

**PUBLIC MEETING  
SEPTEMBER 10, 2013  
MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, September 10, 2013, at 9 a.m. in Commission Chambers Room 330 of the City-County Building, 316 North Park Avenue, Helena, Montana.

Chairman Andy Hunthausen called the meeting to order at 9 a.m. Commissioner Susan Good Geise was present. Commissioner Mike Murray was away attending a NACo Meeting in Washington, D.C. Others attending all or a portion of the meeting included Eric Bryson, K. Paul Stahl, George Theborge, Karen Lane, Cheryl Green, Carrie Severson, Lindsay Morgan, Tony Prothero, Mark Floerchinger, Jack Walsh, Dean Retz, Phil Porrini, John Horne, Tim Dalin, Al Knauber, Marsha Fauque, Laura Schroeder, Steve Tennant, Valerie Jaffe, Juan and Lucy Lozano, Debbie Valdez, Ben Brouwer, Susan Teigen, Lucy St. Onge, Joyce Evans, John Horne, and Rita Cortright, Recording Secretary.

Pledge of Allegiance. Everyone recited the Pledge.

Consent Action Items. (Eric Bryson)

Eric Bryson reported there were no consent action items on the agenda.

Independent Contractor Contract Between Lewis & Clark County and Alta Planning & Design. (Karen Lane) The Commissioners will consider the contract for a 90-minute Webinar Presentation describing engineering and planning considerations for 5-10 bicycle and pedestrian-specific transportation facilities in the amount of \$950.00. Contract period: 9/10 – 9/30/13.

Karen Lane, Prevention Program Manager, reported on the Independent Contractor Contract Between Lewis & Clark County and Alta Planning & Design for a 90-minute webinar presentation for health professionals and others interested in bicycle and pedestrian transportation planning process in the community.

No public comment was received.

Commissioner Good Geise moved adoption of the Independent Contractor Contract Between Lewis and Clark County and Alta Planning & Design, as outlined by Staff. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Resolution 2013-82 Ordering a Refund of Taxes/Fees/Assessments Paid by Timothy & Betty J. Dalin in the Amount of \$7,636.15 (Cheryl Green)

Cheryl Green, Property Tax Supervisor, reported on Resolution 2013-82 Ordering a Refund of Taxes/Fees/Assessments Paid by Timothy and Betty J. Dalin in the Amount of \$7,636.15. Pursuant to Sec. 15-16-603, MCA, the Dalin's requested the refund going back five years, for 2008-2012. The Dept. of Revenue had made an adjustment for the 2013 tax year. The 5-year refund was at the discretion of the Commissioners.

Tim Dalin, 715 E. Clark, in East Helena, provided details regarding the Dept. of Revenue's over-valuation of his business property and requested the Commission grant the refund request.



No public comment was received.

Commissioner Good Geise moved adoption of Resolution 2013-82 Ordering a Refund of Taxes/Fees/Assessments Paid by Timothy and Betty J. Dalin in the Amount of \$7,636.15. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Resolution 2013-83 Ordering a Refund of Taxes/Fees/Assessments Paid by Timothy D. O'Reilly in the Amount of \$1,107.80. (Cheryl Green)

Cheryl Green, Property Tax Supervisor, reported on resolution 2013-83 Ordering a Refund of Taxes/Fees/Assessments Paid by Timothy D. O'Reilly in the Amount of \$1,107.80. Pursuant to Sec. 15-16-603, MCA, Mr. O'Reilly requested the refund going back four years, for 2008-2011. The Dept. of Revenue found a portion of his property was a road, and part was under lake water; adjustments were made for 2012 and 2013.

No public comment was received.

Commissioner Good Geise moved adoption of Resolution 2013-83 Ordering a Refund of Taxes/Fees/Assessments paid by Timothy D. O'Reilly in the Amount of \$1,107.80. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Contract and Encroachment Agreement Between Lewis and Clark County and Jean and Sanders Smith, Owners. (Carrie Severson) Eaves for the house encroach 0.5 feet for a distance of 21 feet into the western utility easement; eaves for the garage encroach 1.5 feet into the eastern utility easement for Lot 12, East Bench Subdivision, Ph. V, also known as 4133 Fox Hollow Drive, SE ¼ of Sec. 6, T11N, R2W, east of Helena, Lewis & Clark County, Montana.

