



## **PUBLIC MEETING**

August 23, 2018  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, August 23, 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, Peter Italiano, Valerie Jaffe, Stephen O'Brien, Joyce Evans, Charles Lane, Greg McNally, Eric Merchant, Kathy Moore, Drenda Niemann, Tony Prothero, Jim Swierc, Steve Utick, and Nadine McCarty, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Consent Action Items**

a. Vendor Claims Report for Week Ending August 24, 2018. (Marni Bentley)

Roger Baltz reported on the 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.

### **Agreement Between Lewis and Clark Public Health and Trinity (Canyon Creek) School District No. 4. (Eric Merchant)**

Eric Merchant, Disease Control and Prevention Division Administrator, presented the agreement with Trinity School District No. 4, Canyon Creek School in the amount of \$1,440 to provide various rural school nursing services for the 2018-2019 school year. The services include: vision screening, scoliosis screening, hearing screening, health education and counseling services assessment of immunization records, dental screening as well as other services. Staff recommends approval of the agreement with Trinity School District No. 4.

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.

**Agreement Between Lewis and Clark Public Health and Wolf Creek School District No. 13. (Eric Merchant)**

Eric Merchant, Disease Control and Prevention Division Administrator, presented the agreement with Wolf Creek School District No. 13 in the amount of \$1,440 to provide various rural school nursing services for the 2018-2019 school year. The services include: vision screening, scoliosis screening, hearing screening, health education and counseling services, dental education as well as other services. Staff recommends approval of the agreement with Wolf Creek School District No. 13.

Mr. Merchant stated there will be two Public Health registered nurses and at times the supervisor, who is also an RN, will provide the services to the schools.

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.

**Agreement Between Lewis and Clark Public Health and Lincoln School District No. 38. (Eric Merchant)**

Eric Merchant, Disease Control and Prevention Division Administrator, presented the agreement with Lincoln Public School District No. 38 in the amount of \$1,440 to provide various rural school nursing services for the 2018-2019 school year. The services include: vision screening, scoliosis screening, hearing screening, health education and counseling services, assessment of immunization records, dental screening as well as other services. Staff recommends the approval of the agreement with Lincoln Public School District No. 38.

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.

**Professional Services Agreement Between Lewis and Clark Public Health and Missoula City-County Health Department. (Drenda Niemann)**

Drenda Niemann, Public Health Officer, presented the professional services agreement with Missoula City-County Health Department for nurse supervision and data entry support for the Nurse-Family Partnership Evidence Based Home Visiting program in Lewis and Clark County in the amount of \$37,724. Since 2012 101 families have been served and there has been 1,185 home visits in the County. The agreement begins July 2, 2018 through June 30, 2019. Staff recommends approval of the agreement with Missoula City-County Health Department.

Ms. Niemann stated the program services high risk individuals to include: low income, health issues, military families and involvement with Child Protective Services. The program addresses birth weight, and help pregnant women to address issues to ensure healthy birth rate and full term births.

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.

**Task Order 19-07-1-01-177-0 to Lewis and Clark Public Health from Montana Department of Public Health and Human Services. (Drenda Niemann)**

Drenda Niemann, Public Health Officer, presented the task order from Montana Department of Public Health and Human Services in the amount of \$10,000 to assist in completing the 2018 Community Health Assessment. Historically data has been gathered every three years since the 1930s. The steering committee meets regularly to produce the 2018 Community Health

Assessment to be completed by the end of this year. The task order extends from September 1, 2018 through August 31, 2019. Staff recommends approval of the task order with Montana Department of Public Health and Human Services.

Ms. Niemann stated the report card is completed at the state level and is a data source that the department looks at and cumulates into the Community Health Assessment. She continued that the health assessment plays directly with the community health to develop the community health improvement plan.

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.

