



## **PUBLIC MEETING**

April 28, 2016  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, April 28, 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, K. Paul Stahl, George Theborge, Matt Heimel, Lindsay Morgan, Eric Griffin, Jay Nelson, Cate Nelson, Dean Retz, Vern Evans, Bob Utick, Tony Prothero, Al Knauber, and Nichole Nisbet, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Consent Action Items**

- a. Public Meeting Minutes: April 5, 14 and 19, 2016. (Nichole Nisbet)

Eric Bryson reported on the consent action item 2a 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.

### **Memorandum of Understanding Between Lewis and Clark County, City of East Helena and the City of Helena. (Eric Bryson)**

Eric Bryson presented the memorandum of understanding for the continued operation of the East Valley Bus Service in the amount of \$53,010 for the period of July 1, 2016 through June 30, 2017. 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.

### **Extension Request of Preliminary Plat Approval for JAMVAR Subdivision. (Applicant: Bob Utick) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the request for an extension of preliminary approval until May 9, 2017 for this 4-lot, preliminarily approved Subdivision located east of Collins Drive, north of and adjacent to Fantasy Road. The subdivision was granted preliminary approval on May 9, 2013. The subject property is located east of Collins Drive, north of and adjacent to Fantasy Road, and is 20.17 acres in size. According to the applicant's Extension Request Application form, he has submitted an application for final approval of this Subdivision. In addition, the applicant states that JAMVAR Court is complete and

that he is waiting on both testing and the engineer's certification. The applicant also states that the detention ponds were to have been completed in April, that all address plaques and road signs were to have been installed in April as well, that various agreements and paperwork are being finalized, and that he plans to complete work on Fantasy Road within a couple of weeks. Planning Staff was able to verify that the applicant has submitted an application for final approval and that he is currently working towards completion of all conditions. Items that have been completed include: submittal of a DEQ approval statement, the signed covenants, Certificate of Title, and a letter from the lien-holder authorizing the division of land and the applicant has also paid all property taxes for the current tax year. The Commission has the following options to consider regarding the requested extension of preliminary approval for the JAMVAR Subdivision: grant a one-year extension of preliminary approval until May 9, 2017; or deny the requested extension of preliminary approval.

Robert Utick, the applicant, restated the items that have been completed and stated the extension is needed to ensure the remaining items are completed.

No public comment was received.

A motion was made by Commissioner Geise to approve the extension request of preliminary approval until May 9, 2017 and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

**Off-site Road Improvements Request for JAMVAR Subdivision. (Applicant: Bob Utick) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the request to complete improvements to a section of Fantasy Road, in-lieu of paying the off-site road improvement exaction for this section of Fantasy Road and two sections of Collins Drive as required under preliminary approval Condition No. 3 of the JAMVAR Subdivision, which is located east of Collins Drive, and north of and adjacent to Fantasy Road. According to the conditions of approval, the applicant is required to pay a proportionate share of the improvements required to bring all roads within this subdivision's traffic impact corridor up to County Standards, Typical Section No. 1, gravel. Roads included within this corridor are: Fantasy Road from the east boundary of the subdivision to Collins Drive, and Collins Drive, from Fantasy Road to Lincoln Road. Since Condition No. 3 only requires the applicant to pay the exaction, and not to actually complete any improvements, he is seeking permission from the Commission to use this money to complete all improvements necessary for bringing approximately 1,990 feet of Fantasy Road up to County Standards in-lieu of paying the exaction. In addition, the applicant has submitted a list of improvements he believes are require to bring this road section up to the County Standard. The list includes: preparation of the road sub-grade and drainage improvements, 9 inches of road mix, compaction and quality insurance testing and grading, watering and rolling of the 9 inches of road mix. The applicant is also requesting that he not be required to submit engineered road plans as he has laid out his plan for completing these road improvements. Planning Staff and County Public Works Department Staff discussed this request and determined that engineered road plans and certification should be required prior to improvements being completed on Fantasy Road. Staff also discussed the exaction estimates and determined that the following information was not included, current market values for the gravel, mobilization amounts, engineering fees and the engineer's contingency. Without this information, Staff is not currently able to determine the amount of the off-site road exaction for this Subdivision. And because Staff is unable to determine this amount, it is unknown if the cost of bringing Fantasy Road up to County Standards, Typical Section No. 1 (gravel), will be less than, equal to, or more than the amount of the exaction. Should this amount be less than the exaction once these estimates are finalized, Staff recommends that if the applicant's request is approved by the Commission, he be required to pay the monetary difference between these costs to the County and that this money be set aside for future improvements to the sections of Collins Drive within this Subdivision's traffic impact corridor. Additional information was given to Staff and included an estimate from engineer, Gary Bay that provides additional details. The applicant plans to bring the section of Fantasy road up to County Standards no matter what the cost is.