Carrie Severson, Special Districts Coordinator, presented the Contract and Encroachment Agreement Between Lewis and Clark County and Jean and Sanders Smith, Owners. This subdivision, Lot 12, Phase V of the East Bench Subdivision, is located just north of York Road and off of Old Lake Helena Drive, next to the golf course; Lake Helena Drive is to the east. An aerial of the property was viewed. The eaves of the house encroached slightly into the 10-foot utility easements. Staff will work with the builder to prevent future encroachment issues. Christal Ness had spoken with the utility company and obtained their verbal approval.

No public comment was received.

Commissioner Good Geise moved approval of the Contract and Encroachment Agreement Between Lewis and Clark County and Jean and Sanders Smith, Owners, as outlined by Staff. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Public Meeting. Proposed First Minor Subdivision to be known as Saddle Rock Subdivision. (Applicant: Mark Floerchinger) (Planner: Greg McNally) (Lindsay Morgan) The Commissioners will consider a proposed four-lot Subdivision located approximately 2 miles north of Lincoln Road and east of Collins Road, adjacent to Tea Road and a variance request from the requirements of Chapter XI: H.3 pertaining to determining costs directly attributable to the Subdivision.

Lindsay Morgan, Planner, presented the staff report. The applicant proposed to create four lots, each 5.06 acres in size for single-family residential use, serviced by individual wells and individual on-site wastewater treatment systems. Access was proposed via an internal access road intersecting with Tea Road. The property contained two dilapidated, abandoned

manufactured homes and two ephemeral drainages trending north/south on the property. Adjacent land use was primarily 20-acre parcels for single-family residential use. Impacts on Traffic related to Tea Road, as well as Collins Drive were presented. Issues related to Water Quality and Water Quantity were reviewed, as noted in the Staff Report. It was noted the Commission did not have jurisdiction over water rights; the State DNRC had jurisdiction. Regarding Fire Protection, the property is located within the L&C County Fire Service Area. The applicant proposed an off-site water source 2.0 miles from the subdivision, which fell in the West Valley Fire Dept. The L&C County Fire Chief preferred a source within 1 mile of the subdivision.

Tony Prothero, 3196 Brow Tine Road, supported using the local data from Bob Abeline's Traffic Impact Study, in lieu of the ITE Standard, which would reduce the ADT from 9.57 to 7.1. Assuming the higher number would result in a disproportionate share of impact. Requiring an additional fire protection fill site in the subdivision was seen as overkill; the potential for fire was relatively low. He requested consideration of using the existing fill site 2 miles distant, noting it was the Commission's decision. Drilling 40-50 feet below the static water level was recommended due to seasonal fluctuations in groundwater levels. Test holes were dug on every lot, and adequate drainfield sites were identified on each lot outside of the drainages.

Commissioner Hunthausen supported using the ITE Standard of 9.57 ADT, as it was a reliable and defensible number that could be applied in a consistent manner. Regarding the fill site, while it was the Commission's decision, typically, it was made based on the recommendation of the fire professionals.

#### Public Comment –

Steve Tennant, 2376 Tea Road, expressed concern with the condition of Tea Road, stating there were no culverts on the driveways; area residents performed pothole maintenance. Springtime access was very difficult; fire truck access would take longer than 10 minutes; and snowdrifts were problematic. Regarding wells, most were over 400 feet deep, his own was 435 feet deep, and one neighbor drilled to 460 feet for water. With 4 more residences in the area, and the associated landscaping, summer water use would threaten his well water supply, and he questioned who would be responsible.

