



## **PUBLIC MEETING**

December 7, 2017  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, December 7, 2017, at 9:00 AM in Commission Chambers Room 330.

### **Roll Call**

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

Commissioner Andy Hunthausen and Commissioner Jim McCormick were present. Others attending all or a portion of the meeting included Roger Baltz, Laura Erikson, Lindsay Morgan, Christal Ness, Joe Nistler, Kate McMahon, Sarah Bauer, Andy Adamek, Jerry Meyer, Steven Bates, Jason Crawford, Neal Warlick, Sharon Warlick, Rick Lemoch, Alan Gilda, Jerry Hamlin, Orlan Strom, Greg Duncan, Patricia Helvey and Nadine McCarty, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Consent Action Items**

There were no consent action items.

### **Appeal of a Denied Contract and Encroachment Agreement. (Christal Ness, Ombudsman)**

Christal Ness, Land Use Ombudsman, presented the appeal of a denied Contract and Encroachment Agreement for applicant Joe Nistler. On August 9, 2017 Mr. Nistler submitted a second Contract and Encroachment Agreement application for his encroachments into the public access easement known as Smallwood Court, in the Broadwater Estates Subdivision. On August 28, 2017, Public Works Director Eric Griffin denied the application for the encroachments. On September 5, 2017 Land Use Ombudsman, Christal Ness, sent Mr. Nistler the denial letter from Eric Griffin, along with a copy of the completed application with attachments. Also included with that application was a sheet indicating the process for appealing the denial from the Public Works Director to the Board of County Commissioners. Pursuant to that appeal process, on October 5, 2017, Mr. Nistler filed his notice for an appeal of the denial of the Contract and Encroachment Agreement. The appeal request and second application were included in the Commission Meeting packet as part of the official record.

On December 9, 2016, Eric Griffin, Director of Public Works denied an Encroachment Agreement for Joseph Nistler for the septic tanks, sidewalk, landscaping, and the retaining wall, encroaching into the platted Public Access Easement, known as Smallwood Court.

On Thursday, January 19, 2017 the Lewis and Clark County Commission held a public hearing regarding the appeal for the denial of a Contract and Encroachment Agreement for Lot 60 of the Broadwater Estates subdivision, from the Lewis and Clark County Public Works Direct, Eric Griffin. On Thursday, January 26, 2017 the Lewis and Clark County Commission upheld the denial of the Contract and Encroachment Agreement. Pursuant to that decision, Mr. Nistler had twelve months, to cure the encroachments on Lot 60 of the Broadwater Estates subdivision. The Findings and Conclusions related to this initial denial were included in the Commission Meeting packet as part of the official record.

Commissioner Good Geise asked if there are any options available to Mr. Nistler. Ms. Ness explained the remedies available. Commissioner Hunthausen asked for clarification if the scaling back of the easement could run all the way back to the edge of the tanks, and then anything else in the easement be removed or be addressed via encroachment agreement. Ms. Ness indicated Commissioner Hunthausen was correct. Commissioner Hunthausen referenced several instances in this subdivision where infrastructure and/or improvements were mistakenly installed and the Commission was asked to allow the mistakes. Ms. Ness confirmed the builders have not ensured their construction complies with the building area allowed on the plat.

#### PUBLIC COMMENT

Joe Nistler, applicant, spoke to the issues surrounding the location of the easement in relation to the subject property and urged the Commission to approve the proposed appeal. He asked the Commission for an explanation of how this encroachment damages the public good.

Commissioner Good Geise explained the public good is damaged by non-compliance with building regulations when they have difficulty buying and/or selling their homes due to encroachment issues. It is the County Commission's job to protect its residents from such problems, which can be devastating.

Mr. Nistler asked if encroachment agreements run with the land or expire after a defined time period. Charles Lane, Deputy County Attorney, stated the agreements run with the land.

Commissioner Hunthausen stated the County Commission approved a preliminary plat for the subdivision in good faith with agreed upon conditions for approval. He again referenced multiple occasions where either Mr. Nistler, or the previous developer, violated those conditions. He noted the applicant has already been told no additional variances would be granted to accommodate their mistakes. Commissioner Hunthausen referred to comments made indicating the County has damaged the reputation of the subdivision, and indicated the opposite is true and the County has done nothing but try and work on the issues brought before them.

