



PUBLIC MEETING

August 29, 2017
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, August 29, 2017, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Susan Good Geise called the meeting to order at 9 a.m.

Commissioner Andy Hunthausen and Commissioner Jim McCormick were present. Others attending all or a portion of the meeting included Roger Baltz, Holly Fox, Eric Griffin, Nicho Hash, Matt Heimel, Charles Lane, Lindsay Morgan, Paul Spengler, Jerry Hamlin, Barb Hamlin, Kathy Maxwell, James Maxwell, Steve Story, Traci Sears, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Resolution 2017-117 Levying and Assessing a Tax Upon Benefited Property Within the Buckboard Rural Improvement District No. 2017-9. (Planner: Matt Heimel)

Matt Heimel, Special Districts Planner, presented the proposed resolution to levy and assess a special assessment upon benefited properties within the Buckboard Rural Improvement District. The District was created through adoption of Resolution 2017-82 on July 27, 2017, to fund internal roadway for the Buckboard subdivision and also catch up on funding for future chip seal projects as the District was not created when the subdivision was granted final plat approval. Legal notice of the public hearing was published and mailed to all property owners within the District; as of August 23, 2017 no written comments had been received.

The proposed assessment is \$302.06 per lot, which provides for ongoing maintenance, future chip seal, and approximately two years of revenue not yet collected. Staff recommends approval of the proposed resolution.

No public comment was received.

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

Resolution 2017-118 Levying and Assessing a Tax Upon Benefited Property Within the Frontier Village Fire System Rural Improvement District No. 2016-4. (Planner: Matt Heimel)

Matt Heimel, Special Districts Planner, presented the proposed resolution to levy and assess a special assessment on the benefited properties within the Frontier Village Fire System Rural Improvement District. The RID was created on January 3, 2017 through the adoption of Resolution 2017-4 to fund maintenance of the fire protection system in the Frontier Village Estates and Buckboard Subdivisions. Once the Garden Valley Subdivision lots are available for special assessments, they will also be included in the RID. Legal notice of the public hearing was published and mailed to all property owners within the District and as of August 23, 2017 no written comments had been received.

The proposed assessment is \$43.74 in addition to any other districts within Frontier Village Estates, Buckboard and Garden Valley subdivisions. The rate will lower to \$28.30 annually once all the lots in the Garden Valley Subdivision are available for special assessments. Because that subdivision was final platted after January 1, 2017 it cannot be added to the 2017 RIDs.

No public comment was received.

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

Resolution 2017-119 Levying and Assessing a Tax Upon Benefited Property Within the Frontier Village Estates Rural Improvement District No. 2011-4. (Planner: Matt Heimel)

Matt Heimel, Special Districts Planner, presented the resolution to levy and assess a special assessment upon the benefited properties within the Frontier Village Estates Rural Improvement District (RID). The RID was amended through the adoption of Resolution 2017-81 on July 27, 2017, in order to remove the fire protection cost component of the district and continue to fund ongoing road maintenance. Legal notice of the public hearing was published and mailed to all property owners within the District and as of August 23, 2017 no written comments had been received.

The current assessment for the road maintenance is \$265 per lot. With the addition of the Fire Protection District the total assessment is \$308.74 per lot. Once Garden Valley Subdivision is able to be charged special assessment, the amount for Frontier Village will be \$293.30 per lot. Staff recommended approval of the resolution.

No public comment was received.

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

Proposed Updates to County Parks and Recreation Plan. (Planner: Lindsay A. Morgan)

Lindsay A. Morgan, Planner I, presented the proposed amendments to the County Parks and Recreation Plan. The purpose of the amendments are to: assure compliance with the Montana Subdivision and Platting Act for the dedication and use of funds collected from developers as cash payments in-lieu of dedicating parkland; and to provide the Parks Board with criteria and a process for reviewing proposals for both parkland and/or cash payments in-lieu of dedicating parkland and requests for parkland funding from private organizations. The proposed amendments are intended as an interim treatment to deal with these specific issues prior to a more comprehensive review and possible overhaul of the County Parks Plan within the next year.

The Parks Board recommended approval of the draft amendments on July 12, 2017, and the Planning Board recommended approval of the same on August 15, 2017. Staff recommended approval of the proposed updates.

Ms. Morgan explained the process for cash in-lieu of dedicated parkland and noted there are concerns that the discussed area is too large and they want to narrow it down to be more in

compliance with state law by requiring developments to be a certain distance from a park to qualify for cash-in-lieu. The recommended reasonable distance is 2 miles or a fifteen minute bicycle ride.