Commissioner Hunthausen asked Ms. Morgan if it is possible if someone says they will bring a road up to County Standard if County Public Works signs off on the details rather than having an engineer do so. Eric Bryson stated the Public Works staff is relied on throughout the phases to review the design, building of the road and certifying the work has been completed.

Commissioner Murray asked if by having a professional engineer sign off it means they will assume the liability.

Lindsay Morgan reiterated that the applicant's request is to not have a professional engineer sign off on the plans.

Commissioner Murray asked Ms. Morgan about the road exaction estimates.

Lindsay Morgan stated when a developer is required to pay the offsite road exaction, they are paying the full cost of bringing the full road up to County Standard.

Commissioner Geise asked about the process of bringing a road up to County Standards. It is her understanding that County Public Works would confirm that the road is truly up to County Standard.

Lindsay Morgan stated the process includes a developed submitting road plans including a road certification and having a professional engineer sign off on the work.

Commissioner Geise asked Mr. Stahl if the Commission were to move forward if they would be setting a precedent.

K. Paul Stahl stated yes and stated the developer has not completed the obligation to pay the proportional share as required by our County Subdivisions.

Lindsay Morgan stated that staff has not been able to confirm the developer's proportional share as they were missing information needed to calculate their share. She further noted that the funds received could be used anywhere along the traffic impact corridor.

Commissioner Hunthausen asked if there is an estimate for the off-site road exaction.

Lindsay Morgan stated there is an estimate however it does not include the four items that are missing. The amount of the exaction was estimated at \$25,000 from his engineer. The applicant's proposal is to complete that section of Fantasy which is estimated at \$34,000.

Commissioner Hunthausen stated the question is whether or not the Commission is willing to move forward without the submission of road plans and an engineer's certification.

K. Paul Stahl stated the precedent would be letting the applicant decide where they would like to spend all their funds in the traffic impact corridor.

George Theborge stated the money can be spent on any section of the road and noted it is up to the Commission to approve that request and with the guidance of Public Works. In regards to the question of precedence, he stated that any applicant that comes before the Commission is an entity and the decision is not based upon the assurances of the entity to do certain actions but is based on what are the legal requirements and the County needs assurances that the road will be completed.

Commissioner Geise asked if the developer believes the road is up to standard and our Public Works Department does not agree, then the developer would need to go back and fix the road.

K. Paul Stahl stated having personal assurance that the road is up to County Standards is not a real assurance and it would be better to have professional certification that the road is truly up to County Standards.

Commissioner Hunthausen stated it isn't the County's obligation or job to do the work of the developer.

Tony Prothero, the applicant's engineer, stated they recognize the difference in the estimates and stated the proposal will not change alignments or grades for example. In his opinion having engineered plans have less value in this circumstance as the road is already built.

Commissioner Murray asked if Mr. Prothero would be willing to certify the road.

Tony Prothero stated if he engineered the road, yes. In this case, the applicant does not want to have engineering plans.

Commissioner Hunthausen asked if an engineer has to do the plans in order to certify the road.

Tony Prothero stated he would be willing to review the road and certify the road meets Typical Section No. 1 standards.

Commissioner Hunthausen asked if an engineer plan was not required but a certification was, would that be a significant cost savings to the applicant.

Tony Prothero stated there is a cost savings if there is an agreement made ahead of time. There is value even with a low grade set of plans.

Robert Utick, the applicant, stated the engineered plans are not to build a new road but to improve a road. The applicant is proposing to do one hundred percent of the improvements to Fantasy Road and the reason he would like to do Fantasy Road is it will make the lots easier to sell and he feels if he does not do it and writes a check for his proportional share the road may never be fixed. He stated it will cost him less money to write a check to the County but feels improving the road will be more of a value. He noted they will do the compacting testing to ensure there is nine inches of gravel on the road.

Commissioner Murray asked Mr. Utick about the culverts along the road.

Robert Utick stated there are existing culverts, one of which has already been extended and the proposal includes the installation of a new culvert.

Commissioner Geise asked Mr. Utick if he feels he can produce a product that will pass County Standards and if it doesn't if he is willing to go back to the drawing board to have a road that will pass County Standards.

Robert Utick stated he is guaranteeing that he will be able to meet County road standard.

Eric Griffin, County Public Works Director, stated it is good business for the County and the developer to have a set of plans. If you are not going to require certification that will require staff doing the work that the developer should be doing with an engineer. He recommended that there is a set of plans and that an engineer signs off and certifies that the road is up to standard. He noted the four items missing are used in the calculation of the exaction.

Commissioner Geise asked Mr. Griffin if at the end of the project if Public Works will verify if the road meets County Road Standards.

Eric Griffin stated they do however they need plans to verify that the road is built to their standards.

Commissioner Hunthausen asked when there is a certification of a road and plans, does Public Works do an inspection to ensure the road was built to standard.

Eric Griffin stated that is correct.

Commissioner Geise stated she does not feel the applicant is asking for Public Works to become the engineer. She feels the applicant is asking to do the work all himself until the road is complete for inspection by the County.

