



## **PUBLIC MEETING**

April 28, 2015

MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on April 28, 2015, at 9:00 AM in Commission Chambers Room 330.

### **Roll Call**

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

Commissioner Susan Good Geise and Commissioner Mike Murray were present. Others attending all or a portion of the meeting included Eric Bryson, Michele Peterson-Cook, K. Paul Stahl, Jason Grimmis, Lindsay Morgan, Kim Smith, Matt Witkos, and Nichole Nisbet, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Proclamation Recognizing 2015 as the Navy Reserve Centennial.**

Commissioner Hunthausen read the Proclamation recognizing 2015 as the Navy Reserve Centennial.

### **Consent Action Items**

- a. Public Meeting Minutes: April 2, 2015. (Nichole Nisbet)

Eric Bryson reported on the consent action item 2 a and recommended approval.

No public comment was received.

A motion to Approve was made by Commissioner Murray and seconded by Commissioner Good Geise, and the motion result was Passed with a vote of 3-0

### **Contract between Lewis & Clark County and Benefis Spectrum Medical, Inc. (Jason Grimmis)**

Jason Grimmis, Detention Center Captain, presented the annual contract with Benefis Spectrum Medical for FY16 for medical services to the detention center. The contract pays for the salary of the staff of Spectrum Medical which includes a nurse for 60 hours a week and a physician's assistant for 16 hours a week. The contract covers all medical services including providing medical care, prescriptions, scheduling doctor's appointments and training of the detention center staff. The contract amount is \$256,985.00 for dates of July 1, 2015 through June 30, 2016.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray, and the motion result was Passed with a vote of 3-0.

**South Forestvale II Subdivision (Modifications) (tabled 4-21-15) (Applicant: Kim Smith Properties, LLC) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the South Forestvale II subdivision modification request. On Tuesday, April 21, 2015, a public hearing was held on the South Forestvale II subdivision modification request. The applicant has requested modifications to the following, Condition No. 9, regarding the requirement to chip-seal a portion of Mill Road, No. 10.b, regarding the requirement to establish a Rural Maintenance District or Rural Improvement District for maintenance of the community water supply system and No. 13.a. regarding the requirement to pay a per lot fee to the West Helena Valley Fire District. In addition to modifying the three existing conditions, the applicant has also requested a variance from Chapter XI.S, and Appendix L 18-4.1 of the 2005 County Subdivision Regulations. Today is decision day, two public comments were received yesterday, one was received April 20 and one was received on April 27th. Commissioner Hunthausen stated that having reviewed the staff report, variance request, the presentations by staff and the applicant, and the draft findings of fact and conclusions of law and proposed modifications of the approval conditions, is anyone prepared to make a motion to approve, conditionally approve, or deny the request for modifications of the subdivision approval for the Forestvale II Subdivision.

Commissioner Geise stated she has reviewed 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 considering public testimony to approve the request for modifications of the conditions of approval. The motion was seconded by Commissioner Murray, the motion result was Passed with a vote of 3-0.

Commissioner Hunthausen stated that we now have a motion on the floor for action on the request for modifications of the conditions of approval for the Forestvale II Subdivision. We will first consider whether or not to approve the requested variance based on findings of fact and conclusions of law.

Commissioner Geise stated that she has reviewed the draft findings of fact for the variance request. Those draft findings touch on the following information: The subdivision is located in the West Helena Valley Fire District, The First District Court has invalidated the per lot fee for fire protection, The Subdivision Regulations in effect at the time still required the applicant to address fire protection, The Subdivision Regulations in effect at the time required that all water sources for fire protection be located on-site, The applicant is requesting a variance to allow a project with no on-site fire protection system and the applicant has identified an off-site water source that is a little over a mile away and that members of the public addressed concerns regarding the distance to the proposed offsite water system and wanted to see an onsite water source.

Commissioner Hunthausen added findings of fact No. 8 that surrounding subdivisions rely on the same water source for their fire protection and the same response capacity by West Valley Fire.

