



PUBLIC MEETING

December 17, 2019
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, December 17, 2019, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Jim McCormick 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 Roger Baltz, Nicho Hash, Peter Italiano, Audrey McCue, Greg McNally, Kevin Tenney, James Swierc, Steve Utick, Robert Utick, Tony Prothero, David Cole, Mike Gurnett, Joyce Evans, Maria Stout, Tyler Manning, Lois Steinbeck, Philip Porrini, Fred Pfeiffer, Kevin Wright, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Resolution 2019-109 to Name the Lewis and Clark County Fairgrounds Arena "Cool Alley". (Kevin Tenney)

Kevin Tenney, Fairgrounds Manager, presented the proposed resolution to name the fairgrounds outdoor arena "Cool Alley", the name of a Professional Rodeo Cowboys Association (PRCA) combined 5-time world bucking Horse of the Year both as a bareback and saddle bronc horse. The horse was raised by the Helena Valley's Kesler Family. On November 27, 2019 the Fair Board approved naming the outdoor arena after Cool Alley. The name is for marketing purposes to attract more contestants to the Last Chance Stampede. Staff recommends approval of the resolution.

Mike Gurnett, Last Chance Stampede Rodeo Chair, stated by naming the arena after this horse it gives the Last Chance Stampede an identity that separates the rodeo from other rodeos. On the weekend of the rodeo there are 30 other PRCA rodeos. Mr. Gurnett gave an overview of the contestant decline in PRCA events with a 30% drop from 2006 to 2018, something the PRCA is dealing with. When contestants choose where they want to compete they want to recognize through branding; the respect for the rodeo tradition, values and culture. It is felt if the world champion horse is recognized on marketing materials that would help separate the Last Chance Stampede. He gave some history on the horse Cool Alley. There has been a pledge of \$1,500 received. The proposal is to name the contestant gate and where the guests enter. The signage would include a photo of the horse with a history of the 5 world championships.

Commissioner Good Geise suggested that the Fair Board or rodeo committee speak with Pam Attardo, Preservation and Historic Officer regarding writing an article to be submitted to the Independent Record for the monthly Nugget section of the paper.

Phil Porrini, Fair Board Chairman, gave an overview of the discussions on naming the arena.

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.

Board Appointment. (Audrey McCue)

Audrey McCue, Elections Supervisor, presented the board appointments for the Rimini County Water and Sewer District Board and recommended the appointment of Michaelene Brown and Terry E. Brown to the Board of Directors. The regular May 2018 election for the Rimini county Water and Sewer District was canceled because there were no contested offices. Three positions on the Board of Directors are currently open because they were not filled at the election. The elections office received the two petitions for appointment and both were confirmed to be qualified to serve on the Board of Directors.

Per MCA 13-1-502, if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government, or, appropriate, of the conservation district shall fill the position by appointment. Staff recommends the appointment of Michaelene Brown and Terry E. Brown to the Rimini County Water and Sewer District Board of Directors with terms to end when a successor is elected or appointed at the May 2022 regular election.

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 Grand Vista Estates Phased Major Subdivision and Variance Applications. (Tabled 12-10-19) (Applicant: U&M Enterprises, LLC) (Planner: Greg McNally)

Greg McNally, Planner III, presented the proposed four phase, forty lot major subdivision, to be known as Grand Vista Estates, located north of Lincoln Road, east of and adjacent to Collins Drive and south of and adjacent to Fantasy Road. Also included for consideration are two variance requests to allow six double-fronted lots and two block lengths in excess of 1,600 feet.

On Tuesday, November 19, 2019 the City-County Consolidated Planning Board (Planning Board) held a public hearing regarding the proposed subdivision and after considering the staff report, the staff and Applicant presentations, and public testimony, the Planning Board recommended approval of the two variance requests and the subdivision application with a recommended amendment to one finding of fact and one condition of approval, of which was presented to the Commission on December 10, 2019.

