



PUBLIC MEETING

September 15, 2020
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, September 15, 2020, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chair 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 Pam Attardo, Roger Baltz, Connie Dedrick, Paulette DeHart, Nicho Hash, Jacqueline Isaly, Peter Italiano, Audrey McCue, Lindsay Morgan, Amy Reeves, Rodger Nordahl, Dale DeHart, Ronald Stegmann, Tamrah Chatriand, Jeff Czaplewski, Ryan Warner, Ryan Casne, Aaron Herfert, Tony Prothero, John Herrin, Deidre Smith, Kevin Wright, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Proclamation Declaring Wednesday, September 16, 2020 as Paulette DeHart Day.

Rodger Nordahl, retired Accounting Manager, read the proclamation declaring Wednesday, September 16, 2020 as Paulette DeHart Day in Lewis and Clark County.

Paulette DeHart, Treasurer/Clerk and Recorder, thanked everyone for the recognition

Consent Action Items

There were no consent action items.

Swearing in Ceremony for the Consolidated Office of Treasurer/Clerk and Recorder/Auditor/Surveyor/Assessor/Local Registrar.

A swearing in ceremony was held for the consolidated Office of Treasurer/Clerk and Recorder, Auditor, Surveyor, Assessor and local Registrar with Paulette DeHart, Treasurer Clerk and Recorder administering the oath to Amy Reeves.

Task Order 21-25-5-21-012-0 Between Lewis and Clark Public Health and the Montana Department of Public Health and Human Services. (Jacqueline Isaly)

Jacqueline Isaly, Public Health Promotion Division Administrator, presented the task order with the Montana Department of Public Health and Human Services in an amount not to exceed \$244,601 to administer the Women, Infant, Children (WIC) Supplemental Nutrition and Education Program to Lewis

and Clark, Broadwater, Meagher and Jefferson Counties. The program provides nutrition education and food benefits to low income pregnant women and families with children age 0-5. Designed to improve health outcomes and influence lifetime nutrition and health behaviors. The first 11 months of FY20 the WIC clinic served 1,260 participants, 53% were children age 1 to 5, 29% infants on formula, 23% breastfeeding and non-breastfeeding moms and 15% pregnant women. Since late March, participants have been served by phone thanks to a federal waiver of the physical presence requirement. The waiver is due to expire September 30 and without a new waiver, they will begin to see WIC participants in person beginning October 1. The Health Department on average serves about 900 participants monthly in the clinic. The task order begins October 1, 2020 through September 30, 2021. Staff recommends approval of the task order with the Montana Department of Public Health and Human Services.

Ms. Isaly stated they have currently been targeting eligible families through the local radio stations rather than getting referrals from providers in person.

No public comment was received.

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

Subcontracting Approval Contract Between Lewis and Clark Public Health and the Montana Department of Public Health and Human Services. (Jacqueline Isaly)

Jacqueline Isaly, Public Health Promotion Division Administrator, presented the subcontracting approval contract with the Montana Department of Public Health and Human Services Addictive and Mental Disorders Division for the Mobile Crisis Response Unit (CRU) grant in an amount not to exceed \$125,000. St. Peter's Health will provide the mobile CRU with the mobile Crisis Response Team (CRT) behavioral healthcare services that includes 24-7 acute Mobile CRT assessment, stabilization, safety and care planning services and telepsychiatric services. The services are made available in the field for virtual assessment from physician-level staff 12 hours per day Monday through Friday. It includes full psychiatric assessment, diagnosis and treatment, including medication management if necessary. Ms. Isaly explained the virtual process that will occur. A 100% match is required to be provided by St. Peter's Health. The subcontracting approval contract begins September 1, 2020 through June 30, 2021. This contract informs the Mental Disorders Division whom the subcontractor will be with a full contract to follow. Staff recommends approval of the contract with the Montana Department of Public Health and Human Services.

