

**PUBLIC MEETING
MARCH 14, 2013
MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, March 14, 2013, at 9 a.m. in Commission Chambers Room 330 of the City-County Building, 316 North Park Avenue, Helena, Montana.

Chairman Mike Murray called the meeting to order at 9 a.m. Commissioner Andy Hunthausen was present. Others attending all or a portion of the meeting included Eric Bryson, K. Paul Stahl, Michael Shested, Greg McNally, Michael McHugh, Marni Bentley, Tony Prothero, Ryan Casne, Glenn Hays, Kim Smith, Matthew M. Elvebakken, Brandon Price, Brenda Wahler, Randi Triem, Quinn Noel, Lon Schroeder, Misty Edwards and Rita Cortright, Recording Secretary.

Pledge of Allegiance. Everyone recited the Pledge.

Consent Action Items. (Eric Bryson)

- a. Vendor Claims Report for the Week of March 11, 2013. (Marni Bentley)
- b. Public Meeting Minutes (Rita Cortright)
Jan. 4, Jan. 6, Jan. 11, Jan. 13, Jan. 18, Jan. 20, Feb. 8, April 12, May 19, July 14, July 19, July 21, Sept. 20, Sept. 27, Sept. 29, Oct. 6, Nov. 1, Nov. 24, Nov. 29 Dec. 8, Dec. 13, Dec. 15, Dec. 20, Dec. 22, Dec. 27, Dec. 29, 2011.

Eric Bryson reported on the Consent Agenda Items and recommended approval.

No public comment was received.

Commissioner Hunthausen moved approval of Consent Action Items 2.a. and b. and authorized the Chair to sign.

Commissioner Murray seconded the motion. The motion carried 2-0.

Proposed Subsequent Minor Subdivision to be known as the Elvebakken Commercial and Variance Request from Ch. XI.H. (Applicant: Matt Elvebakken) (Planner: Michael McHugh) A proposed subdivision for rent or lease. The Applicant is requesting a subsequent minor subdivision to allow two non-residential uses (a store and a 26-unit self-storage facility) and a single-family residence on a 3.07-acre parcel. The Applicant also requests two variances from the L&C County Subdivision Regulations for the following requirements: Chapter XI.H.3. (Adjacent and Off-Site Road Improvements) and a variance from Appendix J., Section 3.5. (two approaches on a single lot). The proposed subdivision lies in the NE1/4 of Sec. 11. T10N, R3W. P.M.M., Lewis & Clark County., north of and adjacent to Leisure Village and south of and adjacent to York Road. (Tabled from 3/12/13) Decision. (Tabled from 3/12/13)

Michael McHugh, Planner, reviewed the Request for Preliminary Approval for the Elvebakken Minor Subdivision, located north of Herrin Road and southeast of York Road. The proposal was to allow for the continued mixed use development that included two commercial activities and one residential activity. The Staff Report had been discussed extensively last Tuesday. Staff had recommended approval of the Subdivision with 20 Conditions; however, there were two variance requests. The first variance request, addressed in Condition 8, dealt with Ch. XI.H.3.c (Determining Costs Directly Attributable to the Subdivision). The applicant requested foregoing a preliminary engineering report and contribution for proportionate share. The second variance

was related to the approach to the property from Herrin Road, addressed in Condition 16, and dealt with Ch. XI.I.2 and Appendix J.3.5. (Driveways).

Commissioner Hunthausen moved approval of the proposed Subsequent Minor Subdivision to be known as Elvbakken Commercial Subdivision. Commissioner Murray seconded the motion.

Commissioner Hunthausen moved approval of the first variance, as requested. Commissioner Murray seconded the motion.

Discussion—

Commissioner Hunthausen stated granting the variance met the criteria of not being detrimental to the public health and safety, would not cause a substantial increase in public cost and was not out of alignment with the current regulations and zoning standards. It was noted Herrin Road was not covered by an RID and has been county-maintained for years. The variance would not preclude them from participation in an RID now or in the future.

The motion to approve the first variance carried 2-0.

Commissioner Hunthausen addressed the variance from Ch. XI.I.2. Appendix J.3.5 related to driveways and approaches and moved approval of the variance as requested. Commissioner Murray seconded the motion.

Discussion—

Commissioner Hunthausen addressed the Findings of Facts and Conclusions of Law, stating the variance met the criteria.

The motion to approve the second variance carried 2-0.

Commissioner Hunthausen moved approval of the subdivision, as amended, eliminating Condition 8 and 9, and amending 16, for a total of 18 Conditions and acknowledged the Findings of Fact, as amended. Commissioner Murray seconded the motion. The motion carried 2-0.

