



## **PUBLIC MEETING**

April 12, 2016  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, April 12, 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, K. Paul Stahl, George Thebarga, Matt Heimel, Lindsay Morgan, Greg McNally, Kevin Hamilton, Jennifer McCullough, Christal Ness, Laura Erikson, Jay Nelson, Colleen Smith, Melanie Reynolds, Jack Walsh, Bob Drake, Al Knauber, and Nichole Nisbet, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Alcohol Awareness Month Proclamation. (Jay Nelson)**

Sgt. Jay Nelson read the proclamation recognizing April as Alcohol Awareness Month.

### **Consent Action Items**

There were no consent action items.

### **Contract Amendment No. 1 Between Lewis and Clark County and Helena College. (Jennifer McCullough)**

Jennifer McCullough, Sustainability Coordinator, presented the Contract Amendment No. 1 with Helena College to the original contract dated June 23, 2015 for the Environmental Workforce Development and Job Training Program Contract Agreement. The amendment is to increase the contract amount from \$40,000 to not to exceed \$104,000. The increase is to provide for an expanded scope of services to continue to provide environmental job training to unemployed or underemployed people in the area. Commissioner Murray asked how each course costs.

Jennifer McCullough stated each class is roughly \$16,000 and the CDL is up to \$24,000.

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.

### **Decision. DeTienne Family Transfer Appeal. (Christal Ness)**

Christal Ness, Ombudsperson, presented the DeTienne Family Transfer Appeal Hearing. The hearing was held yesterday afternoon however has been continued until Wednesday April 9, 2016. A request was made to postpone the decision until after the hearing.

No public comment was received.

A motion was made by Commissioner Geise to table the item until the regularly scheduled meeting on April 14, 2016 and seconded by Commission Hunthausen. The motion Passed on a 3-0 vote.

**Amended Plat of Lot 2B - Ries Tract 2 Subdivision. (tabled 4/5/16) (Applicants: Todd and Kapri Byrne) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the request to remove a portion of a utility easement that lies along the north property boundary of Lot 2B in the Ries Tract 2 Subdivision located at 6875 Scratchgravel Drive. A hearing was held on Tuesday April 5, 2016 to allow for a shop that was constructed in the easement to remain. Staff has verified that the applicant's did enter into an encroachment agreement dated October 20, 2015 prior to the construction of the shop.

No public comment was received.

A motion was made by Commissioner Geise to approve the findings of fact as submitted, the conclusions of law and to add the finding of fact that there is an encroachment agreement with the County and to approve the amended plat of Lot 2B. The motion was seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

**Resolution 2016-18 Establishing a County Road Easement and Abandon/Vacate a Portion of the Easement on Lot 13 of the Buckboard Meadows Subdivision. (Applicant: Valley Construction of Helena, LLC) (Planner: Matt Heimel)**

Matt Heimel, Special Districts Planner, presented resolution 2016-18, establishing a County road easement and abandoning/vacating a portion of the easement on Lot 13 of the Buckboard Meadows Subdivision to allow for a newly constructed house to remain and no longer encroach into the easement. The Commission granted preliminary approval on March 8, 2016 to establish and abandon/vacate a county road easement, subject to two conditions of approval. One, the applicant shall provide a Certificate of Survey or an amended Subdivision plat that shows and includes, the established county road easement and abandonment/vacation of this portion of the easement and a reference to the resolution that officially documents the county road easement establishment and abandonment/vacation of this portion of the easement. Secondly, the applicant shall file the Certificate of Survey or amended Subdivision plat that contains the information required with the Clerk and Recorder. Staff has determined that all conditions of the preliminary approval have been met.

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.

**Final Plat. Amended Plat of Lot 13 - Buckboard Meadows Subdivision. (Applicant: Valley Construction of Helena, LLC (Larry Kim Smith)) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the final plat request to allow for the removal of a portion of a utility and fire protection easement located on Lot 13 of the Buckboard Meadows Subdivision at 720 Singletree Road. The preliminarily approved amended subdivision plat was granted on March 8, 2016 subject to three conditions and staff has verified that all the conditions have been met.