Lucy St. Onge, 2275 Snowdrift Road, Helena, was concerned with potential impacts to the water table, the condition of Tea Road, and stormwater runoff. She did not believe adequate road improvements were being made based on the \$140 assessment for the RID. Regarding the variance request to eliminate the PERS, in lieu of paying a proportionate share of the off-site road improvements based on an Engineer's Estimate, Ms. St. Onge expressed a desire to see the Engineer's Estimate.

Joyce Evans, 2276 Tea Road, Helena, supported Mr. Tennant's comments regarding the road conditions. Design and maintenance issues were cited regarding the culvert at Tea Road and Collins. Ms. Evans asked how the RID would be assessed once the 20-acre parcel was divided into 4 lots; if each would pay \$140/year or if each would pay one quarter of the \$140/year for Collins Drive. She supported allowing the variance for the off-site fire protection water source. Dust was an issue; increased traffic would only worsen the situation.

Marsha Fauque, 2510 Fantasy, Helena, noted current problems with her 400-foot-deep well. She concurred with Ms. Evans' comments regarding the road conditions. The drifts at Ferry and Fantasy made the road inaccessible to the west; Fantasy and Tea were not plowed in the winter. Seven residences accessed the roads currently; traffic from four more homes would worsen the road conditions.

Valerie Jaffe, 2623 Tea Road, Helena, provided written testimony to the Commission dated Sept. 10, 2013, and read the text of her comments.

Commissioner Good Geise asked Mr. Bryson who sets the 1-mile standard for fire protection wells from a subdivision. Eric Bryson explained the Subdivision Regulations required the Commission to seek comment from the fire protection authority having jurisdiction; ultimately, it was the Commission's decision.

Commissioner Good Geise questioned Staff regarding the ITE average daily trip number of 9.57, asking if there was a benefit to applying local data over using the ITE standard.

George Theborge, Planning Director, noted the Commission was moving toward a Subdivision Regulation amendment that would allow for a developer to submit more accurate counts and traffic generation estimates on which to base their calculation of costs to be paid for road improvements.

Eric Bryson stated it was the Commission's decision; they had the discretion in the current Subdivision Regulations to consider the information presented by the traffic engineer. However, Staff supported applying the ITE standard of 9.57 ADT because they believed it to be accurate, reliable and time-tested.

Paul Stahl cautioned against acting in an arbitrary and capricious manner. Straying from a standard made it more difficult legally, should someone challenge the Commission's decisions.

Tony Prothero addressed public comments related to Tea Road. The Applicant had not yet seen the Staff Report, but desired to negotiate an agreement to make some of the improvements to Tea Road, rather than a pro rata share of improvements. His main concern was applying an accurate ADT to arrive at a fair and equitable way of determining improvements based on the developer's impact to the road.

Eric Bryson confirmed that the Staff Report was not yet available and recommended continuing the item to Thursday's agenda and determining then if it was ready for a decision. There was a strong likelihood that the Commission needed to ask the applicant's permission to continue past the statutory review period to give the public an opportunity to comment, the applicant an opportunity to review and comment on the Staff Report, and the Commission time to review and make a decision.

Tony Prothero agreed with Mr. Bryson's proposal.

Commissioner Good Geise moved to continue the item until Thursday's public meeting. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

BREAK - 5-minutes

Public Hearing. Proposed Subsequent Minor Subdivision to be known as Amended Pate Minor Subdivision. (Applicant: John and Jeane Horne) (Planner: ~~Greg McNally~~ Lindsay Morgan)  
The Commissioners will consider a proposed two-lot Subdivision located north of the York Road and west of and adjacent to Helberg Drive, and a variance request from the requirements of Chapters (XI. H. 11, XI.H. 15 and XI. H. 3.c.) pertaining to Dead End Street, Two Different Ingress-Egress Vehicular Routes, Determining Costs Directly Attributable to the Subdivision - PER.

