



PUBLIC MEETING

April 1, 2021
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, April 1, 2021, at 9:00 AM in Zoom <https://zoom.us/j/5669454978>.

Roll Call

Chair Andy Hunthausen called the meeting to order at 9 a.m.

Commissioner Jim McCormick and Commissioner Tom Rolfe were present. Others attending all or a portion of the meeting included Roger Baltz, Dan Karlin, Charles Lane, Jessica Makus, Dan Karlin, Greg McNally, Alexa Noruk, Audra Zacherl, Dannai Clayborn, Lawrence Sickerson, Ann Wilsnack, Kim Loftus, Tony Prothero, Kim Horne, Eric Griffin, Nancy Logan, Andrea Opitz, Paul Pacini, Julia Caro, Mark Juedeman, Calob Marquis, Lucas Gleasman, Jeni Garcin, Jerry McDonald, Steve Utick, Steve Tennes, and Nadine McCarty, Recording Secretary. All attendees were present via Zoom.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Vendor Claims Report for Week Ending April 2, 2021. (Marni Bentley)

Roger Baltz reported on consent action item 2a and recommended approval.

No public comment was received.

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

Bid Opening. 2021 Paint Striping. (Audra Zacherl)

Audra Zacherl, Public Works Assistant Director, presented the bid opening. The project generally consists of paint striping center line and shoulder roadway markings on approximately 86 miles of various County roads and in a few Rural Improvement Districts.

Two bids were received, unfortunately one was not marked as required with bid enclosed. The envelope is a Federal Express envelope and the only way it was thought to be a bid is by the return address. She read the requirement for submitting a bid via mail or other delivery system. Ms. Zacherl recommended that it not be opened. She added there is now a checklist on the bid submittal package sent to all bidders.

The only acceptable bid is from Highway Specialties, Inc. of Black Eagle, Montana for a total bid amount of \$105,648.45.

A motion was made by Commissioner Rolfe for staff to take the bid under advisement and make a recommendation to the Commission on April 8, 2021. The motion was seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Resolution 2021-22. Intention to Create the Wild Wind Road and Half Fast Drive Rural Improvement District for Improvement and Road Maintenance No. 2021-1. (Jessica Makus)

Jessica Makus, Special Districts Program Coordinator, presented the resolution of intention to create Wild Wind Road and Half Fast Drive Rural Improvement District (RID) for improvement and road maintenance. A petition was signed by 42% of property owners within the proposed RID, satisfying Lewis and Clark County's policy to consider RID petitions signed by at least 20% of property owners. There are 19 properties included in the proposed RID boundary.

If the resolutions are approved and the District is created, each property within the RID will be assessed an equal amount for the improvements and maintenance of Wild Wind Road and Half Fast Drive, based on total cost of improvements and maintenance. Financing of improvements is estimated to total \$30,176.31 with a 15-year debt service, and each benefited lot is estimated to be assessed \$147.89 annually. The total estimated cost for annual maintenance is \$2,945, and each lot will be assessed \$155 annually. The total assessment per year will be \$302.89 for the first 15 years.

The resolution of intention to create the RID will be advertised in the Helena Independent Record the next two Sundays, a notice will be mailed to all benefiting property owners and public comments will be accepted until 4:00 pm Friday, May 7, 2021, at the Lewis and Clark County Clerk and Recorder's Office with the public hearing to be scheduled for Tuesday, May 11, 2021 at 9:00 am in City-County Building Room 330. Staff recommends approval of the resolution.

Ms. Makus explained the two separate charges that are based on an initial improvement for the roads and an ongoing maintenance to keep the roads at that level over time.

PUBLIC COMMENT -

Lawrence Sickerson, 1000 Wild Wind Road, stated he was the person responsible for collecting the signatures and ushering the paperwork to Ms. Makus to start the process. They would appreciate the Commission's support.

