



PUBLIC MEETING

April 25, 2017

MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, April 25, 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 Jim McCormick and Commissioner Andy Hunthausen were present. Others attending all or a portion of the meeting included Roger Baltz, Larry Hoffman, Jim Henry, Greg McNally, Karie Frydenlund, Michael Miheliz, CJ Hughes, Carol Hughes, Will Hughes, Dan Karlin, Charles Lane, Greg McNally, Kim Smith, Al Knauber, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Grant Award to Lewis and Clark County Weed District from the Montana Department of Agriculture. (Larry Hoffman)

Larry Hoffman, Weed District Coordinator, presented the grant award from the Montana Department of Agriculture Noxious Weed Trust Fund for the Lincoln Valley Snowmobilers-Continuing Grant Award MDA Number 2017-053 in the amount of \$5,947 with a local match of \$10,147 by the Lincoln Valley Snowmobilers for a total of \$16,094. The grant period begins upon approval through October 31, 2018. The snowmobilers manage approximately 400 acres of the 700 mile snowmobile trail system and have been for fourteen years. The objective is to reduce weed infestations and prevent the establishment of new species in a highly recreational area.

No public comment was received.

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

Agreement Between Lewis and Clark County and The State of Montana and East Clark Street Water/Sewer District. (Dan Karlin)

Dan Karlin, County Engineer, presented the contract with the State of Montana Department of Transportation (MDT) and East Clark Street Water/Sewer District for the installation of water distribution and sewer collection infrastructure under East Clark Street in East Helena. Lewis and Clark County will be obligated to taking responsibility for the system if the District is unable to fund improvements or maintenance and complete the encroachment permit onto Old Highway 12. The agreement is necessary because a portion of the new infrastructure will be located within the MDT right-of-way. The encroachment permit has been signed and is completed. Staff recommends approval.

Commissioner McCormick referenced Article IV section 3b of the MOA and the significance of the three missing words "under this Agreement" in the last line of the section.

Charles Lane, Deputy County Attorney, stated one party has already signed the contract, he recommended fixing the contract and having it resigned.

Commissioner Hunthausen asked if it is possible to approve the contract with the contingency of Article IV section 3b being fixed or would it be better to wait until the next meeting. Mr. Lane preferred that it wait.

No public comment was received.

A motion was made by Commissioner Hunthausen to table the item to Thursday, April 27, 2017 at the regularly scheduled meeting. The motion was seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

**Proposed Buildings for Lease or Rent – "Meadowlark Rentals" BLR (Tabled 4/18/17)
(Applicant: Kristopher Smith) (Planner: Jim Henry)**

Jim Henry, Planner I, presented the proposal to develop a vacant 20.67-acre tract of land into fourteen single-family rental residences. The property is located approximately 4,000 feet north of the intersection of Lincoln Road and Applegate Drive and 2,100 feet west of the intersection of Brookings Road and Applegate Drive.

Mr. Henry responded to the Commission questions and concerns from the April 18, 2017 meeting. The status of Brookings Road: Since 1999 three minor subdivisions have been created in the vicinity of the subject property, during that time the County did allow Brookings Road to be platted as public access and a utility easement, but the original survey did not label the road as a public access and utilities easement. After review of surveys and deeds for the road and the subject property, it was concluded that although the original dedication was not clear to the intent to create a public access the actions of the original property owner, developers, property owners, and the County treated it as a public access easement.

The portion of Brookings Road adjacent to the subject property has not been convincingly established to be public or private, therefore staff recommends amending the condition for approach permits to state; if Brookings Road is determined to be a public access easement, the Applicant is required to obtain approach permits for the two proposed approaches onto Brookings Road as shown on the site plan.

The issue regarding adequate water; the Applicant does have an exempt well; entitled to 10 acre-feet a year, granted there is water. The DNRC will ensure he is within that limit. If he goes over additional water rights would need to be obtained.

Commissioner Good Geise referenced the concern of other residents; their own water levels and the possibility of additional wells. By statute the Commission is not allowed to take the concern under consideration in their deliberations; it was confirmed with Charles Lane, Deputy County Attorney. Commissioner Hunthausen stated the proposal is not based on regular subdivision regulations where there is expanded authority for the Commission to consider impacts. With lease or rent regulations the Commission is limited as to their authority.