Commissioner McCormick explained land use applications such as preliminary plats and final plats are always discussed and agreed upon prior to construction due to the gravity of such decisions.

Ms. Ness pointed to a clause in the encroachment agreement allowing for the County to require the current property owner and/or future property owners remove an encroachment should an issue arise; approval of an agreement does not give the property owner a free pass.

Jason Crawford, Triple Tree Engineering, representing the applicant, discussed topographical issues associated with the subject property and indicated this is an appropriate area to allow a narrower easement.

Commissioner Hunthausen asked if allowing a narrower easement and placing Mr. Nistler's septic tank and retaining wall outside of the easement would be a long-lasting solution. Mr. Crawford stated yes.

Andy Adamek, Broadwater Estates Subdivision Home Owner's Association (HOA) President, expressed concern that the issues associated with this property will have a detrimental effect to the neighborhood as a whole.

Mr. Nistler spoke to increased oversight in the development process since this subdivision was approved.

Ms. Ness commented the Department of Environmental Quality does not specifically indicate where septic tanks must be located when they approve a permit. Technically the placement of the tank meets County Health Department regulations and as this subdivision utilizes a community wastewater system, there is no on-site drainfield. She noted subdivision regulations will not allow for the County to approve a project that violates private covenants.

Commissioner McCormick commented he feels there are amenable solutions, but still alot of moving parts. Whether it is removal of the encroachments or an amended plat and adjusted easement, he would support allowing time to identify the correct solution. Commissioner Hunthausen concurred with Commissioner McCormick and indicated he would be willing to support a reduction of the easement.

A motion was made by Commissioner McCormick to deny the appeal, but grant a one-year extension from the previous denial for the Encroachment Agreement for Joe Nistler, located at 4996 Smallwood Court. Commissioner Hunthausen seconded the motion. The motion Passed on a 3-0 vote.

**Establishment of Military Affected Area Regulations and Zoning District. (Tabled 10/26/17)**  
**(Staff: Laura Erikson and Lindsay A. Morgan)**

Commissioner Good Geise stated the Commission is considering separating the Military Affected Area (MAA) and zoning into two separate items with two separate processes. Laura Erikson, Community Development Coordinator, introduced the item and acknowledged those persons present to represent the project's stakeholders and available to answer questions.

Lindsay Morgan, Planner II, stated this is the fifth public meeting on the proposal and provided an overview of the process to date.

Commissioner McCormick commented emails received since the last meeting on November 27th have been entered into the public record.

**PUBLIC COMMENT –**

The following persons expressed concern with the draft regulations and/or proposed zoning district: Sharon Warlick, 4955 W US Highway 12; Jerry Hamlin, 1625 University Street; Greg Duncan, 203 Northgate Loop; Alan Gilda, Helena; Tiffany Erwin, 3939 Head Lane; Orlan Strom, 5000 Smallwood Court; Steven Bates, Helena; Sarah Bauer, 6895 Austin Road; and Joel Irby, 5196 Valley Ridge Drive.

A motion was made by Commissioner Hunthausen to close the public hearing on the proposed Establishment of Military Affected Area Regulations and Zoning District. Commissioner McCormick seconded the motion. The motion Passed on a 3-0 vote.

Ms. Morgan, Ms. Erickson, Military Affairs Planner Rick Lamach, and Kate McMahon, Planner/Consultant with Applied Communications, addressed questions given during public testimony.

Commissioner Good Geise explained federal land does not pay property taxes, instead they make Payment in Lieu of Taxes (PILT). Commissioner McCormick commented on the economic impacts of the military in Montana.

Commissioner Hunthausen noted property values are not determined by the County; the Department of Revenue makes those determinations.

Mr. Lane gave a very brief outline of regulatory takings. Mr. Lamach provided an overview of the annual amount of complaints Fort Harrison receives from surrounding property owners.

A motion was made by Commissioner Hunthausen to separate consideration of the MAA Regulations and the Zoning District proposal, including the existing public record, and instructed staff to begin the necessary processes. Commissioner McCormick seconded the motion. 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 12:02 p.m.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

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Jim McCormick, Chair

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Susan Good Geise, Vice Chair

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Andy Hunthausen, Member

ATTEST:

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Paulette DeHart, Clerk of the Board