



PUBLIC MEETING

May 13, 2021
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, May 13, 2021, at 9:00 AM in Commission Chambers, Room 330.

Roll Call

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

Commissioner Tom Rolfe was present. Commissioner Jim McCormick was out of the office. Others attending all or a portion of the meeting included Roger Baltz, Marni Bentley, Peter Italiano, Charles Lane, Christal Ness, Audra Zacherl, Kevin Horne, Jesse Whitford, Joe Nistler, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Vendor Claims Report for Week Ending May 14, 2021. (Marni Bentley)

Roger Baltz reported on consent action item 2a and recommended approval.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Hunthausen. The motion Passed on a 2-0 vote.

Bid Opening. 2021 County Asphalt. (Audra Zacherl)

Audra Zacherl, Public Works Assistant Director, presented the bid opening for the 2021 County asphalt project. The project consists of constructing an asphalt overlay for a portion of Birdseye Road. One bid was received. The bid is from Helena Sand & Gravel, Inc. of Helena, Montana for a total base bid amount of \$252,517.60, the additive alternate is \$12,800.

Jesse Whitford, Construction Coordinator, stated the project on Birdseye Road will be 1.89 miles of paving from the railroad tracks at Williams Street to the following set of railroad tracks. The paving will be approximately 1.5 inches of asphalt, 24 feet wide.

A motion was made by Commissioner Rolfe for staff to take the bids under advisement and make a recommendation to the Commission on May 20, 2021. The motion was seconded by Commissioner Hunthausen. The motion Passed on a 2-0 vote.

Bid Award. 2021 Bituminous Asphalt Pavement. (Audra Zacherl)

Audra Zacherl, Public Works Assistant Director, presented the bid award for the purchase of bituminous asphalt pavement by the Road Department for the period beginning May 15, 2021 through June 30, 2022. On May 6, 2021, two bids were received and opened.

The asphalt material will meet the requirements of Montana Public Works Standard Specifications (MPWSS) Sixth Edition, Section 02510. Asphalt material will be produced at the bidder's facility and County crews will transport, place and compact. The successful bidder must be able to provide a minimum of four tons and up to a maximum of 100 tons of the asphalt daily. Both bids were for \$71 per ton. However, one bidder did not meet the requirements of the MPWSS Section 02510 for the mix design. Staff recommends awarding the bid to the other bidder, CAP Paving, Inc. of East Helena, Montana for the base bid of \$71 per ton.

Ms. Zacherl gave a brief overview of where the asphalt will be used.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Hunthausen. The motion Passed on a 2-0 vote.

Bid Award. 2021 Rural Improvement District Asphalt. (Audra Zacherl)

Audra Zacherl, Public Works Assistant Director, presented the bid award for the 2021 Rural Improvement Asphalt project. On May 6, 2021, two bids were received and opened. The project generally consists of asphalt overlays on various roads within the Pleasant Valley, Ten Mile Creek Estates, and Treasure State Acres Rural Improvement Districts (RID). Funding for the project will be budgeted from the FY22 individual RIDs. After a review of the bids by the selection committee, staff recommends awarding the contract to the low bidder, CAP Paving, Inc. of East Helena, Montana for a total contract amount of \$353,230.08.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Hunthausen. The motion Passed on a 2-0 vote.

Appeal from the Denial of an Encroachment Agreement for Lot 60 of the Broadwater Estates Major Subdivision. (Applicant: Joe Nistler) (Christal Ness)

Christal Ness, Community Development Supervisor, presented the appeal of the denial for a contract and encroachment agreement for Lot 60 of the Broadwater Estates Major Subdivision. The applicant requested the appeal of the denial by the County Public Works Department regarding encroachments within Smallwood Court. The denial was for improvements previously installed in the Public Access and Utility Easement, also known as Smallwood Court. The process is pursuant to Section 15 of the Lewis and Clark County Public Works Manual. Smallwood Court is located north of Highway 12, and generally west of Old Broadwater Lane, with the affected lot in the northwestern area of the Broadwater Estates Subdivision.

