dave Lewis, Candace West, William West, Daniel Danielsen, Kerry Bartlett, Charles Warrell, Joyce Evans, Mike Sheard, Kaye Poston, John Poston, Connie and Dave Cole, Euce Graland, Shane Williams and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Resolution 2018-100 Declaring County Property Surplus Property. (Amy Reeves)
- b. Resolution 2018-101 Authorizing a Change In Approved Signatures for the Citizens Alliance Bank of Lincoln. (Paulette DeHart)

Roger Baltz reported on the consent action items 2 a-b 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.

Proposed Preliminary Plat First Minor Subdivision to be known as Wilkison Vista Estate. (Applicant: Wade Marcus Wilkison) (Planner: Greg McNally)

Greg McNally, Planner III, presented the proposed preliminary plat first minor subdivision to be known as the Wilkison Vista Estate Subdivision. If approved an agricultural covenant affecting an existing 14.09 acre tract of land will be removed and the property will be allowed to be developed with a proposed single-family dwelling. A proposed boundary line adjustment with an adjacent property will reduce the existing 14.09 acre tract to 13.98 acres. The lot will be served by an individual well, an individual on-site wastewater treatment system, and utilities. Direct access to the lot will be off of South

Hills Road. No requirement to dedicate parkland is necessary as it is a first minor subdivision. The proposed subdivision is located north of the Jefferson County boundary along South Hills Road and southwest of Sweetgrass Road and Lodgepole Road, created in 1981 through an agricultural exemption.

Two letters of public comment were received. Tri-County Fire Safe Working Group has been working with the applicant to reduce fire hazard and there is a 10 year agreement to maintain. The property is subject to the South Hills Road and Lime Kiln Road Rural Improvement District established in 1993. The property currently has a \$0.00 assessment because of the use with agricultural covenant.

The applicant desires to annex into the Montana City Fire District for fire services. After conversation with the applicant Mr. McNally heard concerns that the covenants or conditions applied to this property will apply to the property involved with the boundary line relocation but that is not the intent. Mr. McNally offered some clarification to amend some language to clarify they are referring to Lot 1.

Mr. McNally noted the review period ends on December 11, 2018.

Commissioner Good Geise asked if Montana City Fire District would be the main support for fire services and Mr. McNally noted they would be. There would be an additional transaction between Jefferson County, perhaps their fire district and Lewis and Clark County. Commissioner Good Geise asked if there was a response from Lewis and Clark Fire Service Area and there was no response from them.

Mr. McNally stated the property is subject to extra territorial zoning by the City of Helena and there is a requirement that the applicant speak with the City to obtain a development permit in compliance with the Open Space Residential Zoning Regulations and at this time it has not occurred because of the agricultural covenant currently on the property.

Commissioner Good Geise asked about the Lime Kiln Road concerns received regarding construction vehicles moving along Lime Kiln Road. Mr. McNally noted there is no mitigation in mind due to the location of the property. Their main access is the South Hills Road which is in Jefferson County.

Mr. McNally has made the recommendation that this property be added to the existing RID.

Wade Marcus Wilkison, 330 S Hills Road, stated he has completed substantial work on the property working with the Tri-County Fire Safe Working Group. The Montana City Fire District has agreed to the annexation of the property in to their protection. He submitted a vegetation plan, has passed the DEQ site evaluation, and has submitted a traffic analysis. He has received favorable comments from his neighbors regarding building one single-family home.

No public comment was received.

A motion was made by Commissioner Good Geise to table the item to Tuesday, December 4, 2018 and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Proposed Expansion of Boundaries for Special Zone District No. 49. (Tabled 11-15-18)
(Planner: Lindsay A. Morgan)

Lindsay Morgan, Planner III, presented the proposed District Expansion of Boundaries Special Zone District #49 (Valley View Heights). She added 66% of landowners have signed the petition to expand boundaries. The location is located south of Snowdrift Road, north of Fantasy, east of Collins Drive and west of Ferry Drive. The proposed district boundaries would expand to the northwest and to the south.

Public comment was taken on November 8 and November 15, 2018. One property owner requested to be removed from the petition and land removed from the boundary expansion. Legal department

informed the landowner that he would need to protest the expansion of these boundaries during the 30-day protest period.