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

Stormwater Control Easement Agreement Between Lewis and Clark County and Varyn Land & Livestock, LLC, and Ryan K. and Valeria A. Robinett. (Dan Karlin)

Dan Karlin, County Engineer, presented the storm water control easement agreement with Varyn Land & Livestock, LLC. and Ryan K. Robinett and Valeria A. Robinett. In the ongoing efforts to mitigate flooding in the Helena Valley, they are always searching for opportunities to complete elements of the Helena Valley Flood Mitigation Master Plan. While the plan is currently undergoing community input and updates as part of the Flood Mitigation Assistance Grant, one element that remains is to move water to the D2 drain ditch. About one year ago, the Robinett's, owners of a large parcel of land north of Sierra Road that lies along a preferred route of floodwater conveyance, approached Mr. Karlin with a proposed storm water control easement across their property. They have been working with Public Works in good faith to formalize an easement and have settled on terms. The proposed easement will cross Tract A-1 on Certificate of Survey 3214752. The easement location will eventually be lots A1C and A1E of the Cattle Baron Estates Subdivision per a Preliminary Plat, Exhibit A of the agreement. The easement on future Lot A1E will be a 30-foot wide underground easement because it is through what will be a buildable lot. The easement on future Lot A1C will be a 40-foot easement for an open flood control channel. Lot A1D does not require a stand-alone easement as the proposed road easement location will allow for an

underground flood control structure. The Grantors have delayed advancing their subdivision final plat until the easements were in place to ensure separate negotiations with future property owners of lots A1E or A1C would not be necessary.

The proposed easements will grant the County the authority to install storm water control infrastructure in the designated locations to advance flood mitigation efforts in the valley. For consideration of the easement both Varyn Land & Livestock, LLC and Ryon K. and Valeria A. Robinett request the sum of \$14,500 each for a total sum of \$29,000. Public Works agreed to pay 50 percent of the cost to draft an easement which came to \$1,882, bringing the total cost of the easement to \$30,882. Funds for the easement will come from the Valley Flood Mitigation Rural Improvement District (RID). The RID fund allows for this type. Originally, discussion occurred with the Robinett's regarding splitting the costs of the assessment of the property value, but they chose to leave that out of the agreement. Staff recommends approval of the storm water control easement agreement with Varyn Land & Livestock, LLC and Ryon K. and Valeria A. Robinett.

Discussion occurred regarding the D2 drain ditch being the jurisdictional property of the Bureau of Reclamation and all the necessary requirements and approvals in order for water to be intentionally moved into that ditch. The idea is to give another avenue to move flood water out of the valley more efficiently. There are still several properties along the proposed route that they need to negotiate easements within order to reach the D2. This one covers about 50 percent of the route. The letter received from the Bureau of Reclamation during the Trap Club project was very clear that any future use would require thorough review by them. Once progress is made further north, the next step would be to go through the steps with the Bureau of Reclamation. It is foreseen to take several years to reach completion.

PUBLIC COMMENT -

Eric Griffin, Public Works Director, agrees with everything that has been said and noted it is important for people to know flooding always becomes a big issue when the water is running. Since 2013 when the master plan was accepted the County has done many, many things to help with the flooding in the valley and he credited Mr. Karlin. This is a huge project. A survey was sent to almost 1,600 property owners in the RID asking what is and is not important with less than 1 percent response received.

A motion to Approve was made by Commissioner McCormick and seconded by Commissioner Rolfe. The motion passed on a 3-0 vote.

Declaring Helena Valley Irrigation District Commissioners Elected by Acclamation. (Audrey McCue)

Charles Lane, Deputy County Attorney, presented the two candidates to be elected by acclamation for the Helena Valley Irrigation District Commissioners election that was scheduled to be held on March 31, 2021, for a Division 2 Commissioner and a Division 4 Commissioner. By the close of candidate filing on January 5, 2021, one candidate filed for each division and no write-in candidates filed by the January 25, 2021 deadline. Pursuant to 13-1-502, MCA, the election was canceled, and the candidates shall be elected by acclamation by the Board of County Commissioners.