The Planning Board recommendation on the finding of fact amendment is that water level monitoring will, rather than should, be implemented with the initial wells to provide a baseline for measurement should depletion occur from pumping. The condition of approval recommended amendment is that notice is hereby given that Lewis and Clark WQPD staff shall, rather than can, develop and implement a water level monitoring program for individual wells in the Grand Vista Estate Subdivision in order to monitor for potential depletion that may occur in the future. Staff indicated to the Planning Board the proposed amendments to the conditions of approval would relate only to the restrictive covenants applicable to the future property owners and further indicated the proposed amendments place a requirement upon the WQPD that the District may not be able to fulfill. When considering regulations regarding water and sanitation, the County cannot legally require more than what is already required under state law. The legal requirement carries over into the County's ability to condition a subdivision project above and beyond State requirements for water and sanitation. Staff continues to support the

findings of fact and conditions of approval as originally presented in the Staff Report. Staff has informed the WQPD staff of the Planning Board's recommendation.

Mr. McNally stated the WQPD received board approval regarding implementing a well monitoring program in the area. Staff would like to keep the original language that was included in the staff report in order to prevent the WQPD from doing something they may not be tasked or have the budget to do.

Mr. McNally stated he has in the notes taken after he had to leave the December 10th meeting that Ms. Steinbeck was going to provide written public comment that was not prepared at that time. He had not received it but Ms. Steinbeck informed him today she has the written comment for distribution. He added that Steve Utick provided a slide for showing.

PUBLIC COMMENT -

Lois Steinbeck, distributed her written comments and stated as requested she met with James Swierc of the WQPD. She presented and read from a handout received from Mr. Swierc at the meeting related to the study done in 2012 for the north hills. She added the area is sensitive and dependent on precipitation and noted that Mr. Swierc agrees with the precipitation data presented at the last meeting noting 2017 and 2018 were record years for snowfall. Ms. Steinbeck noted he third well on the handout is drilled into bedrock as recommended by Mr. Swierc and is within one mile of the Grand Vista Estates. Ms. Steinbeck added she had testified four wells on Wooten Road had to be re-drilled and they found a record of three wells all within eight tenths of a mile to one mile from Grand Vista Estates. She noted if a deeper or new well is necessary due to concentrated development that becomes personally costly. She plans to do additional research and submit more comments.

Dave Cole, 6040 Ferry Drive, stated their 40-acres purchased in 1976 lies along the east side of the proposed subdivision. At the time of purchase there was very little data regarding water availability. There were two wells to the east at about 150 feet with flows of 10 gallons per minute. He added after paying on the property for seven years they had a well drilled at 150 feet with flows of 2 gallons per minute and adequate water was found at 420 feet with 20 gallons per minute. They had to redesign their home to meet the parameters of the mortgage. Mr. Cole gave an overview of his work experience working with subdivision activity and his experience while serving on the City-County Consolidated Planning Board. He added his first job with the state Community Development Division was to document how much subdivision activity was taking place without local government review and it was learned that 9 out of 10 parcels with split without local government review or approval. During his time on the Planning Board Mr. Cole noted that Dr. Mitchell Reynolds with USGS emphasized that this area of the valley is shale bedrock and soils from eroded shale or clay soils that impervious to water transmission. Today his concern is the proposed parcel size of 2 1/2 acres is too small based on the water availability and discussed the water issues with Emerald Ridge.

Fred Pheifer, 2220 Lorac Court, stated the measurements given at the last meeting are taken from the airport and noted it is scientifically known the north hills have downslope winds and the south hills have upslope winds. He further discussed the sinking wind force and noted his earlier mentioned measurements are not accurate for the north hills. Mr. Pheifer noted he looked into the well that the developers stated had been drilled and that it was a decent well. The most recent Utick well he could find was drilled January 23, 2019 at 443 feet with 9 gallons per minute. Mr. Pfeiffer's well was drilled at 187 feet with 300 gallons a minute and was split into a shared well. There are two other lots across from them about 600 feet from well to well and it was drilled on August 8, 2018 at 376 feet with 20 gallons per minute. Future water is really unknown.

Joyce Evans, 2276 Tea Road, stated Mr. Swierc's final report is not due until sometime in January and she understands the subdivision final decision is due December 24, 2019, noting maybe they would want to look into that.

