



## **PUBLIC MEETING**

August 30, 2018  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, August 30, 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, Brent Colbert, Nicho Hash, Charles Lane, Greg McNally, Audra Zacherl, Brian Coplin, Margaret Cleary, Valerie Jaffe, Joyce Evans, Stephen O'Brien, Mike Stergio, Colleen Stergio, Steve Utick, Shane Hildenstab, Stan Frasier and Nadine McCarty, Recording Secretary.

### **Pledge of Allegiance**

Everyone recited the pledge.

### **Consent Action Items**

There were no consent action items.

### **Contract Between Lewis and Clark County and Warren Sears. (Brent Colbert)**

Brent Colbert, Sheriff's Office Captain, presented the contract with Warren Sears in the amount of \$4,834.42 for repairs and maintenance to the Augusta Montana Law Enforcement Center due to damages caused by the spring flooding. The contract begins upon approval through October 31, 2018. Staff recommends approval of the contract with Warren Sears.

Captain Colbert gave an overview of the damage, including mold clean up and the necessary repairs.

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.

### **Memorandum of Agreement Between Lewis and Clark County and the Montana Department of Transportation. (Audra Zacherl)**

Audra Zacherl, Public Works Assistant Director, presented the Memorandum of Agreement with the Montana Department of Transportation (MDT) for the purchase of one flush truck, also known as a water truck. In March 2017 the County applied to the Montana Air and Congestion Initiative (MACI) program for one flush truck as our first and only priority.

The MACI program has improved the County's ability to maintain streets and reduce air particular matter. Since 2000, the program has awarded the County ten different pieces of equipment including storage tanks, sweepers and flush trucks.

MACI has awarded the County our priority worth \$194,409.36. The anticipated delivery date of the truck is September of 2019. The purpose of this Agreement is to set forth the terms and conditions for MDT to acquire and transfer title of the flush truck to the County and the financial responsibilities of both parties. The County will be responsible for a match of 13.42% or \$26,089.73 and has budgeted for this in the Road Department's capital fund. Staff recommends approval of the Memorandum of Agreement with the Montana Department of Transportation.

Ms. Zacherl stated the flush truck sprays water on both hard and gravel services as well as magnesium chloride for dust control and ice control.

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.

**Contract Between Lewis and Clark County and Integrated Water, Inc. (Audra Zacherl)**

Audra Zacherl, Public Works Assistant Director, presented the contract with Integrated Water, Inc. as an independent consultant for water system services needed at the Augusta Senior Center and Lincoln Senior Center. Compensation for the contract is for time and materials not to exceed \$500 per site visit. Minimum of one site visit per month is required to meet state law. The contract will begin upon approval and will automatically renew for successive terms of one year for a period not to exceed seven years. Staff recommends approval of the contract with Integrated Water, Inc.

Commissioner Good Geise stated the primary use of both senior centers is for conglomerated meals part of Rocky Mountain Development Council and asked if the expense is being shared with them.

Roger Baltz, Chief Administrative Officer, stated the issues that are being worked out for the Senior Association is separate and this contract is for ongoing maintenance needs for the facilities.

Commissioner McCormick asked if the water systems are individual wells. Ms. Zacherl stated both water systems are a community water system and is a chlorination system. Commissioner Hunthausen stated they are separate wells but are considered as community water systems as they serve more than 25 people or more per day.

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.

**Contract Between Lewis and Clark County and the Law Firm of Baker & Harris. (Nicho Hash)**

Nicho Hash, Deputy County Attorney, presented the agreement with Jared M. Harris of the law firm of Baker and Harris in the amount of \$2,000 for the purpose of effectuating the default judgment secured against Greg Hoskins d/b/a UBC Precast in the amount of \$51,250. In order to pursue Mr. Hoskins who resides in Idaho the county needs to secure the assistance of an attorney who is licensed to practice in that state. The agreement will begin upon signature by both parties.

Mr. Hash gave an overview of the issue. The county entered into an agreement with Mr. Hoskins for a restroom bathroom facility in Hooper Park in Lincoln, MT giving him 50% of the overall purchase price. Ultimately UBC Precast did not complete the project and the County brought an action for breach of contract. Neither UBC Precast or Jared Hoskins answered the litigation notice in the

appropriate time, therefore our office was able to receive a default judgement for the entire contract amount. He added that the \$2,000 retainer allows for the law firm to cover costs. What is not spent will be returned. Mr. Hash has had considerable communication with the law firm and understands that Lewis and Clark County's Attorney's office would be made aware of any moves and decisions.