The requested actions are to declare John F. Baucus elected by acclamation to a three-year term as the Helena Valley Irrigation District Division 2 Commissioner and Craig Winterburn elected by acclamation to a three-year term as the Helena Valley Irrigation District Division 4 Commissioner.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

Grant Award to Lewis and Clark County from the the Montana Disaster and Emergency Services. (Alexa Noruk)

Alexa Noruk, Disaster & Emergency Services Coordinator, presented the grant award amendment for the FY21 Hazardous Materials Emergency Preparedness Program Grant (HMEP). In October 2020, FEMA awarded Lewis and Clark County the HMEP grant in the amount of \$59,128. The grant was to be utilized by Kelly Tuck, Coordinator at the Rocky Mountain Emergency Services Training Center (RMESTC) to develop training opportunities for first responders at the training center.

Following the cancelation and delay in courses around Montana during 2020 due to COVID restrictions, the State identified significant HMEP funds that were unused/reverted back to Montana DES and after a discussion with RMESTC, determined the funds could be reallocated to Lewis and Clark County to have a positive impact. Thus, the amended grant agreement to reflect the changes. Under the amendment the grant award increases to \$86,897.50 with the match requirement increase from \$14,782 to \$21,724.73. Similar to the original grant award, all matches will be met by the participating trainees' time and no additional match funds need to be allocated by the County. The grant period remains unchanged and will end on September 30, 2021. Staff recommends acceptance of the amended grant award from the Montana Disaster and Emergency Services.

No public comment was received.

A motion to Approve was made by Commissioner McCormick and seconded by Commissioner Rolfe. The motion passed on a 3-0 vote.

Variance Application and Modification Request for the Preliminarily Approved Olivet Subdivision, SUBD2021-003-004. (Applicant: Robert Utick)(Planner: Greg McNally)

Greg McNally, Planner III, presented the proposed modification to conditions of approval and variance application for the preliminarily approved first minor subdivision, known as the Olivet Subdivision. Preliminary approval was received on August 30, 2018, subject to 20 conditions of approval and would subdivide a 20.16-acre tract into four lots, each for one single-family dwelling. The Applicant requested a variance application from the Lewis and Clark County Subdivision Regulations, Chapter XI: S: Appendix K Section 18-4.6(4) regarding the distance of an off-site water supply system for fire protection, and if approved, would modify the conditions of approval in relation to the provision of fire protection for the subdivision. The property is located south of and adjacent to Tea Road, approximately 700 feet east of Ferry Drive. Staff recommends denial of the variance application and modification request based on the findings of fact and conclusions.

Steve Utick, 4950 Fantasy Road, speaking on his father's behalf, stated the determination of accessibility of fill site is the main issue at this point. That fill site has been approved to be used by three other subdivisions. With the fill site being usable and accessible year-round, he believes the requirements is fulfilled. The unprecedented snowstorm of 2019 was an exception to the accessibility. Contractors and equipment for snow removal were unavailable for three days during that storm. He does not believe that one instance should be the determining factor. The cost to get Tea Road up to County standards is going to be a burden on the community. The variance is requested so that alternative routes can be provided. He requests the Commission approve the variance application.

PUBLIC COMMENT –

Steve Tennet, 2376 Tea Road, has been a resident for 25 years and has never had a problem getting in and out. The major issue in 2019 was partially due to the people who were plowing the road piling up snow in front of his property. It ended up being a pile about 12-14 feet deep and he had to park and walk in. He has been successfully going in and out in a car for the last two years.

Commissioner Hunthausen requested the item be continued on April 8, 2021. Commissioner McCormick made a motion to continue on April 8, 2021. Commissioner Rolfe seconded the motion. The motion passed on a 3-0 vote.