Steve Utick, 2950 Fantasy Road, Developer, addressed the comment about a well they have drilled and noted there is an existing well at the house that is currently on the property, but have not drilled any

other well. He added they would be willing to drill a well at each phase. Mr. Utick also addressed the question about acquiring water from the Helena Valley Irrigation District (HVID) canal in the event this would be used for agricultural purposes and noted the District told him the basic process is a letter of intent would have to be submitted to the HVID Board and if approved the requestor would be put on a list for access to the canal. The wait is typically 6 plus years. He addressed the water pressure has more to do with the well pump used rather than the water availability. Mr. Utick noted to date he has not seen documentation on the mentioned wells that have gone dry, their location, their depth, a substandard well. They have firsthand knowledge of substandard wells drilled in the area, one of which the property owner was told to go deeper but financially could not.

Mr. Utick provided an image demonstrating topography and a well noting when drilling a well individuals do not want to stop at first water as the shallow water can be more easily depleted during dry years. Most important is the recharge rate of the well. Mr. Utick gave an overview of the recycling of the water. He added their record shows they will get everything done in a timely and professional manner.

Discussion was had on inadequate and robust well pumps.

Mr. Pheiffer stated he had done research on the minimum requirement for well output with some saying 5 gallons per minute and others saying 6. He discussed the Groundwater Information Center report and found three wells that Bob Utick drilled in various years with the most recent being January 23, 2019 at 443 feet with output at 9 gallons per minute.

Bob Utick, Developer, stated he drilled a well last year that is almost 2 miles away from Grand Vista off of Tea Road on the east side of Ferry and that is the well that DEQ requested it was pumped for 24 hours.

James Swierc, WQPD Hydrogeologist, stated the western North Hills graph was the poster of the WQPD open house in December of 2017. He noted the graph shows all the hydrographs from all the monitored wells and noted the wells in the bedrock areas outside of the Helena Valley have a little water level decline with the wells in the Helena Valley aquifer having a different slope. The well at the Department of State Lands shows a significant depletion. Mr. Swierc explained the cross section of the graph that shows what the water table surface appears to be doing at the time. The eastern North Hills USGS studies were published in 1992, review of the Helena Valley aquifer, and 2000 a bedrock study, both focusing mostly on the development area along the Montana corridor. The Bureau of Mines and Geology first study was published in 2006 in response to falling water levels in wells where Silver Creek comes into the valley. There was an extended drought with a number of wells going dry and the levels came back up when Silver Creek flowed again. The final study published in 2012 completed by the Bureau of Mines and Geology focused again where there was more development and wells, the west side of the North Hills and used existing wells. The same hydrologic parameters were applied to the DNRC study on the east side of the North Hills, also published in 2012.

Commissioner Good Geise confirmed with Mr. Swierc that under the current Subdivision Regulations the water availability is looked at within the subdivision and is the only thing that can be considered.

Nicho Hash, Deputy County Attorney, stated 76-3-622 MCA requires a list of requirements the developer needs to provide with their subdivision application and one is evidence of adequate water supply pertinent to the subdivision.

Mr. Hash read the statute: that when an applicant can provide evidence of adequate water availability either obtained from well logs or testing of onsite or nearby wells, or obtained from information contained in a published hydrological report, or as otherwise specified by the rules adopted by the Department of Environmental Quality pursuant to 76-4-104, MCA. He added while an applicant can provide evidence of an adequate water supply from information outside of the proposed area, the consideration for this subdivision is if there is evidence of an adequate supply.

Mr. Swierc stated the existing data cannot definitively show that neighboring areas would be negatively affected. He added the water levels of the closest wells to the subdivision demonstrates that the

southern part shows recharge from the irrigation canal and the present wells in the northern part, one to the northeast and one to the northwest did not show any water level declines. He noted of the 10 or 11 wells studied, some with data back to 2002 or 2003, there was no significant decline in water levels. A couple of wells lost about 15 feet over 20 years. Significant conclusions from the study were: an old well installed in bedrock and monitored for a long time showed a stable water level; and the data from a shallow well to the west of the area, a deeper well, put in by the Bureau of Mines and Geology, both had falling water levels, but a well to the northeast of the subdivision installed in bedrock with the well log stating open hole into bedrock had a rising water level through the same time. Mr. Swierc noted his best guess is that there is adequate water and there is some risk, more so than other areas, but less than a place like Emerald Ridge.

