



## **PUBLIC MEETING**

August 23, 2016

### **MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, August 23, 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 Nancy Everson, K. Paul Stahl, Matt HeimeI, Jim Henry, Lindsay Morgan, George Theborge, John Oitzinger, Sandra Oitzinger, Michael Brennan, Jason Crawford, Al Knauber, and Nichole Nisbet, Recording Secretary.

#### **Pledge of Allegiance**

Everyone recited the pledge.

#### **Consent Action Items**

- a. Public Meeting Minutes: August 2, 4, 9 and 11, 2016. (Nichole Nisbet)
- b. Memorandum of Understanding Between Lewis and Clark County and the Montana Stockgrowers Association for the Protection of Cattle. (Nancy Everson)
- c. Memorandum of Understanding Between Lewis and Clark County and the Montana Stockgrowers Association for the Protection of Sheep. (Nancy Everson)
- d. Pledged Securities as of June 30, 2016. (Paulette DeHart)
- e. Certificate of Appropriation Board of Investments of the State of Montana. (Nancy Everson)

Nancy Everson reported on the consent action items 2 a-e 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.

#### **Resolution 2016-65 Levying and Assessing a Tax Upon Benefited Property Within the Canyon Ridge Rural Improvement District No. 2015-11. (tabled 8/4/16) (Planner: Matt HeimeI)**

Matt HeimeI, Special Districts Planner, presented the resolution levying and assessing a special assessment upon benefited properties within the Canyon Ridge Rural Improvement District. The RID includes street maintenance, saving for a chipseal, and maintenance of the fire system. The decision on a resolution to assess benefited properties of the district was postponed from August 4, 2016 to August 23, 2016 in order to modify the resolution to reflect the inclusion of maintenance costs and the addition of 18 benefited properties for Phase II of the Canyon Ridge Subdivision. The ongoing maintenance assessment is to be levied and assessed at \$494.26 per each benefited property per year. As of August 17, 2016, no written testimony has been received.

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.

