



PUBLIC MEETING

September 5, 2017
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, September 5, 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, Ken Dyrud, Jerry Hamlin, Nicho Hash, Paul Spengler, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Memorandum of Understanding Between Lewis and Clark County, the City of East Helena, and the City of Helena. (Roger Baltz)
- b. Memorandum of Agreement Between Lewis and Clark County and Western Montana Mental Health. (Roger Baltz)

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

Mr. Baltz gave a brief overview of Item 2a for the Memorandum of Understanding with the City of East Helena and the City of Helena; as well as Item 2b, a Memorandum of Agreement with Western Montana Mental Health.

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.

Appeal. Floodplain Development Permit Application Denial for Red Fox Meadows Subdivision. (Tabled 8/29/17) (Appellant: Hamlin Construction and Development Co., Inc.) (Floodplain Administrator: Paul Spengler)

On August 29, 2017 the Commission made a motion to table this item to September 5, 2017 in order to have time to review all submitted documents.

Nicho Hash, Deputy County Attorney, stated Mr. Hamlin had presented information on Friday, September 1st after 4:00 pm. Regarding accepting the new information, Mr. Hash stated that the

public hearing had been closed but that it can be reopened and the Commission can accept the new information and close the hearing again.

Commissioner Good Geise discussed reopening the hearing to accept the presented information and to take Mr. Hamlin at his word that he submitted this information in response to a question asked of him at the last meeting. Some type of notice, as to the content of his response would have been better prior than after 4:00 p.m. on Friday when the Commissioners were in a public meeting in Lincoln.

Commissioner Good Geise reopened the hearing on the appeal of the Flood Plain Development Permit application denial for Red Fox Subdivision and requested the additional information.

Break/Reconvene

Commissioner Good Geise stated that after review of the submitted information, it does not appear to be new information. It is a reiteration from the applicant for the Commission to come out and tour the site. Quoting from his document during my testimony of the flood plain appeal hearing conducted by you on August 29, 2017 I referred to some flood plain exhibits that showed the effects of differing flows of CFS through my property you then asked if I could show them to you and I did not have hard copies with me, but I said I would get them to you. She does not recall anyone asking to see these exhibits.

Commissioner McCormick recalls Mr. Hamlin offered to provide the information. In his comments there is a person at his office who may be able to get it but was not familiar enough with the information to get it immediately.

Commissioner Hunthausen stated this is information that Mr. Hamlin described on the record, but did not have hard copy of it for review. It is not new information; it is picture form of what was described.

Commissioner Good Geise stated the hearing is now closed.

A motion was made by Commissioner Hunthausen to deny the Appeal Flood Plain Development Permit Application Denial for Red Fox Meadows Subdivision, Hamlin Construction and Development Co. The motion was seconded by Commissioner McCormick.

Further discussion was had. Commissioner McCormick stated it was heard last week that the question before the Commission was did the Flood Plain Administrator correctly deny the application. After review of Statute 76-54-05 MCA and testimony brought forward by Traci Sears from the Department of Natural Resources and Conservation (DNRC) regarding ARM 36.15.216 Title Permits Criteria and Time Limits it is clear the time limit for accepting or rejecting is 60 days. In reviewing the standards and requirements for Flood Hazard Evaluation Appendix F of the Lewis and Clark County Subdivision Regulations, the application was not complete as he saw it, given the requirements. But in reference to the statute the County did not respond in the time required by statute.