**Task Order Amendment 18-07-5-21-012-0 to Lewis and Clark Public Health from Montana Department of Public Health and Human Services. (Drenda Niemann)**

Drenda Niemann, Public Health Officer, presented the task order amendment from Montana Department of Public Health and Human Services to administer the Women, Infants, and Children Supplemental Nutrition program (WIC). The program provides nutrition education and food benefits to low income pregnant women and families with children 0 to 5 years. Health department serves on average 900 participants a month. The amendment includes additional funds in the amount of \$16,000 for a total grant award of \$230,334. The period does not change and expires September 30, 2018. Staff recommends approval of the task order amendment with the Department of Public Health and Human Services.

Ms. Niemann noted there has been a small increase in participation over last year.

Ms. Niemann gave an overview on the WIC program and the impact early intervention has on various diseases through the education the program provides.

Commissioner Good Geise asked about retention of those families with children from ages 1 to 5. Ms. Niemann stated the increase has mostly been new pregnant families. A small percentage returns to the program after they dropped off. Staff is at the Food Bank monthly to discuss the WIC program with eligible families. Ms. Niemann meets with retail store managers regarding the role they play in the success of the program and the state also has regular calls with the retailers.

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.

**Proposed First Minor Subdivision to be known as Olivet and Variance Request. (Applicant: Robert Utick) (Planner: Greg McNally)**

Greg McNally, Planner III, presented the proposed first minor subdivision to be known as Olivet Subdivision located on Tea Road just north of Ferry Drive. The proposed is an existing 20.16 acre tract of land to be divided into 4 lots, each for one single-family dwelling. The lots will be 5.04 acres in size. All lots are proposed to be served by individual wells, exempt, on-site wastewater treatment systems, and utilities. Direct access to the lots is proposed off of a new internal access road with connection to Tea Road. The Applicant proposes to utilize an off-site water source for fire protection located at or near 2375 Tea Road. The Applicant has requested a variance from the regulation which would require the preparation of preliminary engineering reports to identify estimated costs of improving impacted off-site roads and would like to do an engineer's estimate for the cost. The project issues are water availability and the variance request.

The Applicant is proposing to use four individual wells. The wells can meet or exceed the minimum requirement. There have been public comments about the concerns of availability of ground water for the proposed lots.

Mr. McNally quoted from Mr. Swierc's report that the groundwater in the area does appear more susceptible to depletion than other parts of the Helena area. Lack of data directly northeast and southeast of the property makes the assessment of ground water condition more difficult to characterize. Mr. Swierc made four recommendations in his comments: housing developments shall have limits on well withdrawal for irrigation purposes; xeriscaping or limit the irrigated yard area and wells should be installed as deep as practical; develop a long term water monitoring program; and Water Quality Protection District could collect water quality and water isotope samples from the new wells to determine increase depletion in the area.

Mr. McNally distributed additional public comment received today prior to the meeting and noted the applicant has been made aware of the comments.

Commissioner Hunthausen referenced the covenants listed in the recommendation and if they are county or private. Mr. McNally stated the draft covenants covers limiting irrigation of property.

The second issue is the variance request. The proposed Subdivision will impact offset roads and the Applicant is willing to prepare an engineering cost to determine the estimated costs to bring the roads to county standard.

Public comments and agency comments were received.

The review period for the property ends on September 4, 2018 and the commission has until then to make a decision.

James Swierc, Water Quality Protection District Hydrogeologist, gave an overview on the water in the area. There have been concerns of water availability in the north hills for more than a decade. Two studies were done in 2006 and 2012. There is not a water level record in the proposed Subdivision to see what is occurring. Water occurring within the clays is a very slow recharging system and may take 12 to 24 hours if it is down from irrigation. The recommendation is to drill a well as deep as possible to get to the bedrock. However, that brings the uncertainty of how deep is the bedrock. The other fear is with the watering if the 5 acre lot is used for horse property.

Commissioner Good Geise asked if there is a requirement as to how deep the well can be dug and there is not. A comment stressed going too deep could run into arsenic. Mr. Swierc stated arsenic could be a concern throughout the profile. Mr. Swierc stated the well logs is what they have, but not necessarily a good source as the drillers are completing the log and not a geologist. He stated the drillers are very good at noting when the geologic formations change, but it is the identification of the rock types or clay types that is difficult.

