



PUBLIC MEETING

April 21, 2016
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, April 21, 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, Kevin Hamilton, Marni Bentley, Greg McNally, Jack Walsh, Ron Bartsch, Bonita Gebhardt, Delvin Gebhardt, Jeff Claassen, and Nichole Nisbet, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Vendor Claims Report for Week Ending April 22, 2016. (Marni Bentley)
- b. Public Meeting Minutes: April 7, 2016. (Nichole Nisbet)

Eric Bryson reported on the consent action items 2a-b and recommended approval.

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.

Decision Day. 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) (tabled 4/19/16) (Applicant: Ron Bartsch) (Planner: Greg McNally)

Greg McNally, Planner II, presented the 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).

Commissioner Geise asked Mr. Bartsch a series of questions beginning with why the Commission should allow for the modification requests.

Ron Bartsch stated that the rules and regulations are the general guidelines that developers and builders follow and noted there are circumstances that go beyond that and time were interpretation of a rule or regulation may differ. He further noted that situations that do not fit in the box are one of the functions of the Commission. The Commission is to review these situations and in doing so, protect the public, health and safety.

Commissioner Geise asked Mr. Bartsch what the Commission should do if this situation occurs again.

Ron Bartsch stated each circumstance should be viewed on their own merit. There are circumstances that are controllable and uncontrollable and reiterated that the circumstances should be viewed individually.

Commissioner Geise asked if the developer would comply with all regulations, laws and the agreements.

Ron Bartsch stated he has nothing but the intent to follow and honor the agreement, rules and regulations.

Commissioner Geise asked if there are any other changes from the developer.

Ron Bartsch stated no, as he believed they were complete in October however unforeseen circumstances have prohibited that. He stated a final plat should be forthcoming once today's issues are solved.

Commissioner Geise addressed the costs that the developer has paid to the County being close to \$400 and noted that it costs the County much more as she calculated staff hours to exceed 100 hours or \$3,000 on this project and asked for the developers' acknowledgement of the costs and staff time involved.

Ron Bartsch stated he acknowledges that the County has committed resources to this project. He noted the County is also losing revenue if the subdivision would have been approved previously.

Commissioner Hunthausen stated that after reviewing the staff report, the variance request, the presentations by staff and the applicant, and the draft findings of fact and conclusions of law and approval conditions and after considering public testimony, I move to approve the request to modify the conditions of approval and preliminarily plat for the preliminarily approved lot A-1A Amended of the H.W. Smith Minor Subdivision and seconded by Commissioner Geise.

Commissioner Hunthausen stated he'd like to take each modification request one at a time. A motion was made by Commissioner Hunthausen to approve number five, the request to modify the lot layout in Phase II by removing 9 lots and modifications to the introduction to conditions of approval for Phase II and approval conditions in Phase II, condition No. 16 and Phase II, condition No. 17 and seconded by Commissioner Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as prepared by staff with the addition of the public testimony that the fire chief supporting larger lots in Phase II and seconded by Commissioner Murray. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact, the Commission concludes that the requested modifications to the preliminarily plat, introduction to the conditions of approval for Phase II, and conditions in Phase II, Condition No. 16; Phase II, Condition No. 17 are supported under the criteria and standards of the Lewis and Clark County Subdivisions Regulations. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion as amended, motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve number six, the request to modify the lot layout in Phases IV and V by adding 4 lots in Phase IV and 5 lots in Phase V and modifications to the introduction to conditions of approval for Phases IV and V and approval conditions in phase IV, condition No. 15; phase V, Condition No. 8 Phase V, Condition No. 16; phase VI, condition No 8; phase VI,

Condition No. 10; phase VI, condition No. 11; and phase VI, condition No. 19. The motion was seconded by Commissioner Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as prepared by staff with the addition of the public testimony received and the comments from the Fire Chief supporting larger lots in Phase II. The motion was seconded by Commissioner Murray. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact, the Commission concludes that the requested modifications to the preliminary plat, introduction to the conditions of approval for Phase IV and V, and conditions in Phase IV, condition No. 15; phase V, Condition No. 8 Phase V, Condition No. 16; phase VI, condition No. 8; phase VI, Condition No. 10; phase VI, condition No. 11; and phase VI, condition No. 19. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion as amended, motion Passed on a 3-0 vote.

