



**PUBLIC MEETING**  
September 8, 2015  
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, September 8, 2015, at 9:00 AM in Commission Chambers Room 330.

**Roll Call**

Chairman Andy Hunthausen called the meeting to order at 9 a.m.

Commissioner Susan Good Geise and Commissioner Mike Murray were present. Others attending all or a portion of the meeting included Eric Bryson, Michele Peterson-Cook, George Theborge, Greg McNally, Drenda Niemann, Lindsay Morgan, Tony Prothero, Joe McMillan, Karen McMillan, Carol Cloninger, and Nichole Nisbet, Recording Secretary.

**Pledge of Allegiance**

Everyone recited the pledge.

**Consent Action Items**

- a. Resolution 2015-130 Ordering a Refund of Fees and Assessments Paid by Steve Schultz in the Amount of \$272. (Cheryl Green)
- b. Construction Agreement Between Lewis and Clark County and Montana Department of Transportation. Nunc Pro Tunc. (Eric Griffin)

Eric Bryson reported on the consent action items 2a-b and recommended approval.

No public comment was received.

A motion to Approve was made by Commissioner Murray and seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

**Task Order 16-07-5-21-012-0 to Lewis and Clark County WIC Program. (Drenda Niemann)**

Drenda Niemann, Division Administration Community Health Administration, presented the task order between Lewis and Clark Public Health and Montana Department of Public Health and Human Services in the amount of \$224,871 to administer the Women, Infant, and Children (WIC) Supplementary Nutrition Program. The program serves about 1,000 participants each month. The task order is effective October 1, 2015 through September 30, 2016.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray. The motion Passed on a 3-0 vote.

**The Amended Plat of Lots 9A, 11A, and 101A of the Amended Plat of Bridge Creek Estates  
Subdivision. (Applicant: Phil Wirth) (Planner: Greg McNally)**

Greg McNally, Planner II, presented the proposed major subdivision to be known as the Amended Plat of Lots 9A, 11A, and 101A of the Amended Plat of Bridge Creek Estates Major Subdivision. The applicant proposes to subdivide Lots 9A, 11A, and 101A of the Amended Plat of Bridge Creek Estates into 50 lots, each for one single-family residential use. All proposed residential lots will be served by utilities, and existing community water and wastewater treatment systems that currently serve the Bridge Creek Estates. Direct access to the lots will be from North Montana Avenue connecting to an internal road network. The applicant is proposing to fulfill the parkland requirement with a cash-in-lieu payment instead of dedicating parkland. The proposed subdivision will occur in five phases: Phase 2A will contain eight single-family residential lots, one lot for future. Phase 2B will contain 8 single-family residential lots and one lot for future Phases 2C, 2D and 2E, and one lot for future Phase 2E. Phase 2C will contain eight single family residential lots, one lot for future Phases 2D, and one lot for future Phase 2E. As of August 14, 2015, five letters of public comment have been received. Comments from existing residents of Bridge Creek Estates are concerned about the unconstructed bike/pedestrian path, impacts on schools, the capacity of the public wastewater and water systems, traffic impacts, parkland donation and the need for a crosswalk for the subdivision across North Montana Avenue. The project issues identified begin with the Bridge Creek covenants, as there are County covenants for the subdivision. The covenants would need to be amended prior to final plat as they currently state; no further subdivision of any lot is permitted. A minor boundary adjustment which does not significantly change lot size and to which adjacent land owners agree is permitted. It was further noted that in 2011, the applicant submitted a subdivision application for the Amended Plat of Bridge Creek Estates. During review of the Amended Plat of Bridge Creek Estates Major Subdivision, Planning staff did not review the covenants and were not aware of the prohibition of further subdivision. The Amended Plat of Bridge Creek Estates Major Subdivision received preliminary subdivision approval on October 20, 2011. The Amended Plat of Bridge Creek changed 15 lots through lot line adjustments, created a utility lot, eliminated nine lots through aggregation, established two encroachments into parkland and abandoned a segment of Roper's Loop. The Amended Plat of Bridge Creek Estates Major Subdivision received final plat approval on September 17, 2013. The next project issue addressed was the community wastewater system as the 50 additional lots proposed will utilize the existing public wastewater system that currently serves the Bridge Creek Estates and the Amended Plat of Bridge Creek Estates subdivisions. This public wastewater treatment system currently serves 88 lots. The applicant received a Subdivision Waiver request from DEQ to permit a design wastewater flow rate of 214 gallons per day. With this Subdivision Waiver, the public wastewater system has the capacity to treat 29,400 gpd of wastewater, or 137 single-family dwellings with a design flow of 214 gpd. Based on flow measuring data for the existing structures in the subdivision, the applicant's engineer determined there is adequate capacity in the sewer system for one additional lot. The next project issue addressed was the community water system as the 50 additional lots proposed will utilize the existing public water system that currently serves the Bridge Creek Estates and the Amended Plat of Bridge Creek Estates subdivisions. The public water system has been reviewed and approved by the Department of Environmental Quality (DEQ). The public water system consists of two distinct and separate systems – domestic water supply and irrigation water supply. The current water rights for the Bridge Creek Subdivision have enough capacity in the public water system for 130 households, utilizing 130 acre-feet annually. There are 88 single-family lots in the Bridge Creek Estates and the Amended Plat of Bridge Creek Estates subdivisions currently, and the proposed additional 50 lots would bring the total number of single-family households to 138. The applicant's engineer has determined there is excess capacity in the public water system because the water right is estimated to be approximately 200 gpm at full buildout and the total annual volume for the Bridge Creek Estates water right is 130 acre feet per year and the maximum volume for 138 units is estimated to be 39 acre-feet per year for domestic demand and 85 acre-feet per year for irrigation demand, for a total of 124 acre-feet per year. Based on the evaluation of peak water demand (200 gpm) and the estimated annual water use (124 acre-feet/year), the applicant's engineer estimated that the subdivision, built-out to 138 units, will use six acre-feet less than the maximum annual volume permitted under the existing water rights. The next project issue addressed was fire protection as the subdivision is proposing to provide fire protection. There is an on-site fire protection well which has been tested at 750 gpm by the West Valley Fire Department. The next project issue addressed was parkland dedication as the amended plat reduced the total number of lots in the subdivision and vacated a portion of Ropers Loop that is a dedicated easement

