



PUBLIC MEETING

May 26, 2022
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, May 26, 2022, at 9:00 AM in Commission Chambers, Room 330.

Roll Call

Chair Jim McCormick called the meeting to order at 9 a.m.

Commissioner Tom Rolfe and Commissioner Andy Hunthausen were present. Others attending all or a portion of the meeting included Roger Baltz, Marni Bentley, Nicho Hash, Christal Ness, Greg McNally, Kellie McBride, Ann McCauley, Nancy Everson, Dan Karlin, Candace Payne, John Herrin, Bob Utick, Steve Utick, Andrew Thomas, Conrad Evarts, Ben Todd, Pat Keim, Bekka Cantreu, Derek Davis, Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Vendor Claims Report for Week Ending May 27, 2022. (Marni Bentley)
- b. Resolution 2022-34 Amending Resolution 2020-40 Approving the Tax Benefits Application of Seeley Building, LLC for Construction of a Commercial Structure Located at 630 N. Last Chance Gulch in the City of Helena, Montana. (Nancy Everson)

Roger Baltz, Chief Administrative Officer, reported on the consent action items 2a-b and recommended approval.

No public comment was received.

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

Grant Application to the Montana Department of Public Health and Human Services. (Kellie McBride)

Kellie McBride, Criminal Justice Services Director, presented the grant application to the Montana Department of Public Health and Human Services in the amount of \$715,653 for the Healing and Ending Addiction Through Recovery and Treatment (HEART) Behavioral Health Services in detention center settings grant program. The grant period begins July 1, 2022, through June 30, 2024. Staff recommends approval of the grant application submittal.

No public comment was received.

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

Contract and Encroachment Agreement Between Lewis and Clark County and Sussex Development. (Christal Ness)

Christal Ness, Development Services Supervisor, presented the contract and encroachment agreement with Sussex Development for a 10-foot utility easement on the north side of Lot 26A, of the first amendment of the Heron Creek Subdivision. The lot is located east of Canyon Ferry Road, north of Eames Lane, east of Pepper Grass Road, to the center of the Subdivision.

Comments were recently received from NorthWestern Energy and Montana Internet that they have no issue with the structure location and the 5-foot encroachment. It was determined the garage does not go over any lines.

Staff recommends denial of the contract and encroachment agreement with Sussex Development. The recommendation of denial was prior to the NorthWestern Energy comments

Discussion occurred on the encroachment and the many modifications that have occurred in Heron Creek Subdivision.

Derrick Davis, Sussex Development, stated he understands the frustration, and this was his mistake. They now have a GPS machine and have a plan moving forward to avoid further mistakes by marking out easements and lot lines before building. When the lot was platted for condominiums, NorthWestern Energy installed conduit. When it went to single family lots, they did not know where the electrical lines ran because it was just conduit and no wiring so it couldn't be detected. The easement then changed from sixty feet to eighty feet.

Ms. Ness stated the subdivision is very complicated due to how it is designed. In the beginning, the whole inner part of the subdivision was going to be condominiums and was one big lot with individual buildings and only needed utility easements where they had utilities. Now there are platted lots that require utility easements on each lot line.

No public comment was received..

A motion was made by Commissioner Hunthausen to approve the contract and encroachment agreement and seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Growth Policy Review and Recommendation for Revision. (Tabled 5-24-22) (Planner: Greg McNally)

Greg McNally, Co-Interim Director/Planner III, presented the Growth Policy recommendation for revision. As conditions warrant, growth policies can be updated by the governing body and updates can address all, or just part of the growth policy. The growth policy was last updated in 2017 to include the Joint Land Use Study for the Fort Harrison area. The Growth Policy is organized into six different geographic areas Canyon Ferry/York, Wolf Creek/Craig, Augusta, Lincoln, Canyon Creek/Marysville, and the Helena Valley. The summary report reviews the County's Growth Policy and recommends initiation of revisions to the Growth Policy after the conclusion of the next legislative session. Staff concludes that the Helena Valley Area Plan (HVAP) is appropriate in its recommendations and continues to be the proper mechanism for improving the growth management processes specifically identified in the HVAP.

Discussion occurred on the initiation plan of hiring a contractor to help identify how to proceed to develop a plan that best represents the entire county. Land use issues and legislation is almost always part of the legislative agenda. Revision is a lengthy process and involves the public and public participation. If revisions are initiated now, it will help alleviate public fatigue in participation during the process. It is important to have the public involved. Staff recommends approval of initiating a contractor to get the process started.

