

**PUBLIC MEETING
FEBRUARY 28, 2012
MINUTES**

The Lewis and Clark County Commissioners Public Meeting will be held on Tuesday, February 28, 2012, 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. Commissioners Mike Murray and Derek Brown were present. Others attending all or a portion of the meeting included Eric Bryson, Katie Jerstad, Kelly Blake, Greg McNally, Audra Zacherl, Eric Spangenberg, Carole Byrnes, Cheryl Green, Jack Walsh, Jeff Claassen, Delvin & Bonnie Gebhardt, Shawn Bryant, Steve Moore, Mike Fasbender, Bill Maloit, Cherche Prezeau, Rebekka Cantrell, Martin Balukas, Ron Bartsch, and Rita Cortright, Recording Secretary.

Pledge of Allegiance. Everyone recited the Pledge.

Consent Action Items. (Eric Bryson)

- a. Resolution 2012-23 Ordering a Refund of Taxes/Fees/Assessments Paid by Kenneth B. and Joanne M. Hanson in the Amount of \$233.78. (Cheryl Green)
- b. Resolution 2012-24 Declaring County Property Surplus Property. (Amy Reeves)
- c. Resolution 2012-25 Ordering a Refund of Taxes/Fees/Assessments Paid by Robert & JoAnn Karhu in the Amount of \$112.69. (Cheryl Green)

Eric Bryson recommended approval of the consent agenda.

No public comment was received.

Commissioner Brown moved approval of the consent action items and authorized the Chair to sign as appropriate. Commissioner Murray seconded the motion. The motion carried 3-0.

Award of Request for Proposals - 2012 Digital Orthoimagery & Planimetric Data. (Eric Spangenberg)

Eric Spangenberg reported that the review committee has recommended the lowest cost option proposal from Sanborn Map Company be accepted and asked the Commission to authorize the IT&S Director to begin contract negotiations and that the Chairman sign all associated documents. The review committee recommended Scenario 3 Option B that will provide full LiDAR over the entire Helena Valley. This will become a very critical piece of infrastructure for floodplain mapping and for deriving contours and new planimetric data. The total for the project is \$97,348.00. The county has partnered with Fort Harrison and the USGS-NGA with this project.

Commissioner Brown moved to accept and begin negotiations with Sanborn Mapping

Company in the amount of \$97,348 and authorized the Chair to sign as appropriate. Commissioner Murray seconded the motion. The motion carried 3-0.

Bid Award for Purchase of One (1) New Asphalt Patcher Body. (Audra Zacherl)

Audra Zacherl reported that one bid was received and opened. The review committee determined that the bid met all bid specifications and has recommended that the county award the bid to Northwest Manufacturing & Distribution, Inc. of Billings, Montana, for the bid amount of \$54,300 and authorized the Chair to sign all applicable purchasing documents. The old patch body burned up at the end of last summer and insurance has reimbursed the county approximately \$50,000. The Road Department will come up with \$1,000 from their deductible line item and the County Liability Insurance Fund will pay for the balance.

No public comment was received.

Commissioner Murray moved to adopt the staff recommendation for the purchase of the asphalt patcher body and authorized the Chair to sign as appropriate. Commissioner Brown seconded the motion. The motion carried 3-0.

Board Appointment - Lewis & Clark County Planning & Zoning Commission. (Carole Byrnes)

Citizen member Stephen Weber has completed his first term and indicated he would like to be appointed to a second term which would expire December 31, 2014. No other applications were submitted.

Commissioner Murray moved to table this until next Tuesday to verify whether the term should be two or three years. Commissioner Brown seconded the motion. The motion carried 3-0.

Proposed Modifications to Conditions of Approval for H.W. Smith Lot A-1A Amended (a.k.a. Heron Creek Subdivision) and Variance Requests from the Following Subdivision Regulations: XI.F.9, XI.H.1 and XI.Q. (Applicant: Ron Bartsch) (Planner: Greg McNally) (Tabled from 2/23/12) Decision.

Commissioner Murray moved to approve the proposed modifications to the subdivision. Commissioner Hunthausen seconded the motion.

Variance 1 - Double-Fronted Lots. Commissioner Murray moved to reconsider the vote of denial on the double-fronted lots. Commissioner Hunthausen seconded the motion.

No public comment was received.

The motion carried 2-0. Commissioner Brown abstained.

Commissioner Murray moved approval of the variance request for double-fronted lots Lot, 65 and 44, in Phase I and Lot 45 in Phase IV. Commissioner Hunthausen seconded the motion. Granting the variance will not be detrimental to public health, safety and general welfare or injurious to the other adjoining properties and, because the particular physical surroundings, shape or topographical conditions of the specific property involved an undue hardship on the owner would result if the regulations were enforced. The variance will not create substantial increase to the public cost and it will not place the subdivision in non-compliance with any of the adopted zoning or regulations applicable, or applicable adopted plans. The motion carried 3-0.