Commissioner Hunthausen stated he would like to consider request number there in the staff report as this request considers replacing the 10-foot utility easements between lots 78 and 79 in Phase II to a 10-foot setback. This request requires us to first consider the variance application from the regulations.

Commissioner Hunthausen stated that after reviewing the draft findings of fact on the variance request and after considering public testimony and comment from the applicant, he moves to deny the request for a variance from Section XI.Q of the 2005 Subdivision Regulations regarding utility easements. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner to accept the findings of fact of fact as prepared by staff with the following changes; to add a finding that the applicant has indicated that if the lot line between 78 and 79 can be adjusted, the side lot utility easements could remain at 10-feet an there would be no need to further modify these utility easements and to add a finding that the applicant has indicated if nine lots can be removed from the Phase II and added to Phases IV and V, there is no further need to remove utility easements in Phase II as each lot in Phase II will have adequate are for residential use, and to delete draft findings of fact Nos. 3, 4, 5, 6, 7 and 8. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to adopt a conclusion of law that the proposed subdivision variance request does not meet the variance criteria. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to deny request number three to modify the 10-foot side lot building setback that would allow roof eaves to extend into the setback that would allow roof eaves to extend into the setbacks and modifications of approval conditions in Phase II, Condition No. 16 and Phase II, Condition No. 17. The motion was seconded by Commissioner Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as prepared by staff with the addition of the findings of fact that the applicant has indicated that if the lot line between lots 78 and 79 can be adjust, the side lot utility easements could remain at 10-feet and there would be no need to further modify these utility easement, to modify the draft finding of fact No. 3 to reflect the decision on the variance application and to delete draft findings of fact Nos. 4, 7, 8 and 11 and with the addition of the public testimony received and the comments from the Fire Chief supporting larger lots in Phase II. The motion was seconded by Commissioner Murray. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact, the Commission concludes that the requested modifications in Phase II, Condition No. 16 and Phase II, Condition No. 17 are not supported under the criteria and standards of the Lewis and Clark County Subdivision Regulations. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion as amended, motion Passed on a 3-0 vote.

Commissioner Hunthausen stated that the Commission must add the authority to move the lot line to reconfigure lots 78 and 79 per the applicant's request. A motion was made by Commissioner Hunthausen to approve the relocation of the lot line per the applicant's request. The motion was seconded by Commissioner Geise.

Commissioner Geise asked for clarification on the motion.

Commissioner Hunthausen stated that the area between lots 78 and 79 has the encroachment of the home, about one foot; the request was to rename it as a no build set back and reduce the size of the easement. If the lot line is moved over a foot there will no longer be an encroachment and a utility easement will still remain between the two lots.

Commissioner Hunthausen moved to add an additional finding of fact that the applicant proposed this alternative and public testimony that supported a reconfiguration of the interior lots to be larger and would allow the twenty foot utility to remain. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact, the Commission concludes that the request is supported under the criteria and standards of the Lewis and Clark County Subdivision Regulations. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion, motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to deny request number four to modify the 10-foot side lot utility easements on all lots in Phase II where utilities are not present to a 10-foot side lot building setback that would allow roof eaves to extend into the setbacks and modifications to approval conditions in Phase II, Condition No. 16 and Phase II, Condition No. 17. The motion was seconded by Commissioner Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as prepared by staff with the addition of the public testimony that the fire chief supporting larger lots in Phase II as it would allow for the 20-foot utility easement to remain and the addition of the findings of fact that the applicant has indicated nine lots can be removed from Phase II and added to Phases IV and V, there is no further need to remove utility easements in Phase II as each lot in Phase II will have adequate area for residential use, to modify the finding of facts No. 2 to reflect decision on the variance application and to delete draft findings of fact Nos. 3, 6, 7 and 10. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact the Commission concludes that the requested modifications to conditions in Phase II, Condition No. 16 and Phase II, Condition No. 17 are not supported under the criteria and standards of the Lewis and Clark County Subdivision Regulations. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion as amended, motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve request number one to modify the lot line between 79 and 80 in Phase II on the Preliminary Plat. The motion was seconded by Commissioner Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact with the addition of the public testimony received and the comments from the Fire Chief supporting larger lots in Phase II. The motion was seconded by Commissioner Murray. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact the Commission concludes that the requested modification to the Preliminary Plat for Phase II is supported under the criteria and standards of the Lewis and Clark County Subdivision Regulations. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion, motion Passed on a 2-1 vote, with Commissioner Geise voting against.