Mr. McNally stated the applicant does have to provide substantial and credible evidence on water availability. The requested additional well logs in the area captured the variability that would exist on the property. The well logs demonstrated adequate water availability for the project.

Mr. Hash stated the Subdivision Regulations limit a governing body to that review of either onsite or nearby wells, published hydrological reports, what the statute provides for. There is a statute that lets a governing body go above and beyond that, but it has to go through an entirely separate process. The review must be based upon the rules and regulations at that time.

Mr. Swierc stated the water availability is all based on estimates. He added the presented graphs are the available data for the area as a whole, not specific to the Grand Vista area. Mr. Swierc explained the DEQ regulatory program and the final review process that includes water availability and quality.

Further discussion was had on the Planning Board recommendations for the amendment to the findings of fact and the amendment to the conditions of approval.

Mr. McNally stated the growth policy identified water as one of the key issues going forward. It recognizes that local government is tied in regard to what is required by the state statutes. He added there was a comment in the staff report that non degradation could potentially be an issues with the project. Mr. McNally explained non degradation and noted in their DEQ application the Applicant would be required to meet all non-degradation parameters.

Mr. Utick stated he reviewed the handout provided by Ms. Steinbeck and noted they also rely on the experts.

A motion was made by Commissioner Hunthausen to approve the variance application from Chapter XI.F.9 regarding double-fronted lots as presented and seconded by Commissioner Good Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as recommended by the City-County Consolidated Planning Board for the Variance from Chapter XI.F.9 and seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed the variance application findings of fact from Chapter XI.F.9: the six proposed lots in Phase 1 will front onto Fantasy Road on their north side and a proposed internal access road on their south side; the lots are approximately 5 acres in size; the proposed subdivision has access to Collins Road to the west and Fantasy Road to the north and would be difficult to design the subdivision without double-fronted lots; there would be a no access restriction that will be shown on the plat for Phase 1 prohibiting a direct access onto Fantasy Road from all six of the lots.

Commissioner McCormick stated there is a motion on the table to accept the findings of fact. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to adopt a conclusion that the proposed variance from Chapter XI.F.9 complies with the four criteria for granting variances from the standards and

requirements of the Subdivision Regulations and approval of the variance application. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen stated the conclusions and the criteria are: that granting of the variance will 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 the regulations were enforced; the granting of the variance will not cause a substantial increase in public cost; and the approval of the variance will not place the subdivision in non-conformance with adopted regulations.

Commissioner McCormick stated there is a motion on the table to adopt the conclusions and to recognize the variance meets the standards and criteria in the subdivision regulations. The motion Passed on a 3-0 vote.

Commissioner McCormick stated there is a motion on the table to approve the variance. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve the variance application from Chapter XI.G.2 regarding block lengths as presented and seconded by Commissioner Good Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as recommended by the City-County Consolidated Planning Board for the variance from Chapter XI.G.2. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed the variance application findings of fact from Chapter XI.G.2: the proposed east-west internal access road in Phase I, Kenai Road, will be constructed with block length of approximately 2,335 feet in length; the proposed east-west internal access road in Phase III, Wooten Road, will be constructed with a block length of approximately 2,335 feet in length; twelve lots would access each one of these blocks in excess of 1,600 feet with each of these lots having approximately 330 feet of frontage on the block; subdivisions with lower densities can impractically limit the ability to create block lengths less than 1,600 feet and if strict compliance were required, more road infrastructure than is necessary to serve the number of proposed lots would be needed; emergency responders did not comment on the proposed block lengths.

Commissioner McCormick stated there is a motion on the table to accept the findings of fact. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to adopt the conclusion that the proposed variance from Chapter XI.G.2 complies with the four criteria for granting variances from the standards and requirements of the Subdivision regulations and approval of the variance application. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen discussed the conclusions that included: the granting of the variance will 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 will not cause a substantial increase in public costs; the approval of the variance will not place the subdivision in non-conformance with adopted regulations.

Commissioner McCormick stated there is a motion on the table to adopt the conclusions and to recognize the variance meets the standards and criteria in the subdivision regulations. The motion Passed on a 3-0 vote.

