



## **PUBLIC MEETING**

December 18, 2018  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, December 18, 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, Kari DesRosier, Nicho Hash, Peter Italiano, Charles Lane, Jennifer McBroom, Greg McNally, Lindsay Morgan, Christal Ness, Spencer Starke, Rodger Nordahl, Amy Reeves, Paulette DeHart, Dale DeHart, Karie Frydenlund, Nancy Everson, Misty Edwards, Laura Erikson, Jim Strachan, Carol Wilcock, Brent Wilcock, Linda McClure, John and Melanie Dayton, Brenda Hasselbacher, Candace West, Rick Lamach, Jeni Garcin, Mike Woodel, Kaye Poston, Shaun Williams, Bryon Backeberg, Tim Wong, Jared Lay and Nadine McCarty, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Proclamation Declaring Wednesday, December 19, 2018 as Rodger Nordahl Day.**

Commissioner Jim McCormick read the proclamation declaring Wednesday, December 19, 2018 as Rodger Nordahl Day in Lewis and Clark County.

### **Consent Action Items**

There were no consent action items.

### **Memorandum of Agreement Between the Lewis and Clark County Sheriff Employees' Association and Lewis and Clark County. (Kari DesRosier)**

Kari DesRosier, Human Resources Director, presented the contract with the Sheriff Employees' Association. The contract identifies the employment terms for the three positions transferred from the Office of Coroner to the Office of the Sheriff/Coroner due to the consolidation of offices effective January 1, 2019. It also identifies employment terms for sworn deputies volunteering for Deputy Coroner assignment. Staff recommends approval of the memorandum of agreement with Lewis and Clark County Sheriff Employees' Association.

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.

**Contract Between Lewis and Clark County and J & H Inc. (Kari DesRosier)**

Kari DesRosier, Human Resources Director, presented the contract with J & H, Inc. for the Kronos Workforce Ready Software. This includes the licensing fees for a three-year period and professional services for software configuration, staff training and data imports. Workforce Ready will replace the existing systems and add additional functions including: benefits administration; Talent Acquisition to replace our current service; employee self-service, ACA Manager and payroll. Staff recommends approval of the contract with J & H, Inc.

Ms. DesRosier gave an overview of the current payroll process and noted the new payroll services will make the whole system more efficient for everyone.

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.

**Contract Between Lewis and Clark County and NorthWestern Energy. (Jennifer McBroom)**

Jennifer McBroom, Water Quality Protection District Supervisor, presented the contract with NorthWestern Energy in the amount of \$5,000 to administer the Prickly Pear Creek Re-water Project in 2019. The total project cost is \$15,220. The purpose of the project is to have water in the creek year-round. The water is purchased from Bureau of Reclamation and allows Prickly Pear Creek to stay in stream and allows irrigators to use an alternate source of water from the Missouri. Results improve the fisheries and the aquatic eco-system, reducing temperature, sediment, and erosion. Water Quality Protection District is doing a restoration project with three landowners on Floweree and Sierra. Water in the Prickly Pear Creek is very beneficial for the restoration projects. Project started in 2008 with funding from DEQ to allow Prickly Pear Creek to continue flow in around a 2 mile stretch that historically had gone dry. The tenth year of keeping water in the creek was in 2017. Staff recommends approval of the contract with NorthWestern Energy.

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.

**Proposed Stonepipe Estates Major Subdivision and Variance Applications. (Tabled 12/11/18) (Applicant: Stonepipe Properties, LLC) (Planners: Greg McNally and Spencer Starke)**

Greg McNally, Planner III, presented the proposed Stonepipe Estates Major Subdivision that was tabled from December 11, 2018. The Subdivision includes 14 lots, on-site septic systems, individual wells, and paved internal road. The location is just 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 Planning Board on November 20, 2018 made a recommendation for approval of the Subdivision. Since the public hearing was held staff has uncovered additional information on the legal status of Nordahl Road. Also since the Public Hearing a note was discovered on the survey that speaks to the vacation of O'Connell Road. Staff further uncovered the resolution that vacated the road and the petition in which the request was made. Staff recommends that the Commission determines this is new information that has not been presented and to direct Planning staff to schedule a subsequent public hearing before the Planning Board. At the Public Hearing only the new information that may have an impact on the findings and conclusions may be considered.