Commissioner Hunthausen discussed the overall goal of trying to help those in crisis in the field versus a more restrictive and expensive setting such as the emergency room or the jail as much as possible.

No public comment was received.

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

Contract Between Lewis and Clark County and Paul M. Putz Historic Preservation Works LLC. (Pam Attardo)

Pam Attardo, Heritage Preservation Officer, presented the contract with Paul M. Putz Historic Preservation Works, LLC for \$12,000 for heritage preservation and development services. The contract will provide support for the Heritage Tourism Council to include digitization of historic documents, conservation of damaged historic documents, archival storage of historic documents, photographs and artifacts and the preparation of National Register nominations and amendments thereto. Mr. Putz is a retired historic preservation officer. He has been performing this contract work since 2013. The contract begins September 15, 2020 through September 30, 2021. Staff recommends approval of the contract with Paul M. Putz Historic Preservation Works, LLC.

Ms. Attardo gave an update on current projects that include receiving the National Register sign for the Silver City Cemetery; work with East Helena Historical Society to rehab the depot, Paul Putz is self-publishing a history of Lewis and Clark County based upon Silver City as the County seat.

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.

Board Appointment. (Audrey McCue)

Audrey McCue, Elections Supervisor, presented the board appointments to the Wolf Creek County Water/Sewer District. The regular May 2020 election was canceled because the election was not contested. Two four-year terms and one two-year term were up for election. No candidates filed and all three positions are currently open. Jason Orzechowski and Cathy Schulte submitted requests for appointment that includes signed oaths of candidacy affirming they possess the qualifications to hold the office. The elections department verified they are eligible to hold the office of Director of the Wolf Creek County Water/Sewer District. When an election is canceled due to no regular or declared write-in candidates for a position, the governing body of the local government shall fill the position by appointment.

The recommendation is to appoint Cathy Schulte and Jason Orzechowski to the Wolf Creek County Water/Sewer District Board of Directors to terms that will end when a successor is elected or appointed at the May 2024 regular election.

No public comment was received.

Discussion was had on the value of all the volunteer board members.

Commissioner Good Geise stated there is a motion and a second. The motion Passed on a 3-0 vote.

Amended Memorandum of Agreement Between Lewis and Clark County and Hamlin Construction and Development Co, Inc. (Planner: Lindsay A. Morgan)

Lindsay Morgan, Planner III, presented the amended memorandum of agreement with Hamlin Construction and Development Co, Inc. The purpose is to extend the completion date for the remaining improvements, to financially guarantee the flood control detention pond improvements on Lot 126A of the Red Fox Meadows Subdivision. Additionally to financially guarantee the completion of the Letter of Map Revision process in accordance with the Floodplain Development Permit approval. Staff recommends approval of the memorandum of agreement and the extension request to July 16, 2021.

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.

Amended Subdivision Improvements Agreement for Red Fox Meadows Subdivision. (Applicant: Hamlin Construction and Development Co, Inc.) (Planner: Lindsay A. Morgan)

Lindsay Morgan, Planner III, presented the amended subdivision improvements agreement (SIA) with Hamlin Construction and Development Co., Inc. to request an extension of the SIA completion date for the Red Fox Meadows Subdivision. The Subdivision is located south of, adjacent to Canyon Ferry Road and east of and adjacent to Lake Helena Drive. The Subdivision was granted preliminary approval on September 17, 2014 and final approval on October 31, 2019. At that time, the SIA entered into was to guarantee that all remaining improvements would be completed by August 25, 2020. Items remaining

include some curb and gutter work, along with some signage. The Applicant submitted an extension request application, an engineer's estimate for the costs associated with the remaining improvements, and a new Irrevocable Letter of Credit. Dan Karlin, County Engineer agreed with the engineer's estimated costs associated with the remaining improvements. Staff recommends approval of the amended subdivision improvements agreement with Hamlin Construction and Development Co., Inc.

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.