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.

**Public Hearing on Proposed Modifications to the Preliminary Plat, Conditions of Approval and Variance Application for the Preliminary Approved Lot A-1A Amended of the H.W. Smith Minor Subdivision (Heron Creek, Phases I-VI) (Applicant: Ron Bartsch) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the proposed modifications to the preliminary plat and conditions of approval and the variance requests for the preliminary approved Lot A-1A Amended of the H.W. Smith Minor Subdivision. The applicant's request dated January 21, 2016 included removing 8 lots in Phase II and adding 8 lots in Phases IV, V, and VI. This initial request differs from the information later submitted on March 2, 2016 which is for the removal of 9 lots in Phase II and adding 9 lots in Phases IV and V. No additional impacts are anticipated as a result of this alteration between submissions. On January 21, 2016, the applicant submitted a fourth request to modify conditions of preliminary approval for the subdivision. On February 9, 2016, the Commission agreed to hear the request and no written comments have been received other than the agency comments as requested. Mr. McNally reviewed the background information on the history of the preliminary approval and modification requests. The fourth request includes a proposed modification request to modify the lot line between proposed Lots 79 and 80. Proposed Lots 79 and 80 each have a single-family residential home constructed on them. An encroachment survey completed by Ries and Associates, PC on October 13, 2015 revealed that these homes encroach in the easements that are required to be graphically shown and described on the final plat of Phase II. In an attempt to avoid creating encroachments, and to maximize the potential width of an easement, the applicant proposes to modify the lot line slightly between proposed Lots 79 and 80. This proposed modification would not affect the existing conditions of approval but would modify the preliminary plat. If approved, the lot line adjustment alone will not eliminate the potential encroachments into the required easements between Lots 79 and 80. Agency comments received include comments from Fire Chief, Bob Drake who commented that he has no objection to modifying the lot line given the orientation of the homes constructed on these lots and the prevailing west wind.

The next proposed modification is to modify the public access, utility and stormwater easement width between Lots 79 and 80 to a total of sixteen feet, expanding the culvert. The easement is supposed to be twenty feet on each side. According to the information submitted by the applicant's representative, this easement contains a 6-inch diameter PVC fire water line, a 24-inch culvert and a 12-foot wide paved walking path. The fire water line and 24-inch culvert are located under the walking path. It appears that fencing may also be located within this easement. Agency comments received include comments from Fire Chief, Bob Drake who commented that he has no objection to modifying the easement width given the orientation of the homes constructed on these lots. He has also commented he has visited the site at the applicant's request and can maneuver one of his emergency vehicles through the easement and was not encumbered by the existing roof eaves as they were higher than his vehicle height. He did indicate that he could approach the easement from only one direction and that access could be improved by removing the fence and expanding the culvert. It was noted in order to modify this request you would have to modify condition no. 16.

The next modification request is where utilities are not present on Lots 78 and 79 and to modify the 10-foot side lot utility easements to a 10-foot side lot building setback that would allow roof eaves to extend into the setbacks. The applicant proposes to modify the 10-foot side lot utility easement adjacent to the lot line between Lot 78 and 79 to a 10-foot side lot building setback that would allow roof eaves to extend into the setbacks. A variance application from XI.Q has been submitted in conjunction with this modification request. Agency comments received included comments from Fire Chief, Bob Drake who commented in opposition to changing the utility easements to setbacks that allow eaves to encroach as it would allow the houses to be closer together and increase the risk of the spread of fire, particularly if the eaves are allowed to go into setbacks without limitation. No limitation on the amount of distance a roof eave could extend into a setback was presented by the applicant. Staff has prepared draft language limiting the allowance of roof eaves and rain gutters to two feet. Staff has also provided draft conditional language for a restrictive covenant to be filed with the plat that indicates as follows: that no structure, or portion of any structure, including decks, awnings, or other attached objects or fixtures, excepting roof eaves and rain gutters extending no more than two feet into the setback are permitted within the 10-foot setback shown on the plat. It was noted that changes would occur to condition no. 16 in Phase II.