Commissioner Good Geise asked about the location of the sizeable property - approximately 150 acres- of the landowner who requested to be removed. In terms of protest Commissioner Good Geise asked if the landowner's vote counts the same as owners of smaller tracts. It was noted that 50% of the titled property owners must protest.

Nicho Hash, Deputy County Attorney, stated the general thought with petitions is once the process has been in front of the Board the finality has started. His request came after the presentation to the Board.

PUBLIC COMMENT -

Dean Retz, 155 Lost Gulch Court, expanded on information that Steve Utick gave in the last meeting. He has been in the subdivision business for almost 24 years. Mr. Retz noted the tax handouts that he delivered to the Commission on November 26, 2018 and discussed the information of tax breakdown. The Utick family is proposing a major subdivision with 24 lots at 5 acres each and went over the math of proposed property tax. Mr. Retz believes an increase in tax revenue should outweigh approval of special district zoning.

Bob Utick and daughter, stated they did not ask that their 160 acres be included in the expanded boundary. The expansion was put in strictly to keep the Utick's from subdividing the land. At the time of purchase of the land Mr. Utick was told subdividing was allowed, they have spent a lot of money following the law. It is not fair to change things now.

Commissioner Good Geise asked what would happen to Mr. Utick's proposed subdivision and what would occur if the zoning request is accepted.

Ms. Morgan noted the subdivision is in the sufficiency stage deadline. If the boundaries are expanded there would be a 30-day protest period. If the request to expand the boundaries is approved, the neighborhood plan for the district would need to be amended. If his property is deemed insufficient prior to the completion of passing the boundary expansion then his proposal would need to comply with the regulations of that district.

Commissioner McCormick asked if the amended boundary is granted does that stop anything for the subdivision application and Ms. Morgan noted they have to get through all three steps before a change would be made to the property and if the sufficiency review is not before the third step is completed their proposal would have to comply with the zoning. They are looking at three months to complete the steps to expand the boundaries.

Ms. Morgan stated if the application is deemed sufficient on December 5, 2018 the subdivision would be grandfathered and can proceed forward.

Mr. Nash reminded the Commission that the question before them involves the extension of the boundaries and if the proposed extension meets the substantial compliance with the growth policy.

Commissioner Hunthausen asked if the proposal complies with statutory compliance, Lewis and Clark County requirements, properly notice, adequate opportunity for public comments, and complies with the Growth Policy. Concerns addressed on the water availability in the area and noted the decision is to be based on presented facts.

Mr. Hash stated the Board should always take the presented information and consider the public comment concerns to base their decision on.

Commissioner McCormick asked if the expansion of the boundaries would stop the subdivision process working to sufficiency for this proposed subdivision. And Ms. Morgan noted the project

would be allowed to proceed; the issue would be if the application was deemed insufficient prior to the end step 3 of this process.

Commissioner Good Geise stated there have been similar cases in the past that have gone to the Montana Supreme Court with a split decision. The proponents of the expansion brought growth plans back from 2004. Water availability issues need to be defined and answered regarding the real status of the water in the area.

Commissioner Good Geise believes Part II Zoning should have been done in this area and would like to stop the proposal and immediately begin the procedure to start Part II Zoning. Part II zoning would transfer the negativity to the Board and not the neighbors.

Ms. Morgan stated Part II Zoning could take roughly 6 months.

Peter Italiano, Community Development and Planning Director, stated bringing the public feedback and input and the whole process of collaboration 6 to 9 months is probably fair. Part I Zoning has been around since the early 1950s and has mostly remained unchanged. A challenge for staff is Part I is created in a vacuum in a small isolated area and staff does not become the steward of managing regular updates to Part I as it would to Part II. Part II has a comprehensive approach to definitions.

Commissioner Good Geise and Commissioner McCormick stressed their concerns on the rhetoric involved in the issue. Commissioner Hunthausen asked if there could be some middle ground, postpone the decision and if the petitioners could withdraw the petition if they are aware the issues could be considered under Part II Zoning.

Charles Lane, Deputy County Attorney, stated he does not know if denying the petition is outside the scope of what is before the Commission.

A motion was made by Commissioner McCormick to approve the proposal and seconded by Commissioner Good Geise for purposes of discussion.

Commissioner Hunthausen stated there is a motion on the table. The motion Passed on a 2-1 vote with Commissioner Good Geise voting against.