#### **Proposed Modifications to Amended Plat of Lots 30, 32, 36, 41, and 60 - Broadwater Estates Subdivision. (Applicant: Jason Crawford) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the proposed modifications to Amended Plat of Lots 30, 32, 36, 41 and 60 - Broadwater Estates Subdivision. The subject properties are located northwest of the junction of Old Broadwater Lane and U.S. Highway 12. The Applicant is proposing modifications to a preliminarily approved amended Subdivision plat known as the Amended Plat of Lots 30, 32, 36, 41, and 60 – Broadwater Estates Subdivision to remove an additional section of the drainage easement on Lot 30 of the Broadwater Estates Subdivision; and further amend the drainage easement on Lot 60 of the Broadwater Estates Subdivision. Ms. Morgan reviewed the background and timeline of the project. It was noted that On July 11, 2006, drainage easements were placed on Lots 30, 32, 36, 41, and 60 of the Broadwater Estates Subdivision, which was a requirement of preliminary approval. On November 5, 2015, preliminary approval with conditions was granted to a proposed amended Subdivision plat known as the Amended Plat of Lots 30, 32, 36, 41, and 60 – Broadwater Estates Subdivision that allowed for alterations to the on-site drainage easements. On April 26, 2016, a final plat application was submitted for this amended Subdivision plat. On May 3, 2016, during an on-site inspection of these properties, Staff noted violations of the conditions of preliminary approval for the amended Subdivision plat, the drainage easement dedications placed on the face of the final plat for the Broadwater Estates Subdivision, and the covenants for the Broadwater Estates Subdivision. During this inspection, it was noted that houses were under construction on Lots 30 and 60 within the existing natural drainage easements, as the removal of a portion of each of these easements would not occur until after a final approval is granted to the amended Subdivision plat. On May 4, 2016, a second site inspection was completed with the County Engineer, in which he confirmed that, in his professional opinion, the building construction and grading activities could adversely affect drainage and cause damage to buildings and properties. On May 19, 2016, Staff completed a report regarding these violations, and a letter, along with a copy of this report, was mailed out certified to each property owner. As stated in this letter, no further processing of the application for final approval would occur until all violations had been mitigated. On May 24, 2016, Staff met on-site with both property owners and their representative, Jason Crawford, a professional engineer with Kadmas, Lee, and Jackson, to discuss the violations noted in the letters. During this meeting, it was determined that boulders placed on the east side of the house on Lot 30 were lying within a portion of the drainage easement that would be retained after final approval of the amended Subdivision plat. In addition, it was determined that portions of the house and its associated eaves on Lot 60 had been constructed within a segment of the drainage easement that would also be retained after final approval. On June 3, 2016, a letter was mailed out from our Department to both property owners regarding the results of the on-site meeting and a request was made for an assessment of the current conditions of the violations on each lot. On June 15, 2016, a letter from Mr. Crawford was received by our Department in which he provided an assessment of the current status of the violations on each lot, along with a proposed mitigation plan. As a part of this mitigation plan, Mr. Crawford stated that the property owners would pursue modifications to the preliminary plat for Lots 30 and 60 to further amend the locations of the drainage easements. The proposal from the applicant includes the request to eliminate that portion of the drainage easement that contains the newly placed boulders on Lot 30 and on Lot 60, the proposal is to further adjust the drainage easement to the north so that the recently constructed house and eaves will no longer encroach into the drainage easement. On July 22, 2016, the request for modifications was submitted to our Department for review. During a site inspection to determine compliance with the conditions of approval, Staff noted violations on all five lots. Since that initial inspection, Staff has pursued an enforcement action to bring these properties in compliance. To accomplish this, Staff has worked closely with the County Engineer, DEQ, and the property owner's representative, Mr. Crawford. Although the Broadwater Estates Subdivision plat required drainage easement dedications on-site, the DEQ approval for the Subdivision did not require culverts under the roadway to allow the up-gradient water to flow through this drainage onto Lot 30. As a result, this drainage has been bisected, which has resulted in three separate drainages. Therefore, both the proposed easement removal and relocation will be in compliance with these covenants. It was noted that Broadwater Estates Subdivision plat required a drainage easement dedication on Lot 30, the Montana Department of Environmental Quality (DEQ) approval statement for the Subdivision did not require culverts under Smallwood Court up-gradient of this property and its drainage. As a result, this drainage has been bisected, which has resulted in three separate drainages. According to the preliminary approval for the amended Subdivision plat, the western half of the easement on Lot 30 will be removed once all conditions of that approval have been satisfied. Because the boulders have been placed in the preliminarily approved, new head of the drainage on Lot 30, retaining this portion of the easement is no longer necessary. Lot 60 also contains the head of a drainage on-site. In addition, there are easements protecting this drainage and a culvert located under Smallwood Court that allows for stormwater run-off within this drainage to continue down-gradient onto

other lots within the Broadwater Estates Subdivision. According to the preliminary approval for this amended Subdivision plat, a portion of the drainage easement on Lot 60 will be adjusted to the north once all conditions of the approval have been met. Because the property owner has constructed a house and its eaves into the portion of the drainage easement that will be retained, the Applicant is requesting approval to further modify this easement to the north so that the house and eaves will not encroach into the easement after final approval. According to the covenants placed on the Broadwater Estates Subdivision, any development within the drainage easement that would restrict or alter the pattern of channel flow has been expressly prohibited. In addition, these covenants also provide a notice to each property owner that they are responsible for providing on-site retention of all stormwater run-off generated from their lot in excess of historical volumes. According to the private covenants placed on the Subdivision, there are stipulations regarding the construction of the on-site stormwater detention ponds. Upon inspection of these properties, the on-site detention ponds have been completed in accordance with DEQ requirements. Comments have been provided by the City-County Health Department – Environmental Division stating that the proposal must comply with DEQ requirements, the City of Helena Community Development and Planning Department stating that any changes to the drainage systems should be well planned due to its proximity to Ten Mile Creek, and by the City of Helena Public Works Administration/Engineering Division expressing concerns about the construction of buildings within the drainage easements and the need for an alternative drainage plan. The concerns expressed by both the City-County Health Department – Environmental Division and the City of the Helena have been addressed through the conditions of approval placed on the amended Subdivision plat, in which all DEQ requirements will need to either be satisfied prior to final approval or financially guaranteed at the time of final approval.