The next modification request is 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. The applicant proposes to modify all other 10-foot side lot utility easements in Phase II to a 10-foot side lot building setback that would allow roof eaves to extend into the setbacks. A variance application from XI.Q has been submitted in conjunction with this modification request. Agency comments received included comments from Fire Chief, Bob Drake who commented in opposition to

changing the utility easements to setbacks that allow eaves to encroach as it would allow the houses to be closer together and increase the risk of the spread of fire, particularly if the eaves are allowed to go into setbacks without limitation. No limitation on the amount of distance a roof eave could extend into a setback was presented by the Applicant. Staff has prepared draft language limiting the allowance of roof eaves and rain gutters to two feet. Staff has also provided draft conditional language for a restrictive covenant to be filed with the plat as noted prior.

Commissioner Hunthausen asked about the utility easements and if there is a plan in place as he noted concern of eliminating any utility easements that may have a future access need to provide services to homes.

Greg McNally stated there is a plan that includes the approximation of utility lines but noted the map cannot be relied upon and you should always call before you dig. Mr. McNally stated he did sit down and visit with Steve Rock with Northwestern Energy and he commented that all lots should continue to be required to provide a 10-foot wide utility easement on the front. He further commented that proposed Lot 69 should continue to include a side lot utility easement between Lots 70 and 72 to allow for utility access.

Greg McNally continued with the modification requested and noted that the next modification request is to modify the lot layout in Phase II by removing 9 lots. This would reduce the number of lots in Phase II from 44 to 35. These proposed changes will increase the distance between some of the homes in Phase II and reduce the opportunity for encroachments. It was noted that the five lots removed in Phase II will reappear in a later Phase. The parkland dedication requirements for this Phase will be decreased as a result in the reduction in lots; however, as with the original and modified preliminary approved plat, the applicant still has plans to dedicate County Parkland in excess of the required parkland dedication requirements for the entire Subdivision. Agency comments included Fire Chief Bob Drake stating that a reduction in lot density of Phase II is a step in the right direction; however, there are still many small lots in which the risk of fire spreading from structure to structure is a concern. He further commented that the safety of future residents should not be sacrificed by allowing increased density into the easements to allow for larger houses. The applicant should make houses that fit the lots or make the lots bigger to allow for larger homes. The introduction to the conditions of approval and condition Nos. 16 and 17 in Phase II would require modified language to account for these changes. Staff has provided the following draft language to reflect the applicant's request.

The next modification request is to modify the lot layout in Phases IV and V by adding 9 lots (4 lots in Phase IV and 5 lots in Phase V). By removing 9 lots from Phase II, the applicant wishes to retain the total number of lots in the subdivision by further dividing some lots in Phase IV and V that are large enough to accommodate additional single-family homes. The location and addition of 5 lots in Phase V will require modifications to the conditions of approval to ensure legal and physical is provided to all lots within this Phase. Instead of constructing certain internal access roads and cul-de-sacs in Phase VI, the applicant will have to construct these roads and cul-de-sacs in Phase V. This will eliminate the need for any existing conditions regarding on-site road construction, signing plans and sign installations, or approaches in Phase VI of the Subdivision. Comments received included comments from Tri-Lakes Fire Service Area, Fire Chief, Bob Drake as noted prior. Comments from Northwestern Energy, Steve Rock commented that in areas where the proposed plat indicate a "well and water service easement", he would like it to indicate a "utility, well and water service easement". In addition, proposed lot 69 should include a side lot utility easement in between Lots 70 and 72 to allow for utility access into Lot 69. All lots should continue to be required to provide continuous 10-foot wide utility easements on the front of the lots. Comments from Environmental Health Department Sanitarian, Frank Preskar commented that the proposed changes will require DEQ review. Comments from the City-County Address Coordinator, Jason Danielson commented that addresses have been pre-assigned based on lot numbers and layout from the existing preliminary plat. If approved, the pre-assigned addresses will be updated to represent the approved modifications. In addition, since address plaques have already been created for Phase I and II, updated plaques will be required. Comments from Public Works, Construction Project Coordinator, Jesse Whitford commented that the first four proposed modifications should be denied as the developer should be aware of easements/restrictions prior to building. Drainage and utility easements are commonly established as a 20-foot minimum and are needed for maintenance, future utility construction, and fire access. Comments from Weed District, Larry Hoffman commented on the need for a five-year weed management plan; inspection fees paid; and inspection and "Weed Seed Free Certification". The