Commissioner McCormick commented that O'Connell Road was vacated by the county and was renamed Nordahl Road but legal status is unknown. Multiple residents currently use the road. Seems there is physical access but need to determine if there is legal access.

Charles Lane, Deputy County Attorney, stated the decision today is to determine that this is new information that calls into question the facts relied upon by the planning board in making the recommendation. There would be two motions: one to determine this is new information; and the second to send it back to the Planning Board to consider this new information.

#### **PUBLIC COMMENT -**

Brent & Carol Wilcock, live in Helena, stated they appreciate the efforts that have gone into the issue. They recognize there are new things that they had not anticipated. The project would greatly benefit the county and the community. A 12 to 14 month process was anticipated and they are now going on two years.

Carol Wilcock stated the subdivision is in line with the growth policy and the neighborhood helps satisfy the demand for housing. The Subdivision would not adversely affect the water, traffic, soil or the wildlife.

Mrs. Wilcock gave an overview of the variances to include: an angled property line for the Yellowstone Pipeline as a safety issue so that no property owner has the pipeline directly under their property; request for preliminary engineers report to be granted; and a variance from Pioneer Park Drive to their property on Pioneer Park Drive. She added the conflict between the growth policy, legal road assignments and subdivision regulations is something the county needs to clear up. They support the county to move forward with the road issues but not on their dime. They ask to be allowed access to their property from the public road Pioneer Park.

Mr. Wilcock stated the ownership status of the road is unclear and asked that access to their own property please be granted.

Commissioner Hunthausen asked about the discovered resolution and Mr. McNally noted it was recorded.

Mr. Lane stated it is considered new information if it has never been submitted as evidence or considered by the governing body during the subdivision application process. The options are to move forward and approve, conditionally approve or deny the proposed subdivision if the Commission determines that the new information is not relevant or creditable.

Commissioner McCormick asked if prescriptive easement plays into this. Mr. Lane noted there are a lot of legal uncertainties with this road. Determining the status of the road would take a court decision to determine it as a private or a public road.

Mr. McNally stated the earliest available public hearing for the Planning Board to hold is January 15, 2019 due to the need of a fifteen day notice.

Mr. Lane stated there is a risk in moving forward under the assumption that it is a public road, which a landowner along that road may bring an action to quiet title an adverse possession action and the Subdivision would lose the access.

A motion was made by Commissioner Good Geise that the Commission make the determination that they have heard new information not available to the Planning Board. The motion was seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Good Geise to direct the Planning to schedule a subsequent public hearing before the Planning Board regarding only the new information received and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Mr. Lane clarified the County cannot unilaterally create a county road or take ownership over a road. It requires a petition process initiated by the public.

**Certificate of Survey Dedicating a 60 Foot Public Access Easement. (Christal Ness)**

Christal Ness, Development Services Supervisor, presented the acceptance of a dedicated public access easement and slides showing the project area. The land is owned by the estate of William Whyte. The applicant presented a retracement survey for 7 of the blocks in the Highland Park Subdivision. As part of the retracement survey, the applicant has requested to dedicate a 60 foot public access easement through the north end of Block 20 to accommodate the existing Le Grande Cannon Boulevard. Staff recommends acceptance of the public access easement.

Commissioner Hunthausen clarified that the easement is being proposed by the landowner not the County.

Commissioner Good Geise asked what the purpose of the retracement is and Ms. Ness explained the survey review committee meets to address retracement surveys and verify property accuracy from the original plat, and to clean up any issues that may exist. She added that the survey review committee is comprised of a Deputy County Attorney, a member of the Clerk and Recorder staff, one planning member and herself.

No public comment was received.

