



PUBLIC MEETING
September 26, 2017
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, September 26, 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, Paulette DeHart, Bob Drake, Leo Dutton, Karie Frydenlund, Nicho Hash, John Huston, Greg McNally, Dorothy Mitchell, Jim Mitchell, Christal Ness, Tony Prothero, Paul Spengler, Scott Svee, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Public Meeting Minutes: January 17 and 31; June 22; August 22; September 7, 12, and 19, 2017. (Nadine McCarty)
- b. Resolution 2017-132 Ordering a Refund of Taxes/Fees/Assessments Paid by Vicki & Charles Malatare in the Amount of \$195.10. (Karie Frydenlund)
- c. Resolution 2017-133 Ordering a Refund of Taxes/Fees/Assessments Paid by Amerigas LP in the Amount of \$30,584.91. (Karie Frydenlund)
- d. Resolution 2017-134 Ordering a Refund of Taxes/Fees/Assessments Paid by Summit Stacking, LLC in the Amount of \$1,072.33. (Karie Frydenlund)
- e. Resolution 2017-135 Ordering a Refund of Taxes/Fees/Assessments Paid by Robert & Clarice Boomer in the Amount of \$421.26. (Karie Frydenlund)
- f. Letter of Support to Montana DNRC for the Alice Creek Fire. (Roger Baltz)

Roger Baltz reported on the consent action items 2 a-f and recommended approval.

No public comment was received.

After Mr. Baltz's presentation of the consent action items Karie Frydelund, Property Tax Manager, explained the tax refunds are due to errors or discrepancies from the Department of Revenue.

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

Resolution 2017-136 Ordering the Cancellation of Delinquent Property Taxes on Mobile Home or Housetrailer. (Karie Frydenlund)

Karie Frydenlund, Property Tax Department Manager, presented the resolution to order the cancellation of delinquent property taxes on an abandoned mobile home. The trailer park owner is requesting taxes be removed as they served the appropriate paperwork to the mobile home owner with no response and it has been deemed abandoned. The only way the mobile home can be removed from the property is if the ownership is changed to the current landowner and the taxes are paid. The County Tax Department issued a writ of execution, the legal owner was not located, and therefore it is an uncollectible debt. The Tax Department makes sure the mobile home is taken to the landfill prior to the write-off of the taxes when it has been deemed uninhabitable.

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 2017-137 Ordering the Cancellation of Delinquent Property Taxes on Mobile Home or Housetrailer. (Karie Frydenlund)

Karie Frydenlund, Property Tax Department Manager, presented the resolution to order the cancellation of delinquent property taxes on an abandoned mobile home. The current trailer park owner has gone through the abandoned property process, notifying the legal owner to remove their property with no response. The County Tax Department issued a writ of execution and tried to collect the back taxes, but unable to locate the legal owner. The trailer park owner is requesting the taxes be waived in order to remove the uninhabitable trailer to the landfill.

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 2017-141. Intent to Enter into a Land Exchange with the City of Helena. (Christal Ness, Ombudsman)

Christal Ness, Ombudsman, presented the resolution of intent to enter into a land exchange agreement with the City of Helena. The City owns 33.8 acres in the southwest quarter of the northeast quarter of Section 17, Township 10, and Range 3 West. Adjacent to the east, the County owns 40.17 acres in the southeast quarter of the northeast quarter of Section 17, Township 10, and Range 3 West. The City would deed the southern 15 acres of its property to the County and reserve the remaining 18.8 acres. The County would deed its entire 40.17 acres to the City. An amended plat would be prepared aggregating the remaining acres of city property with the County property that is transferred to the City. Additionally, the City will pay \$718,750 to the County for the acreage difference. This is a two-part process, today is the public hearing and next week the documentation with a survey will be completed.

PUBLIC COMMENT -

Bob Drake, 5733 Drake Road, asked what is the purpose of the exchange.

Ms. Ness explained the County originally purchased the parcel in anticipation of the new correctional facility. The City has facilities there as well, adjacent to the County's parcel, but separated from the other City owned property. The City and the County agreed that the County did not need that large of a parcel for a future facility. The City wants to possibly expand the wastewater facility in the future. The exchange mutually benefits both parties.

Commissioner Hunthausen stated the fifteen acres was always part of the plan for future county needs and from the beginning it was known that the County and City would partake in this exchange.

