



PUBLIC MEETING

August 21, 2018
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, August 21, 2018, at 9:00 AM in Commission Chambers Room 330.

Roll Call

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

Commissioner Jim McCormick and Commissioner Susan Good Geise were present. Others attending all or a portion of the meeting included Roger Baltz, Marni Bentley, Jason Crawford, Linda Grady, John Grant, Nathan Bilyeu, Paulette DeHart, Nancy Everson, Nicho Hash, Rick Hays, Peter Italiano, Dan Karlin, Audrey McCue, Lindsay Morgan, Bob Murdo, Christal Ness, Joe Nistler, Randy Talbert, Susan Talbert, Jeff Wadekamper, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

a. South Forestvale Rural Improvement District Intercap Loan Application. (Marni Bentley)

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

No public comment was received.

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

Public Hearing on the Issuance of a \$5,400,000 Helena Regional Airport Authority Revenue Note, Series 2018. (Nancy Everson)

Nancy Everson, Chief Financial Officer, stated this is an advertised public hearing for the purpose of determining if it is in the public interest for the Helena Regional Airport Authority to issue revenue bonds to finance the portion of the cost of remodeling and expansion of the airport terminal building. Revenue bonds in the amount of \$5.4 million to finance a portion of the cost of remodeling and expansion of the terminal building.

Jeff Wadekamper, Director of Helena Regional Airport, gave a summary of the terminal building remodel. A two year project to be completed in three phases and to include additional 20,000 square feet and additional jet bridges. This is being driven by the growth that is being seen. This year every month has had double digit growth. The airlines are doing well and continuing growth is anticipated. The FAA funding is about \$6.7 million and the remaining is from this revenue bond. The Airport Authority operates as an enterprise fund so no local taxes or mill levies are collected. The \$5.4

million will be paid back with revenues generated by the airport. He gave an overview of the three different revenue streams that support the airport: aeronautical; airline related and other aviation; non-aeronautical, currently at 40% of the revenue. This has diversified the revenue with a number of leases to non-aeronautical entities. It's crucial for the community to keep the airport updated and maintained. Mr. Wadekamper gave an overview on the FAA Airport Improvement Program and how it works when it comes to federal funding application and distribution.

Bob Murdo, Law Firm of Jackson, Murdo & Grant, serving as bond council for the airport stated this hearing started on August 16, 2018 and continued to this date, at this point it is time to determine if the issuance of the airport revenue note is in the public interest and consider a resolution.

No public comment was received.

Upon no public testimony, Commissioner Hunthausen stated the public hearing is now closed.

A motion was made by Commissioner Good Geise to move the record forward from August 16, 2018 to be included in this record and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Resolution 2018-75 Determining Public Interest and Authorizing the Issuance of a \$5,400,000 Helena Regional Airport Authority Revenue Note, Series 2018. (Nancy Everson)

Nancy Everson, Chief Financial Officer, presented the resolution authorizing the issuance of a \$5,400,000 Helena Regional Airport Authority revenue note for expansion of the airport terminal. Staff recommends approval of the resolution.

No public comment was received.

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

Resolution 2018-73 Levying and Assessing a Tax Upon all Benefited Property Within the Maynard Lighting District. (Marni Bentley)

Marni Bentley, Budget Coordinator, on behalf of County Community Development and Planning presented the resolution to levy and assess a special assessment upon benefited properties within the Maynard Lighting District. The proposed increase reflects a determination by the County Finance Department that an approximate 50% increase in assessments is necessary to adequately maintain the lighting district. The assessments have not been increased since 1983 and the district fund is currently running a negative balance. The amount taken in does not cover the cost of the electricity. Staff recommends approval of the resolution. Legal notice was published and mailed to all property owners within the District and as of August 14, 2018 no written comments had been received.

Commissioner Good Geise referenced the varying assessment amounts listed, the portion of the lot included square feet and asked how the assessments are determined.

Ms. Bentley stated when the District was created in 1968 the method of assessment was square footage. They were trying to get to an equitable fee for each lot and since the lights are on the street the proposal was that the half of the lot that abuts the road is included in the district and there are some different sized lots. The original square footages were used in the current calculations.

Commissioner Good Geise asked if there are other districts assessed using this methodology.

Peter Italiano, Director of Community Development and Planning, stated he does not have the answer, but as he works through the process of developing new protocols a fact sheet will be developed and provided to the Commission.

Ms. Bentley noted there are different statutory requirements for how lighting districts are assessed.

No public comment was received.