Lindsay Morgan, Planner, presented the Staff Report on the proposed Subsequent Minor Subdivision to be known as the Amended Plat of Lot B-1A, 2A, Pate Subdivision. The subject property is located a ½ mile north of York Road and west of and adjacent to Helberg Drive. The applicant proposes to create two parcels from a 51.23-acre parcel: a 5.01-acre parcel for a single-family residential use; and a 46.08-acre parcel for existing uses which include 3 single-family residences and numerous agricultural out-buildings and structures. Proposed new residences would be served by individual wells and onsite wastewater treatment systems. Current access was off of Helberg Drive; access to the new lot would be off of Helberg Drive, as well. No parkland dedication was required.

Impacts on Traffic were presented related to Helberg Drive which is a dead-end road approx. 2.5 miles long and serving 28 residences. The applicant's Traffic Impact Study utilized the ITE Standard of 9.57 ADT; Staff calculated the percentage of impact to be 2.78 percent. Phil Porrini, P.E., provided a letter certifying that Helberg Drive from York Road to the north end of the property meets the County Standard for a local road with less than 400 ADT.

Groundwater levels averaged 4.67 – 4.95 feet; a suitable on-site wastewater treatment site was identified, and the permitted system will be a non-standard engineered wastewater system.

Regarding fire protection, the applicant proposed utilizing an off-site water source for fire protection for the property which is in the East Valley Fire District. The application notes the presence of two water sources in the area. Prior to Final Plat, the applicant would be required to provide written documentation from the East Valley Fire District authorizing use of their fill site, or to provide an alternative on-site source.

Three variance requests included:

A variance from County Subdivision Regulations, General Design and Improvement Standards (XI.H.15) regarding two different ingress-egress vehicular access routes.

A variance from County Subdivision Regulations, General Design and Improvement Standards (XI.H.11) regarding a dead-end street or cul-de-sac not greater than 700 feet.

A variance from County Subdivision Regulations, General Design and Improvement Standards (XI.H.3.c.) regarding the requirement to prepare a Preliminary Engineering Report. In-lieu, the applicant proposes to pay a proportional share of the costs for off-site road improvements based upon an engineer's estimate for bringing a segment of Helberg Drive up to County Standards, Typical Section No. 1.

Phil Porrini, 1221 LeGrand Cannon Boulevard, the applicant's engineer noted the unavailability of the Staff Report; thus, his only comments were related to justification of the variance requests.

Public hearing –

Laura Schroeder, 27880 Lifestyle Lane, Helena, posed several questions related to the location of the subdivision, the division of the acreage into lots, and whether any commercial uses were proposed. Southridge Estates subdivision was noted as being in the area.

Lindsay Morgan responded noting the subdivision was one-half mile from the junction of York Road and Helberg Drive. Southridge Estates was south of and separated from the proposed Pate Minor Subdivision, and no commercial uses were proposed at this time.

Jim Horne, 3890 Helberg Drive, Helena, stated his intention was to build himself a new home 600 yards from his current shop that included an apartment. His employment was farming the land and raising livestock; his wife teaches at Warren School. Regarding fire protection, Fire Chief Dave Sammons had promised a letter authorizing use of any of the three fill sites in the area; however, Mr. Horne did not possess the letter.

Eric Bryson confirmed the Staff Report was not yet available and recommended continuing the item to Thursday's

Commissioner Good Geise moved to keep the public hearing open until the public meeting Thursday, Sept. 12, 2013. Commissioner Hunthausen 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.

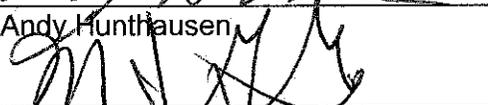
Jack Walsh, HIBA, 3180 Dredge Drive, Suite B., Helena, announced toe 20<sup>th</sup> anniversary Parade of Homes planned for Sept. 13-15, 2013. Catalogs were offered to the Commission and Staff, and a list of participating builders and ticket locations were noted.

There was no other business and the meeting adjourned at 11:32 a.m.

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Michael A. Murray, Chairman

  
Andy Hunthausen

  
Susan Good Geise

ATTEST:

  
Paulette DeHart, Clerk of the Board