No public comment was received.

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

Extension Request. Red Fox Meadows Subdivision. (Applicant: Hamlin Construction and Development Co., Inc.) (Planner: Lindsay A. Morgan)

Lindsay A. Morgan, Planner I, presented the applicant's request for a three-year extension of preliminary approval for the Red Fox Meadows Subdivision until September 17, 2020. Subject to a Settlement Agreement, the Subdivision was granted preliminary approval on September 17, 2014. The property is located south of and adjacent to Canyon Ferry Road and east of and adjacent to Lake Helena Drive and is approximately 165 acres. The Subdivision will create 127 lots, 110 of which will be used for one single-family dwelling, 5 lots to be utilized as open space, 8 lots to be used for a total of 125 condominiums, 3 lots for commercial purposes, such as storage units and a gas station, and 1 lot for a public water treatment system. Access to the lots is through a series of proposed internal access roads and commercial driveway entrances that connect to both Lake Helena Drive and Canyon Ferry Road. The applicant's extension request application form stated no construction had been completed due to the floodplain permitting process and subsequent denial.

Ms. Morgan noted due to language in the Settlement Agreement for the Subdivision, the only option the Commission has is to grant the three-year extension of preliminary approval.

PUBLIC COMMENT -

Kathy Maxwell, 3797 Canyon Ferry Road, stated she has only lived in the area for six years but understands the development has been in the process since 2007. Ms. Maxwell is not opposed to building homes on the property, but there are some things that are inherently bad about the subdivision. Ms. Maxwell has a background in developing and gave the following concerns: traffic, accidents, the proposed mining operation directly across the street from the subdivision, water issues, the floodplain, and noise factors. Something was horribly overlooked in the whole thing. Ms. Maxwell stated what is missing in the development is improving the roads to include widening them and adding turn lanes. Ms. Maxwell understands they have no option but to approve the extension, but the roads really need to be improved. She noted 125 wells plus the mining operation is likely to draw down the water sources and feels tapping into another water source is a good thing.

Commissioner Good Geise informed Ms. Maxwell that the County has to abide by the statutes on subdivision regulation. The water depletion point is well taken.

A motion was made by Commissioner McCormick to grant the three-year extension of preliminary approval until September 17, 2020. The motion was seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Appeal. Floodplain Development Permit Application Denial for Red Fox Meadows Subdivision. (Appellant: Hamlin Construction and Development Co., Inc.) (Floodplain Administrator: Paul Spengler)

Commissioner Good Geise asked for an overview of how to proceed with the hearing for the appeal of the flood plain development permit denial.

Charles Lane, County Deputy Attorney, outlined the process for the hearing, including applicant testimony, question and answer, and closing comments. Mr. Lane requested the Commission disclose any ex-parte communications they have had, including any conversations about the denial of the floodplain permit since the appeal was made approximately 30 days ago, in order to ensure

an accurate record for any decision made regarding the application. Commissioner Good Geise stated she had no communications to report. Commissioner McCormick stated everything he has reviewed has been part of the hard copy record. Commissioner Hunthausen concurred with Commissioner McCormick and noted the only conversations he has had on the agenda item have been procedural in nature, and with Mr. Lane and Mr. Hash.

Mr. Lane noted the two binders of information presented by Mr. Hamlin were not included with the online staff report for this agenda item; however, the information contained therein is a part of the official record and was submitted with the appeal.

Paul Spengler, Disaster & Emergency Services Coordinator and County Flood Plain Administrator, gave a Power Point presentation on the proposal and reviewed the Findings of Fact and Conclusions in support of denial of the Red Fox Meadows Subdivision Floodplain Permit Application.

Steve Story, Department of Natural Resources and Conservation (DNRC), provided a detailed explanation of the gauging graph that was included in the Michael Baker International Report. Said report provided third party review of WWC Engineering's (WWC) Hydrology Report.

Detailed discussion was held between the Commissioners and Mr. Story on interpretation of the reports.

Commissioner Hunthausen referred to the history of the proposal and discussion was held on how the application was analyzed and the associated review by Michael Baker International as a third party. Mr. Spengler indicated he did everything he could to assist the applicant in submitting a favorable proposal and kept them informed as to his conclusions.

Discussion was held on the consequences of approving a floodplain that intentionally, or unintentionally, includes the identified risks and concerns.

The meeting recessed until 10:50 a.m.

