



PUBLIC MEETING

**May 14, 2019
MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, May 14, 2019, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Jim McCormick 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 Roger Baltz, Jason Danielson, Nicho Hash, Peter Italiano, Greg McNally, Sam Neill, Dan Karlin, Kevin Wright, Gary Bertellotti, Mike Mueller, David Barrett, Bryan Coulie, Jeanne Holmgren, Heather Clarke, John Herrin, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Resolution 2019-40 Approving Funding for the Acquisition of the Falls Creek Property from the County Land, Water, and Wildlife Bond. (Planner: Sam Neill)

Sam Neill, Planner I, presented the resolution to approve funding from the County Land, Water, and Wildlife Bond to Rocky Mountain Elk Foundation (RMEF) for the Falls Creek Acquisition. The property owner, Dan Barrett approached RMEF to help sell off 442 acres of his property eventually conveying it to the US Forest Service for acquisition into the Helena-Lewis and Clark National Forest. The property is located along the Rocky Mountain Front approximately 30 miles southwest of Augusta. The properties have been appraised for \$2.46 million. RMEF will purchase all 442 acres as funding becomes available with the goal of acquiring the properties by December 2020 per the purchase option agreement with Mr. Barrett.

The project was brought to the Open Lands Advisory Committee (CAC) in July of 2018 and the CAC recommended approval of the project contingent on approval of the due diligence materials approved by the County legal staff. In January and April 2019 the Board of County Commissioners held public meetings for review of the due diligence materials and submitted public comment. Following the April meeting a 30-day comment period was opened and closed on May 11, 2019. Over 30 letters of support were collected with no letters of opposition. To date RMEF has raised about \$960,000 for the purchase and will continue to raise funding for the acquisition of which about \$1.5 million is still needed. Ms. Neill noted the US Forest Service has provided \$255,000 in funding for the project with

anticipation of receiving Land and Water Conservation (LWCF) funding to go towards the remaining balance, but the funds have not been guaranteed. Staff recommends conditional approval and depending upon the decision if there is still funding to be raised by RMEF the County will want to see confirmation that the full balance of the acquisition price has been secured prior to the release of County funds. Spent on conservation projects thus far are about \$5.2 million out of the \$10 million County Land, Water, and Wildlife Bond leaving about \$4.7 million remaining.

Mike Mueller, Rocky Mountain Elk Foundation, thanked the Commission for staying with the process and how it is so good to have an open space bond program. He also thanked Dan Barrett for his vision and understanding. Mr. Mueller noted they are continuing to raise funds, but still need \$1.5 million for the project. The property will not be opened to the public until the project is fully completed. Mr. Mueller noted the total raised so far did include the \$255,000 from the US Forest Service that was left over money from another project. The Falls Creek project, competing with nationwide projects, is No. 25 on the Land and Water Conservation Fund list with some money attached to it but has to wait for Congress to act and for budget approval.

Ms. Neill reviewed the open lands bond criteria considered in the project such as water quality and water protection, habitat for a variety of fish and wildlife, open space recreation aspect, ability to connect to existing public lands.

Roger Baltz, Chief Administrative Officer, asked for clarity on the numbers stated in the staff report and Ms. Neill stated that was the information they had at the time the staff report was written and she received the update on the amount of raised funds this morning.

PUBLIC COMMENT -

Mr. Mueller stated the public access component is hard to put a dollar value on the project when you look at all the recreational benefits it will provide to the public.

Commissioner Good Geise asked if \$1 million was given today and the fundraising is not successful to raise the balance would the applicant be able to come back through the Open Lands Committee with another recommendation to the Commission.

Nicho Hash, Deputy County Attorney, stated he does not think this has ever occurred and does not have a direct answer.

Peter Italiano, Community Development and Planning Director, stated the Open Lands Committee does not look at dollar amounts. Mr. Italiano stated the Commission could have them go back through the whole process, or have them go straight back to the Commission, because the second decision would only be to put a dollar amount on the project. Mr. Italiano noted another approach might be, after conferring with legal, to structure a two-part motion up to whatever the shortfall is with a guarantee of \$1 million today and the spread with a timeframe on it if RMEF says they have not been able to raise the money.

Charles Lane, Deputy County Attorney, stated if the Commission would like to move forward and conditionally determine the amount of money they want to spend he would recommend a break to discuss the formatting of the motion.