PUBLIC COMMENT:

John Herrin, 2855 Sundown Road, stated he disagrees. The Department of Natural Resources and Conservation (DNRC) regulations state that water rights are statewide where you can only have 13 lots on one individual well and if there are multiple wells, they must be a quarter mile apart which is about one acre per lot. Landowners are unable to transfer water rights. The growth patterns have changed the transportation network. Large commercial growth is mostly on North Montana Avenue. Mr. Herrin has asked repeatedly the last three years of the Planning staff to produce documentation on what's happening with growth. Nothing on housing, housing prices, water issues or transportation has been shared. He believes the growth policy is an introduced bias and is outdated. The County has made zero effort to update the transportation plan since 2014. Transportation cannot be an excuse for the 10-acre minimum. The legislature changes do not make a difference regarding the growth policy. He opposes the adoption of the growth policy. He stated he does not believe the County Commissioners are doing their jobs. The 10-acre minimum is taking property rights away from property owners. He believes Birdseye Road will never see another subdivision due to the zoning regulations.

Andrew Thomas, 5895 Redwing Road, stated the review should be initiated. The draft legislation is in the legislature currently and available for review by the planning staff although it is not yet law. It focuses on community growth, affordable housing, and economic trade-offs. He discussed the cyclical difference between the comprehensive plan and the growth policy. Regardless of state statute, the character of growth of the community warrants changes in the Growth Policy. In general, the ten-acre minimum is not applicable to most of the community. He believes the plan overlay and the rural area is enough to warrant changes to the Growth Policy. He also thinks the regulations are bias against rural development. He gave an example of Portland, Oregon, and their Growth Policy with regulations on density and compared that to what would likely happen in the Helena area under the zoning regulations. It did not promote affordable housing in Portland's case.

Mr. Herrin discussed his lawsuit against the County in 2006 regarding 5-acre minimum lots in the rural area. He spoke of details in the court records and how that lawsuit relates to what is going on today. The information he gave this morning has valid reasons why the growth policy needs to change today. He suggests the County defer a decision until Tuesday, May 31, 2022. He suggests the Commission go over the information he provided over email at 6 a.m. this morning before deciding. His volumes of information will be entered as public comment.

Commissioner Hunthausen discussed the updates of the growth policy and subdivision regulations. The review of the growth policy is to determine whether the existing growth policy is in line with projected population. The projections are accurate and the HVAP is appropriate. The plan is the Commissions commitment to follow up and make changes to the Growth Policy as needed over time. Subdivision regulations are being updated currently. The 2014 Transportation Plan is a partnership between the State of Montana, City of Helena, and Lewis and Clark County. The Transportation Coordinating Committee oversees and works with entities on the plan. The plan is reviewed every ten years and if patterns have changed significantly, an update is initiated at that time. Transportation issues are being looked at by that committee. The County does not control the housing market. City streets and city growth is not within the County's jurisdiction and not something the county controls. Commissioner Hunthausen did have a chance to read through the documents that were sent by email at 6:00 a.m. this morning by Mr. Herrin and most, if not all the information in the document has been

presented in one way or another prior to today. What is being decided today is a commitment to updating the Growth Policy and can move forward today without reservation.

Discussion occurred on gathering information on the growth policy earlier than June of 2023.

Mr. McNally gave an overview of the preparation process. If approved, the process begins today. The terms of the contract with a contractor are unclear until the legislature is concluded. However, preparations can be started today as far as budgeting and reviewing costs of the process.

Roger Baltz stated the Planning Department has had their budget session and put in an ARPA request for around \$300,000 for this project.

A motion was made by Commissioner Hunthausen to accept and concur with the Growth Policy revisions. The motion was seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

Resolution 2022-32, A Resolution of Intention to Adopt Amendments to the Helena Valley Zoning Regulations. (Tabled 5-24-22) (Greg McNally, Co-Interim Director/Planner III and Lindsay A. Morgan, Co-Interim Director/Planner III)

Greg McNally, Co-Interim Director/Planner III, presented comments from an email received at 6 a.m. with five attachments from John Herrin. Also provided was a document from the Water Quality Protection District (WQPD) from a meeting they held May 24, 2022. They are requesting striking some language from the proposal to remove the option to require water rights and extend waterlines from the Helena Valley Alluvial Aquifer. This request would require a process to occur that would combine two analyses. Through the plan development process, there is a selection of options in place with the amendments that are already proposed. Staff does not recommend the request from the Water Quality Protection District. Comments were brought from Bill Gowen who met with Greg McNally and had questions answered. Comments with concerns about water was also brought by Mr. Utick, Mr. Paulson, Mr. Packheim who served on the Zoning Advisory Panel (ZAP), Max Milton, and Mr. Herrin. Letters were received from Terry Zimmerman, Megan Malcolm, Dr. Andrew Thomas, Connie and Dave Cole, and Mr. Herrin.