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

Board Appointment (Audrey McCue)

Audrey McCue, Elections Supervisor, presented the board appointments to the Birdseye Fire District. Sheila Abrahamson and Clifford Ulmer resigned from the Birdseye Fire District in June and July 2018. Their original terms to expire May 2019. Per 7-33-2106, MCA an appointment to fill a vacancy occurring during the term of office of a trustee must be made by the county governing body and the appointee shall hold office until the next trustee election.

Brad O'Shea and Linda Grady have submitted an oath of their qualifications and the elections office has confirmed that they are both registered voters in the Birdseye Fire District.

Requested actions are to appoint Brad O'Shea and Linda Grady as trustees to the Birdseye Fire District until the next regular election, May 7, 2019. At that election, the full three-year term will be up for election.

PUBLIC COMMENT -

Linda Grady, 6570 Lone Pine Road, stated she has been on the Birdseye Fire District since last September starting out as training to be a volunteer firefighter. Since then she became involved with the trustee items and when this opportunity came up she decided she would like to be in that position and looks forward to being a part. Ms. Grady noted that Brad O'Shea has been a firefighter for sixteen years, very knowledgeable and is also looking forward to the position.

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

Board Appointment. (Audrey McCue)

Audrey McCue, Elections Supervisor, presented the board appointment to the La Casa Grande Water/Sewer District Board of Directors. The regular May 2018 election for the La Casa Grande Water/Sewer District was canceled due to no contested offices. One two-year term position on the Board of Directors is currently open because it was not filled by election. While Water/Sewer Director terms are typically four years, the open position is the remainder of a term that originally expired in 2020 and was vacated before the 2018 election cycle. Per MCA 13-1-502, if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government, or, if appropriate, of the conservation district shall fill the position by appointment.

Patrick Proulx submitted a petition for appointment and oath of his qualifications to be appointed by the County Commissioners to the open position on the La Casa Grande Water/Sewer District Board of Directors.

The requested action is to appoint Patrick Proulx to the La Casa Grande Water/Sewer District Board of Directors. Mr. Proulx's term will end when a successor is elected or appointed at the May 2020 regular election.

No public comment was received.

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

Board Appointment. (Audrey McCue)

Audrey McCue, Elections Supervisor, presented the board appointment to the Bridge Creek Estates Water/Sewer District. The regular May 2018 election for the Bridge Creek Estates Water/Sewer district was canceled due to no contested offices. Two four-year terms are currently open because they were not filled by election. Per MCA 13-1-502, if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government, or, if appropriate, of the conservation district shall fill the position by appointment.

Ryan Holm submitted a petition for appointment and oath of his qualifications to be appointed by the County Commissioners to the open position on the Bridge Creek Water/Sewer District Board of Directors.

Requested action is to appoint Ryan Holm to the Bridge Creek Estates Water/Sewer District Board of Directors. Mr. Holm's term will end when a successor is elected or appointed at the May 2022 regular election.

No public comment was received.

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

Resolution 2018-74 Levying and Assessing a Tax Upon Benefited Property Within the Frontier Village Fire System Rural Improvement District No. 2016-4. (Planner: Lindsay A. Morgan)

Lindsay Morgan, Planner III, presented the resolution to levy and assess a special assessment of \$28.30 upon benefited property within the Frontier Village Fire System Rural Improvement District (RID) for maintenance of the fire protection system. The amended annual assessment is due to the inclusion of newly created properties located within the Garden Valley Subdivision. Ms. Morgan gave an overview of the two different boundaries. All of the boundaries were included in the original creation of the RID, however at the time of levying and assessing the individual properties within Garden Valley Subdivision did not have assessment codes and were not included. The amendment would now include those properties and the overall assessments for the current properties in Frontier Village and Buckboard Meadows Subdivisions will be reduced.

Legal notice was published and mailed to all property owners within the District and as of August 15, 2018, no written comment had been received.

Ms. Morgan stated the resolution to create the District was adopted January 3, 2017, levied and assessed in August of 2017.

PUBLIC COMMENT -

Susan Talbert, 680 Singletree Road in the Buckboard Meadows Subdivision along with her husband Randy, came to this hearing as they did not understand the letter they received. They thought maybe they were getting an increase on top of what they were already paying but now are happy to hear the cost will go down. They would like for it to be kept in mind for future development along John G Mine that the responsibility for the fire district is a shared responsibility in that area. As senior citizens living on a retirement income they would like to see it all continued to be shared instead of increases.