Wheat Ridge Estates Phase IV Major Subdivision and Variances. (Applicant: Aaron Helfert)
(Planner: Connie Dedrick)

Connie Dedrick, Planner I, presented the Wheat Ridge Estates Phase IV Major Subdivision and two variances. On August 18, 2020, the Consolidated City and County Planning Board recommended approval of the Major Subdivision Preliminary Plat subject to the conditions of approval based on the findings of fact with denial of the two variances.

The property is located east of East Helena, south of and adjacent to Spokane Ranch Road and west of Spokane Creek Road. The current land uses are undeveloped agricultural, adjacent land uses north, south and west are vacant agriculture and single-family residential. Further east is Wheat Ridge Estates Phase III and Phase II. The Applicant is requesting approval of two variances. One to exclude a portion of right-of-way costs, the second to not pave road extensions for future connectivity. In addition, approval of a 36-lot subdivision. The property is 75.5-acre parcel and will have 36 lots with lot size from 1.7 to 2.7 acres. Lots will be served by four multi-user wells at nine lots each; individual septic; off-site fire protection; and combination parkland dedication and cash in-lieu. On August 10, 2020, the City-County Parks Board recommended a combination parkland and cash in-lieu as proposed by the applicant.

Key issues are water with four multi-user wells each serving nine lots at 250 gallons per day per single-family residence, at peak times 1,700 gallons per day for lawn and garden. Well space is 0.25 miles apart with a combined appropriation of 9.95-acre feet per well per year. Wastewater is individual septic systems. Test holes have been excavated; it is 250 gallons per day with a combined flow for the entire subdivision at 9,000 gallons per day.

The property is located outside the 500-year flood area. A required retention pond will be constructed and located in the northeast corner of lot 81-1. The proposed off-site fire system is constructed and is located in Wheat Ridge Estates Phase II, located less than one mile and does not cross a major highway. The property is located in the Tri-Lakes Fire Service Area and the applicant owns and operates the system.

According to a traffic impact study the subdivision would generate approximately, 340 trips per day at build out. A 60-foot right-of-way will be dedicated at time of recordation of final plat.

The first variance request is to not pay a proportionate share of right-of-way acquisition costs for Wheat Ridge Phases 2 and 3. A statement from the County Engineer was read into the record noting the property owner can provide the necessary easement from their northern property boundary and other properties they own for a portion of the roadway without the necessity to acquire any right-of-way from another landowner. He does not believe they should be required to include right-of-way acquisition from other property owners in the calculation of the pro-rata share because they are already encumbered. The second variance is to not pave the southern and west connector; the applicant would like to leave that in gravel. The County Engineer does not support the variance as maintenance of one small segment of gravel road in an otherwise paved subdivision would be inefficient and a likely source of contention amongst eventual landowners.

To date two comments have been received from property owners located in Wheat Ridge Phase II in opposition of the subdivision. Legal notice was published in the Independent Record, certified letters were sent to adjacent property owners and two public notice signs were posted on the property.

Ms. Dedrick added a decision is needed by September 24, 2020.

Commissioner McCormick asked why a gravel connector is more favorable than a paved connector, and Ms. Dedrick noted future buildout to the west or south is unknown.

Tony Prothero, J Bar T Engineers, representing the Applicant Aaron Helfert. The connector roads are not necessary to provide legal and physical access to any lots within the subdivision. The contention is due to the proposed zoning, the adjacent parcels would be 10-acre minimum lot size and under the subdivision regulations, gravel roads are sufficient. If the adjacent property owners do develop, they could pave the road at that time. The Spokane Ranch Road right-of-way width is currently a 45-foot public right-of-way. He was not involved with Phases II and III and is not sure about any discussion on granting additional right-of-way. In good faith, the Applicant completed the conditions of approval for those subdivisions and some of the conditions probably should have included granting an additional 15 feet of right-of-way, but now the lots are developed and the cost would be much more expensive today. The road itself closely meets the current County standards.