for water system access and maintenance. The applicant is proposing to dedicate to the County the cash in-lieu equivalent of .82 of an acre which would have an approximate monetary value of \$4920. Staff sought a legal opinion from the County Attorney to see if the applicant's proposal to receive credit for parkland previously dedicated is legally supported. Comments received from Michele Peterson-Cook stated that parkland dedicated in previous subdivisions may not be used to fulfill the parkland requirement for a new subdivision. While the statute regulating parkland dedication is flexible and allows various methods to fulfill the parkland requirement, it does not allow the County to accept an already dedicated park as parkland for a new subdivision. It was further noted that the County must treat all new subdivisions the same, and any new subdivision must meet the parkland requirements required by statute. Mr. McNally noted that staff has determined a total of 2.32 acres would be required for this parkland dedication, which has an approximate monetary value of \$13,920.00. Because the applicant has proposed to develop the amended plat in five phases, the parkland requirements must be commensurate with each phase, unless the applicant chooses to provide more than what is required with a particular phase or phases. On Wednesday, August 5, 2015, the City/County Parks Board made a unanimous recommendation to both the Planning Board and the County Commissioners to accept the required amount of cash in-lieu of parkland dedication. The next project issue addressed was the traffic impact study as the summary stated that the subdivision will generate 469 annual average daily trips and have little impact on the surrounding road systems and most of the nearby intersections will continue to function at acceptable levels of service, with the exception of Lincoln Road/North Montana which has existing operational problems and is scheduled for major improvements. Abelin Traffic Services determined no additional turning lanes or modified traffic controls were warranted as a result of the Amended Plat of Lots 9A, 11A, and 101A of Bridge Creek Estates. Nonetheless, the applicant will still need to provide a percentage of impact to impacted off-site roads within the traffic impact corridor unless an engineer can certify the impacted roads as meeting the required typical section. The next project issue addressed was wildlife and wildlife habitat as the development would displace a black-tailed prairie dog and comments received from FWP stated that the species is of concern and can be considered a nuisance species and there are no required mitigation measures for the preservation or relocation of a prairie dog colony. The last project issue addressed was noxious weeds as they were observed on the South Bank of the Helena Irrigation main canal. Infestations of spotted knapweed were observed along the north side of Ropers Road. The Planning Board recommended the addition of findings of fact that touch on the requirements of an existing SIA that requires construction of a non-motorized path on the east side of North Montana. The other suggested finding of fact is related to the conflict of the 10 foot wide non-motorized easement and the HVID easement as the 10 foot wide non-motorized easement was provided over the HVID easement so construction of that non-motorized path will require the applicant to work with HVID or relocate the easement. The Planning Board also recommended that two conditions of approval be added to Phase 2E. Those recommendations are the construction of the non-motorized trail and the ability to financially guarantee the construction on the non-motorized easement.

