

**PUBLIC MEETING
AUGUST 29, 2013
MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, August 29, 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 and Commissioner Susan Good Geise were present. Others attending all or a portion of the meeting included Eric Bryson, George Thebarger, Art Pembroke, John Hinshaw, Marni Bentley, Lindsay Morgan, Greg McNally, Dean Retz, Pat Cirillo, Debra LaFontaine, Laura Fister, Al Knauber, Pat Drynan, Jerry Bowser, Jack Walsh, Michael McHugh, Michael Ellison and Rita Cortright, Recording Secretary.

Pledge of Allegiance. Everyone recited the Pledge.

Retirement Recognition – John Hinshaw, Addressing Coordinator. (Art Pembroke)

The Commission congratulated John Hinshaw on his retirement, having worked for the County for 14 years, and presented him with an engraved paperweight.

Consent Action Items. (Eric Bryson)

- a. Vendor Claims Report for the Week of August 26, 2013. (Marni Bentley)
- b. Resolution 2013-77 Declaring County Property Surplus Property. (Amy Reeves)
- c. Resolution 2013-78 Declaring County Property Surplus Property. (Amy Reeves)

Eric Bryson reported on the consent action items and recommended approval.

Commissioner Good Geise moved approval of the consent action items. Commissioner Hunthausen seconded the motion. The motion carried 3-0.

Helena Sand and Gravel Variance Request for Permitted Hours of Operation for Night Asphalt Production from Sept. 16 – Sept. 27, 2013. (Eric Bryson)

Eric Bryson presented the letter from Helena Sand & Gravel requesting a variance from permitted hours of operation for night asphalt production on the Lyndale Avenue project from Sept. 16 through Sept. 27, 2013.

Pat Drynan, Operations Manager, Helena Sand & Gravel, provided details on milling project that would include Lyndale Avenue from the intersection at Last Chance by the First Interstate Bank, through Malfunction Junction, up Montana Avenue to Butte Avenue. Their main concern was Malfunction Junction; nighttime milling and paving would lessen the traffic impacts.

No public comment was received.

Commissioner Hunthausen moved approval of the Helena Sand and Gravel Variance Request for Permitted Hours of Operation Night Asphalt Production from Sept. 16 – 27, 2013, as requested. Commissioner Good Geise seconded the motion. The motion carried 3-0.



Public Hearing. Consideration of Conditions to Abate a Nuisance Related to the Keeping of Horses in Special Zoning District No. 9. (Planner: Lindsay A. Morgan) (Adjoining Landowners: Patrick Cirillo and Paula Jacques) The Commissioners will receive public comment and consider conditions on property located at and adjacent to 811 and 813 Hiawatha Street in Special Zoning District No. 9. (Heard on 7/25/13 and remanded to P&Z)

Commissioner Hunthausen moved to bring the record forward from the Aug. 28, 2013, Planning and Zoning Commission meeting and incorporate it into today's record. Commissioner Good Geise seconded the motion. The motion carried 3-0.

Lindsay Morgan, Planner, stated today was a public hearing regarding conditions to abate a nuisance related to the manner in which horses were being kept at and adjacent to 811 and 813 Hiawatha Street in Special Zoning District No. 9. During the July 25, 2013, Public Meeting the Commission determined the manner in which the horses were being kept was a nuisance and to abate the nuisance, directed Staff to address the following concerns: 1) The smell of the urine, 2) The manure and the frequency at which was raked into piles and removed from the site; 3) Dust issues; and 4) Runoff, pests, erosion and soil degradation associated with the manner in which the horses were being kept. Staff's analysis included discussions with the County Extension Agent and County Weed District Coordinator. Subsequently, Staff prepared four mitigation measures as options for conditions. The Planning and Zoning Commission, at their August 28th hearing, passed a motion 5-1 requiring the property owners and horse owners to submit a mitigation plan within 30 days to the Community Dev. and Planning Office that addressed the four condition options presented by the Planning Staff.

Patrick Cirillo, 2010 Westridge Court, directed several questions to the Commission regarding the plan: whether it would address each of the staff recommendations or if the Ellisons would propose their own mitigation plan; what entity would have final approval of the plan; and why the 50-foot setback request had not been addressed. The 30-day deadline would bring the process to Sept. 25, 2013; the initial complaint was filed Aug. 12, 2012. He requested a complete timeline, to be notified when the plan was available, and asked if he was correct in understanding that he could appeal the plan or its implementation.

No public comment was received and the public hearing was closed.

Lindsay Morgan and George Thebargе addressed Mr. Cirillo's questions. The Board of County Commissioners had final decision-making authority; they could delegate to the Planning and Zoning Commission if they chose. Imposing a 50-foot setback went beyond mitigating the nuisance. The Commission could consider re-vegetation; however mitigation of dust and weeds could be conditioned. The process would probably entail a 30-day review period and could be contingent upon how diligent and willing the property owners and horse owners were in developing and implementing a plan that adequately addressed the nuisance issues. Enforcement was an option if the plan was not developed in the 30-day period. Mr. Cirillo would have the right of appeal to the Commission for actions of County Staff.

Deputy County Attorney Paul Stahl agreed with Mr. Thebargе's comments.