A motion was made by Commissioner Geise that after reviewing the draft findings of fact for the variance including No. 8, to approve the findings as submitted. The motion was seconded by Commissioner Hunthausen, the motion result was Passed with a vote of 2-1, with Commissioner Murray voting against.

Commissioner Murray stated that he intends to vote no as the surrounding subdivisions have contributed to the equipment that will provide fire protection for this subdivision. The developer is relying on equipment that has been provided by other people in the development of the fire district.

Commissioner Hunthausen stated we have adopted findings of fact for the requested variance. We must now make conclusions of law as to whether under the facts the request for variance meets the criteria for granting variances contained in Section II of the Subdivision Regulations.

Commissioner Geise stated that she has reviewed the variance criteria that must be met by the applicant. Those variance criteria are the following: The granting of the variance would not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the standards were

enforced. The granting of the variance would not cause a substantial increase in public costs. The approval of the variance would not place the Subdivision in nonconformance with other adopted regulations.

A motion was made by Commissioner Geise, after reviewing the adopted findings of fact and the variance criteria, to adopt a conclusion of law that the proposed subdivision variance request meets the variance criteria. The motion was seconded by Commissioner Murray, the motion result was Passed with a vote of 3-0.

A motion was made by Commissioner Geise, after reviewing the adopted findings of fact and our conclusion on the variance criteria, to approve the variance request as submitted by the applicant. The motion was seconded by Commissioner Murray, the motion result was Passed with a vote of 3-0.

Commissioner Hunthausen stated the applicant has requested a modification of Approval Condition 9 related to a requirement for off-site road improvements. We must now make findings of fact on whether modification of Approval Condition 9 would be consistent with the criteria and standards of the regulations in effect at the time of project approval.

Commissioner Geise stated that she has reviewed the draft findings of fact for the request for modifications to Approval Condition No. 9. Those draft findings touch on the following information: Mill Road was chip sealed by the County in 2012, Chip seals last for 7 to 10 years, Mill Road won't require chip sealing again until at least 2019, the applicant is still required to chip seal Scribner Road and the applicant is willing to chip seal Scribner Road and that members of the public expressed heavy truck traffic on Mill Road and has been taken under consideration.

A motion was made by Commissioner Geise, after reviewing the draft findings of fact for modifications to Approval Condition 9, to approve of the findings as submitted. The motion was seconded by Commissioner Murray, the motion result was passed with a vote of 3-0.

Commissioner Hunthausen pointed out that the findings related to the 7-10 years which a chip seal may last and it doesn't make sense to require another chip seal on a road that doesn't need it until 2019.

A motion was made by Commissioner Geise, after reviewing the adopted findings of fact for modifications to Approval Condition 9, to approve of a conclusion of law that the proposed modification is consistent with the criteria and standards of the 2005 version of the County Subdivision Regulations. The motion was seconded by Commissioner Murray, the motion result was passed with a vote of 3-0.

A motion was made by Commissioner Geise, after reviewing the adopted findings of fact and our conclusion on the requested modification, to approve the modification request as submitted by the applicant. The motion was seconded by Commissioner Murray, the motion result was passed with a vote of 3-0.

Commissioner Hunthausen pointed out that that this subdivision is under the 2005 subdivision regulations.

Commissioner Hunthausen stated the applicant has requested a modification of Approval Condition 10.b related to a requirement for a Rural Maintenance District. We must now make findings of fact on whether modification of Approval Condition 10.b would be consistent with the criteria and standards of the regulations in effect at the time of project approval.

Commissioner Murray stated that he has reviewed the draft findings of fact for the request for modifications to Approval Condition No. 10.b. Those draft findings touch on the following information: In order for improvements to be covered by an RID they must be publicly owned, the applicant acquired the project from the prior developer and the applicant doesn't intend to make this a publicly owned utility,

members of the public expressed concerns about future homeowners having say in what happens in their water.