Commissioner Geise asked about the nature of a drainage easement.

Lindsay Morgan stated the subdivision regulations require that drainage easements be dedicated. She noted the easements serve two purposes, one to conserve the water to flow naturally or to reserve a wildlife corridor. She further noted that houses need to be built away from the drainage to protect the property as well as the structure so you do not have water flowing into a home. She reviewed the graphical changes to Lot 30 and 60 that include added vegetation to the drainage.

Commissioner Geise asked if Lot 30 is located in the easement.

Lindsay Morgan stated that is correct and noted that the applicant is asking to remove part of the easement and constructed a home prior to final approval.

Commissioner Hunthausen asked why the violations occurred and how there was a misunderstanding. He expressed concern about the violations and the disregard for the agreement that was entered into by the applicant.

Commissioner Geise asked for an estimate of how much staff time has been involved with this project.

#### PUBLIC COMMENT-

Jason Crawford, the applicant's engineer, stated there was a misunderstanding to when the construction could begin.

Commissioner Hunthausen asked if there was confusion on where the easement was on Lot 60.

Jason Crawford stated that the new easement was not staked before construction of the home took place.

Commissioner Hunthausen stated his frustration with going through another amendment process.

Michael Brennan, owner of Lot 30, apologized for the frustration and noted he thought receiving preliminarily approval meant they could proceed.

Commissioner Geise asked Mr. Brennan if he was relying on the contractor to stay outside of the easement.

Michael Brennan stated he did not relay the information to the contractor to stay outside of the easement.

No further public comment was received. The public hearing is now closed.

A motion was made by Commissioner Hunthausen to table the item until the regularly scheduled meeting on Thursday, August 25, 2016. The motion was seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

**Proposed Modification to Valleyview Farms Subdivision. (Applicant: Valleyview Farms Development, LLC (John Oitzinger)) (Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the proposed modification to Valleyview Farms Subdivision. The property is located north of Canyon Ferry Road, north of and adjacent to Emily Lane. The Applicant is requesting a modification to Condition of Approval No. 4.c to eliminate the requirement to create a Rural Improvement District (RID) for maintenance of the fire protection source for this Subdivision. As a part of the conditions of approval for the Subdivision, the Applicant is required to provide a fire protection source that meets specific criteria: 250 g.p.m. at 20 p.s.i. for two hours. This source can be located either on-site or off-site. In order to fulfill this requirement, the Applicant plans to utilize an existing fire protection well located along Emily Lane, which lies in close proximity to the southwestern boundary of the preliminarily approved Subdivision in the Emily Acres Subdivision – Phase 2. As part of the review process for the Emily Acres Subdivision – Phase 2, the developer was required to: (1) convert an existing irrigation well into a fire protection well for the East Valley Fire District, and (2) dedicate an easement for access to this well. This well and easement were dedicated to the Fire District on October 15, 1993. Because this well has been owned and maintained by the Fire District for approximately 23 years and all property owners within this District have been assessed a fee in their taxes that contributes towards its maintenance, creating an RID to maintain this well is not necessary. If an RID was established for the future Subdivision lots, these lot owners would not only pay a similar assessment in their taxes for the maintenance of this fire protection source, but would also pay an additional assessment for the RID. These lot owners would be paying more for the maintenance of this fire protection source even though it equally benefits others outside of the Subdivision's boundaries. If lots outside of the Subdivision's boundaries were to be considered for the creation of an RID, benefiting properties would need to be determined. In addition, a petition that includes a majority of the benefiting property owner's signatures would need to be submitted to initiate this process. As no lots in this area have waived their right to protest the creation of an RID for this purpose, there is the potential that either the required amount of signatures on the petition could not be obtained or the resolution of intent to create the RID would get protested out. It was noted that according to the 2007 County Subdivision Regulations, under which the Valleyview Farms Subdivision was reviewed, an RID for maintenance of fire protection improvements is not listed as a requirement of subdivision approval.

