



## **PUBLIC MEETING**

February 9, 2016  
MINUTES

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

### **Roll Call**

Chairman Mike Murray 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 Eric Bryson, Michele Peterson-Cook, George Thebarga, Kevin Hamilton, Matt Heimel, Jason Danielson, Greg McNally, Eric Spangenberg, Paulette DeHart, Audra Zacherl, Jack Walsh, Ron Bartsch, Andrea Silverman, Jeff Claassen, Karie Frydenlund, Ryan Casne, Vern Evans, Tia Nelson, Cherche Prezeau, Al Knauber, and Nichole Nisbet, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Consent Action Items**

- a. Public Meeting Minutes: January 21 and 26, 2016, February 2 and 4, 2016. (Nichole Nisbet)
- b. Resolution 2016-7 Ordering a Refund of Taxes/Fees/Assessments Paid by Dennis & Susan Smrdel in the Amount of \$1,976.97. (Paulette DeHart)
- c. Resolution 2016-9 Declaring County Property Surplus Property. (Amy Reeves)

Eric Bryson reported on the consent action items 2a-c 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 3-0 vote.

### **Agreement Between Lewis and Clark County and Helena Babe Ruth Baseball Association. (Eric Bryson)**

Eric Bryson presented the agreement with Helena Babe Ruth Baseball Association for the operation and maintenance of Ryan Exchange Park. The agreement will run for a period of five years, starting January 1, 2016.

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.

### **Contract Between Lewis and Clark County and BH Maintenance. (Audra Zacherl)**

Audra Zacherl presented the contract with BH Maintenance for janitorial services at the Public Works complex offices in the amount of \$14,000 for an initial period of six months beginning January 1, 2016. The janitorial duties will be performed on a weekly basis and as needed upon request.

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.

**Grant Application to the Montana Land Information Council. (Eric Spangenberg)**

Eric Spangenberg, GIS Coordinator, presented the grant application to the Montana Land Information Council for the FY2017 Montana Land Information Grant for the design and development of a Corner Recordation (CR) GIS feature in the amount of \$27,000. The grant will assist in leveraging the County's local MLIA funds to create a GIS feature representing CR in the County. 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 3-0 vote.

**Resolution 2016-8 Naming Lee Mountain Way. (Jason Danielson)**

Jason Danielson, GIS Addressing Coordinator, presented resolution 2016-8 naming Lee Mountain Way. A road naming request in Lewis and Clark County has been initiated by Mr. Jordan Alexander of the Baxendale Fire District Chief for emergency services purposes. The road is generally located approximately 6.5 miles south of US Highway 12, traveling west from Rimini Rd. Notification letters and petition forms were sent to the 2 adjacent property owners on January 8, 2016, and addressing received a signed petition with a majority on January 13, 2016. Upon approval four existing addresses will be re-addressed.

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.

**Resolution 2016-6 Approving Funding of The Welch Conservation Easement Project. (tabled 1/19/16) (Matt Heime)**

Matt Heime, Special Districts Planner, presented resolution 2016-6 approving funding of the Welch Conservation Easement Project. Funding in the amount of \$228,000 has been requested from open space bond funds for the Welch Conservation Easement Project. After the Citizens Advisory Committee on Open Lands unanimously voted for approval of the project on December 1, 2015, contingent on the receipt of an updated title report, that report was received on February 4, 2016.

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.

**Request for Modifications of Conditions of Approval for the Preliminarily Approved Amended Plat of Lots 9A, 11A, and 101A of the Bridge Creek Estates Subdivision. (Applicant: Phil Wirth) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the request for modifications of approval for the preliminarily approved subdivision located east of and adjacent to N. Montana Avenue and north of Lincoln Road. The applicant has submitted a letter requesting modifications to the preliminarily approved Amended Plat of Lots 9A, 11A, and 101A of the Bridge Creek Estates Subdivision. Preliminary approval for this subdivision was granted on September 17, 2015. The applicant has submitted a letter requesting that the Commissioners consider the modification requests. The applicant is proposing to modify the conditions of approval to remove Condition No. 1 in Phase 2A and Phase 2E which states, prior to any construction within the subdivision, the applicant shall prepare and record covenants for the Bridge Creek Estates Subdivision that amends the covenants filed in Book M34, Page 900 at the Clerk and Recorder's Office to allow for the further division of lots within the proposed subdivision. The covenants will be amended in

accordance with Section 15 of the "Declaration of Covenants, Conditions and Restrictions of Bridge Creek Estates." The Commission will need to decide if the applicant can go forward with a modification application and pay the fee to move forward.