Final Plat Approval for Timber Works Estates Subdivision, Phases II-III. (Applicant: Frontier Builders, Inc.) (Planner: Michael McHugh) The applicant has requested four changes to the Conditions of Preliminary Plat approval. The subject property is located in the SE ¼ of Sec. 18, T11N, R03W, P.M.M., Lewis & Clark County. The property is located west of and adjacent to North Montana Ave. and north of and adjacent to Lincoln Road. (Tabled from 3/12/13.)

Final Plat Approval for Timberworks Estates Subdivision, Phases II-III had been tabled on March 12, 2013, due to an incomplete application. Mr. Bryson reported having in hand today three cashier's checks providing the missing financial guarantees, an agreement for access to fire protection water and additional documentation that showed a dedicated easement would be granted once the system was completed. The Subdivision Improvements Agreement and addendum forwarded to the applicant and engineer and Mr. Smith had also been signed; therefore, the Commission could consider Approval of the Final Plat. Commissioner Murray cited Ch. 3, Sec. C. paragraphs 2 and 3 of the County's Subdivision Regulations and asked Mr. Bryson why the request was placed on the agenda when the application was incomplete. Mr. Bryson reviewed the timeline of events and the agreement to slightly modify the standard practice; however, in hindsight a date for final plat consideration should not have been set prior to completion of a sufficiency review of the application.

Michael McHugh, Planner, reviewed the request to amend the Conditions of Approval. Condition 12 dealt with installation of a left-turn lane on N. Montana Avenue. Based on communication with MDOT and County Public Works it was determined the left-turn lane would interfere with possible improvements to the intersection of N. Montana and Lincoln Road; therefore, the turn-lane was not needed and Condition 12 should be deleted. The second request dealt with Condition 18, requiring the applicant to place setback requirements and utility easements on the final plat. The applicant has requested to just show the utility easements where they were installed. Condition 19 dealt with the applicant's request to delete subsections (b) through (z) that identified specific uses on each lot within the commercial portion of the subdivision.

Commissioner Hunthausen moved approval of the Final Plat for Timber Works Estates Subdivision Phase II and III. Commissioner Murray seconded the motion.

Commissioner Hunthausen moved to eliminate Condition 12, Phase II. Commissioner Murray seconded the motion. The motion carried 2-0.

Commissioner Hunthausen moved to change Phase II, Condition 18.c to read, "utility easements within Phase II located along front and side and rear lot lines are necessary wherever required"; e. would read "15-foot setbacks from all property lines unless defined by zoning regulations," and f. would read, "notification on the plat that reads, for setback requirements, see applicable zoning regulations." Commissioner Murray seconded the motion. The motion carried 2-0.

Commissioner Hunthausen moved to eliminate Phase II, Condition 19.b. through z., and the addition of a covenant stating all development would comply with zoning regulations. Commissioner Murray seconded the motion. The motion carried 2-0.

Commissioner Hunthausen moved to change Phase III, Condition 14. c. to read, "utility easements within Phase III located along front, side and rear lots are necessary wherever required." F. would read, "15-foot setbacks from all property lines unless defined by zoning regulations," and g. would read, "notification on the plat that reads, for setback requirements see applicable zoning regulations." Commissioner Murray seconded the motion. The motion carried 2-0.

Commissioner Hunthausen moved approval of the subdivision as amended, Phase II and III, allowing for 21 Conditions of Approval in Phase II and 19 Conditions of Approval in Phase III, and recognizing the Findings of Fact and acknowledging and accepting them as part of the motion. The motion carried 2-0.

Amended Plat of Lot A – Guettler Subdivision No. 2 and Subdivision Improvement Agreement. (Applicant: Larry Kim Smith) (Planner: Greg McNally) The Applicant is requesting to amend the Subdivision Improvements Agreement to extend the completion date until March 24, 2014.

Greg McNally, Planner, in Lindsay Morgan's absence, presented the Staff Memo outlining the applicant's request to amend the Subdivision Improvements Agreement (SIA) and extend the completion date to March 24, 2014. This subdivision, located east of and adjacent to Applegate Drive and south of and adjacent to Lincoln Road, was granted preliminary approval on August 2, 2005, and final approval on May 13, 2008. The SIA entered into at final approval guaranteed that all remaining improvements would be completed; the agreement had subsequently been amended. The most recent amendment requested deletion of subsections (b) through (z) that identified specific uses on each lot within the commercial portion of the subdivision; none of

those improvements have been completed to date. A Letter of Credit in the amount of \$118,557.33 accompanied the SIA; the agreement would expire on April 24, 2013.