A motion was made by Commissioner Murray, after reviewing the draft findings of fact for modifications to Approval Condition 10.b, to approve the findings as submitted. The motion was seconded by Commissioner Geise, the motion result was Passed with a vote of 3-0.

Commissioner Hunthausen stated that the system will be regulated by the Public Service Commission and will be maintained by fees paid by the future homeowners.

A motion was made by Commissioner Murray, after reviewing the adopted findings of fact for modifications to Approval Condition 10.b, to approve the conclusion of law that the proposed modification is consistent with the criteria and standards of the 2005 version of the County Subdivision Regulations. The motion was seconded by Commissioner Geise, the motion result was Passed with a vote of 3-0.

A motion was made by Commissioner Murray, after reviewing the adopted findings of fact and our conclusion on the requested modification, to approve the modification request as submitted by the applicant. The motion was seconded by Commissioner Geise, the motion result was Passed with a vote of 3-0.

Commissioner Hunthausen stated the applicant has requested a modification of Approval Condition 13.a related to fire protection requirements. We must now make findings of fact on whether modification of Approval Condition 13.a would be consistent with the criteria and standards of the regulations in effect at the time of project approval.

Commissioner Hunthausen asked the legal staff if the variance has been approved in essence does this make this condition moot.

Michele Peterson-Cook, Deputy County Attorney, stated that you can condition after granting a variance. The subdivision regulations require that you find there is proper fire mitigation in the area. The Commission needs to determine how best to mitigate that whether it is through a condition or not.

Lindsay Morgan stated that the applicant has proposed to remove the fire fees and not be required to do anything further. The applicant has also pointed out there is an offsite source nearby. Staff has provided alternative modifications to Approval Condition No. 13.a which include either a two hundred fifty (250) g.p.m. for two hours, water shall be supplied by a well and pump with required volume and minimum pressure of twenty (20) p.s.i. An overhead fill may be required in order to fill tankers. The fill site must be useable year round and the FPAHJ must have legal access in perpetuity. Or, Water shall be supplied by a tank/pressurized hydrant combination. The tank may be constructed from plastic, concrete, fiberglass or other materials capable of holding and maintaining the require water supply. The tank must be built and installed so as to last a minimum of thirty (30) year. The pump must be capable of delivering, from an approved fire hydrant, the required g.p.m. at a minimum of twenty (20) p.s.i. The system shall be inspected and certified by a Professional Engineer and approved by the Fire Protection Authority have jurisdiction. Or, 30,000 gallon storage with dry hydrant. Dry hydrant applications may be used for ponds, streams and lakes. The system must be designed to be useable and accessible year round. All pipe must be a minimum of 6 inch diameter and the threads at the outlet must be 6 inch male NST. The offsite source does not meet all three of those but you could require specifics of the offsite source to one of the three criteria.

Commissioner Geise, stated that she has reviewed the draft findings of fact for the request for modifications to Approval Condition No. 13.a. Those draft findings touch on the following information: the project is in the West Valley Fire District, the First District Court has invalidated the per lot fee for fire protection, the Subdivision Regulations in effect at the time still required the applicant to address fire protection, the Subdivision Regulations in effect at the time required that all water sources for fire protection be located on-site, the applicant is requesting a variance to allow a project with no on-site fire protection system and the applicant has identified an off-site water source that is a little over a mile away

and the public expressed concerns of distance of the offsite fire protection and wanted to see an onsite source.

Commissioner Geise added to the findings of fact that depending on how the distances were measured as the applicant's representative measured .98 miles and this was not a major collector and should not be a huge barrier.

Lindsay Morgan stated that when the distances were calculated by the representative of the applicant, the route that was measure did not exist. County Planning staff calculated the distance as over one mile. The applicant's representative agreed their measurement was an error.

Commissioner Geise stated that the one mile constraint is post 2005 Subdivision Regulations.