Discussion occurred on the possibility of future development to the property, who would be responsible for paving the unpaved section of road. Mr. Prothero noted there is an existing easement that was intended to provide connectivity and to Mr. Prothero it is not much different if development to the south or west occurred. The road could have been required to be constructed, but it was not.

Commissioner Hunthausen asked about the other side of the road and Ms. Dedrick noted she discussed with Mr. Karlin the three lots in Wheat Ridge Phase III still owned by the Applicant and the possibility of getting the 15 feet right-of-way on those lots. There are five incumbered between Phase II and III. The thought is for the three lots at 15 feet at this time and in the future if Spokane Ranch Road goes to a full 60 feet either go to the other side of the road to acquire the 15 feet or have a discussion with the owners of the five lots. To her knowledge, the Applicant does not own property on the other side of the street.

Ms. Dedrick gave a brief overview of the Consolidated City and County Planning Board discussion regarding the unknown of possible development occurring south or west. They were troubled with the gravel road and who would pave it.

Aaron Helfert, 6982 Biscaya, Applicant, stated he did attend the Consolidated City and County Planning Board meeting and as previously discussed, on Phase III, the connecting road is completely undeveloped and they will develop it to make access between Phase III and IV. He added if he were going to do something on the adjoining properties, that he would have no problem improving the connecting roads to make connectivity between the subdivisions.

Ms. Dedrick added the four criteria all have to be met prior to granting a variance and Deputy County Attorney Nicho Hash agreed.

Discussion occurred regarding a 45-foot easement or a 60-foot easement and the 2005 Subdivision Regulations. Ms. Dedrick added it was a 60-foot right-of-way stated in previous documentation for Spokane Creek and Spokane Ranch Roads. She believes it was an oversight that the 60-foot easement was not requested. A 20-foot pedestrian and trail easement was added along Phase II and III that is not developed.

Greg McNally, Planner III, added the easement that was in existence at the time when Phase II and Phase III were reviewed was 45 feet in width and the staff represented to the Commission at the time of proposal consideration that it was 60 feet in width leading to the confusion.

PUBLIC COMMENT -

John Herrin, 2855 Sundown Road, stated he is confused what the applicant would be responsible for, is it 45 feet or 60 feet and was the 15-foot additional walking path part of it. What part is deficient. How can you go back and retroactively require the applicant to fix what is functionally okay. He does not understand why the Planning Board and the County engineer would recommend denial. It would be nice for legal to clarify the legal status regarding the old approval relative to the applicant now. If the engineer's opinion is not based on legal facts, then it should not be the basis to go on. Regarding the second variance request, it is unclear where the subdivision regulations and the road design standards says that the roads need to be constructed. He noticed because someone built in the right-of-way of another subdivision, that the County changed its policy to say that people who make connector roads have to physically build the roads, because someone did something wrong. When someone builds on an easement, they are wrong. He would like to see the written policy presented in a factual basis. He believes the regulations say that wherever the last house is on the road, wherever the ingress/egress is is where responsibility should stop for road construction. Anything from that point on would be on the next people to improve it to standard. Written policies should exist that cover these things with consistency by everyone involved. He wondered how the County has authority to require the development of the road past the last ingress/egress. He asked that the County follow the law and he believes a policy has to be in the Subdivision Regulations.

Ms. Dedrick reviewed and read portions of the Subdivision Regulations specific to the two variance requests.

A motion was made by Commissioner McCormick to table the item to September 24, 2020 and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Buildings for Lease or Rent: Lake Helena Drive Storage. (Applicant: Deidre Smith) (Planner: Connie Dedrick)

Connie Dedrick, Planner I, presented the Buildings for Lease or Rent (BLR) application to be known as Lake Helena Storage. The proposed BLR will create five new storage structures one for RVs, one for boats and three for personal storage on a portion of the 5.41-acre site. It will consist of 116 units and an office. The office building will utilize the existing well and a new individual wastewater system. Access to the property will be via Lake Helena Drive, a County maintained road. A stormwater detention pond has been constructed and is located at the southwest corner of the property. The project is located at 5574 Lake Helena Drive on the corner of Lincoln Road East and Lake Helena Drive.