A motion was made by Commissioner McCormick to approve the Certificate of Survey dedicating a 60 foot public access easement and seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

**Letter of Support for U. S. Forest Service Conservation Efforts in Lewis and Clark County. (Peter A. Italiano)**

Peter Italiano, Community Development and Planning Director, presented the letter requested by the Lewis and Clark National Forest District to show support for the on-going conservation efforts within Lewis and Clark County.

Commissioner Good Geise stated her concern about the timing as within the Citizen Advisory Committee there is some discussion and asked if this is generic enough so it does not indicate a position that they might take in the future.

Charles Lane, Deputy County Attorney, stated the language is generic enough along with the comments just made by Commissioner Good Geise.

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.

**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 12-6-18) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner III, presented the three draft resolutions: Resolution 2018-104 to create the Fort Harrison Compatibility Area Regulations and Boundaries; Resolution 2018-105 to create the Fort



Harrison Rural Growth Area Zone District Regulations and Boundaries; and Resolution 2018-106 to create the Fort Harrison Urban Growth Area Zone District Regulations and Boundaries. To date ten public hearings or meetings have been held regarding the draft boundaries and regulations.

In August the three documents were presented to the Planning Board for consideration. Following public comments the Board recommended approval with the condition that boundaries be amended to follow property lines so that no properties were bisected. Following four hearings the Commission amended the boundaries to follow the property line and to remove all property located south of Highway 12.

Ms. Morgan noted the Commission asked staff to prepare a draft Fort Harrison Rural Growth Area and Urban Growth Area Zone District Regulations that included some of the regulations contained within the Fort Harrison Compatibility Area Regulations. She reviewed staff recommendations in each of the documents and indicated the recommended changes.

Ms. Morgan stated if the Commission adopts or creates zone district regulations they will need to adopt a Resolution of Intention to create the district. A 30-day protest period will start with the publication of the first notice in the newspaper.

Ms. Morgan stated if it is decided to create the Fort Harrison Compatibility Area the Commission can adopt a resolution to create these regulations and the associated boundaries. There is no protest period and no necessary resolution of intention.

Ms. Morgan reviewed the notice process including the posted signs, newspaper notices, the county website, and all property owners were notified approximately 45 days in advance of the initial October hearing. All notices contained maps. The website has been updated several times to inform people of the meetings.

#### **PUBLIC COMMENT –**

Linda McClure, 4950 Buckskin Drive, stated for the last two meetings there were not letters sent to the landowners. Ms. McClure would like to request that everything north of Austin Road and a good portion of Birdseye Road be exempt from this plan. Her property is 4 to 5 miles from Fort Harrison and she is opposed to this and it is not fair.

John Dayton, 4946 Buckskin Drive, stated he recognizes a zone needs to be around Fort Harrison. There is an 800 foot mountain in front of his property and they barely hear anything from the Fort. Mr. Dayton has never seen military along the ridge that runs alongside of Austin Road. They are so far removed from anything going on at the Fort.

Rick Lamach, Master Planner for the Department of Military Affairs, stated the boundaries of Fort Harrison go up further. They have an agreement to use the public land as part of the Fort Harrison training area. The noise is referenced to the helicopter trainings and the flight paths they take. The goal was to make the least amount of confusion while still sticking to the boundaries of the Fort and the recommendation of the JLUS regarding the contour lines.

Commissioner McCormick asked if the map is showing designated flight paths. Mr. Lamach stated the pilots have to follow set requirements and the designations on the map are the most used flight paths. He added the number of miles involved in the landing zones are situation dependent.

Commissioner Good Geise asked what would be the effect of delaying anything that has to do with the MAA. Mr. Lamach noted the recommendations in the MAA all go back to the JLUS and the specific issues addressed in the zoning specifically are what the Fort considers the immediate issues so to address the zoning now and to look at the MAA moving forward would not hurt the Fort.

Mr. Lamach stated there are three things: the base level zoning, zoning as presented with extra things from the MAA, and the MAA. To meet the goals of the JLUS the adoption of the entire MAA would be preferred. The enhanced zoning better meets the objectives and goals of the JLUS but the base level zoning would be better than nothing.