Commissioner Brown moved to create the 44 individual lots in Phase II, each one for single-family dwelling on the 10.89 acre lot. Commissioner Murray seconded the motion.

Variance 2 - To allowance deviation from road ditch depths and road curvature.

Commissioner Brown moved to approve the variance. Commissioner Murray seconded the motion. The variance creates no hardship and is not a public safety issue. They are low-speed, narrow roads. There is no increased cost to the public and would not create any further non-conformance to the regulations. The motion carried 3-0.

Variance 3 – To eliminate the side lot utility easement between lots: 94/95, 96/97,

101/102, 104/105, 106/107, 107/108, 108/109. Commissioner Brown moved to eliminate the requirements for two side-yard utility easements on 14 of the proposed lots, with the condition that a 10-foot setback is listed on the plat. Commissioner Murray seconded the motion. There will be no detrimental effect to the public health, safety and general welfare by granting the variance. The motion carried 3-0.

Staff recommended that with approval of the variance for double-fronted lots in Phase I that this variance be added to Condition of Approval 22.m.

Staff further recommended that the hold harmless language and the addition of the variance for the double-fronted lot be included in Phase II, Condition 18.

Commissioner Murray moved to modify Condition m. to include the variance and the hold harmless language as recommended by staff. Commissioner Brown seconded the motion. After discussion, the motion carried 2-1. Commissioner Brown voted no.

The motion to create 44 lots, each for a single-family dwelling on a preliminarily approved 10.8 acre lot instead of the current preliminarily approved 44 condominium units carried 3-0.

Condition of Approval 8.b (Phase II), Construction of the internal access road to a Typical Road Section #2. Commissioner Murray moved to ask staff to draft appropriate language to reflect the variance approvals to provide for the exception of the curvature of the road and the ditch depths. Commissioner Hunthausen seconded the motion. Commissioner Brown did not agree that the motion was necessary since the variance

had been approved. The motion carried 2-1. Commissioner Brown voted no.

Commissioner Murray moved to amend Condition 17 to reflect the approved variance regarding utility easements, which includes the 10-foot setback. Commissioner Hunthausen seconded the motion. The motion carried 2-1. Commissioner Brown voted no.

Commissioner Brown moved to approve the condition allowing for the preliminarily approved subdivision to be developed and platted in six phases, as amended. Commissioner Murray seconded the motion. The motion carried 3-0.

Improvement of Eames Lane. Commissioner Brown moved to approve the Condition as presented by the applicant on page 3, with 1.1, 1.2, 1.3, 1.4, 1.5 and 2.0 as presented in the staff report. Commissioner Murray seconded the motion.

Commissioner Murray moved that condition 1.1 read, "The segment of Eames Lane from Canyon Ferry Road to Keir Lane is to be improved to a pavement standard in accordance with an engineered plan to be reviewed and approved by the County." Commissioner Hunthausen seconded the motion. The applicant agreed. The motion carried 2-1. Commissioner Brown voted no.

Commissioner Brown moved to strike 1.2 and 1.3. Commissioner Murray seconded the motion. The motion carried 3-0.

Commissioner Brown moved to strike 1.4 as redundant, it is covered under 1.1. Commissioner Murray seconded the motion. The motion carried 3-0.

Commissioner Brown moved to approve 1.5. Commissioner Murray seconded the motion. The motion carried 3-0.

Break – 10 minutes.

Commissioner Brown moved to modify 1.3 to read, "At the closing of the sale of any lot in the subdivision, Sussex shall deposit the sum of \$10,000 into the interest-bearing reserve account held by the County strictly for off-site road improvement," and strike inclusion of Sussex on the signature. Commissioner Murray seconded the motion. The applicant agreed. The motion carried 3-0.

Commissioner Brown moved to modify 1.4 to say, "The County shall hold a lien on all lots in the Subdivision, until such time as the Offsite Road Improvement has been completed and certified by the County not to exceed \$500,000. The County shall file a lien release for each lot sold at the closing of any such lot, contingent upon the deposit of funds in the County account. The applicant shall notify the county when the 32nd lot is sold." Commissioner Murray seconded the motion. The applicant agreed. The motion carried 3-0.

Cherche Prezeau, attorney for Ron Bartsch and Sussex Construction. No closing would occur on a property that's encumbered by a lien. A signed lien release from the County in exchange for a check of \$10,000 would be a condition of closing.

Commissioner Brown moved that on final plat of Phase I of this subdivision with these conditions applied that the offsite road agreement is null and void. Commissioner Hunthausen seconded the motion. Discussion.