Ken DyRud, DyRud Law Offices, Missoula, MT, representing Hamlin Construction and Development Co., Inc., applicant; provided an extensive history of the proposal and spoke in favor of the floodplain permit application submitted by Hamlin Construction and Development Co., Inc. He noted the circumstances surrounding this situation could raise the issue of takings and expressed concern that the County's Floodplain Ordinance was not administered correctly relative to the review and analysis of the proposal and application.

Commissioner Good Geise referred to the requirement that the application be complete and correct, and asked Mr. DyRud if the application was found to be correct and/or complete each of the four times it was re-submitted. Mr. DyRud acknowledged the permit application requirements and stated if the application was not submitted as required, no review should have taken place. Commissioner Good Geise referred to the four different application submissions and expressed concern for the inaccurate information provided each time. She disagreed with the applicant's assertion that the proposal was submitted correctly and completely and noted Lewis and Clark County staff make every effort to assist citizens in obtaining their desired outcome and/or favorable solutions. Mr. DyRud stated the term "correct" is very vague in the context of the requirements for application and explained the applications were submitted with information of differing professional opinion, not information that was incorrect.

The meeting recessed until 1:15 p.m.

Mr. Lane read a written statement from Ms. Kathy Maxwell, Helena, into the record as public comment.

Mr. Story read an excerpt from DNRC Civil Engineering Specialist John Connor's memorandum dated September 8, 2015, expressing concern for discrepancies in the hydrology calculations used to analyze potential flooding, and inconsistent and unclear presentation of design flows used for various components of the design in the report submitted by WWC Engineering for the subdivision. Mr. Spengler confirmed the memo was provided to the applicant's engineer, Jeremy Fadness with WWC Engineering, shortly after receipt.

Discussion was held on the relationship between past changes to the Regional Regression Equations and ephemeral stream flows. Mr. Lane asked if Hamlin Construction will be required to reconstruct the highway with issuance of the floodplain permit. Mr. Story stated not unless the County separately required the applicant to do so, and clarified issuance of the permit would not be conditioned on reconstruction of the highway. Mr. Lane asked if the culverts installed by the Montana Department of Transportation (MDT) in 2005 increased or decreased the flow through the road. Mr. Story explained the culverts increased the flow capacity in the area. Mr. Lane indicated the base flood elevation is not allowed to be increased as a condition of construction in a floodplain and asked if the base flood elevation was increased or decreased via installation of the culverts. Mr. Story stated it was not increased and explained the condition in detail.

Mr. Lane asked for the reasoning behind the recommendation that the applicant submit a Conditional Letter of Map Revision (CLOMR) application to Lewis & Clark County for review and approval. Mr. Story explained the recommendation was developed following the applicant's failure to address DNRC's repeated comments identifying concerns for hydrology inadequacies and deficiencies contained in the report.

Mr. Lane asked if DNRC required WWC to use Regional Regression Equations. Mr. Story answered no.

Commissioner Good Geise referred to statements made indicating WWC perpetuated the use of the MDT data from 2005. She asked if she would be correct in assuming DNRC referred WWC to FEMA out of desperation over their repeated use of that data. Mr. Story explained DNRC's role is that of technical advisor. The agency also adopts and endorses FEMA's floodplain designations throughout the state; endorsements mean that DNRC feels the floodplains are representative of the best data, methods, and standard practices being applied. DNRC's referral to FEMA was to provide an opportunity for FEMA to weigh in on the use of the 2005 MDT data.

Commissioner Good Geise asked Mr. Story if DNRC ever told the applicant they would need to install a larger culvert in the subject area. Mr. Story stated the applicant was informed of all improvements "up to and including" that could be necessary; they were not instructed to perform any.

Commissioner Good Geise asked for the frequency of changes to statutes governing DNRC since 2008. Mr. Story explained it is standard practice to review and update hydrologic analysis for floodplain study. She asked for more information on the methodology identified as deficient. Mr. Story spoke to the lag time associated with the most recent submittal, DNRC did not submit comment on that particular submittal as Michael Baker International had been retained by the County at that point and would be providing review and comment on the proposal. Commissioner Good Geise asked if the applicant was relying on the lag time. Mr. Story explained some methodology requires lag time be calculated into the process; however, Michael Baker International questioned the results associated with that methodology. Commissioner Good Geise asked why the lag equation is still in use today with all of the advancements in calculations, process and data. Mr. Story spoke to the benefits of using the lag equation in certain situations.

Commissioner McCormick expressed concern for the confusion created by authorizing the use of dissimilar yet equally acceptable modeling standards, and corresponding data fluctuations stemming from the use of such diverse methods in the analysis process.