John Herrin, stated he has been a fan of the open space projects such as this one that gives more of a public access.

Mr. Mueller stated a possible consideration of the Commission could be to guarantee the \$1 million today and consideration up to the balance of \$1.4 million and RMEF could report the shortfall amount by August 1st. The partners would know the project was finished and could prepare everything for the public a month later.

Mr. Italiano stated staff thinks the best way is to provide the \$1 million with RMEF coming up with the remaining amount before the \$1 million was released and they have until the end of December of 2020 to do so. However, if the Commission would want to provide more funding than the \$1 million there is nothing legally or from a policy decision preventing the Commission from doing so.

Commissioner Good Geise asked if there is \$4.7 million dollars in the Open Space Bond and asked what other projects are coming. Ms. Neill stated that is with the \$1 million deducted so there is \$5.7 million. She added a Level I application has been received from a working farm in Spokane Hills and are waiting on the appraisal.

Mr. Italiano stated there is property on the west side of town somewhat adjacent to existing City open space and it is moving forward. As of a couple weeks ago it appears the county will not be asked for additional funding as they have secured adequate funding.

Commissioner Hunthausen noted there is a 10 year time frame to allocate the \$5 million to open lands projects. The Falls Creek project has been supported by all organizations, both public and private with no negative comments.

Heather Clark, RMEF Grant Program Specialist, stated the Forest Service did find \$255,000 committed to the project included in the \$960,000 submitted. The Land and Water Conservation Fund list is for FY2020 funding. The answer will not be known until the national budget process is complete and secure.

Jeannie Holmgren, Forest Service Project Manager, stated they will be asking for the reprogramming of the \$255,000 that is a remaining balance from another project and they do not anticipate denial of the request.

Mr. Mueller stated the \$960,000 does not include the unknown amount coming up in FY2020.

Dan Barrett, Augusta, stated he is good with the project.

A motion was made by Commissioner Good Geise to approve the resolution and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to allocate \$1.4 million to the project described in Resolution 2019-40 and seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

Resolution 2019-38 Naming Willard Court. (Jason Danielson)

Jason Danielson, City-County Address Coordinator, presented the resolution to name a road located north of John G Mine Road, traveling northeast approximately 1500 feet. An existing 50 foot private access and utility easement is filed and recorded in the Lewis and Clark County Clerk and Recorder's Office. The Road Naming and Addressing Standards in the Lewis and Clark County Public Works Manual, notes that every road with three or more structures shall be given a separate, unique name. Naming a road in Lewis and Clark County requires the completion of a road-naming petition and that a simple majority of adjacent property owners agrees to a proposed road name. In April 2019, the Addressing Office received a signed petition from the applicants to name the road Willard Court. Staff recommends approval of the resolution naming the road Willard Court. Upon approval, a notification letter will be sent to the applicants confirming the new road name, and a separate notification letter will be emailed to all service providers.

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.

Resolution 2019-39 to Amend the Subdivision Regulations for Lewis and Clark County. (Greg McNally)

Greg McNally, Planner III, presented the resolution to amend the December 13, 2016 Lewis and Clark County Subdivision Regulations. On April 16, 2019 the Helena/Lewis and Clark County Consolidated Planning Board recommended that the County Commission adopt the proposed amendments. The purpose of the proposed amendments are to: eliminate County enforcement of private covenants; ensure compliance with Montana Subdivision and Platting Act following the 2017 Montana Legislative Session; reorganize language that was inadvertently not addressed with the December 13, 2016 Subdivision Regulations amendment when the processes for minor subdivisions was consolidated with the processes for major subdivisions; and require that certain graphic images and maps be submitted in an electronic format that facilitates visual clarity for presentation in multiple situations. Mr. McNally gave an extensive overview of House Bills 245 and 445 as well as Senate Bill 219 adopted during the 2017 Legislative Session and the proposed amendments to the Subdivision Regulations as a result.

The Planning Board held public hearings on March 19, 2019 and April 16, 2019 to consider the proposed amendments. Two public hearings were required because the first did not have a quorum. Legal ads of the hearings were properly noticed in the Independent Record and on the County website. No written public comment was submitted to the Planning Board. On March 19, 2019 the Board heard from Max Milton, 111 Alfalfa Road indicating the changes in the proposed amendments made sense, he is an advocate of smart growth, and did express concern with how to make the County and the City regulations one in the areas where they are growing together.