Commissioner Good Geise stated her intention is to continue the public hearing to next week. Ms. Ness stated today is the noticed public hearing for this exchange, and next week will be the survey and the deeds to complete the transaction. She thinks the hearing should be closed today. This then allows for the execution of all the documents next week, thus completing the process.

Nicho Hash, Deputy County Attorney, is in agreement with Ms. Ness to close the hearing.

Commissioner Good Geise stated that the public hearing is now closed.

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

Request for Extension of Preliminary Conditional Approval for Timberworks Estates, Phases V and VI Subdivision. (Applicant: Frontier Builders, Inc.) (Planner: Greg McNally)

Greg McNally, Planner II, presented the request to extend the preliminary conditional approval of the remaining phases (Phase V and VI) of the Timberworks Estates Subdivision located north of and adjacent to Lincoln Road and west of and adjacent to North Montana Avenue. The extension is to be completed by January 20, 2019. On March 1, 2011 the Lewis and Clark County Commission granted preliminary subdivision approval to Frontier Builders, Inc. for Timberworks Estates, Phases I-VIII with conditions of approval for each phase. On March 15, 2012, September 4, 2012, and December 4, 2014, the Commission modified the conditions of approval at the request of Frontier Builders. The most recent modification of conditions of approval reduced the total number of phases from eight to six. The preliminary approval is for all phases for a total of 106 lots; 80 lots for one single-family dwelling, and 26 lots for non-residential use. The preliminary approval was given a three-year extension on February 27, 2014 and expired on March 1, 2014. Conditions of approval for phases I through IV are complete and have been filed with the Clerk and Recorder. It is evident progress on the remaining conditions of approval is taking place with roughed in internal roads, installation of the last remaining fire hydrant and manhole covers for the wastewater treatment system are in place. Some of the conditions of approval must be kept up-to-date and ongoing compliance will be required for DEQ regarding the wastewater treatment and water supply systems as well as stormwater drainage management. The remaining phases, V and VI include 38 lots, each for one single-family dwelling. An extension agreement was drafted to extend to March 1, 2020.

Mr. McNally explained the permits were acquired for all phases which have expirations with required renewals. The applicant must monitor the permits to make sure they keep them up-to-date as the development progresses.

No public comment was received.

A motion was made by Commissioner Hunthausen to approve the extension request for Timberworks Estates for Phases V and VI through March 1, 2020 as presented and seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Site Plan Approval of Buildings for Lease or Rent for Block 38, Lots 9-16 City Park Addition (406 Affordable Storage) (Applicant: Jay and Caty Nelson) (Planner: Greg McNally)

Greg McNally, Planner II, presented the revised site plan for the previously conditionally approved Buildings for Lease or Rent (BLR) known as 406 Affordable Storage located on Block 38, Lots 9-16. The conditional approval was granted on April 28, 2016 for a BLR project located north of and adjacent to 10th Avenue, east of and adjacent to Douglas Street, and west of and adjacent to Wilkinson Street for five storage buildings with a total of 130 storage units based on the site plan dated March 2, 2016. On April 14, 2017 the Planning Department received a revised site plan from the DEQ reducing the total number of storage units. The applicants made functional design changes to include improved access to and around the units as well as addressing the conflict with a stormwater detention pond. Planning Staff had received the new site plan in November of 2016, included with an approach permit and the changes were not recognized until receipt of the DEQ approval for stormwater drainage in April of 2017. All the other conditions of approval have been met. The access to the site and the provision of fire protection services appear to be acceptable to the Public Works Department and the East Valley Fire District.

Mr. McNally stated there are no anticipations of potential impacts to adjacent properties.

No public comment was received.

Break/Reconvene

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

James and Dorothy Mitchell's Appeal of Community Development and Planning Director's Determination. (Appellant: James and Dorothy Mitchell) (Planner: Greg McNally)

Greg McNally, Planner II, presented the appeal of the former Community Development and Planning Director's determination that there is no provision in the County Subdivision Regulations or policy for County Staff to make a determination on the legal status of Ranger Drive. The consideration of this appeal is not a mechanism for the County Commission to determine the legal status of Ranger Drive. On December 15, 2016, the County Commission granted preliminary subdivision approval for the Ranger Estates Subdivision with twenty-one conditions of approval. Condition No. 21 requested of the Applicant that they establish or demonstrate that Ranger Drive meets the requirement for legal access of the Lewis and Clark County Subdivision Regulations. The Mitchell's provided a legal opinion from their attorney, Scott Svee, which concluded that Ranger Drive should be considered a public access easement and the Mitchell's would like this information to be used by County staff to determine the legal status of Ranger Drive and to satisfy Condition No. 21. Mr. Theborge provided a letter to the Mitchell's indicating there is no provision in the Subdivision Regulations to make the determination. Three options were provided to the Mitchell's to choose from in order to proceed with the designation and acceptance of the legal status of Ranger Drive. Of the three they chose to appeal the determination under Section II. D. 2. c of the County Subdivision Regulations that staff lacks authority to make a determination of the legal status of Ranger Drive and compliance with Condition No. 21.