Eric Griffin stated the applicant has no plans, a cost estimate was submitted. The only way for Public Works to certify the road is to be involved from the ground up throughout the entire process.

Commissioner Murray asked Mr. Griffin how the standards differ from the plans.

Eric Griffin stated the difference is in the process with plans, the engineer is signing off and ensuring the work is being completed. With this proposal the County is being asked to do the work of an engineer and ensuring the has been built to standards.

Commissioner Hunthausen stated the plans are a guide for the engineer to follow to design the road.

Eric Griffin stated it is standard industry process to have a plan to construct a road.

Commissioner Hunthausen asked Ms. Morgan what the regulations state.

Lindsay Morgan stated since this is an off-site road, a check is written to the County and the County would initiate improvements within the traffic impact corridor. You have a condition of approval that requires a check for the amount of the exaction.

No further public comment was received.

Robert Utick stated he feels they are rebuilding a road that is there and stated he feels if he does not do the work himself it will not get done. He noted an engineer will be there throughout the process and reiterated a road compaction test will be done.

Commissioner Murray stated the public hearing is now closed.

A motion was made by Commissioner Hunthausen to table the item until the regularly scheduled meeting on May 5, 2016 and seconded by Commissioner Geise. The motion was Passed on a 3-0 vote.

Break/Reconvene.

**Proposed Buildings for Lease or Rent for Block 39, Lots 9 - 16 City Park Addition. (tabled 4/26/16)**  
**(Applicant: Cate Nelson & Anne Dormady) (Planner: Matt Heimel)**

Matt Heimel, Special Districts Planner, presented the proposed the Buildings Lease or Rent for Block 39, Lots 9-16 City Addition.

A motion was made by Commissioner Hunthausen to approve the proposed Buildings Lease or Rent for Block 39, Lots 9- 16 City Addition and seconded by Commissioner Geise.

Commissioner Hunthausen reviewed the Buildings for Lease of Rent review criteria as the proposed buildings for lease or rent, as submitted complies these regulations and all other applicable regulations to the property, and avoid or minimize potential significant impacts on the physical environment and human population in the area affected by the proposed buildings for lease or rent, noted the findings of fact and reviewed the 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, 2, 4, and 6.

A motion was made by Commissioner Geise to approve the findings of fact and conclusions of law for Criteria A and seconded by Commissioner Murray. The motion Passed on a 3-0 vote.

Commissioner Hunthausen reviewed the findings of fact for Criteria B, adequate water, wastewater, and solid waste facilities are available to serve the proposed buildings for lease or rent and reviewed the conclusions of law that adequate access to the site is provided to serve the proposed buildings for lease or rent.

A motion was made by Commissioner Geise to approve the findings of fact and conclusions of law for criteria B and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Commissioner Hunthausen reviewed the findings of fact for Criteria C, adequate access to the site is provided to serve the proposed buildings for lease or rent and reviewed the conclusions of law that adequate access to the site is not provided to serve the buildings for lease or rent. However, compliance with Conditions of Approval Nos. 3 and 5 can provide adequate access to the site to serve the buildings for lease or rent.

A motion was made by Commissioner Geise to approve the findings of fact and conclusions of law for Criteria C and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Commissioner Hunthausen reviewed the findings of fact for Criteria D, adequate emergency medical, fire protection, and law enforcement services are available to serve the proposed buildings for lease or rent and reviewed the conclusions of law that adequate emergency medical, fire protection, and law enforcement services are available to serve the buildings for lease or rent.

A motion was made by Commissioner Geise to approve the findings of fact and conclusions of law for Criteria D and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Commissioner Hunthausen reviewed the findings of fact for Criteria E, the proposed buildings for lease or rent comply with any applicable floodplain regulations and reviewed the conclusions of law that there is no floodplain on this property and therefore there are no applicable floodplain regulations.

A motion was made by Commissioner Geise to approve the findings of fact and conclusions of law for Criteria E and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.


There is an overall motion on the table to approve the proposed Block 38, Lots 9 – 16 City Park Addition Buildings for Lease or Rent (406 Affordable Storage BLR). The motion Passed on a 3-0 vote.

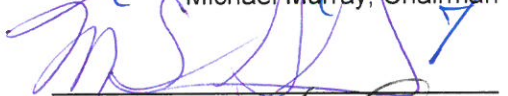
**Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.**

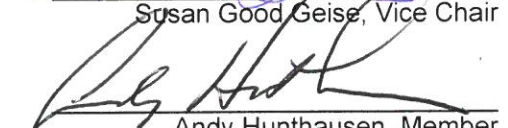
**Adjourn**

There being no further business, the meeting adjourned at 10:36 am.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
\_\_\_\_\_  
Michael Murray, Chairman

  
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Susan Good Geise, Vice Chair

  
\_\_\_\_\_  
Andy Hunthausen, Member

ATTEST:

  
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Paulette DeHart, Clerk of the Board