following agencies responded with no comment or did not respond at all: Lewis and Clark County Public Works Road Supervisor and County Engineer; Century Link; Charter Communications; Lewis and Clark County Sheriff's Office and DEQ, Subdivision Review Section. Mr. McNally addressed the variance request from the 2005 Lewis and Clark County Subdivision Regulations, Section XI.Q. The variance is from the following requirement: utility easements shall be located along front and side lot lines whenever required and the variance is from the requirements to provide for side lot line utility easements in Phase II where utilities are not existing or required.

#### Break/Reconvene

Ron Bartsch, the applicant, apologized for having the proposal before the Commission and addressed the two structures that were built and noted that the property stakes were staked incorrectly and during the encroachment survey the issue of eaves came up and they found out that the eaves are hanging into the easement. The applicant stated his request also includes aggregating some of the lots to allow for more separation and ease some of the concerns of an encroachment happening in the future. He also noted his request to change the verbiage on the final plat from easement to setbacks.

Commissioner Geise asked the applicant if he would be willing to enlarge the culvert under the walking path between the two structures.

Ron Bartsch stated he believe Commissioner Geise is referring to the comment from the Fire Department about the location of the fence line and whether or not a culvert can be extended to the right of the path in order to improve access to the area and stated he had no problem modifying the two elements.

Commissioner Hunthausen noted it would be his desire to only have utility easements where needed and wanted to ensure that no one is setting themselves up for future problems with a setback where a future utility may be needed instead. He noted concern about the applicant's request to change the setback as it would only include an eight foot setback not the ten feet as required.

Ron Bartsch stated he had the assumption that the setback was from the foundation and if the opportunity was granted to aggregate some of the lots it would lessen the possibility of encroachments reoccurring. He noted that they have assessed all of the utility easements and are certain that those utility easements that would remain in place and would allow for services to access all the lots.

#### PUBLIC COMMENT-

Bob Drake, Chief of Tri-Lakes Fire Department, stated his concern with Phase II and the risk of fire spreading from one structure to another. There are physical limitations with the fire department as they are a volunteer fire department that covers 125 miles and their trucks are housed in five different stations. The response time was noted as a concern as it can take over 20 minutes to respond due to the present limitations. Mr. Drake addressed the utility easements as it forces the houses twenty feet apart and further noted concern with changing the easements to setbacks. Some trucks only have one person on board and can be impossible to navigate the area. There are two fire hydrants, one at the other end of the subdivision and the other fire hydrant located behind the two existing structures that has to allow for access to the trucks between the homes that will allow for them to drag the hoses to the denser part of the subdivision. Due to the limited manpower the twenty foot easement allows for them to drop the hose from the trucks. Mr. Drake noted that the eaves are tall and the trucks can only be twelve feet. The west wind will blow between the two houses so it tends to not make the eaves being close together as critical. He did note that the future homes need to have more space between them so they are able to protect the homes.

Commissioner Geise asked Mr. Drake about the potential issue of training firefighters being they are volunteers and not everyone is trained equally on the equipment.

Bob Drake stated there are 32 or 33 firefighters on their roles and they can expect to have 8 people respond. They may have a firefighter that physically cannot be in a collapse zone and that presents limitations on who can respond and to what extent in a situation.

Commissioner Geise asked Mr. Drake about the prevailing winds as stated in his comments.