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. (Tabled 8-23-18) (Applicant: Robert Utick) (Planner: Greg McNally)**

Greg McNally, Planner III, presented the proposed First Minor Subdivision to be known as Olivet Subdivision that was heard by the Commission on August 23, 2018. Additional public comment was received since August 23, 2018. During the August 23 meeting Commissioner Hunthausen asked if the impacted off-site roads were part of a recent Federal Lands Access Program (FLAP) grant award.

The FLAP is administered by Western Federal Lands, provides funds for road projects that are located on or adjacent to, or that provide access to Federal lands. The FLAP supplements State and local resources for public roads, transit systems, and other transportation facilities. A portion of Ferry Drive is included in a FLAP grant. As a result of staff's additional research, Mr. McNally recommends the following findings of fact be incorporated into the subdivision findings and the variance findings for this project: a portion of Ferry Drive 1.5 miles north of where Ferry Drive crosses the Helena Valley Irrigation canal extending north to the intersection of Snowdrift Road. With a 13.42% County match the grant award is for surface preservation. The total cost of the project was estimated to be \$252,863.46. A date to receive the grant award has not yet been identified but with communication in April was to start construction in 2021

The County Public Works Department does provide maintenance of Ferry Drive from Lincoln Road to Helena Valley Irrigation canal.

As for water availability for the proposed subdivision, proposed individual wells will meet or exceed the minimum requirement for water supply. In addition there was discussion about the application itself and particular wells to describe water availability. When any subdivision application is submitted it goes through a completeness and sufficiency review process. It was noticed that some specific well logs used for the non-degradation analysis was fairly broad.

The City/County Environmental Health Division determined the Applicant was exempt from having to perform a non-degradation analysis.

James Swierc, Water Quality Protection District Hydrogeologist, stated he reviewed the eight wells in the application and compared them to other wells in the area. Wells closer to the canal are shallower wells that have a decent water supply. There were three wells not in the section, one of which shows an 80 foot well with water relatively shallow with standing gravel. No other wells show that. Location of the other wells may have been incorrect. The well log shows the clay rich sequence in the northern area. This is the best data we have and it is useful and representative of the wells.

Mr. Swierc stated the long term plan is to develop and implement a ground water monitoring program. They will look at wells in the area where there is data from previous investigations and start a routine monthly water level monitoring program. Also will do water quality samples.

Mr. McNally stated the Applicant's engineer indicates there is adequate water supply and needs approval from the Department of Environmental Quality for the water supply system.

Charles Lane, Deputy County Attorney, gave an overview of the subdivision regulations that require the Applicant provides evidence of adequate water supply as DEQ requires it. The question before the Commission is you have the evidence provided by well logs, and evidence provided by testimony and letters of neighboring properties. Mr. Lane added under the regulations at the time of application submission the evidence of availability of water are within the boundaries.

Mr. Swierc stated it is difficult with the inherent uncertainties of the geology. They take the data available from around the site and make the best generalization they can. The recommendations mentioned were consistent with saving water. The ability to drill to bedrock could be more expensive, but would be a better guarantee on the availability of water.

Mr. McNally stated that Bob Utick also provided a letter in response to comments received but is unable to make the meeting due to health issues.

Steve Utick, 2950 Fantasy Road, stated even though water is not a criteria for preliminary plat approval because of the concern they thought they should address it. All the well logs are in close proximity to the proposed subdivision and in most cases adjacent lots. They feel they have submitted all of the necessary documentation as required. They are more than willing to complete all of the conditions in a timely manner. As winter is approaching they would request that preliminary plat be approved to start some work before the snow hits.

#### PUBLIC COMMENT -

Valerie Jaffe, 2626 Tea Road, stated she thinks the decision today of preliminary approval is premature. She would like to submit a suggestion to follow Butte-Silver Bow regulations that substantial and creditable evidence that the impact on the water supply systems will not harm any existing senior water rights. The enforcement of DEQ to determine adequate water supply is lacking and should be verified.

Sam Frasier, Water Quality Protection District Board, stated thirty years ago he owned a plot directly across on Tea Road. He drilled a well more than 200 feet and got less than 2 gallons per minute although not able to locate the well log. All the lots that were there when he lived there were 40 acre lots and those property owners had barely enough water. The well logs are not very complete for the area. Mr. Frazier urged that the recommendations of James Swierc be followed. People need to be more careful when purchasing property.

Margaret Cleary, 6331 Ferry Drive, asked if the road will continue to be maintained.

Commissioner Hunthausen asked Mr. Utick if the landscaping suggestion be included in the private covenants and Mr. Utick stated it has been discussed, but they do not want to get into a situation that would be up for interpretation.

Mr. Lane asked if Mr. Swierc has made a statement that there is adequate water to supply at least 10 gallons per minute over a one hour period, 6 gallons per minute over two hour period or 4 gallons per minute over a four period on these lots.