Commissioner McCormick referenced the average yields of the 38 wells of record is 20.29 gallons per minute with the maximum of 60 and minimum of 3 gallons per minute. He asked if all issues, items, aspects of the subdivisions related to waters and well are within the jurisdiction of the Department of Natural Resources & Conservation (DNRC). Mr. Swierc believes so.

Mr. Swierc stated in this case a groundwater model tool would be the way to determine the amount of groundwater drawdown. The study that was published in 2012 with a model did not include this part of the north hills. The water isotope is a very good tracer as it will not change with chemical reactions once it recharges.

Mr. McNally stated the state law requires the county to adopt subdivision regulations and it indicates the county cannot adopt regulations that are more stringent than the similar requirements adopted by the state unless the county has developed peer reviewed studies to support the



additional regulations. He noted the well logs are reviewed to determine if there is water availability within the area.

Mr. Lane stated while more specific regulations have not been adopted the regulations the information provided by the applicant is not unsalable. Public comments and concerns should be addressed and discussed.

Kathy Moore, Environmental Division Administrator, commented on her letter submitted. One comment on what might be done to verify information about water availability is to do a pump test on a well in that vicinity. It essentially measures water pumped out over a specific time and it measures recharge to see if the water comes back to the original level. It is not foolproof but it would provide more detail about water availability in the area. The water well drillers are regulated by the Board of Water Well Contractors ran through the DNRC. They have requirements for construction of wells, abandonment of wells, and placement of wells. Ms. Moore stated the well should be in the same aquifer and as close as it could be to the proposed development.

Commissioner Good Geise asked what the effect on the landowner if they are included in one of the groundwater control areas. Ms. Moore stated the controlled groundwater area would limit or disallow the drilling of new wells depending on what the finding were. DNRC would evaluate the groundwater data, and based on that, they would determine if the control would be temporary or permanent.

Mr. McNally stated the Growth Policy has a suggestion of 10 acre minimums lot sizes, but it is only a suggestion at this point. Staff recommends the commission follow the regulations that are in place at the time that an application is submitted. He stated subdivision applications are reviewed as they come in. The state statutes do contemplate further subdivision of individual parcels.

Mr. Lane asked Mr. McNally if the Subdivision Regulations look at water supply differently if it is a minor or a major subdivision and Mr. McNally noted they do not.

Steve Utick, 2950 Fantasy Road, here on behalf of Bob Utick, stated overall the demand for 5 acre lots in the Helena Valley is great. Overtime people have found maintaining acreage larger than five can be a financial burden. Twenty-five years ago when his family owned two sections and sold them off covenants were placed on the parcel in order to try to maintain the rural integrity of the property. During the development these covenants as well as the subdivisions and planning act regulations have to be followed. We have the legal and moral right to develop this property as long as we follow the rules and regulation in place at the time of development. Mr. Utick referenced the six year water study that expired. They feel if there was an issue it would have continued at the request of DNRC. There is nothing stating that someone who drilled a well first has any more right than someone who is putting in a new well.

Tony Prothero, J Bar Engineers, stated there is a very specific process that they have to go through and they try to provide substantial evidence in compliance with the subdivision act to develop the property. The well logs are the best available information they have related to water availability. The state requires evidence of an adequate dependable water source and according to the state it is 10 gallons a minute for one hour. If you can meet or exceed those requirements that would determine an adequate water supply. They are supportive of water conservation techniques and they will be required to do so to get the DNRC approval.

Commissioner Hunthausen referenced the covenants and because this is a new subdivision there would be an opportunity for new covenants. He asked if xeriscaping had been considered to put in the covenants. Mr. Utick was open to the idea.

Commissioner Good Geise ask Mr. Utick what he meant by substandard well in the area. Mr. Utick stated there is one person that at the time they drilled the water well the drilling company told them

they needed to go deeper or they would have trouble with their well forever. They said they could not afford to go any deeper and the well continues to have trouble.