Draft Fort Harrison Compatibility Area Regulations, Fort Harrison Rural Growth Area Zone District Regulations and Fort Harrison Urban Growth Area Zone District Regulations and Maps. (Tabled 11-15-18) (Planner: Lindsay A. Morgan)

Lindsay Morgan, Planner III, presented the proposed Fort Harrison Compatibility Area Regulations, Rural Growth Areas Zoned District Regulations and Urban Growth Areas Zoned District Regulations.

There have been seven public hearings prior to today. The documents were initially combined in one document but at the request of the Commission, the regulations have been separated into individual documents. A total of 130 questions regarding the regulations have been addressed. The Commission has amended the boundaries to exclude properties south of Highway 12, to remove properties that are less than 50% inside of the District proposed boundaries and to unclad the entirety of the parcels that are located 50% or more located in the boundaries.

Ms. Morgan gave an overview on the benefits of Fort Harrison to include economic benefits, military strategic importance, and community support.

Ms. Morgan presented maps showing the proposed boundaries of the proposed MAA, Urban Growth Area, and Rural Growth Area. In the Fort Harrison Compatibility Area five uses would be prohibited to include: landfills, multiple family dwellings, contrite living facilities, structures in the Fort Harrison aircraft imaginary surface area, and any use that would endanger the use of aircraft. Within the Zone Districts all land uses are allowed, but two principle uses would not be allowed. Development permits

are required for new or replacement of principal structures. There are no permitting requirements under the zoning regulations.

Ms. Morgan stated the MAA is found under the Military Compatibility Act and not Part II County initiated zoning. She added the Fort Harrison Rural and Urban Growth Areas are being considered under the County Part II Zoning.

Commissioner Hunthausen asked if it is possible to include the essential components from the MAA into the zoning document. Ms. Morgan stated details would need to be reviewed, but it is possible to move some of the information over to the zoning.

Commissioner Good Geise stated there would be no reason that the base could not have comments included under zoning as they would not be able to make decision anyway.

Charles Lane, Deputy County Attorney, stated he does not see a Fort representative but added that one of the primary purposes of the MAA is for notice provisions. While some of the regulations could be moved into the zoning he would like to hear comments from the Fort along those lines.

Commissioner McCormick asked what was learned from other jurisdictions with MAAs in place.

Ms. Morgan stated the Department of Defense does not keep a record of joint land use studies or military use affected areas. She added she spoke to several military areas that have MAAs and noted that Malmstrom Air Force Base has county-wide zoning that implemented zone area around the base as agricultural use.

PUBLIC COMMENT –

William West, 805 Franklin Mine Road, stated it would be a lot less confusing if the three could be separated and discussed one at a time. Two weeks ago Vance Air Force Base and Whiting Field were discussed. Mr. West called the two bases and looked at their website. They have determined where the military conflicts would occur and structured zoning to fit.

Mr. Lane stated the takings issue is different than the substantive due process issue. A zoning regulation to become a taking would require a near complete reduction in the value of the property and that is not happening here. The County has adequately supported our rational bases for the regulations with the eight public hearings and the staff provided responses to questions.

Candace West, 805 Franklin Mine Road, stated they are located in a parcel north of Seven Mile Creek that is zoned in District 45 and the growth concerns are already addressed. She argued to impose regulatory structure over parcels where the military does not operate but only where military aircraft fly over is contrary to the expressed language in the statute. Ms. West stated the Commission needs to have more information on what the military actually needs to address in the military compatibility issues.

Mr. Lane stated the military affected area means not only land use for military purposes but also land that is in close proximity to military facilities. The one mile buffered area was done on the recommendation from the JLUS study. Regulations were made based on the recommendation made in the JLUS handbook.

Commissioner McCormick asked about trust lands adjacent to the Fort to keep open areas and Ms. Morgan noted there have been some purchases of land. The Fort is exploring other ways to have compatible use buffers.

Commissioner McCormick asked if the military and the statute dictated to the county what must be done or does it tell the county or the jurisdiction what to consider in the regulations.

Mr. Lane noted the items are not required to be considered under the zoning. The Fort is not able to purchase lands outside the area they currently have or are leasing.