Mr. Henry gave an overview on one of the biggest issues, the adequate access. The first lots were created in the late seventies with the parcels being created separately from the roads. The roads were created for the purpose of allowing access to the property, but were not labeled as a public access easement. The adequacy requirement has been met with both the roads and water.

PUBLIC COMMENT -

Kim Smith, 7510 Applegate, stated this property is no different than any of the other parcels; he is entitled to one well exempt well with 10 acre feet. The well concerns are on the east side. The drain fields were laid out by an engineer; the lines that slope down are in the direction of the flow of the ground water. To meet all necessary criteria the engineers have to show there will be no degradation of the water down stream. It represents the water coming from the northwest going to the southeast with the water entering and leaving not crossing any of the other properties. Farther to the west, one-half mile away he has a get well with water rights for 56 or 76 acre feet and 225 gallons a minute. He believes the access issue is fairly mute.

Mr. Henry confirmed that the 10 acre feet is for the entire lot, not for each structure; of which the applicant's engineer determined it is possible. Mr. Smith stated a residence uses 0.27 acre feet of which a lot is returned to the aquifer through the wastewater treatment system. The vast majority of water consumption is irrigation. There will be a total of 4 acres that will be irrigated. There is plenty of water.

Michael Mihelic, 350 Applebrook, stated he understands what the applicant is doing with the water and if he does not over pump the wells the water should be fine, but who will be monitoring it. The issue he has is Brookings Road: it needs to be widened if there will be more traffic; it is a dirt road that is not maintained in the winter. When the road gets bad the public uses alternate routes such as Applebrook. The addition of fourteen new units with two vehicles per unit on average is another twenty eight vehicles on the road.

Carole Hughes, 7550 Sunflower Drive, asked about the degradation for the water drainage. Her property is located southeast of the drain fields and she is concerned about the drainage. They looked at the Brookings Road and there are no stop signs. With current traffic they are seeing the corner of Sunflower and Applebrook going into Applegate beginning to slope just as Bergren Drive and Brookings Drive have done. The access to her driveway is becoming bermed due to the increased traffic and the speed throwing up gravel.

Mr. Smith stated the drain fields are midway down the property and if they go straight southeast they clearly miss Ms. Hughe's property. The road situation is similar to a lot of road situations. If a road association was formed he would be more than happy to join. They are correct a lot of traffic dumps out on Bergren Road. The road issues have been a problem in the north valley but has vastly improved from where it was ten years ago.

Greg McNally, Planner I, stated the drain fields are often sized for the soil conditions that are onsite, to include a mixing zone. Generally they do not go beyond the property line. This property boundary is not changing so it will not follow under that rule, but the system will be reviewed by the Public Health Department to make sure there is adequate separation between other existing wells.

Upon no further testimony or comment, Commissioner Good Geise stated that the public hearing is now closed.

A motion was made by Commissioner Hunthausen that the proposed Buildings for Lease or Rent (BLR) project to be known as Meadowlark Rentals be Conditionally Approved for fourteen residences on the 20.67 acre tract of land, as shown on Certificate of Survey No. 238655 in Lewis and Clark County, Montana. This condition of approval is in accordance with Resolution 2013-74, Lewis and Clark County Buildings for Lease or Rent Regulations for the application and review of buildings for lease or rent, based on the findings of fact and conclusions of law in the staff report. The motion was seconded by Commissioner McCormick.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact on Criteria A, to approve the findings as submitted; keying in on findings a, d, g, h and n. The motion was seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen under Criteria A Conclusions of Law that the proposed buildings for lease or rent can be brought into compliance with these regulations and other regulations applicable to the property, and avoid or minimize potential significant impacts on the physical environment and human population in the area through Condition of Approval Nos. 1-5. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to add two findings of fact under Criteria B: 1) DEQ and DNRC rules allow for the development of exempt wells to serve such development provided the production from those wells is limited to parameters established by DNRC; 2) DNRC is the only entity with jurisdiction to enforce that limitation, there are no requirements in the current county building for lease or rent regulations to require the applicant to go beyond the DEQ or DNRC permitting requirements. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact on Criteria B to approve findings as amended; keying in on findings a, b, d, e and g. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve the conclusions of law under Criteria B as submitted. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

Prior to a motion on the findings of fact under Criteria C Commissioner Hunthausen included two additional findings of fact to Criteria C; 1) the actions of the original property owner, subsequent actions of developers, property owners, and the County have treated Brookings Road as a Public Access Easement; 2) there is no regulatory requirement for the applicant to demonstrate conclusively that legal and physical access will be provided by a Public Access and Utility Easement or a County Road Easement. There is also no requirement in the Buildings for Lease or Rent regulations for a formal maintenance agreement for the external or internal roads.