PUBLIC COMMENT-

Cherche Prezeau, 314 N. Last Chance Gulch, representative of the Bridge Creek Estate's Homeowner's Association, stated the HOA does not believe the applicant has met the criteria for the three questions and read a section of the covenants that prohibit any further subdivision of lots. She further noted that in order to amend the covenants the developer has to have one hundred percent of HOA support.

Tony Prothero, Shedhorn Engineering and representative of the applicant, stated he has met with the Board of Directors of the HOA about the proposed changes to the covenants and received one signature against the changing of the covenants. He noted that applicant's attorney disagrees with the interpretation of the covenants.

Commissioner Geise asked Mr. Prothero if the applicant wrote the covenants.

Tony Prothero stated Mr. Wirth's original attorney wrote the covenants and stated that attorney no longer represents Mr. Wirth.

Commissioner Geise asked if Mr. Wirth was fully aware of what the provisions were.

Tony Prothero stated Mr. Wirth instructed the attorney to write the covenants based upon the Ranchview Estates covenants. The applicant was not under the understanding that the covenant in question would apply to him. He noted the new attorney and the applicant believe the clause only applies to future landowners. He feels they have been allowed to dig themselves into a hole that they can't climb out of.

Commissioner Geise stated this does not appear to be a material change in condition. In the application it asks what circumstances have changed. In her opinion the circumstance that has changed is having a good lawyer. She asked if this change meets the criteria of the application.

Michele Peterson-Cooke, Deputy County Attorney, stated she would further look into the circumstance.

Commissioner Hunthausen stated the original subdivision included a change to aggregate lots and the violation of the covenants was missed by the HOA and County at the time but that does not mean we should violate the covenants again. He noted they have never denied someone to make their case before the Commission and intends to allow for the applicant to move forward to a hearing.

No further public comment was heard.

A motion was made by Commissioner Hunthausen to allow the applicant to go through the modification process and seconded by Commissioner Geise.

Commissioner Geise noted the only people who appear to benefit from the circumstances are the applicant and does not believe the circumstances have changed besides an attorney's opinion. Commissioner Hunthausen stated there is enough gray area and questions to allow the party to make their case before us.

The motion on the table is to allow the applicant to go through the modification process. The motion Passed on a 2-1 vote with Commissioner Geise voting against.

**Request to Extend Preliminary Plat Approval for Lot A-1A Amended of the H.W. Smith Minor Subdivision (Heron Creek Major Subdivision, Phases 1-6). (tabled 1/28/16) (Applicant: Ron Bartsch) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the request to extend the preliminary plat approval period for a subdivision located east of and adjacent to Eames Lane and south of and adjacent to Kier Lane. The

extension request was presented at the public meeting on the 28th of January and noted the options for the extension request.

#### PUBLIC COMMENT-

Ron Bartsch, the applicant, stated this is a phased development and intends to come forward on a periodic basis asking to extend the process. A final plat application was submitted two years ago and he feels it is reasonable to ask for the extension as they continue to complete the final plat applications.

Jeff Claassen, 5545 Kier Lane, asked the Commission to look at how the conditions have been met before and noted violations of those conditions and feels the conditions were put in place to mitigate the impacts and that is not being done. He stated there has been a consistent pattern of the applicant violating the conditions where the applicant is asking for forgiveness rather than doing it right the first time.

Cherche Prezeau stated her appreciation of Commissioner Hunthausen's comments with the Bridge Creek Estates item and asked for the Commission to recognize precedence with this subdivision and suggested the Commission accept the five year extension request.

Commissioner Hunthausen asked Mr. McNally to give an overview of the progress being made with the subdivision.

Greg McNally stated there was a request for final plat made for January 2014 with known deficiencies with the application. In the fall of 2015 almost of all the conditions were met for Phases 1-3 before the encroachment issue was discovered.

Commissioner Geise asked how much the applicant has spent on application fees throughout the years.

Greg McNally stated he can find out but does not have a ballpark estimate.

Commissioner Geise stated while the applicant has spent money she cannot begin to guess how much staff time has been tied up through this process. She noted that the fact that the process is taking so long is because things keep changing and stated that is not the County's fault.

A motion was made by Commissioner Hunthausen to approve the extension request for a period of three years as recommended by staff and seconded by Commissioner Geise.

Eric Bryson stated you must mutually agree on the extension request and the applicant must come forward to acknowledge that.

Ron Bartsch stated he agrees with the period of three years.

The motion on the floor is to approve the extension request for a period of three years as recommended by staff. The motion Passed on a 3-0 vote.