Resolution 2021-19 Requesting to Join the Big Sky Passenger Rail Authority, Established for the Purpose of Providing for the Preservation and Improvement of Abandoned Rail Service in Southern Montana. (Tabled 3-18-21) (Roger Baltz)

Roger Baltz, Chief Administrative Officer, presented a resolution that was continued from March 18, 2021. The request from the Commission for further research on procedures and processes on financing and the ability to exit the rail authority has been discussed along with a clarification analysis from Charles Lane, Deputy County Attorney. Clarification was attempted, although there are still unanswered questions regarding policy and procedures for financing at this point.

Charles Lane, Deputy County Attorney, stated that some concern was generated when seeking answers to the Commission's questions. The Rail Authority was made to investigate the feasibility of the rail in southwest Montana. The Rail Authority statutes state that when it is established, it becomes a subdivision of state government and is outside the control of the counties which establish it. The broad powers of the Rail Authority mirror the powers of a county, some included are to sue and be sued, execute contracts, have perpetual succession, and can receive and disburse federal, state, and other funds. This all independent from a county's interaction once it is created. The concern is that they have the authority to raise funds through a mill levy and would be voted upon with the other counties that are a part of the jurisdiction. The possibility of a mill levy does exist even though it is voiced to not be the intention of the Rail Authority.

Commissioner Hunthausen compared the statutes with the processes that happen within subdivisions of the government with the school district and water and sewer districts. There was a mill levy, the county collects the tax and turns it over to the subdivision. Mr. Lane states that the Rail Authority is unique in that it is the only one and it spans several counties. The concern is that the initial legal framework did not correctly represent that it would be the aggregate of the entirety of the Rail Authority. Statute does not set up the structure through its language that it would be decided county by county, although there is an opportunity to establish that structure by setting resolutions while creating the regional Rail Authority. It is an opportunity for joint resolutions to articulate that mill levies may be limited to raising enough funds for matching grants or to be done county by county. A risk-based analysis was conducted, and this is the conclusion of that analysis. Each county involved would have a seat on the board and would have an opportunity to voice any concerns and participate in authority resolutions.

Commissioner McCormick presented findings from research. The questions that were readdressed today and other lingering questions were not answered. Interregional or Intraregional system cost would likely be significantly more than what taxpayers are willing to pay. House joint resolution 34 with the House of Representatives requesting an interstudy of ways to improve passenger transportation services in Montana requiring that the study be reported to the 67th legislature. The transportation interim committee work was completed and the agenda for September 16 was a follow-up of that resolution. Financial and fiscal impacts to the community pointed about by Burlington Northern/Santa Fe is that the capital investments necessary to communal services is the responsibility of the public including investments for future capacity. The feasibility report prepared for the Montana Department of Transportation, Rail Transit, and Planning Division did not include the startup costs that may be shared within the partners in the project. The study emphasized that stations would need to meet current requirements which would include building appropriate platforms, operating costs, and keeping the stations in good repair to comply with federal ADA requirements. The purpose of the study is assumed that these be provided by the local communities as well as maintenance, snow and ice removal and janitorial services. If Amtrack chooses to use such platforms, they will need to be in good repair before service is initiated.

The Fire Rock to Butte segment is owned by Burlington Northern/Santa Fe and has not been operated in over 30 years. Severe road, track and subgrade erosion in several places, two tunnels need rehabilitated, and several bridges need to be rebuilt. Butte to Garrison section is not serviceable and not a functioning rail bed. Potential station restoration, occupancy, and maintenance agreements would need to be negotiated between Amtrak and local government or private owners. The county would have to have a public/private partnership with Montana Rail Link and Burlington Northern/Santa Fe. With current station sites being used for freight railroad operations and other various purposes, negotiations will likely become complex. Display systems and electronic ticketing equipment is expected to be the other party's responsibility other than Amtrak as part of the state supported service. It was the 66th legislature that required the study for findings to be brought forward in the 67th legislature with no current information provided so far and is unknown if it is being addressed. The government entity would provide for all ongoing maintenance associated with station facilities and would be responsible for day-to-day costs. If the current sites could be used, new platforms would need to be built. Passengers will likely be using automobiles to and from these stations. Amtrak recommends that state policy makers make the decision on if the rail service shall be developed and shall provide the capital and operating funding. Amtrak will work cooperatively to establish that service.