Mr. Swierc stated he does not believe there is a definitive 10 gallons per minute over a one hour period. From his perspective as a hydrogeologist, the only way to definitively prove the water availability is drill a well and conduct a pump test.

Mr. McNally stated Mr. Prothero did speak to those flow rates and indicated they could meet the requirements.

Mr. Lane asked if the submitted well logs provide evidence that these properties meet the minimum flows required. It was stated that they do feel the well logs provide that.

A motion was made by Commissioner Good Geise to conditionally approve the proposed First Minor Subdivision and will take up a variance request within that and seconded by Commissioner McCormick.

Mr. McNally gave an overview of the variance request on Chapter 11 Design Standards and Improvements for the Subdivision Regulations.

A motion was made by Commissioner Good Geise to approve the variance as requested by the Applicant and seconded by Commissioner McCormick.

Commissioner Good Geise reviewed the findings of fact which included a traffic study indicating it will not affect traffic on Ferry Drive and the impact on the county road with work being done by the Applicant to meet or exceed the standards.

Commissioner Hunthausen noted the Applicant is required to do an engineering report by regulation and the Applicant is asking to do an engineering estimate instead.

After reviewing the findings of fact, a motion was made by Commissioner Good Geise to add finding of fact number 6 that approves the findings of fact as submitted and seconded by Commissioner McCormick. The motion Passed 3-0 vote.

After reviewing the adopted findings of facts and after considering public comments and letters received, Commission Good Geise moved to recommend adoption of the conclusions of law based on the findings of fact, that granting of the variance would not be detrimental to public health, safety or general welfare, would not cause a substantial increase in public costs and would place the subdivision in non-conformance with the adopted regulations that could be remedied by the conditions and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Good Geise to recommend adopting the conclusion of law that the Applicant has demonstrated that the requested variance meets all 4 of the standards named and further to recommend adopting conclusion of law that compliance with the various criteria requires that the conditions of approval be applied and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Good Geise that after reviewing the findings of facts on the impact criteria and subdivision regulations requirements and after considering public comments to approve the findings of fact.

Commissioner McCormick reviewed the additional findings of fact to also include the portion of Ferry Drive north of where Ferry Drive crosses Helena Valley irrigation canal be included in the FLAP grant and #2) County Public Works provides maintenance of Ferry Drive from Lincoln Road to the Helena Valley irrigation canal. These will be included in the motion.

After review of the findings of fact a motion was made by Commissioner Good Geise and seconded by Commissioner McCormick.

Commissioner Hunthausen stated there is a motion on the floor to approve the findings of fact as presented, discussed and amended. The motion Passed on 3-0 vote.

Commissioner Good Geise moved to adopt a conclusion of law that proposed subdivision will have adverse impacts on the review criteria and will not be in compliance with regulation. Further moved to adopt a conclusion of law that adoption of the following conditions in Exhibit A will mitigate the impacts and bring the project into compliance with regulations. Second by Commission McCormick. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Good Geise to approve the conditions of approval and seconded by Commissioner McCormick.

Mr. Lane asked if now is the appropriate time for discussion to weigh the public comment verses the Applicant's submitted evidence and provided conclusion on which is more creditable.

Mr. McNally stated in the motions you are considering the public comments received.

Commissioner Hunthausen asked for a vote on the motion on the conditions of approval. The motion Passed with a 3-0 vote.

Commissioner Good Geise noted the findings of fact, the conditions and that the variances which we already acted on, that all of those actions be moved forward under the previous motion. Second stands.

Commissioner Hunthausen stated there is a motion on the table to approve the subdivision as a whole. The motion Passed on a 3-0 vote.

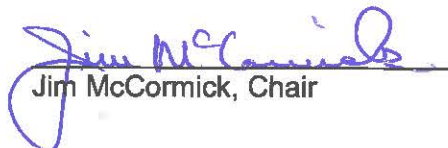
**Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.**

Brian Coplin, 1805 Joslyn Street, No 125, stated he received a call on his helpline from a family who was in crisis. The family stated they had been to many service providers and no one would listen to them. Mr. Coplin stated he is in a community crisis himself. Over the years the community organizations and his allies have become less affective due to cuts in programs and staff. Mr. Coplin knows the Commission and the agencies are working really hard, but the community needs are not being met.

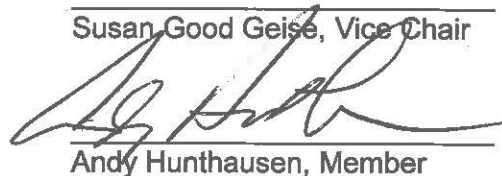
**Adjourn**

There being no further business, the meeting adjourned at 11:32 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