The meeting recessed until 3:52 p.m.

Mr. Dyrud, addressed several of the issues discussed in the preceding testimony from Mr. Story, including varying cubic feet per second (cfs) flow data and recommended upgrades to existing culverts in the area.

Commissioner Good Geise commented if there is a discrepancy identified in the report there is a problem. It should not have been impossible to obtain analogous data through all of the means discussed. Mr. Dyrud reiterated obtaining such data proved difficult due to a legitimate difference of professional opinions.

Commissioner Hunthausen expressed frustration for Mr. Dyrud's repeated placement of blame on differing engineering opinions instead of addressing what were fundamental errors in the WWC report submitted in support of the permit containing clearly incorrect, inaccurate data and obvious discrepancies. Said issues were never resolved by the applicant despite County requirements and requests.

Mr. Dyrud spoke to the application review and findings by Chuck Parrot, P.E., WWC Engineering. Again, Mr. Dyrud disagreed with the County's assertion that the application was not complete or correct when submitted. There had been no statement, indication, or comment that the application was not complete and correct.

Commissioner Hunthausen addressed Mr. Dyrud's earlier comments attributing problems with the numerous permit submissions on what they perceive as untimely review of the proposal by the County, and a lack of notification and effort by County staff to address problems identified. He stated he believes the applicant was well aware of problems with the application since they continued to file supplemental reports for the project.

Traci Sears, Floodplain Community Assistance Program, DNRC, spoke to the floodplain review checklist she created to assist cities and counties with review of floodplain permit applications and provide guidance on the process. Ms. Sears explained if the governing body requests additional information from the applicant, the timeframe for review is stopped until the subject information is submitted as requested. Various scenarios and their effects on the statutory timeframe for review were discussed.

Mr. Dyrud described concerns raised with the checklist resulting from their subpoena of DNRC records.

Commissioner Hunthausen asked Mr. Dyrud what he would do from a legal standpoint, if he were representing clients with property damage due to flooding on their property located in an inadequately developed floodplain and knowingly approved by the governing body.

Shawn Higley, P.E., WWC Engineering, provided detailed testimony regarding WWC's professional review of the proposal, findings and intended actions to meet Floodplain Ordinance requirements. Included in his presentation were photos supporting WWC's analysis of the existing floodplain and subsequent hydrology report.

Discussion was held regarding Michael Baker International's determination that methods used by WWC in the initial analysis resulted in inaccurate data and flawed findings, and should be revised to correctly map the existing floodplain. They determined each re-submittal of the permit application to also be inaccurate, containing unreasonable estimations and unreliable calculations.

Jerry Hamlin, Hamlin Construction & Development Co., Inc., Helena, MT, applicant; stated for the record he would never want to put any individual or any of his development projects in a dangerous floodplain situation and does support implementation of regulations related to safety. The problem lies in that this regulation cannot be quantified. Mr. Hamlin extended appreciation to Mr. Spengler for his work to apply the Floodplain Ordinance to his applications correctly and fairly.

Mr. Hamlin testified in detail to the history of the project, the determination of the completeness and correctness of his application(s), the detrimental impact of the proposed requirements and improvements on his right to develop the subject property, fiscal hardships of compliance with more stringent and unnecessary regulations, and the inappropriate application of updated USGS Equations effective in 2016 for this proposal submitted in 2015. Mr. Hamlin thanked the Commission and County staff for their time and dedication to ensure this complicated project is analyzed and vetted appropriately and in accordance with statute.

Mr. Lane clarified the applicant was not required to use the USGS Regression Equations and noted the 2016 USGS Equations actually lowered the flow amounts compared to the Equations in effect in 2015 and preferred for use by the applicant.

Mr. Dyrud thanked staff and Commission members for the great deal of time spent on the floodplain permit application and the concerns presented by the applicant.

Mr. Spengler reiterated his discomfort with the applicant's proposals and recommended the Commission uphold the denial.

Mr. Story, DNRC, reiterated DNRC's support for the conclusions and recommendations contained in the Michael Baker Incorporated analyses of the proposals.

Commissioner Good Giese closed the public portion of the hearing.


A motion to table the appeal of the floodplain permit application denial for Red Fox Meadows Subdivision to the regularly scheduled public meeting of September 5, 2017 was made by Commissioner Hunthausen and seconded by Commissioner McCormick. 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 4:59 p.m.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Jim McCormick, Chair


Susan Good Giese, Vice Chair


Andy Hunthausen, Member

ATTEST:


Paulette DeHart, Clerk of the Board