Lindsay Morgan, Co-Interim Director/Planner III, discussed the following sections and amendments being proposed in each section. Section 2: General Requirements and Exceptions, public services and utilities do not need to meet the ten-acre minimum requirements. Section 7, changes to Residential Rural mixed use. Section 704 to change from Commission to Board of Adjustments, Section 706 and 707 looking at minimum lot area and maximum gross density with the addition of Plan Developments as an option. Maximum setbacks concerns about labeling lots in Section 708 changes to two setback requirements, one for lots of ten acres or greater and one for lots less than ten acres. Removing section 711 on street standards as it is unnecessary, Section 21: Plan Development Overlay District that was adopted under original zoning, but no regulations associated with it. There would be a two-step process with a Plan Development preliminary plan and a Plan Development final plan. Requirements would be long term water availability, access roads and impacts on rural fire protection. Plan Development does not require that water for fire protection be on site, just that protection could be provided. She discussed the water availability requirements and the WQPD suggested amendments. She read in detail the WQPD amended language regarding a professional hydrogeologist analysis.

Commissioner Rolfe stated he was in attendance of the WQPD Board meeting, and he did not participate in this topic and did not vote.

Ms. Morgan stated the planned development process will require higher standards than what the subdivision regulations require on certain items particularly wells and access roads.

Mr. McNally stated the growth plan is continuous and on track. Just under 200 lots have been platted since the end of 2020. Eleven subdivision applications have come in since the approval of the zoning regulations.

Ms. Morgan gave an overview of the Board of Adjustment that would consider appeals on a decision, review variances and consider conditional use permits. She explained Part 1 and Part 2 zoning and that Part 2 zoning would not be in effect unless Part 1 were to be eliminated for some reason.

Mr. McNally stated if passed, the resolution of intent would amend zoning regulations that are already in place and will go into effect June 1, 2022.

Ms. Morgan explained cluster development would pertain to a larger piece of land with smaller acreages associated with it with one required to remain as open space for agricultural use until there is an ability to develop the area. Someone could go through the Plan Development process to redevelop it. There is a process for citizen-initiated zoning and the process needs approval from the Commission.

Nicho Hash, Deputy County Attorney, stated he would have to review the regulations again to see if there is anything specific on the topic of citizen-initiated zoning. It would be a question of whether it is the desire of the board and if it is legally and practically possible.

Mr. McNally discussed the provision to amendments to regulations and explained it is something that can be initiated by a resident or group of residents. They would then go through the process of consideration and ensure compliance with the growth policy and other requirements of the statutes before bringing it to the Commission.

PUBLIC COMMENT -

Bob Utick, 117 Morton Street in East Helena, is opposed to the 10-acre minimum and the alternative of a Plan Development is very, very expensive. So much must be done to get approval to start the Plan Development process. He has estimated it will cost him around \$750,000 to get approval to start the process of Plan Development on his 570 acres off Lake Helena Drive and if someone denies it, he's out that money. There should be some type of provision that does not require people to spend money to start the process.

John Herrin, 2285 Sundown Road, believes this zoning is slowing development in the rural area to a halt. The only way it could be worth the money to comply with the regulations is if you can build 500 homes. If you were to build 50, it wouldn't be worth it. He believes 90% of the County is blackballed by the two-road requirement. Road costs are much higher than the inflation rate. He believes the only people who can afford to develop are millionaires from out of state. Roads don't meet standards and never will. The regulations encompass way too much property. He is happy the fire protection was clarified. Hopefully because it is part of public record it will remain the case that fire protection does not have to be on site. A water right cannot be acquired until you divert it. He would like to see the County remove the two-entrance requirement. If the county doesn't take care of the roads, why would it be required the property owner take care of them? He doesn't know how that would stand up in court and it would be a headache. He knows from going through it six times with the county already. He gave a background of the housing market from 2014 on.

Commissioner McCormick stated public comment is now closed. He has not had an opportunity to review the documents that Mr. Herrin sent at 6 a.m. this morning and needs a chance to do so and to consider all public comment.

Nicho Hash, Deputy County Attorney, stated the Commission is within purview to close public comment to review public comment and take it into consideration.

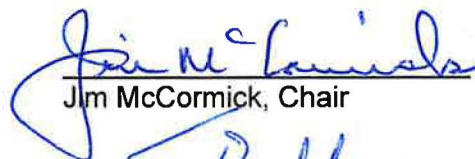
A motion was made by Commissioner Hunthausen to close public comment and table the item for decision on May 31, 2022. The motion was seconded by Commissioner Rolfe. The motion Passed on a 3-0 vote.

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

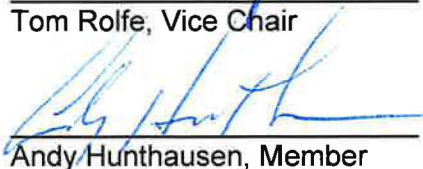
Adjourn

There being no further business, the meeting adjourned at 12:16 pm.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Jim McCormick, Chair


Tom Rolfe, Vice Chair


Andy Hunthausen, Member

ATTEST:


Amy Reeves, Clerk of the Board