A motion was made by Commissioner Hunthausen that under Criteria C to approve the findings of fact, including the two additional Findings. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen under Criteria C conclusion of law that the existing access to the subject property is adequate. However, approach permits may be required if the road is determined to be a Public Access Easement. The proposed buildings for lease or rent can be brought into compliance with these regulations and the Conditions of Approval. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve the findings of fact under Criteria D as submitted, keying in on findings b, c, d, and e. The motion was seconded by Commissioner McCormick. The motion passed with a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve the conclusion of law under Criteria D as submitted. The motion was seconded by Commissioner McCormick. The motion passed with a 3-0 vote.

A motion was made by Commissioner Hunthausen that after reviewing the findings of fact under Criteria E to approve the findings as submitted. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to adopt the conclusion of law under Criteria E that the subject property is not located within the floodplain; therefore there are no applicable floodplain regulations. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to amend the draft condition of approval No. 8 to add the language; if Brookings Road is determined to be a public access easement. The motion was seconded by Commissioner McCormick. The motion passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to approve the draft conditions of approval as amended and seconded by Commissioner McCormick.

The draft conditions of approval were discussed. These included the applicant shall obtain a trailer/mobile home license and comply with all requirements if required; if there is ground disturbance they may fall under the Montana DEQ rules to obtain a Montana Pollution Discharge Elimination Systems permit; as well as the five year weed plan; prior to any development of the BLR project, a wastewater treatment plan shall be submitted to the Lewis and Clark Health Department, Environmental Division for review and approval.

Commissioner Hunthausen stated that the Commission has a motion on the floor to approve the draft conditions of approval as amended and seconded. The motion passed on a 3-0 vote.

Commissioner Good Geise stated we will revert back to the main motion. Commissioner Hunthausen stated the original motion was to Conditionally Approve the proposal.

A motion was made by Commissioner Hunthausen that after reviewing the findings, conclusions and amendments to approve the proposal as recommended in the original motion and as amended. The motion was seconded by Commissioner McCormick.

Commissioner Hunthausen addressed some public comment about the roads. The Legislature passed the BLR law in 2013 and it allows for this kind of development. Part of this law is that the County does not have the ability to address the road issue and the impacts to the roads that might be attributed to the new development.

Commissioner Good Geise stated seeing no further discussion those in favor of 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.

Kim Smith referenced all the roads in general. The County Commission does have the ability to mitigate some of these things. The north valley has greatly improved. He believes Rural

Improvement Districts are a good idea. That is what it is going to take to keep improving the roads and would encourage to keep moving in that direction.


Commissioner Hunthausen stated an RID cannot be put on a road that is not deemed as public or county. If the County does not know what the road is an RID cannot be formed.

Kari Frydenlund, 350 Applebrook, stated Applebrook is a private road. All five owners fix their own road. Law enforcement has been called numerous times due to speed conditions and the way people drive the road turning to Sunflower. If Applebrook is a private road can they put up a speed sign or gate at the end of the road? Mr. Lane stated he does not have information in front of him to verify it is a private road. If it is a private road, it would be within the property owners' right to restrict access, but no advice beyond that. Ms. Frydenlund noted if Applebrook was gated it would cut off the private road of Sunflower. Commissioner Good Geise stated they will have someone get back to her on this issue. Commissioner Hunthausen recommended caution to the homeowners and to do some research prior to any action.

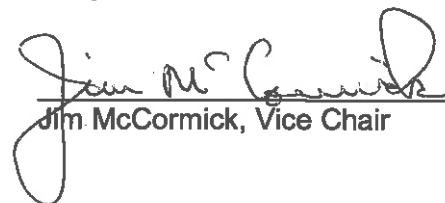
Adjourn

There being no further business, the meeting adjourned at 10:11 am.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS




Andy Hunthausen, Chair



Jim McCormick, Vice Chair

Susan Good Geise, Member

ATTEST:



Paulette DeHart, Clerk of the Board