Commissioner Murray asked if comments were received from the Fire Department.

Lindsay Morgan stated she has not yet received comments but has had past conversations in regards to the source and the Fire Department not opposing the source.

Commissioner Geise asked Ms. Morgan to review the comments received from the City of Helena.

Lindsay Morgan addressed the comments received by the City of Helena. She noted that the well is maintained by the Fire District and feels the concerns have been addressed.

**PUBLIC COMMENT-**

John Oitzinger, the applicant, thanked the staff for their work on the project and noted his disappointment with the comments received by the City of Helena. Mr. Oitzinger reviewed the process of finding the new well and fire protection source.

No further public comments were received.

A motion was made by Commissioner Hunthausen to approve the request to eliminate Condition No. 4c of the preliminary approval. The motion was seconded by Commissioner Geise.



Commissioner Geise reviewed the findings of facts and noted the comments received for the project and that the concerns have been adequately addressed. She further noted the testimony received by the applicant.

Commissioner Hunthausen reiterated that the RID is not necessary at the time since the well is already maintained.

A motion was made by Commissioner Geise to accept the findings of fact as modified. The motion was seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Geise to adopt the conclusion of law that the modification does not have any impacts to agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety. The motion was seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

The motion on the table to approve the modification Passed on a 3-0 vote.

**Final Plat. Valleyview Farms Subdivision. (Applicant: Silver Maple Ranch Co. (John Oitzinger))**  
**(Planner: Lindsay A. Morgan)**

Lindsay Morgan, Planner II, presented the final plat for Valleyview Farms Subdivision. On behalf of Silver Maple Ranch Co., the applicant, John and Sandra Oitzinger have submitted an application for final approval of the Valleyview Farms Subdivision, a preliminarily-approved Subdivision that will create five, single-family residential lots. Preliminary approval for this Subdivision was granted on September 18, 2008 subject to twenty conditions and staff has found that all conditions have been met by the applicant. She further noted that the plat is found to be in substantial compliance with the Lewis and Clark County Subdivision Regulations.

**PUBLIC COMMENT-**

John Oitzinger, the applicant, reiterated his appreciation of the staff and the Commission.

No further public comment was received.

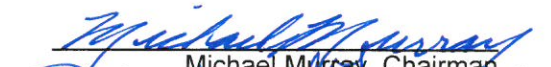
A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

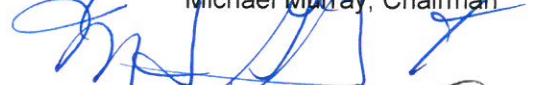
**Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.**

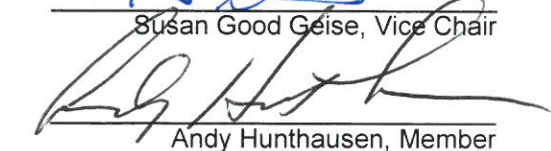
**Adjourn**

There being no further business, the meeting adjourned at 10:07 am.

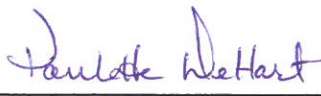
LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Michael Murray, Chairman

  
Susan Good Geise, Vice Chair

  
Andy Hunthausen, Member

ATTEST:

  
Paulette DeHart, Clerk of the Board