Commissioner McCormick stated there is a motion on the table to approve the variance. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve the preliminary approval recommendation from the City-County Consolidated Planning Board for Grand Vista Estates Subdivision, Phases I-IV. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen pointed out in the findings that water level monitoring will be implemented with the initial wells to provide a baseline for measurement should depletion occur from pumping. Upon request, WQPD staff will work with local land owners to develop and implement a groundwater level monitoring program concurrent with the development of the property.

A motion was made by Commissioner Hunthausen to amend the finding from will to should and from will to can that is documented by the staff report. The motion was seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to accept the amended findings of fact as recommended by the City-County Planning Board and the staff report. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen reviewed some of the findings of fact that included: there are no known surface water rights associated with the subject property from the Helena Valley Irrigation District, additionally, Subdivision Regulations require a minimum 50-foot setback from each side of the ordinary high water mark along the irrigation canal and fencing; all 40 lots are subject to review and approval by the Department of Environmental Quality and the County Public Health Environmental Services for individual wells and wastewater treatment systems; Mr. Swierc, WQPD, Hydrogeologist has indicated there is creditable evidence of sufficient water for the subdivision; the developer will have to build the internal roads for the subdivision to County standards as well as participate a proportionate share of the impacts to the roads in the area; emergency services location, distances and accessibility to the site; recommendation from the Parks Board was to take cash in lieu of parkland dedication; a five-year weed management will be required; legal and physical access to the proposed subdivision is off of Collins Drive and Fantasy Road. The new internal roads will be to County standard with a County easement.

Commissioner McCormick stated there is a motion on the table to accept the findings of fact as presented and amended. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to adopt a conclusion that the proposed Grand Vista Estates, Phase I-IV will have adverse impacts on the impact criteria. The motion was seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to adopt a conclusion that the adverse impacts of the proposed Grand Vista Estates, Phases I-IV can be mitigated through the conditions of approval as recommended by the City-County Consolidated Planning Board. The motion was seconded by Commissioner Good Geise.

Commissioner Hunthausen pointed out the condition of approval 12cc read notice is hereby given that Lewis and Clark County Water Quality Protection District staff shall develop and implement a water level monitoring program, etc.

A motion was made by Commissioner Hunthausen to amend the condition of approval from shall to can, the original staff recommendation. The motion was seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

Commissioner Hunthausen reviewed the conditions of approval focusing on: prior to subdivision application for each phase the Applicant will submit plans for wastewater treatment and water supply systems to DEQ and Lewis and Clark Public Health Environmental Services for review and approval, he added recommending doing pump tests on wells for each phase as the Applicant is willing to do; prior to final plat must show a fire protection system in place and upgrade of the existing offsite water supply to 750 gallons for 2 hours; prior to road construction and installation of utilities 3 copies of plans for the

subject roads and utilities must be submitted to the Community Development and Planning Department; access roads must meet County standards; proportionate share percentages for each phase; no access restriction along Fantasy Road; notice given of a minimum 15-foot building setback from all property lines, there are areas on each property where the setback from the property line may be greater; no access restriction along Collins Drive; encroach permits are required; notice is given that wells be installed as deep as possible to ensure sufficient groundwater availability; sample of wells after installation; prior to final plat submission for each phase or phases, the Applicant shall complete or financially guarantee improvements required by the storm water drainage plan, Montana Pollution Discharge Elimination System permit, vegetation management plan, weed management plan, mail facilities, utilities abutting and available to each lot; three year time period to complete the preliminary approval; creation or amendment of a Rural Improvement District or maintenance of the fire protection system as well as for the roads, storm water retention/detention ponds; 50-foot setback from the irrigation canal and installation of a fence.

Commissioner Hunthausen stated there is a motion to approve the conditions of approval as amended on the table. The motion Passed on a 3-0 vote.

Commissioner Hunthausen stated there is a global motion on the table to approve the preliminary approval recommendation from the City-County Consolidated Planning Board for Grand Vista Estates Subdivision, Phases I-IV as amended by the Commission with variance approvals included as well as discussion and approval of the findings of fact as amended, and the adverse impacts and conditions of approval as amended. 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 12:08 pm.

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