Mr. Prothero stated regarding the variance that the road standards requires the proportionate share offsite improvements be based on the preliminary report and it can be very costly especially for the 2 plus miles. In lieu of a preliminary engineering report we would do a reasonable amount of core sampling to estimate the condition of the road. Mr. Prothero stated no work has been done on this road.

Commissioner Good Geise referenced a letter received today from Mr. O'Brien who has concerns about the use of the well logs and not the closest wells.

#### **PUBLIC COMMENT -**

Joyce Evans, 2276 Tea Road, stated if you do file water rights she believes you do have recourse. Regarding the two steel tanks buried for fire protection she asked the engineer if the tanks are coated but he was not going to coat these tanks.

Steven O'Brien, 2623 Tea Road, read the letter that was submitted to the Commission earlier in the day and pointed out the locations of the wells that were in the study were cherry picked. There are other wells closer to the subdivision to review and he asked how the new wells being deeper affect his well. One recommendation is to allow two wells to share instead of four wells.

Valerie Jaffe, 2623 Tea Road, stated a select set of showcased wells demonstrating water availability used in the subdivision application does not represent the ground water available. There are other wells in the vicinity that could have been used. She noted the vicinity is dominated by 10 and 20 acre parcels. The probable impacts does include the impact on wildlife. It is not uncommon for the property to be used for wildlife transport.

Commissioner Hunthausen referenced the concern over follow-up and oversight and asked Ms. Jaffe what she meant by the statement. Ms. Jaffe explained the rules may be on paper in terms of covenants and rules set forth by state agencies and under conditional approval it is difficult to determine how any of the conditions would be enforced.

Commissioner Hunthausen stated private covenants are complaint driven and dealt with by the homeowner association not the county.

Mr. McNally gave an overview of the process when conditional approval is given to a subdivision and includes a report to the commission as to whether they have been met or not.

Commissioner Hunthausen noted all conditions of approval are followed up on prior to final plat approval.

Mr. Lane stated regarding the water supply, the impacts on the neighbors of the subdivision and regulations to whether the subdivision will have an adequate water supply. He noted what is in front of the Commission is whether or not the information submitted by the Applicant is adequate related to the water supply.

Mr. McNally stated during the insufficiency review, Planning did indicate that some of the wells were fairly spread out and they are looking for a closer picture of wells for that particular analysis.

Commissioner Hunthausen referenced Mr. Prothero's statement that if a house would be built today on that property they would have the rights to an exempt well with 10 acre feet. Mr. McNally stated it would be up to the DNRC to make that determination.

Mr. Utick stated the 30,000 gallon holding tanks are engineered to have at least a 25 year lifetime. There is a proposed RID for the upkeep and maintenance of the storage tanks and designed to ensure the tanks are viable for the future.

Bob Utick has requested that they defer any further comments until he has a chance to review the public comments submitted today.

Mr. Prothero stated the wells that were selected were used to determined aquifer properties. The reason those wells were selected is sometimes you have to reach out to get the study to work. The site conditions on the property do make this particular subdivision exempt because the soil conditions are adequate and favorable. An exempt well is 10 acre feet maximum rate of 35 gallons per minute.

Commissioner Good Geise asked Mr. Swierc to present his opinion at the next meeting stating he is satisfied that the number of wells and location used were appropriate or not.

Commissioner Hunthausen asked Mr. Lane to research water availability and Judge Sherlock's decision on exempt wells. The proposal says there would be four lots, but not use any more than the already exempted 10 acre feet that exists on the property.

Mr. Lane stated the right to drill and get 10 acre feet is a right and not a reality that it exists. The impact it would have on the neighbors could also affect their rights. What is currently before the Commission is whether or not there is adequate water availability to subdivide the land into four parcels.

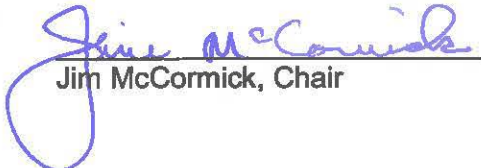
A motion was made by Commissioner McCormick to table the item to August 30, 2018 and seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

**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 12:54 pm.

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