PUBLIC COMMENT –

Scott Svee, Jackson, Murdo and Grant, representing James and Dorothy Mitchell stated it is confusing why they are here right now. Based on Condition 21 he was engaged to do a legal review and provide a legal opinion regarding Ranger Drive to demonstrate that it is a legal access under subdivision regulations. There was never a question raised of staff to make a legal determination, that is for a court. His legal opinion is that Ranger Drive already is a public access easement, a public right-of-way. According to the condition the applicant demonstrated that to staff. It was their intention that the staff would make a recommendation on whether the materials they provided demonstrated that Ranger Drive met the subdivision regulations. Condition 21 requires the applicant to demonstrate Ranger Drive meets the requirement for legal access of the Lewis and Clark County Subdivision Regulations. The definition of legal access is the subdivision and all lots within the subdivision access a County road easement or public right-of-way and all necessary county or state approach permits have been obtained. His legal opinion arose from this. Again they were not asking the staff to designate that Ranger Drive was a private right-of-way, it is a public right-of-way and they demonstrated and provided supporting evidence to prove that. He understood staff would review it and give recommendations on whether the information submitted by the applicant was sufficient to demonstrate that Ranger Drive is a public access right-of-way. According to the regulations the Planning Director does have the authority to administer, interpret, and enforce subdivision platting act and the county regulations. It is clear to him that the Planning Director and staff have the authority under their own regulations to review what the applicant provided to demonstrate that Ranger Drive is a public access easement. Again they are not asking planning to determine that Ranger Drive is a public access easement. They think it is and it meets the regulations. They are asking staff to review the provided information, compare that with the regulations, and if provided material demonstrates that the requirement was met. He referenced Exhibit C and that it contains a plat for Foster Ranch Tracts, approved by the County in 1997. The preliminarily approved Ranger Estates Subdivision is a seven acre subdivision contained in Lot 1A and the western half of Lot 1A-2. In this plat Ranger Drive was designated as a public right-of-way and is a secondary mode of ingress/egress for Ranger Estates Subdivision. Hines Road is in the northwest corner and is public access. Looking at the condition and the submitted materials to Planning, according to the definition of legal access within the county regulations the seven tracts actually lie adjacent to and connect with the public right-of-way of Ranger Drive, showing the requirement of the condition has been met. There has been twenty-five years of use of Ranger Drive. Foster Ranch Tracts was approved with Ranger Drive being the only mode of ingress/egress, but now the question is whether it is legal access.

Mr. Svee stated he is not referring to a prescriptive easement. On the plat Ranger Drive is identified as a 60 foot public access easement. The applicant dedicated it as part of subdivision requirements within the dedication line on the plat itself and then accepted by the County when the plat is signed.

Commissioner Hunthausen stated the question for today is at least one person or persons disputed whether Ranger Drive is public access or not. There is enough question in the Commission's mind that Condition No. 21 exists so that all access to the subdivision is legal and physical access. The question today is if the Planning Department or the Commission has the authority to state if Ranger Drive is public or private. Mr. Svee has done his research and has his opinion, but the parties involved do not have the authority to give a definitive answer on the legal status of Ranger Drive. Mr. Svee agreed, but in this case the portion adjacent to the subdivision the Commission did dedicate and accepted, as listed in Exhibit C. Mr. Svee stated he tried to clarify in the beginning that the information submitted to Planning was not for them to make a legal determination or to say the road is public or private, but for them to review the regulations and see whether this circumstance meets the regulations and they do have the authority to do so. If someone is adverse to any road issue they should provide materials that Planning has a certain level of authority to review in light of the regulations and have an opinion if the materials are sufficient. Commissioner Hunthausen agrees an opinion can be had, but the authority to

determine its status is still beyond the Planning Director and would have to go to the next level to determine its legal status. Mr. Svee stated anything regarding legal access is all challengeable, written easement, a Judge with an order can all be appealed. That is why it is best to stick within the regulations and what the staff is reviewing. No legal determination, just reviewing the regulations based on the submittal of the applicant and is it sufficient.