Commissioner Murray asked if there are AASHTO standards for the crosswalk requested.

Greg McNally stated he is not aware if there are any AASHTO standards but will look into it.

Commissioner Hunthausen asked for additional information in regards to the parkland dedication requirement.

Greg McNally stated there is currently 5.25 acres of parkland and stated there is an encroachment agreement that allows the applicant to continue farming the land.

Commissioner Hunthausen stated that we can rescind the encroachment agreement with a 60 days notice in the event the residents wish to develop the land as a park in the future.

Commissioner Geise stated that the Park Boards recommendation in regards to cash in-lieu was the preferable choice in this situation having two undeveloped parks in the area.

Commissioner Hunthausen asked for further clarification about the water system issues as comments received addressed the water issues. He noted that water systems are permitted and regulated by the State of Montana, DEQ.

Greg McNally added that there is a water and sewer district for this subdivision. There is also extensive work done to ensure water is available throughout the process. He further noted that the applicant would like the Commissioners to consider the option of having the applicant complete improvements to the existing park, instead of making actual cash payment; however, no plan for actual improvements was submitted. The applicant, after receiving preliminary plat approval could still pursue this option with the County Commissioners.

Tony Prothero, applicant's representative, stated the original covenants state that no further subdivision can be done within the subdivision with the exception of minor boundary relocation which would be agreeable to the residents. When the original subdivision was proposal the only anticipated development was to lot 101 and was deemed a reminder tract. As they went through the final plat process the County required the applicant to assign a lot number to the property. The covenants were not amended to exclude certain portions of the projects. The amended plat was filed in 2013 and would have been a clear violation of the original covenants that they were not aware of none the less that the covenant existed. The intent was not to violate the covenant. To remedy the situation they need 100% of ownership to allow for an amendment to the covenant. The other issue is that there is supposed to be two separate distinct water systems supplied to each lot. There is an irrigation and a domestic system. The northwest lots only have the domestic system supplied. To remedy the situation they will either need to extend the irrigation system to those lots or request a change to the covenants. There is an easement shown on the original plat for a 10 foot bike path however there is an HVID easement on the plat in the area and was improperly placed. The HVID is 65 feet from the west boundary going east and the 10 foot bike path was platted on top of it. If they cannot get permission to construct the bike path they will do an alternative plan that will be presented to the County. In his opinion they should add one pedestrian crossing to North Montana to allow access to the bike path. The water system has been approved by DEQ and was constructed in accordance with the plan. There had been issues with maintenance of the system and in his opinion it happens a lot with small or privately owned water systems as the systems lack proper oversight and there are people working on the system that do not necessarily know how to do the work necessary. He noted that it is not uncommon with subdivisions. There was an issue with the water system with an incident that occurred when work was being done to extend the water main to the north lots. Damage occurred to a home when the water system was being re-pressurized. The residents have indicated concerns about the water system and he has offered to sit down with the residents to further discuss any issues or concerns. In his opinion the system can handle the additional number of lots and noted that they will seek the needed permit through DEQ.

Commissioner Geise addressed the letter from the Sprankle's and asked Mr. Prothero to explain his understanding of a covenant and how they work. She further asked him to explain how the covenants interact within the process at the County.

Tony Prothero stated that covenants are a legal contract between property owners, the covenant creator and subsequent property owners. He further stated that if one entity does not uphold their end or there is a violation of the covenant there could be grounds for legal action. He stated that to his knowledge the County does not enforce private covenants however they do not allow people to violate them either.

Michele Peterson-Cook stated that a covenant is a restriction placed by the initial property owner on the subsequent property owners. The County does have a subdivision regulation that states they will not knowingly violate any private covenants. In this case private covenants were placed on the property by the applicant and the language does not allow for any exemption for a subdivision. If the subdivision was approved conditionally it would be her recommendation to have the covenants amended as a condition of approval.

Commissioner Hunthausen asked about the amended plat and how they there is a violation of the covenants as it appears there are less lots than the original proposal.

Greg McNally stated there are less lots however the northwest corner lots were subdivided to increase the number of lots.

Tony Prothero stated the covenants originally stated that minor boundary relocation was permitted.

Commissioner Hunthausen asked Mr. Prothero if he is aware that Public Works is working with residents to have a signalized pedestrian crossing.