Bob Drake stated the prevailing wind comes from the west most of the time and could assist in the fire not spreading from home to home.

Commissioner Hunthausen asked Mr. Drake if he is comfortable with the current infrastructure in place and with what is being proposed with the access to the lines, pipes and hydrants.

Bob Drake stated the system is designed to give the best quantity and quality of water that an open water pond is designed to give. He noted the density is still his main concern and noted there are fire suppression systems installed in the existing two homes and will certainly help if there is a fire inside a home.

Commissioner Geise asked Mr. Drake if he is satisfied with the arrangement with the pond to ensure the water does not freeze.

Bob Drake stated they have received all they are going to get with the constraints that are present.

Commissioner Hunthausen asked Mr. McNally to elaborate on the NorthWestern Energy comments received and asked if they have been discussed with the applicant.

Greg McNally stated he has not spoken with the applicant about the specific comments from NWE. He noted the comments from NWE included that there will be several well and water service easements that are shared among lots which are required by DEQ so both properties have equal access. There will be utility, well and water easements listed on the plat. It was noted that with the applicant's proposal to combine two lots, NWE would like the utility easements to remain.

Jay Lyndes, 5349 Kier Lane, stated his opposition to the variance request and suggested a reduction of lots to allow room for the easements.

Jeff Classen, 5545 Kier Lane, stated that the County Project Coordinator's comments against the requests should not be ignored and also noted the Fire Departments comments are in the best interest of the public.

Jack Walsh, HBIA Representative, stated his support for the applicant and noted there is also a responsibility of the individual homeowner in terms of fire protection.

Ben Quinones, 3601 Eames Lane, reiterated the idea of safety being the number one priority and stated that the modifications should be evaluated with the idea of safety first. This can be done by allowing emergency equipment to enter and leave an leave if an emergency arises.

Rob Bartsch stated that safety is paramount and noted that the existing buildings are 21 feet apart and fire suppression systems are being installed in the structures. Mr. Bartsch did note that the paving and fencing was installed to preserve the access points.

Commissioner Hunthausen asked the applicant to address the comments from NWE.

Ryan Casne, Engineer for the applicant, stated the concerns from NWE for the well easement stating well/water easement have been addressed and changed on the plat. The concern with aggregating the lots and leaving an easement is not a problem but would like to have a limitation on how far that easement will go and prefers it is no further than 10 feet.

Commissioner Geise asked Mr. Casne about modification request no. 4.

Ryan Casne stated that the modification request no. 4 is an alternative to the aggregation of the lots and can be looked at as an either or request.

Commissioner Geise asked about the two homes where the eaves are in the easement and asked as the development moves forward if the eaves could remain.

Ryan Casne stated the staff recommendation addresses that concern and the eaves can only go no more than two feet into the setback.

Commissioner Geise asked if the applicant is okay with the staff language.

Ryan Casne stated they are fine with the language.

Commissioner Hunthausen stated if the aggregation of lots is allowed the ten foot setbacks or easements can be true ten foot easements and there would be no need for the two foot allowance.

Ryan Casne stated that is correct and stated they would still like to see the easements changed to setbacks in Phase II.

Commissioner Murray asked Mr. Casne about the fire suppression systems installed.

Ron Bartsch stated the fire suppression systems were contracted out and installed by a fire suppression specialist.

Commissioner Hunthausen asked the legal staff to look into the ramifications and liability based upon their decisions.

Ron Bartsch stated the one priority he has is to move the property pins.

Steve Moore, 3740 Eames Lane, stated the east boundary of his property is one hundred feet of the corner of the subdivision and noted he did not receive notice of the hearing and asked to be put back on the list.

Greg McNally stated if Mr. Moore is indeed an adjoining property owner it gives reason to keep the public comment period open.

Commissioner Murray stated the public comment period is still open.


A motion was made by Commissioner Hunthausen to table the item until the regularly scheduled meeting on April 19, 2016 and seconded by Commissioner Geise. 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 11:21 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