Nicho Hash, Deputy County Attorney, stated this is quoted directly from Mr. Theborge's letter regarding staff lacking the authority to make the determination of the legal status. There is a question of legal access and then does staff have the ability to make that decision. Have heard argument and Mr. Svee has talked about the exhibit that they think establishes legal access. That is information presented, but that is not the question before the board today. The appeal before the board today is staff's ability to make the legal determination of access.

Jim Mitchell, 3947 Valley Drive, stated he did the initial subdivision and built the road from Canyon Ferry Road into the subdivision and it was approved by Eric Griffin at that time. He stated he believes the Commission does have the power to review things and determine whether a road is public or private. He asked how he could build the road as a private road when he did not even own the road and no one complained then. He understands a decision cannot be made on it today, but perhaps do this next week or at another time. What is before you today is does the staff have the authority to do this. He did not expect the staff to be able to do that, but he thought the staff could bring it to the Commission and they could rule on it.

Mr. Hash stated if the Commission does uphold the position that staff does lack the authority that does not limit any further discussions.

Commissioner Hunthausen suggested, assuming they go forward with upholding of the staff's determination; the Commission meets with the legal staff about their options. At that time the legal staff could visit with Mr. Svee regarding options and potential discussion going forward.

Commissioner Good Geise would like to defer this item and revisit in a week.

A motion was made by Commissioner McCormick to continue the appeal until October 5, 2017 and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Board Appointments. (Roger Baltz)

Roger Baltz, Chief Administrative Officer, presented the board appointments for the City-County Consolidated Planning Board, City-County Parks Board, Heritage Preservation and Tourism Development Council, Lewis and Clark County DUI Task Force, and Open Lands Citizens Advisory Council. Staff recommends the following appointments: Ken Demmons to the City-County Consolidated Planning Board to a term that expires September 1, 2020; Nyle Howsmon to the City-County Parks Board to a second term that expires September 30, 2020; Laura Evilsizer to the Heritage Preservation and Tourism Development Council to a term that expires June 30, 2020; Samara Sant Pennartz to the Lewis and Clark County DUI Task Force to replace Sydney Beach and to complete the term that expires December 31, 2017; Danielle Shyne to the Open Lands Citizens Advisory Committee as a Member at Large to a term that expires June 30, 2020.

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.

Discussion of Current Fire Restrictions. (Leo Dutton)

Bob Drake, Fire Chief of Tri-Lakes Fire, stated during the fire restrictions conference call this morning the consensus of the group was to recommend dropping the Stage I fire restrictions on Friday at 12:01 am. The decision today was based on the moisture that has been received improving the conditions. The one hour, ten hour, hundred hour, thousand hour fuel levels are no longer below the critical levels. The consensus is fire season is not over as there is still a tremendous amount of dead fuels from the drought not covered by snow. But the conditions are better with the shorter days and the received moisture. Across the county there have been anywhere from 2 inches of moisture to .10 inches of moisture.

Paul Spengler, Disaster and Emergency Services Coordinator, stated he was on the call and he has prepared and submitted a draft resolution eliminating the Stage I fire restrictions for review to Deputy County Attorney Charles Lane. The callers on the conference call were adamant about continuing the ban of debris burning.

Nicho Hash, Deputy County Attorney, asked for determination if the resolution will be available for the Commission today or on Thursday. Commissioner Good Geise this will go into effect 12:01 am on Friday so the resolution could be heard on Thursday.

Chief Drake stated once Stage I restrictions are removed they go back to regular operations. The burn permit system is normal with the Fire Warden making the decision on debris burning. At this time debris burning will stay closed, with hopes to open as soon as possible before air inversions start occurring. Debris burning is natural vegetation only. Burn permits have to be activated each day that burning is to occur.

A motion was made by Commissioner Hunthausen to take action on a resolution to determine fire restrictions on Thursday, September 28, 2017 at the regularly scheduled meeting. The motion was 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 10:41 am.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Susan Good Geise, Chair



Andy Hunthausen, Vice Chair



Jim McCormick, Member

ATTEST:



Paulette DeHart, Clerk of the Board