A motion was made by Commissioner Hunthausen to approve request number two to modify the Public Access, Utility, and Stormwater Easement width between Lots 79 and 80 to a total of sixteen feet (16') and the modifications to approval conditions in Phase II, condition No. 16. The motion was seconded by Commissioner Geise.

A motion was made by Commissioner Hunthausen to accept the findings of fact as prepared by staff with the addition of a finding of fact that the Fire Chief, Bob Drake, commented that the accessibility of the Public Access, Utility, and Stormwater Easement could be improved by the removal of the fence and expansion of the culvert, i.e. increase the turning radius, to add a finding that the applicant has indicated that he is willing to work with the fire district to improve accessibility of this easement and to add the finding that the approval of this request does not impact the existing utilities located within the easement. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that based on these findings of fact, the Commission concludes that the requested modifications to conditions in Phase II, Condition No. 16 are supported under the criteria and standards of the Lewis and Clark county Subdivision Regulations. The motion was seconded by Commissioner Geise. The motion passed on a 2-1 vote with Commissioner Geise voting against.

The Commission voted on the main motion as amended, motion Passed on a 2-1 vote, with Commissioner Geise voting against.

A motion was made by Commissioner Hunthausen to add a condition of approval to Phase II that states the applicant will create an agreement and comply with that agreement between Tri-Lakes Fire Service Area and the Public Works Department to develop a plan to improve the accessibility of the Public Access, Utility and Stormwater Easement between Lots 79 and 80 which must include removal of the fence and any encroachments and expansion of the culvert, i.e. widening the turn radius prior to final plat. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

The Commission voted on the main motion as amended, motion Passed on a 2-1 vote, with Commissioner Geise voting against.

Commissioner Hunthausen reviewed the process and noted that each request has been acted on individually and now the Commission will act on the overall motion to modify the preliminarily plat based upon those decisions.

Greg McNally reviewed the Commission actions including the amendments.

Commissioner Geise stated there will be a boundary line relocation and reiterated there will be no moving of buildings and some of the smaller lots will be made larger. She stated she will oppose the motion due to the increasing concern as there needs to be a consequence when this situation arises.

Commissioner Hunthausen stated he is frustrated by the process as it is not fair to put the Commission in this place as they have modified the subdivision multiple times and the rules have been laid out very clearly. In the best interest of the County he would like to find solutions and move forward. He reiterated that measuring twice and cutting once needs to be practiced by following the rules.

Commissioner Murray stated he is reluctantly going to support the motion and noted the work that was put into the motions by Commissioner Hunthausen however in his heart he agrees with Commissioner Geise.


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 9:54 am.

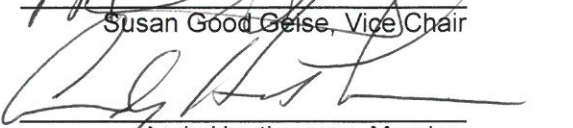
LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Michael Murray, Chairman



Susan Good Geise, Vice Chair



Andy Hunthausen, Member

ATTEST:



Paulette DeHart, Clerk of the Board