Tony Prothero stated it was brought to his attention.

Commissioner Geise referred to the letter from the Sprankle's and the one concern was lack of a master plan and could have the potential to significantly affect their property values and asked Mr. Prothero if he has any comments on that concern.

Tony Prothero stated there is no master plan that he could find but was referenced in the covenants.

Commissioner Geise stated that the covenant stated there would be a master plan and asked if this would be a private issue.

Michele Peterson-Cook stated she believes she is correct without reviewing their covenants. She does not believe there are any requirements under our subdivision regulations that require a master plan.

Commissioner Geise stated that a development can have a master plan but whether or not it is modified, upholds it or abandons it is not under the control of the Commission and asked if that was correct.

George Thebarga stated that is correct and stated that the County is bound by our regulations and provide the opportunity to amend preliminary approval and final plats. If the master plan is a vision for their neighborhood cannot be enforceable by the County.

Commissioner Murray asked Mr. Prothero about a letter received questioning the amount of payment in lieu of parkland and asked how it is calculated.

Tony Prothero stated is it calculated based on lot size and the total amount of acreage to be developed into lots. The value of the land and noted that the formula is shown in subdivision regulations and a market analysis is used to determine the calculation. The final amount is based on an appraisal prior to final plat.

Break/Reconvene.

#### PUBLIC COMMENT

Karen McMillian, 1306 Luchese Road, stated her opposition to the proposal and stressed her concerns about the covenants being violated.

Carol Clonginer, 1210 Ropers Road, stated the subdivision has many problems and believes there is no follow through from the developer. She expressed concern about the covenants being violated and safety due to increased traffic. She asked what the process would be if all of the home owners agreed to

Commissioner Geise asked about the incorrect filing of the final plat and the costs incurred by Carol Clonginer as addressed in her letter.

Carol Clonginer stated that Lot 23 was planned into Bridge Creek and because it is an L-shaped lot the surveyor could not split the lot for an easement therefore they did not have a legal road. When they came to know about this they were told by the developer it would be \$5,000 per acre to obtain the land to secure a road. She noted that their son had to go through boundary relocation in order to build a home on the lot. They brought forward a proposal to the County for a major subdivision in order to preserve their road however the costs to develop Roper's Loop were substantial and extinguished their efforts.

Commissioner Hunthausen asked about the proposal before the Commission that has the potential to be in violations of the covenants what the responsibility of the Commission is.

Michele Peterson Cook stated that Planning staff did ask Legal if they could bring forward an application that was in violation of covenants and it is the opinion of the Legal staff that a condition of approval requiring to the applicant to amend or bring the covenants into compliance would be required and that Planning staff could bring the application forward.

A motion to table the item until September 17, 2015 at the regularly scheduled meeting was made by Commissioner Murray and seconded by Commissioner Geise. The motion Passed on a 3-0 vote.

**Final Plat. Amended Plat of Lots 1, 16-43 - Glacier Point Subdivision (Phase III). (Lindsay A. Morgan)**

Lindsay Morgan, Land Use Planner, presented the Amended Plat of Lots 1, 16-43 – Glacier Point Subdivision. An application has been submitted requesting final approval of Phase III of the Amended Plat of Lots 1, 16-43 – Glacier Point Subdivision, a preliminarily approved Subdivision that will remove the 20-foot wide, rear-yard utility easements on Lots 1, 17-19, 21, 22, 29, 30, 35, 36, 40, and 43 of the Glacier Point Subdivision. Preliminary approval was granted on June 5, 2012 subject to three conditions. All conditions have been met and otherwise addressed by the applicants and found in compliance with County Subdivision Regulations.

Commissioner Murray asked who owns the subdivision.

Lindsay Morgan stated all lots have been sold so they are owned individually.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray. 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.**

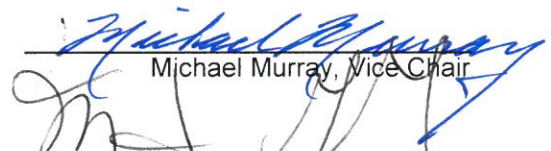
**Adjourn**

There being no further business, the meeting adjourned at 10:42 am.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS



Andy Hunthausen, Chairman

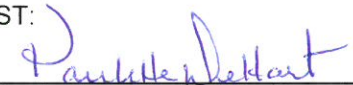


Michael Murray, Vice Chair



Susan Good Geise, Member

ATTEST:



Paulette DeHart, Clerk of the Board