The subject property is currently under construction. Previous land use was irrigated agriculture. Adjacent land uses to the north, south and east are single-family residential. Further south is Lake Helena and west is agriculture. Structure A will be the largest structure in the middle of the project with 20 - 45'x15' RV units; structure B will have 38 - 20'x10' personal units; structure C will have a mixture of 5 - 10'x10' and 7 - 10'x20' units; structure D will have 31 - 10'x10' units, the office and a restroom; and structure E will have 15 - 30'x12' boat units. All structures have been erected except structure A. The traffic will be equivalent to two single-family residences with approximately 21 trips per day. Once concern was line of sight. The project engineer submitted a traffic triangle that demonstrated the line of sight to be over 170 feet, which is the minimum requirement of the Lewis and Clark County Public Works manual, therefore compliant. Lighting is addressed in the covenants attached to the property and all lighting will need to be shielded and facing downward. The applicant has stated all lighting will face inward from the project with not lighting attached to the outside of the buildings facing the roads. The perimeter wall has slated chain link fence with the exception of the entry gate and a portion of the southern property line. Notices were

sent to adjacent property owners. To date ten email comments have been received with concerns regarding traffic, lighting, screening, hours of operation, potential decrease in property values, mosquitos due to the detention pond, constructing project without approvals, line of sight visibility, potential crime, obstructing viewshed, and potential environmental impacts.

The following permits have been submitted and approved: on March 18, 2020 the approach permit, on May 4, 2020 stormwater pollution protection and on July 14, 2020 wastewater. Staff recommends approval of the BLR application with recommended conditions of approval.

Commissioner Hunthausen stated he understands many of the public concerns and explained the BLR process. The legislature designed the BLR law during the oil boom in the eastern part of the state so they could quickly go through the BLR process without going through subdivision review.

PUBLIC COMMENT -

Ms. Dedrick noted it was put through during the oil boom for rentals because of the need for housing. The law is very broad and it does not give the County much to stand on to have them go through different regulations. Since there is no zoning on the property the statute allows the applicant to propose a BLR and does not state that they have to have building permits to start construction. They just cannot lease or rent any units until the County Commission approves the project. The County does not have much to go on to limit the construction.

Deidre Smith, 1108 Butte Ave., stated she does not have anything to say that Ms. Dedrick, the engineer, or her general contractor cannot discuss. She was asked what gave her the confidence to be able to erect the structures before coming to the Commission, and she noted to begin the project they had to have the state permits in place. The county clerk that they could go ahead with construction and the county could not stop them from starting.

Ryan Casne, 664 Logan Street, Casne & Associates, stated he would be happy to answer any questions regarding permitting or engineering on the project, but will not field any questions regarding business decisions, sequencing of construction. He stated the only permit application that he prepared is the one before the Commission today that he began in March. The structures were not up at that time. He was asked if he received any cautionary notes as to proceeding without going before the Commission, and he noted his decision was not to proceed with the project and he does not hold the keys to the development, it is not his money and his risk to take, therefore not a fair question.

Ryan Warner, General Contractor on the project, stated they were unable to get their packet accepted to Lewis and Clark County for the application permit in March because the County was shutdown. His client had bought the project and wanted to keep going with it. Ms. Ness informed him that the property is unzoned, as long as the permits are in process they could get started on the project. They do not have to have a BLR permit until they are open for business.

He met with his client and told them they would start, as they cannot wait for the County to open back up. They got all of the necessary permits to get the project started. Knowing that it was an unzoned piece of property and the County was not accepting applications at that time, they moved forward. They knew the risk they were taking going into it. He added they checked all of the boxes and he knew the BLR does not have to be established until they are open for business.