The public hearing today was noticed in the Independent Record, on the website, and available copies in the Planning Office as well as the Clerk and Recorder's Office. There were some telephone inquiries with no additional comment. Written public comment of 104 pages was received from John Herrin for the public hearing today. The first 18 pages are from a letter received last week. Mr. McNally noted that Mr. Herrin asked that information he submitted December of 2018 be attached as well. In his documentation Mr. Herrin spoke to specific issues: amendments be made to the regulations that would alter the road profile for county roads required to be built in a subdivision, including the ditch work and slopes of the crown; and he requested an amendment that would alter or eliminate the requirement for 250 or 500 gallon permitted fire protection systems in smaller subdivisions.

Mr. McNally stated the Helena Valley Growth Policy Update Plan has policies identified particularly in the Rural Growth Area that deals with fire protection and calls for developing a plan for regional water supply sources for fire protection. And also eliminating or modifying the requirement for rural low density subdivisions to install expensive onsite water supply sites. However, the growth policy does indicate that the requirements in the Subdivision Regulations for onsite water sources for fire protection should not be eliminated unless and until other policy measures have implemented. Mr. McNally added this is not part of the proposed amendments for today. Staff recommends adoption of the proposed amendments by resolution as recommended by the Helena/Lewis and Clark County Consolidated Planning Board.

PUBLIC COMMENT -

John Herrin, 2855 Sundown Road, stated he felt it was necessary to get the County up to speed on what he realized was a bias built into the Subdivision Regulations starting in about 2004 or 2005 when the fire protection requirements were added. And he believes the road design issued is more environmentally friendly and better for the communities. He added the Commission is faced with the administrative, legal and technical side of things and stated the County has not done himself or the general public a favor in proceeding without consideration of what he presented in December of 2018. Mr. Herrin believes there is an illegal takings issue.

Commissioner Good Geise asked Mr. Herrin to comment on what is before the Commission at this time.

Mr. Herrin continued stating in 2005-2008 the County used the Subdivision Regulations and the administrative rulings on subdivisions to restrict rural growth. Mr. Herrin added comments on previous lawsuits that occurred. He added the current Subdivision Regulations target rural property and exact takings. Rural property owners creating a new subdivision spend \$5,000 to \$15,000.

Commissioner Hunthausen stated Mr. Herrin's comments have been noted, staff would like to evaluate them and there could possibly be changes brought before the Commission. He asked for comments about the resolution at hand.

Commissioner McCormick assured Mr. Herrin the Commission is not cutting him off; they are inviting him back for further discussion on his requested amendments that are not relevant to the terms under discussion.

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

Resolution 2019-41 of Creation to Alter the Boundaries of the York Fire Service Area to Annex Adjacent Land. (Planner: Sam Neill)

Sam Neill, Planner I, presented the resolution to alter the York Fire Service Area (FSA) boundaries. A petition was received to annex certain adjacent lands into the York FSA. The petition was signed by owners of the majority of the taxpayers within the proposed area. Staff recommends approval of the resolution. Ms. Neill stated over 50% of the land is owned by Federal or State agency with some ranches and residential housing.

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.

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

John Herrin, 2855 Sundown Road, passed out additional information and stressed his desire to have the Subdivision Regulations resolved. For each new subdivision the requirement for the costly fire protection and ditches add additional cost to the creation of the subdivision.

Peter Italiano, Community Development and Planning Director, stated with each plat Planning visits with the Fire District for the area and has been having discussions with fire districts to look at the specific regulations.

Commissioner Good Geise stated Mr. Herrin wants a firm date when his request could be considered and asked if between now and November 1, 2019 that discussion can be held.

Commissioner Hunthausen would like to ask necessary staff to have the discussions and to not put a timeline on it.

Mr. Herrin asked that the working group not be made up of just county employees and fire district representatives and asked for a public to be included.

Adjourn

There being no further business, the meeting adjourned at 11:38 am.

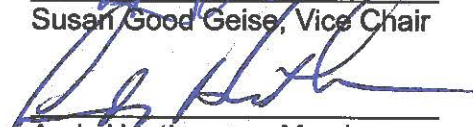
LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Jim McCormick, Chair



Susan Good Geise, Vice Chair



Andy Hunthausen, Member

ATTEST:



Paulette DeHart, Clerk of the Board