Shane Whyte, 3413 Terrace Avenue, stated the military does not need all of the land as they have had their land for over 100 years. Limestone Hills has no regulations and that is where heavy armory is conducted. Fort Harrison is surrounded by mountains which are obstructions. Mr. White had an appraisal done on his house and when you have to register it under a MAA the value drops. Mr. White has been asked several times to join a class action suit. Mr. White is opposed to this.

Shawn Williams, 3838 Barrett Road, stated it does not have to be a physical taking of the property; it just has to basically have government take so much of your rights on the property that you no longer want to own it. In the Independent Record those that oppose to the MAA are being beat down and accused of being against the military. Mr. Williams asked what this will be like once this is completed.

Ms. Morgan stated if zoning is approved there would be clear rules and guidelines available in the Planning Office as well as maps available.

Mr. Lane stated the draft documents are the final documents. There are no changes to them unless recommended by the commissioners.

Commissioner Good Geise asked if the MAA was denied would the zoning resolutions need to be changed and Mr. Lane noted they could be changed as the process proceeds.

Commissioner Hunthausen stated upon no further testimony, public comment is now closed.

A motion was made by Commissioner McCormick to table the item to December 6, 2018 to allow staff more time to review the components and bring forward changes that will incorporate regulations in to zoning and amend MAA regulation component of these resolutions and seconded by Commissioner Good Geise for the purposes of discussion.

Commissioner Good Geise stated there are parts of the MAA that she would oppose to be put into the zoning documents.

Mr. Lane stated there are only a few restrictions in the MAA.

Mr. Italiano stated if moving it over to the zoning regulations they can work with the Fort to address their concerns.

The Commissioners reviewed the requirements listed under the MAA to determine those that could be moved to the zoning regulations and discussed at length certain regulations such as the Imaginary Surface Area, no development permits, and performance standards.

Commissioner Hunthausen stated there is a motion on the table. The motion Passed on a 3-0 vote.

Approval of Modification to the Agreement to Lease, Sell, and Purchase Real Property with the City of Helena and Cottonwood, ALC, Inc. (Roger Baltz)

Roger Baltz, Chief Administrative Officer, presented the modification to the Agreement with the City of Helena and Cottonwood ALC, Inc. to lease, sell and purchase real property. The original Agreement was for roughly 40,000 sq. ft. of building located at 406 Fuller Avenue in Helena with monthly lease payments of \$12,500 being applied 100% to the purchase price through the end of the calendar year. The location would be for the Helena Police Department and the Lewis and Clark Sheriff's Office to co-locate. The City and County negotiated a modification to the existing Agreement to allow for purchase of the remaining property, commonly called the Pillar building, consisting of roughly 25,000 sq. ft. and 42 additional parking spaces. Costs are to be split by the City and the County. The remodeling work of the building has begun.

The current Agreement calls for work with the seller to legally separate the adjoining property and separation clarified in order to occupy the building per city code requirements. Code requirements and various actions are not required if the property was not to be separated. Options to proceed which would not separate the property include pursuing a condominium agreement method or outright purchase of the remaining property. Cottonwood is willing to work with everyone in any direction decided on. The additional property would be purchased for \$660,000 to be equally divided between the City and the County.

In addition, an interlocal agreement is under review to address how the building will be managed once it is acquired.

No public comment was received.

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

Storage Area Rental Agreement Between Lewis and Clark County, the City of Helena and Cottonwood ALC, Inc. (Roger Baltz)

Roger Baltz, Chief Administrative Officer, presented the storage area rental agreement with Cottonwood ALC, Inc. to allow for Cottonwood to store furniture, fixtures and equipment. Mr. Baltz noted it is fully intended to have the purchase agreement documents completed by the end of the calendar year.

No public comment was received.

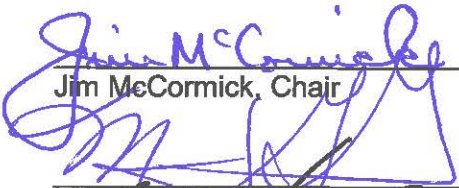
A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

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 1:38 pm.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Jim McCormick, Chair

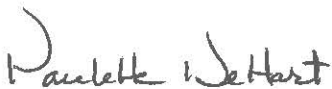


Susan Good Geise, Vice Chair



Andy Hunthausen, Member

ATTEST:



Paulette DeHart, Clerk of the Board