Eric Bryson stated that the offsite road agreement would be brought forward for Commission consideration at a future public meeting for further discussion.

Cherche Prezeau stated that the road agreement was negotiated outside of the subdivision process and they should have a contract in writing that nullifies the existing contract.

The motion failed 1-2. Commissioners Murray and Hunthausen voted no agreeing to schedule the contract on a public meeting agenda.

Condition 14, Phase I. The Commission addressed a February 17th letter from Mr. McNally dealing with the irrigation ditch on the northwest corner of the property, which included a letter from the Helena Valley Irrigation District. Discussion focused on providing safety mechanisms or structures around the danger areas, known as drop structures, and inlet/outlets of the pipes.

Ron Bartsch handed out prepared language which was reflected in earlier public testimony to better clarify that he was interested in only ensuring that the public safety aspects of the drop gates and the structures themselves would be protected and specifically asked that he not be required to follow the condition that the pipe be buried.

Commissioner Brown made a motion to modify Condition 14 to say, "The applicant shall install safety measures to ensure the irrigation ditch that parallels the northwest corner of the proposed subdivision is safe to the public. Applicant must provide safety grates for each of the exposed pipe lengths, as well as to the take-out holding tanks. These grates shall be designed so as to not interfere with the adjacent property owners' flow of water." Commissioner Murray seconded the motion.

BREAK: 5 minutes to confer with legal counsel.

Discussion with Martin Balukas on safety mechanisms and how they relate to maintenance, and installation of grates on the pipes. Mr. Balukas stated he was amenable to the idea of grates on those structures, however, they do not alleviate the safety concerns of 2 cubic feet per second of water running through an open ditch in the parkland.

The motion carried 3-0.

Condition of Approval 25.b. Public Access Trails. Commissioner Brown moved to modify this condition and subsequent ones throughout, "*Completion of public access trails in direct proportion to the number of lots as to the total proposed.*" Commissioner Hunthausen seconded the motion. Discussion. The motion carried 3-0.

Condition of Approval 22.u. Ephemeral Drainage. Commissioner Brown moved to modify the condition to be specific to Lot 25. Commissioner Murray seconded the motion. After discussion, the motion was modified "*to consider the drainage in the area indicated by Lot 25.*" The second agreed. The motion carried 3-0.

Condition 25.e. Treatment Facility. Commissioner Brown moved to modify the condition to say, "Community Level II wastewater treatment system to comply with the requirements of the Department of Environmental Quality." Commissioner Murray seconded the motion. The motion carried 3-0.

Condition of Approval for Eames Lane. For clarification purposes, Applicable to all phases.

Condition 14, Phase II. Commissioner Brown moved to strike the condition throughout the subdivision. "The Applicant shall relocate the proposed manmade stream out of the utility easements. The Applicant shall work with County Planning Staff to ensure the recommended changes to the preliminary plat remain in concurrence with the preliminary approved subdivision." Commissioner Hunthausen seconded the motion. The motion carried 3-0.

Condition 22.s. Commissioner Brown moved to modify the condition to say, "Prohibition of raising, keeping or confinement of livestock *on any residential lot.*" Commissioner Murray seconded the motion. The motion carried 3-0.

BREAK - 15 minutes

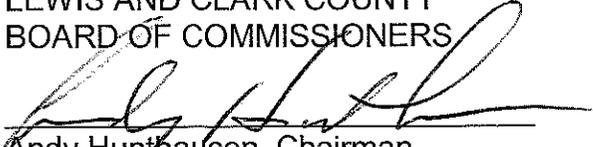
Commissioner Murray moved to allow Mr. McNally to amend the Findings to incorporate today's discussions and decisions and the previous public hearings. Commissioner Brown seconded the motion. The motion carried 3-0.

Commissioner Murray moved that the motion to approve the proposed modifications to the preliminary approval of Lot A-1A Amended for H.W. Smith Minor Subdivision, otherwise known as Heron Creek, be modified as amended, including the variances. Commissioner Brown seconded the motion. The motion carried 3-0.

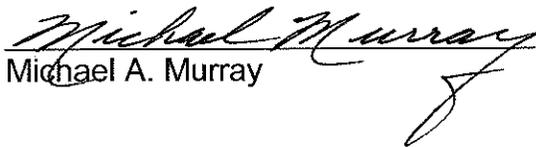
Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above. None.

There was no other business, the meeting adjourned at 12:52 a.m.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



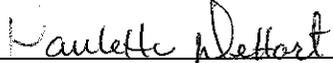
Andy Hunthausen, Chairman



Michael A. Murray

Derek Brown

ATTEST:



Paulette DeHart, Clerk of the Board