**Request for Modifications of Conditions of Approval for the Preliminarily Approved Lot A-1A Amended of the H.W. Smith Minor Subdivision (Heron Creek Major Subdivision, Phases 1-6). (tabled 1/28/16) (Applicant: Ron Bartsch) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the request to go forward with the procedure for modifying conditions of approval and the preliminary plat for a preliminarily approved subdivision located east of and adjacent to Eames Lane and south of and adjacent to Kier Lane. Preliminary approval for this Subdivision was granted on September 18, 2007. The preliminarily approved plat and conditions were modified on November 6, 2008, February 23, 2012, and September 10, 2015. Greg McNally reviewed the request and noted that the applicant has submitted a letter requesting modifications to the preliminarily approved Heron Creek Subdivision, Phases I-VI and is proposing to modify the conditions of approval to accomplish the following: modify the lot line between proposed Lots 79 and 80, modify the utility easement width between Lots 79 and 80 to a total of sixteen feet, where utilities are not present,

modify the 10-foot side yard utility easements to a 10-foot side yard building setback that would allow roof eaves to extend into the setbacks, where utilities are not present, modify all 10-foot utility easements located along side and rear lot lines to 10-foot building setbacks that would allow roof eaves to extend into the setbacks, modify the lot layout in Phase 2 by removing 8 lots; and modify the lot layout in Phases 4, 5, and 6 by adding 8 lots (2 lots in Phase 4, 5 lots in Phase 5, and 1 lot in Phase 6). Mr. McNally noted additional requests needed on the application. The Commission can decide whether or not the applicant can move forward with the request.

#### PUBLIC COMMENT-

Ron Bartsch, the applicant, stated the request is for the modification request to be heard and requested the consideration to move forward.

Commissioner Geise asked Mr. Bartsch if he built buildings that are encroaching.

Ron Bartsch stated one building is encroaching in the setback easement.

Commissioner Geise asked how the encroachment happened.

Ron Bartsch stated the construction staking was done prior to construction and noted the red line shown on the plat on the projection screen and noted it was staked incorrectly and when the lines were strung the building were setback according to that line. He noted that he interprets what constitutes a setback as from the foundation whereas the County interprets it from any part of the structure, including the eaves.

Commissioner Geise stated it is her understanding that the City measures from the foundation and the County measures from the eaves.

Ron Bartsch stated the City determines that a setback is determined from the foundation where the County would use an overhang such as the eaves. It is his understanding the County has a policy, not in writing, about the eaves being used in part of the setback. He stated this was not a deliberate action on his part.

Commissioner Geise asked Mr. McNally if eaves are the criteria to determine an encroachment in the County.

Greg McNally stated the County uses the building whether it is an eave or fence to determine whether or not there is an encroachment into the easement.

Michele Peterson-Cook stated the County consistently interprets any portion of the building; the City differentiates between zoning and easements where the County does not.

Ron Bartsch stated he has a memo from the County stating it does not have any regulations on how an encroachment is measured.

Commissioner Geise noted that it appears the buildings were perhaps misplaced. She noted that builders are expected to know the rules and asked Mr. Bartsch if the buildings were built for the intention of buildings for lease or rent.

Ron Bartsch stated the statute allows for up to five structures to be built on a specific property and stated that these buildings were built for lease or rent.

Commissioner Geise asked if the buildings have been leased or rented as she found them listed for sale in October of 2015.

Ron Bartsch stated he built the homes with the intention to lease them. He noted every property he owns is for rent, lease or sale. The properties cannot be sold at this point as it is not subdivided.

Jeff Claassen, 5545 Kier Drive, stated he does not feel it is appropriate to approve these conditions when the other conditions have not yet been met.

No further public comment was heard.

A motion was made by Commissioner Hunthausen to allow the applicant to go through the modification process and seconded by Commissioner Geise.

Commissioner Hunthausen noted concerns of changing the utility easements to a side yard setback and noted he would like to hear from the Fire Chief.

Commissioner Geise noted the laws and rules need to be applied as they are not as we wish they were. She is not comfortable granting this request for modification as they rely on builders to follow the rules and regulations.

Commissioner Murray noted that if you modify the approved subdivision enough then it becomes a new subdivision, in this circumstance it has not been approved and believe this has been modified enough times it should be a new subdivision application.

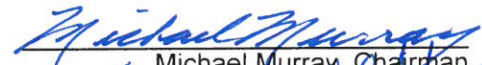
The motion on the table is to allow the applicant to go through the modification process. The motion Passed on a 2-1 vote with Commissioner Geise voting against.


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

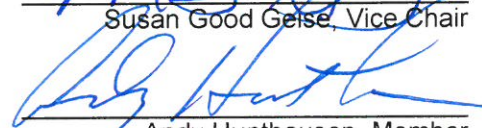
**Adjourn**

There being no further business, the meeting adjourned at 10:38 am.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Michael Murray, Chairman

  
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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