Revenue estimate for 15,300 passengers is \$381,000 with estimated operating expenses at \$12.6 million on top of subsidy required of about \$12.2 million. Mobilization costs are estimated at \$2.8 million for training alone. The cost to get the first car into town with estimates coming from 2009, is \$171 million and adjusting for inflation would be over \$210 million.

PUBLIC COMMENT-

Ann Wilsnack, 715 Highland St., supports joining the Rail Authority because she thinks that it is good for our environment and trains save energy. She does understand it is not a financial boost at this point but believes it will be a good tourist attraction. She states that a train will be sustainable in the future.

Paul Picini, 303 State St., stated Commissioner McCormick did a lot of research and there is no denying money is going to need to be spent on any project. House Resolution 24 went to an interim committee for studying the proposal and the committee threw it out. The Amtrack Plan and the plan by the Department of Transportation are out of date. He believes it is unfair to decide based on out-of-date information with problems that are responsibility of the Rail Authority. He thinks that not becoming part of the Rail Authority will be a missed opportunity. He states there is enough public backing to approve the joining of the Rail Authority with citizens willing to pay for it. There is no difference between paying a mill levy county by county or by the Authority. Please don't try to save us from ourselves.

Mark Juedeman, Helena resident, supports the Rail Authority. The board representation is skewed toward less populated counties. The 2010 study is greatly exaggerated to bringing the passenger rail back, so the Rail Authority is necessary to provide current information.

Kim Loftus, 1439 N. Harris, pointed out that in Biden's infrastructure speech, he said there is \$80 billion in the transportation bill to boost our Amtrak. She spoke with the chair of the Big Sky Rail Authority, and he stated that the Biden administration wants projects in line to begin funding immediately. The numbers from the outdated study cannot be considered because it does not consider bringing people from the Empire Builder coming into the southern tier. The summit held in September showed the mayor, governor, and senators are behind the project. It seems the constituents of the county want it to move forward. Quick, high-speed rail will be a beneficial way to move people. She would hate for us to miss out on federal funding for infrastructure and asks it to be tabled instead of getting a "no" vote.

Jerry McDonald, Helena resident, requested for Commission McCormick to read table 4.8 from the Montana Rail Plan.

Commissioner Hunthausen stated the public hearing is now closed.

Commissioner McCormick stated the two questions of most concern are the ability to leave the Rail Authority once it is joined, and a feasibility study. He is trying to get to "yes", but his concern is getting taxpayers hooked into a project where the resolution doesn't read the way the financial aspect is talked about. He thinks that tabling the discussion is a good decision.

Commissioner Rolfe likes the idea but has concerns that came up a couple weeks ago. He is concerned they will be signing a blank check that the taxpayers will have to pay and is concerned there won't be a way out once we join the Rail Authority. He does not want to make a commitment at this time.

Commissioner Hunthausen stated that from creating jobs and participating in state government are benefits. The purpose of joining the Rail Authority is to investigate if a rail service is viable in Montana. There will be huge hurdles and it won't be cheap, but there are questions that are currently unanswered. All public projects are paid for by all of us, this will be included. At this point he feels that they owe it to the community to join the Rail Authority and investigate all the challenges that may be faced.

Mr. Lane stated that because there was public notice sent out, there is a requirement to make a decision within 2 weeks of the date on the notice. To table it is acceptable but will require public notice and reading of the resolution again.

Commissioner Rolfe made a motion to table to June 10, 2022 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 12:04 pm.

Meeting minutes approved on November 22, 2022

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Jim McCormick, Chair



Tom Rolfe, Vice Chair



Andy Hunthausen, Member

ATTEST:



Amy Reeves, Clerk of the Board