Smallwood Court was constructed as a condition of preliminary plat approval for the Broadwater Estates Subdivision and was improved to the standard for a paved local road under the Lewis and Clark County Subdivision Regulations. It is on the eastside of a 60-foot wide easement with a roadside ditch located on the west side of Smallwood Court. The east side does not have a ditch due to a steep downward slope. The applicant's house is constructed adjacent to the easement for Smallwood Court with the septic tanks, retaining wall, walkway, and house eaves constructed within the easement.

In November of 2016, the encroachments were first identified, and the applicant applied for an encroachment agreement that was denied. The second encroachment agreement application was received July of 2017 with no changes. In February of 2018 the applicant applied for an amended plat and a variance to scale back the easement so the road that was built would still be contained in the 40 feet, but the encroachments would then be outside of the right-of-way.

In August of 2018 the County Commission denied the application for the amended plat. In February of 2021 the applicants again applied for an encroachment agreement that was denied by Public Works.

Ms. Ness stated the recent denial from Public Works noted there is no evidence to improve the encroachment. The original denial was because after inspecting, the improvements are 20 feet into the right-of-way. It is a hilly section of the road and inspection was done in the summer when there was no snow on the ground. Public Works did not know if encroachments would impede the ability to complete maintenance on the road.

Commissioner Hunthausen explained the Commission often works with home buyers that are unaware of easement violations and is out of their control. But in this case the applicant built their house and included the encumbrance of the violation into the easement after it was established and fully open to their review.

Ms. Ness stated the subject lot has a substantial amount of rock. There are no new circumstances to consider.

Joe Nistler, 4996 Smallwood Court, stated he is here due to a Commissioner turnover. The subdivision was originally developed by Frank Gruber in 2006. Because of the hilly, rocky terrain, they had to move the road to the path of least resistance. At the end of that there are supposed to be as-builts done so if the road is not centered in the middle of the easement, they settle the easement on top of the road. Because of the original developer's lack of capability, the as-builts were stamped and never came back to center the easement on top of the road. He did not know of the encroachment at the time of putting in the septic system.

Commissioner Hunthausen asked about the options of moving the septic and Mr. Nistler explained the process and estimated \$44,000 to move the septic and retaining wall. It was an honest mistake and just wants help to move on. He explained there are no drain fields in Broadwater Estates due to the rocky terrain. If this is denied he does not have an answer where to go from here.

Ms. Ness explained the possible alternatives that the County has at this time and does not see any alternatives besides a plat variance which was already denied. She does not know what to do from here with no changes on anything.

Commissioner Hunthausen asked if an encroachment agreement would solve the problem with the bank and Ms. Ness explained the 60-day clause that in that 60 days they could have the encroachments removed for any reason. The encroachment agreement satisfies the bank that the county has said the encroachment is acknowledged but at any time in the future, you could be required to move the encroachment.

Charles Lane, Deputy County Attorney, stated the County requires a 60-foot wide easement and limiting the size of the road in the area would create an issue for the requirement. The applicant can work with other landowners to move the easement. The County could be held liable if any problems arise if the 60-foot requirement is not enforced.

A motion was made by Commissioner Rolfe to table the item to May 20, 2021 and seconded by Commissioner Hunthausen. The motion Passed on a 2-0 vote.

Board Appointment. (Roger Baltz)

Roger Baltz, Chief Administrative Officer, presented the board appointment for the City-County Parks Board. Staff recommends the appointment of Alex Tommerup to the City-County Parks Board to complete a vacant term that expires September 30, 2021.

No public comment was received.

A motion to Approve was made by Commissioner Rolfe and seconded by Commissioner Hunthausen. The motion Passed on a 2-0 vote.

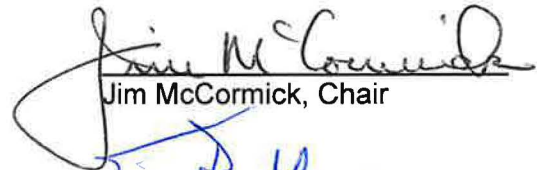
Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

Adjourn

There being no further business, the meeting adjourned at 9:57 am.

Meeting minutes approved on 11.22.22

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Jim McCormick, Chair



Tom Rolfe, Vice Chair



Andy Hunthausen, Member

ATTEST:



Amy Reeves, Clerk of the Board