Lindsay Morgan stated that is correct, prior regulations did not allow for offsite sources but current regulations do have parameters.

Commissioner Geise moved to strike the finding of fact she stated as it is not pertinent. The motion died for lack of second.

A motion was made by Commissioner Geise, after reviewing the draft findings of fact for modifications to Approval Condition 13.a, to approve the findings as submitted. The motion was seconded by Commissioner Geise, the motion result was Passed with a vote of 3-0.

A motion was made by Commissioner Geise, after reviewing the adopted findings of fact for modifications to Approval Condition No. 13a, to approve a conclusion of law that the proposed modification is consistent with the criteria and standards of the 2005 version of the County Subdivision. The motion was seconded by Commissioner Murray, the motion result was Passed with a vote of 3-0.

A motion was made by Commissioner Geise to approve the modification request as submitted by the applicant. The motion was seconded by Commissioner Murray, the motion result was failed with a vote of 1-2 with Commissioner Hunthausen and Commissioner Murray voting against.

Commissioner Geise asked for clarification from Ms. Morgan if the staff recommendation provides more or less flexibility as it is her intention to give the applicant maximum flexibility.

Lindsay Morgan stated if approved as the applicant is proposing there is no further action required and that would be more flexibility.

Commissioner Hunthausen stated that he will not support the motion as he believes the site the applicant has identified meets the first criteria as suggested by staff.

Commissioner Murray stated he believes there needs to be parameters around it and intends to vote against it as well. A motion was made by Commissioner Murray, after reviewing the adopted findings of fact and conclusions of law on the requested modification, to approve the modifications as recommended by the staff. The motion was seconded by Commissioner Hunthausen, the motion result was Passed with a vote of 3-0.

Commissioner Hunthausen stated that this is standard language for what we require for fire protection and he believes the site should meet some standards and this will provide flexibility for the applicant.

Commissioner Geise stated that the applicant in his request has a reasonable solution and the addition of the parameters is unnecessary.

Commissioner Murray stated he supports the motion because of the parameters.

Commissioner Hunthausen stated this is what we require currently in our Subdivision Regulations.

Commissioner Hunthausen stated that the motion on the floor is approve the request for modifications for conditions of approval to include the consideration of findings of fact and conclusion of law related to the modification request as well as the approval of the variance and the facts and findings and conclusions of law related to the approval of the variance.

Commissioner Geise moved to ask for allowance to reconsider the last vote to approve the modification request for 13a. as the vote was unanimous and she would like the chance to set the record straight. The motion was seconded by Commissioner Murray, the motion result was Passed with a vote of 3-0.

A motion was made by Commissioner Murray to approve the modifications as recommended by the staff. The motion was seconded by Commissioner Hunthausen, the motion result was Passed with a vote of 2-1, with Commissioner Geise voting against.

Commissioner Hunthausen stated that the motion on the floor is approve the request for modifications for conditions of approval to include the consideration of findings of fact and conclusion of law related to the modification request as well as the approval of the variance and the facts and findings and conclusions of law related to the approval of the variance. The motion was seconded by Commissioner Murray, the motion result was Passed with a vote of 3-0.

### **Board Appointment. (Eric Bryson)**

Eric Bryson presented the board appointment and recommended the appointment of Bill Pandis to replace Patrick McDuffie on the Stop DUI Task Force as the LCSO representative and complete the term that will expire 12/31/2016.

No public comment was received.

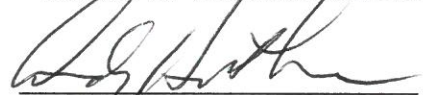
A motion to Approve was made by Commissioner Murray and seconded by Commissioner Good Geise, and the motion result was Passed with a vote of 3-0.


**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 9:52 am.


LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Andy Hunthausen, Chairman

  
Michael Murray, Vice Chair

  
Susan Good Geise, Member

ATTEST:

  
Paulette DeHart, Clerk of the Board