Commissioner Hunthausen stated after all the testimony, findings and discussion the question remains did the Flood Plain Administrator have adequate justification for the denial of Red Fox Meadows Flood Plain Permit Application. From his standpoint the Flood Plain Administrator had ample, reasonable and defensible justification for the denial. It was clear that the 31 Findings of Facts he relied on and presented in his staff report were sound. It was those Findings of Fact along with public testimony and information from the applicant and representatives that are the

basis for his decision today. Mr. Spengler relied upon: his duty to protect the public health and safety; the thorough hydrologic analysis prepared by internationally renowned Michael Baker International; and the analysis of the DNRC. He deemed the reports more credible than those of the applicant. Both Michael Baker International and the DNRC found that the flow rates generated by the applicant's engineer were unreasonably low and thus could put future homeowners at risk of flooding. By knowingly approving a permit with the low numbers the County could possibly be held liable for approving such a permit knowing of the potential danger. The applicant and the applicant's engineer were given multiple opportunities to respond to the concerns brought by DNRC and Michael Baker International, but chose to stick with the low numbers.

It was clear there were multiple models and methods that could be used to calculate flood flows, but it was also clear to Michael Baker International and the DNRC, no matter the methods and models, the numbers by the applicant were too low resulting in the denial.

His understanding is Mr. Spengler and the DNRC did respond to the applicant prior to the 60 days and requested more information. In addition, it was obvious to him when there are four different responses over 1 1/2 years to the concerns; obviously the applicant recognized that the application was not deemed correct, complete, or adequate.

Break/Reconvene

Discussion was had on the applications. Commissioner McCormick stated the appellant requested that the June 30, 2017 flood plain application be granted and made retroactive to October 12, 2015, hence linking the 2015 and 2017 applications. His opinion and decision will be based on that. Commissioner Hunthausen stated for clarification the application was filed August 12, 2015 and was denied on June 30, 2017, it is one application. There is another application that has been filed, but it has nothing to do with this decision. Further clarification, the application was filed August 12, 2015, the 60 days would have been October 15, 2015 and prior to that day Mr. Spengler and the DNRC did give feedback to the applicant regarding the insufficient application.

Commissioner Good Geise stated much of the time was devoted to the application needing to be approved within 60 days, which as she understands is currently in litigation. And that is not the issue to be focused on. It is clear the County Flood Plain Administrator and the DNRC promptly engaged the applicant about difficulties that were clearly evident in the application and made suggestions that would more closely approximate accurate flows. Testimony from the DNRC staff flatly disputed the applicant's statement that DNRC told him that he would have to reconstruct any road as was stated in the written two volume case presented to the Commission. Her decision is based on the Findings of Fact presented by the Flood Plain Administrator, as well as the number of attempts that the County and DNRC made to assist the applicant to use more accurate information. The reports from DNRC repeatedly referenced the internal application inconsistencies. The applicant submitted multiple revisions, but without much per substantive changes. The meeting last Tuesday included dueling engineering arguments and from that one fact emerged, all the calculations were subject to interpretation. In every instance the applicant's CFS were near the bottom of the scale. Emails from the WWC Engineering seemed to reflect they were receiving pressure from the applicant to get going on the project and get the application approved. But continued to submit data heavily disputed. Testimony heard last week: the applicant declared that each revision cost \$25,000 and he was becoming impatient; he stated that using the higher CFS would be more expensive for him and result in loss of income from the inability to sell as many lots if those numbers were used. She referred back to information received today, in that Mr. Hamlin was unhappy and stated the USGS formulas were unreasonable and he rejects that option. And even if he agreed, the new formula has proven not to work on their drainage and would not produce acceptable results. Read from the applicant's

letter, Mr. Hamlin is ready to be as flexible as financially feasible. Again, the information today was not as a result of a request, this is information the applicant wanted the Commission to have including the invitation to a site visit that could make a considerable impact on the decision. Because the hearing had been closed, and there would be no option for public involvement the invitation would be rejected. She will support upholding the Flood Plain Administrator's denial of the appeal. She asked if a recital of the Findings of Fact need to be in this decision or is it sufficient that all acknowledge they have heard them.

Mr. Hash stated it can be recognized that everyone has heard the Findings of Fact before and have given their rationale and basis for their decisions.

Commissioner Good Geise stated that the Commission has a motion on the floor and asked for a vote. The motion Passed on a 2-1 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 9:46 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