Commissioner Hunthausen noted the only piece of the County Commission process is approval of the site plan in order for them to begin renting and leasing. In terms of them building on their land that happens outside of the Commission's purview.

Ron Stegmann, 3615 Pelican Road, stated he is concerned that the project is nearing completion and then it comes to the Commission for approval. There were many assumptions made that the Commission was going to approve the application. The regulations say the application submitted must

have a detailed narrative assessing the potential significant impacts on the surrounding physical environment or human population because of the proposed BLR, including a description of any proposed mitigation measures to avoid or minimize impacts. When he asked about the affect of the physical environment or human impact, he was told there was no human impact. He believes there is significant impact. He built his house for the view of Lake Helena. He would like to know what is included in the statement physical environment or human population because of the proposed building.

Jeff Czaplewski, 5548 Lake Helena Drive, stated they bought the property to retire there. They are going to run slats in the fence until they get to the pond, which is next to his property. He wants to know: why not run the slats all the way down as all the buildings affect people's view already. Will all the storage be in the buildings and not outside of the buildings; can they do something to prevent the stagnant pond from being a mosquito breeding ground; during snow removal where will the snow be piled up; and will there be surveillance cameras that can look onto his property.

Ms. Dedrick read the detailed statement in statute that Mr. Stegmann referred to and Commissioner McCormick asked about viewscape being controlled by the law, as it is not listed in statute.

Nicho Hash, Deputy County Attorney, stated the potential significant impacts with the physical environment or the human population is not only in statute, but also in the Buildings for Lease or Rent regulations. Because of the current discussion, it would be appropriate to discuss further, staff could provide what their review was, and an explanation from staff why there either was not any found impacts or if impacts were found how they would be mitigated through conditions of approval.

Mr. Warner stated they want to be a good neighbor. During a meeting with the neighborhood and the planners, the property owner south of the project had concern related to headlights shining on his property as people go through their entrance. That is when they contacted the fence contract to slat the fence. The design of the detention pond for the water to get absorbed. DEQ instructed them to put it at that location and there will not be any more mosquitos there than at Lake Helena. He only ran slats down past the neighbors shop for 340 feet to protect any lights from shining in his property and he did not think slatting the fence to the end of his property was necessary. The property will have a state-of-the art surveillance system. He welcomed the concerned neighbor to come see that the cameras will not be in his backyard. All the cameras will be on the buildings and will go down the alley ways, one camera will be on the gate. Regarding snow removal, there is a ditch along the south part of the property that is part of the stormwater pollution prevention plan permit. The plan is to pile snow down in the southwest corner with no hazards to the neighbor's property.

Commissioner Good Geise would like more information regarding the human impact.

Mr. Hash stated in the staff report there are four specific proposed findings that address the questions being asked and the Commission could ask for further information.

Ms. Dedrick noted the project timeline for the 60 days is October 19, 2020.

Ms. Dedrick stated the application does go into a little more detail about the primary impact would be the additional stormwater that does not immediately filtrate the ground due to the increase runoff from the building roofs, asphalt, gravel surfacing. The proposed mitigation would be rain gutters directed toward the center driving out in a v-shape with the water to flow to the detention pond. The application also states the proposed project does not significantly impact the human population. The development can create additional traffic impact to local roadways. She can copy the application for the next meeting. She reviewed recent photos of the site and noted there is standing water in the channel that feeds into the detention pond.

A motion was made by Commissioner McCormick to table the item to September 29, 2020 and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

A motion to Approve was made by Commissioner Good Geise 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.

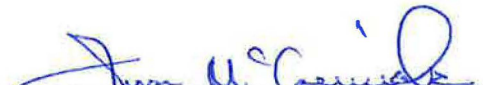
Adjourn

There being no further business, the meeting adjourned at 9:55 am.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Andy Hunthausen, Chair



Jim McCormick, Vice Chair



Tom Rolfe, Member

ATTEST:



Amy Reeves, Clerk of the Board