The applicant requested four items: 1) a one-year extension of the SIA completion date to March 24, 2014; 2) that the Engineer's Estimate the applicant provided in 2011 be used to calculate the amount of his new financial guarantee; 3) that the new financial guarantee for this fire protection source be tied to the guarantee he has provided for the Timberworks Estates Subdivision, therefore, only providing one guarantee for both subdivisions; and 4) that the applicant continue to be allowed to guarantee only one-third of the cost to complete the remaining off-site road improvements, even though the condition listed in Exhibit B of the SIA requires that the off-site road improvements be completed. If the Commission chose to extend the SIA completion date to March 24, 2013, an amended Agreement would have to be signed and a financial guarantee would be required. Mr. McNally reviewed the Options provided on Page 2 of Ms. Morgan's March 11, 2013, memo related to Cost Estimates for the Financial Guarantee, the Guarantee for Fire Protection Source, and Off-Site Road Improvements.

Kim Smith, 7510 Applegate Drive, addressed fire protection, stating it was not fair to ask him to guarantee the same improvement twice. Regarding roads, Mr. Smith stated that at the time the subdivision was done he did not believe offsite road improvements were applicable. The reason for reducing the guarantee to 1/3 was an effort at negotiating; he would pay the pro rata share for what was currently being used. To date none of the Conditions of Approval had been met, as Mr. Smith had been working on offsite water improvements. Some meetings had taken place; however, no compromise or agreement had been reached. He suggested the County Attorney's Office had the right to sit down and work up an agreement. Mr. Smith added he saw no relation between the final agreement and the amount of the bond.

Mr. McNally explained that the applicant final platted the subdivision, and in lieu of completing Conditions of Approval, entered into a Subdivision Improvements Agreement, which in a sense satisfied the Conditions. To change the required improvements would involve the applicant requesting an amended plat. Because lots have been sold, the applicant was no longer the sole property owner; all lot owners would have to sign the application and engage in the process.

K. Paul Stahl, Deputy County Attorney, said it was clear that all lot owners in the subdivision would need to participate as they purchased land in reliance on the Conditions that were imposed. Regardless of Commission action, a lawsuit was expected by one or the other side.

Eric Bryson suggested the option of allowing the applicant to go into default on the Subdivision Improvements Agreement and using the money in coordination with the applicant and potentially residents of the subdivision to make improvements to offsite roads.

Commissioner Hunthausen moved to render a final decision on Tuesday, March 19. Commissioner Murray seconded the motion. The motion carried 2-0.

Final Plat Approval for Grass-Land II Subdivision and Subdivision Improvements Agreement. (Applicant Grass-Land, Inc., Beth Noel) (Planner: Michael McHugh) If approved subdivision will create 19 single-family residential lots and one (1) utility lot. Preliminary plat approval was granted on July 12, 2012, subject to 15 conditions.

Michael McHugh, Planner, in Lindsay Morgan's absence, presented the Final Plat Application for Grass-Lands II Major Subdivision, and Ms. Morgan's memo of March 13, 2013, providing an update on Conditions deemed incomplete as of March 11, 2013. The subdivision, given preliminary approval in July 2012, consists of 19 single-family lots and one utility lot with 15

Conditions of Approval. Condition 1, 2, 6, 9 10 and 11 according to Ms. Morgan's memo, were not completed. The applicant provided financial guarantees in the amount of \$123,000 in the form of a CD set to expire Sept. 9, 2013. Condition 13 addressed mailbox requirements; to date the Postal Service had not provided certification of approval. Condition 14 addressed parkland dedication; the Park Board approved the cash in lieu payment; however the appraisal was approx. \$700 less than the approved amount. Condition 15 addressed fire protection; 3 existing hydrants were greater than 1,000 feet road length in separation, as required by County Subdivision Regulations Appendix K. 18-4.1.B.5.b.

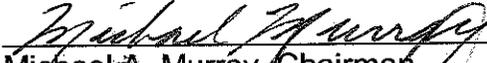
Commissioner Hunthausen moved approval of the Final Plat for Grass-Lands II Subdivision with 15 Conditions of Approval, the Findings of Fact, and signature of the Subdivision Improvements Agreement. Commissioner Murray seconded the motion. The motion carried 2-0.

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

Brenda Wahler attempted to reopen discussion on a topic addressed earlier in the meeting; however, the request was denied.

There was no other business and the meeting adjourned at 10:10 a.m.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



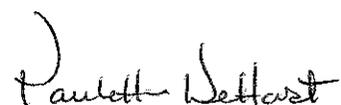
Michael A. Murray, Chairman



Andy Hunthausen

(Vacant)

ATTEST:



Paulette DeHart, Clerk of the Board