Commissioner Hunthausen stated public comment is now closed.

Charles Lane, Deputy County Attorney, stated proper notice has been followed for the zoning and MAA procedures outlined in statute.

Commissioner Good Geise asked for clarification on the stripped down zoning basic if it can be voted on today with legal notices being satisfied and Mr. Lane stated the notice provided was notice of the zoning regulations in the paired down form.

Commissioner McCormick asked if the original resolution, including a substantial number of MAA performance standards and prohibited uses are still valid. Mr. Lane noted the notices sent out were an all-encompassing notice of plan for zoning according to the JLUS.

Commissioner Hunthausen stated there are three documents before them: the resolution for zoning in the Urban Growth Area; resolution for zoning in the Rural Growth Area; and a resolution to adopt the MAA.

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

Commissioner Hunthausen asked for discussion or further information on Resolution 2018-106 the Urban Growth Area Zone District.

Commissioner McCormick asked if in the future the City of Helena was to annex areas of the Urban Growth Area if the zoning regulations were adopted then the City of Helena would have jurisdiction over land use in that area.

Commissioner Hunthausen asked if both zoning resolutions comply with the growth policy and it was answered by Ms. Morgan that both are in compliance with the growth policy.

Commissioner Good Geise referred to the growth policy and feels uncomfortable with the 10-acre requirement as a concern for affordable housing.

Ms. Morgan stated the growth policy does talk about urban areas; the issue in this area is the close proximity to the Fort. An additional chapter was added. Planning staff believes that the proposed is in compliance with the updated growth policy.

A motion was made by Commissioner McCormick to adopt the original Resolution 2018-106 drafted on December 6, 2018 and seconded by Commissioner Good Geise for purpose of discussion.

Commissioner Good Geise strongly prefers using the plain basic level resolution and has heard from Fort Harrison that they could live with that. If this motion is passed today, as we move forward with zoning we will regret it.

Commissioner Hunthausen stated due diligence has been conducted to design land use strategies that will meet the goals of the JLUS. The Commission listened to comments and tried to adjust the documents where possible.

Commissioner McCormick pointed out that many were involved in this process. There were a lot of public comments. This has been discussed intensely.

Roger Baltz, Chief Administrative Officer, asked if the resolution is adopted will development permits be required and Ms. Morgan stated they would not be required. Mr. Baltz also asked if there would be notification requirements to the Fort and Ms. Morgan stated there would not be, but as a policy the Fort would be notified.

Commissioner Hunthausen stated there is a motion on the table to adopt Resolution 2018-106 drafted on December 6, 2018. The motion Passed on a 2-1 vote with Commissioner Good Geise voting against.

Ms. Morgan gave another overview of the notice process and the 30-day protest period. If not protested out the Commission would have 30 days to consider a final resolution on the zoning.

A motion was made by Commissioner McCormick to adopt Resolution 2018-105 drafted December 6, 2018 and seconded by Commissioner Good Geise for the purpose of discussion. The motion Passed on a 2-1 vote with Commissioner Good Geise opposed.

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

Jim Strachan, 8187 York Road, stated he was here last Thursday regarding vigilante activity. After the meeting he went to Lincoln to his cabin and once again had a dog taken. He called the Sheriff's Department and got no response. He went several hundreds of miles and couple tanks of gas to locate his dog. Close to the daylight hours his dog showed up on Highway 200 where she was dropped off, by indication of tracks in the snow. Mr. Strachan asked that the Commission speak with the Lewis and Clark Sheriff's Department.

Commissioner Good Geise asked Mr. Strachan if he would meet with her and a member of the Sheriff's Department.

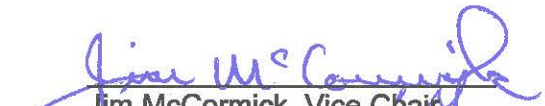
**Adjourn**

There being no further business, the meeting adjourned at 12:08 pm.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS



Andy Hunthausen, Chair



Jim McCormick, Vice Chair



Susan Good Geise, Member

ATTEST:



Paulette DeHart, Clerk of the Board