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

Amended Plat of Lot 60 of the Amended Plat of Lots 30, 32, 36, 41, and 60 - Corrected Plat of Broadwater Estates Subdivision (Applicants: Joe and Stacy Nistler) (Planner: Lindsay A. Morgan)

Lindsay Morgan, Planner III, presented the amended plat and associated variance within Broadwater Estates Subdivision. The requested amendment to the Subdivision plat is to eliminate a section of the public access easement for Smallwood Court, along with a portion of a utility easement on the east side of their lot (Lot 60 of the Amended Plat of Lots 30, 32, 36, 41, and 60 of Broadwater Estates Subdivision. The request affects the area where their retaining wall, septic tanks, and concrete walkway have been constructed or installed. As a part of the request, the Applicant is also seeking a variance from Chapter XI.F.4 of the County Subdivision Regulations, which requires that each lot abut and have legal and physical access to a public street or road. Lot 60 is located north of U.S. Highway 12, west of and adjacent to Smallwood Court and is 1.40 acres in size developed with a single-family residence and attached garage. Direct access to the property is off of Smallwood Court. The property does not lie within a Special Zoning District.

After the final approval in 2006, a corrected Subdivision plat was subsequently recorded in 2007 to address an acreage issue with the parkland. In 2015 amendments were proposed to the then undeveloped Lot 60 and granted preliminary approval by the Board of County Commissioners.

In 2016, during construction of the house on this lot, a modification to the preliminarily approved amendment was requested and approved by the Board of County Commissioners, and final approval to the modified amendment was granted by the Commission in 2016. Since that time, it has been determined that three of the four septic tanks for the system, the retaining wall, concrete walkway, and the eaves of the existing house on Lot 60 encroach in the public access and utility easement for Smallwood Court.

As a condition of preliminary approval in 2002 for the Broadwater Estates Subdivision, the Applicant was required to improve Smallwood Court to the then County standard where the road was internal to the Subdivision. When Smallwood Court was constructed, it was installed on the east side of the 60-foot wide public access and utility easement. A roadside ditch is located on the west side of Smallwood Court, however the east side of the road does not have a ditch due to a steep downward slope.

When the encroachment agreement was upheld by the Board of County Commissioners in 2016, the decision letter regarding the appeal gave the Applicants one year to cure the encroachments. The one year remedy timeframe expired in January of 2018. The second encroachment agreement was denied by County Public Works Department and again upheld by the Board of County Commissioners. The decision letter granted the Applicants an additional year to cure the encroachments. The second one year remedy timeframe will expire in January of 2019.

After review of the private covenants and those placed on by the county, staff determined nothing would be in conflict with the request. The required width of a County road easement is 60 feet, the Applicants are proposing a variable width, and the narrowest would be 40 feet.

As of August 21, 2018 no public comments have been received. Comments from NorthWestern Energy stated the proposed decrease in easement width may cause difficulty in the future should they need to extend utilities to the north. Comments from the County Engineer stated by eliminating the portion of the 60-foot wide public access easement it could be noncompliant with the ASHTO road design guidance in particular the safety provision regarding the clear road width. He further stated the requestor provide data on the existing retaining wall that it is consistent with the state-of-the-practice in roadside safety.

After review of the information provided by the Applicant and the comments received from the County Engineer, staff recommends denial of the request and associate variance.

Ms. Morgan explained further the utility easement and referenced the map showing the easements and noted the shaded areas are public access easements and part of those are proposed to be

removed. Ms. Morgan also pointed out the house eaves, septic system and retaining wall in the easement.

Commissioner Good Geise asked Mr. Hash the legality of factoring in prior facts of this agreement into today's discussion.

Nicho Hash, Deputy County Attorney, stated the importance is to consider what is being presented today.

Commissioner Hunthausen stated the history of the property can be discussed. Mr. Nash stated the background can be discussed, but the decision needs to be based on what has been presented with this process.

Dan Karlin, County Engineer, stated ASHTO is the American Association of State Highway Transportation Officials. They produce several guide documents on how to design a facility. The roadside design guide speaks specifically to safety of vehicle departures whether intended or unintended. Mr. Karlin's concern is a very solid wall possibly being within the clear zone, with variable speeds to allow a vehicle to stop safely.

Ms. Morgan explained easements are to allow public ingress/egress through the property and to allow utilities to be extended across properties.

Mr. Karlin stated the County would have the ability to access and provide whatever is needed within the easement and any hindrance to that could be at a cost to taxpayers.

Commissioner Good Geise referenced the staff report compatibility section and asked should that portion be included as a finding of fact. Ms. Morgan stated it could be as a finding of fact in the amended plat report.

Jason Crawford, Engineer with Triple Tree Engineering, stated the proposal is to narrow the easement to 40 feet. Within the easement there is a 24-foot wide paving of the road, this case it is 20 feet. Typically in the easement there is a ditch. If there was a site where the easement could be narrower, this site could be it as it is at the top of the drainage. The position of the retaining wall does meet the ASHTO regulations as the requirements allow a 7 to 10 foot distance from the travel way and the obstruction of the retaining wall.

Commissioner Good Geise asked why NorthWestern Energy or anyone else be burdened with restricting their access to accommodate an applicant that knew he was building in an easement in the first place. Mr. Crawford stated the road is not centered on the easement and often times builders do take it for granted that the road is centered on the easement.

Commissioner Hunthausen would like a copy of the private covenants to be familiarized with them. Ms. Morgan referenced the private covenants stated that each lot in the subdivision shall have a front yard 20 feet in depth.

Joe Nistler, 4996 Smallwood Court, stated the highlighted areas on the map were brought to them by Christal Ness and that the Commission cannot approve anything that is in violation of covenants. The covenants does not define at what point the 20 feet starts.

Mr. Nistler has no intention of building anything within the easement. The road has been working just fine with about eight to ten cars passing by daily. In his knowledge the county does not provide snow removal as he does it for the subdivision himself.

Commissioner Hunthausen stated the property has to be reviewed in perpetuity.

No public comment was received.

Ms. Morgan stated the reason for the variance request is due to the current Subdivision Regulations that state each lot shall abut and shall have legal and physical access to a public street. Standard for the right-of-way is 60 feet so because there would be less than 60 feet there is need for a variance.

Commissioner Good Geise stated it appears the Commission is not able to grant the variance as they are not allowed to consider self-imposed expense in a variance.

Mr. Nash stated he will work in conjunction with staff to provide better answers and if that is a limitation in itself and thus we are done here or if that is part of the overall consideration before the Board. Mr. Nash believes the financial hardship is not the end all to this process.

Christal Ness, Land Use Ombudsman, brought a copy of the private covenants. The discussion on the setbacks of the front yard does state the front yard is to have 20 feet in depth measured from the easement boundary.

Commissioner McCormick affirms that the structures are out of compliance with both the county and private covenants and Ms. Ness said that is correct.

A motion was made by Commissioner Good Geise to table the item for a decision on August 28, 2018 and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Wildfire Outlook Briefing. (Bob Drake)

Roger Baltz, Chief Administrative Officer, noted that Bob Drake, Fire Chief of the Tri-Lakes Fire Department would not be in attendance.

Commissioner Hunthausen stated Bob Drake, Fire Chief of the Tri-Lakes Fire Department has been giving weekly briefings on the status of the fires and because of the rain he is postponing his visit until next week.

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

Diane Tipton, 1968 Rimini Road, presented a brief slide show of the revegetation issues along Rimini Road and noted there are additional photos. She stated there are definitely not native weeds growing. There is clover which is not in the roadside vegetation and continuing to spread beyond the zone of the construction. She would like to know who is responsible for seeing the revegetation plan through and noted she is concerned this is being overlooked. She has discussed repeatedly with the Forest Service. In the past the Forest Service has planted the clover seeds along with the native seeds. Ms. Tipton stated the Forest Service wrote the official Rimini revegetation plan. She stated she has re-seeded her mile and pulled eighteen bags of weeds. These are nuisance weeds not noxious weeds.

Commissioner Good Geise noted this is a Forest Service issue. Ms. Tipton stated this is a county right-of-way.

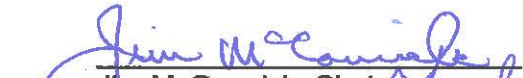
Commissioner McCormick stated this is a matter of opinion, perception and degree of engagement. He will continue to ask questions and review the contract specifications.

Commissioner Hunthausen stated it is very difficult to combat the noxious weeds and there will probably not be a lot of funds used for nuisance weeds.

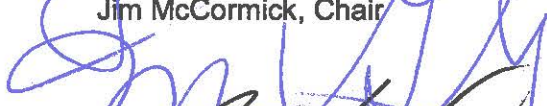
Adjourn

There being no further business, the meeting adjourned at 11:29 am.

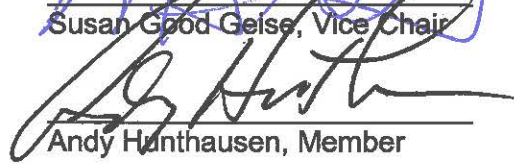
LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Jim McCormick, Chair



Susan Good Geise, Vice Chair



Andy Hunthausen, Member

ATTEST:



Paulette DeHart, Clerk of the Board