Lindsay Morgan reviewed the draft Conditions as outlined in her Aug. 8, 2013 memo to the Commission, followed by a timeline of events: In August, 2012, a complaint was received dealing with three issues: expansion of a non-conforming use; expansion that did not meet setback requirements; and keeping of horses was a nuisance. Staff investigated and found the horse owners, the Ellisons, were in violation of the setback requirements and expansion of a non-conforming use, but did not find there was a nuisance based on information Staff had at the

time. A report was written by Staff and presented to the complainant and property owners. The complainant appealed the Staff's determination regarding the nuisance portion to the Planning and Zoning Commission and ultimately to the County Commission. On July 25, 2013, the Commission determined, in fact, it was a nuisance and directed Staff to prepare conditions to abate the nuisance.

Commissioner Good Geise noted it was in June 2011 that Mr. Cirillo and Ms. Jacques made the first request of the Planning and Zoning Commission regarding the property. They had occupied their home for 21 years, and learned that horses were being brought in, pre-emptively made inquiry of the County regarding regulations, and were informed the County's Zoning Regulations were silent on the issue of horses. This was followed by an action to modify the Zoning proposal to include not allowing horses, or large livestock, in addition to provisions for small livestock. The Zoning Board did include the modifications, but not before the horses were put on the property, which resulted in them being grandfathered. At this point, the horses had been on the property for two years. Commissioner Good Geise confirmed that Staff was reluctant to serve as the arbiter of what smells good or bad, as that would be subjective; enforcement was the issue. Her research revealed an array of devices that could be employed in sampling agricultural odors, and ranged in price from \$1,200 to \$130,000, the point being it would be expensive to monitor and may not result in resolution of the situation. She did not see resolution to the situation, thus her reason for opposing the motion at last evening's Planning and Zoning Commission meeting to continue with Conditions. Had the Ellisons been present today she would have asked if they were willing to risk the investment and possibly be disappointed if the mitigation efforts were unsuccessful. She had personally visited the property on three occasions since July 1, and had seen no progress in cleaning up the property.

Paul Stahl confirmed that all parties had been accorded due process.

George Thebarg clarified that, based on visits to the property, Staff had confirmed two alleged violations. Administrative meetings were held with the Ellisons to explain the situation. They subsequently took action to remove portions of construction that were added after adoption of zoning, thus violating the non-conforming use and setback for animal enclosures. There were not sufficient grounds to determine that a nuisance existed. This third component was appealed resulting in today's meeting.

Mr. Ellison joined the meeting.

Paul Stahl readdressed the due process question, stating this situation began with a zoning violation. There was a grandfathered provision allowing the Ellisons to keep horses on their property. He cautioned against Conditions so draconian that it would be impossible for Ellisons to keep their horses on the property. A conflict now existed between zoning and the nuisance portion of the law.

Lindsay Morgan noted that the Zoning Regulations states that uses cannot be considered grandfathered if they amount to a nuisance, if they are obnoxious, or if they are unlawful.

Without objection, Commissioner Murray re-opened the Public Comment portion of the meeting and requested Mr. Ellison come forward and answer questions.

Commissioner Hunthausen asked Mr. Ellison if he thought the Conditions proposed at last evening's Planning and Zoning Commission Meeting would adequately address the situation. Two options were on the table: imposing Conditions to mitigate the situation or require the Ellisons to remove the horses from the property.

Mike Ellison, 811 Hiawatha, Helena, stated he felt the Conditions were overkill, but they would work with the Commission to meet the Conditions if that was what was required to keep the horses on the property, noting they had invested considerably in the property to date.

Commissioner Good Geise restated the Conditions and asked Mr. Ellison if he was willing to invest the time and money to meet the Conditions. Mr. Ellison stated his intention to meet the Conditions; however, they were considering selling the horses. Commissioner Good Geise again expressed concern that the Ellisons might invest considerable time and expense in attempting to meet the Conditions, to no avail. That was Commissioner Good Geise's reason for voting against placing Conditions on them last evening, in lieu of relocating the horses, and why she would vote against the Conditions again today.

Pat Cirillo, 2010 Westridge Court, stated his property had been devalued because of the situation with the horses, which would also make it difficult to market his property. He was also concerned with the placement of the berms to control water runoff and suggested requiring a 50-foot setback as a possible solution. Dust, flies and wind-blown debris were cited, as was the unpleasant odor and the possibility of fire due to the haystack. Mr. Cirillo stated his intention to continue pressing for resolution to the situation, and said over the past 30 days he had seen no attempt by the Ellisons to clean up the property and felt that imposing Conditions would not bring resolution. He addressed Mr. Stall, stating that initially there was no zoning, no language either allowing or not allowing horses; someone made the decision to allow horses without public comment, and now they were grandfathered.

No public comment was received. The public comment portion of the Public Hearing was closed.

Commissioner Good Geise stated that because Mr. Ellison was not confident in his ability to comply with the Planning and Zoning Commission's recommended conditions, she would remain in opposition to imposing Conditions.

Lindsay Morgan clarified that the berm and ditch designs were an approximate location based on a contour map showing the direction of stormwater flow, and could be adjusted.

Commissioner Good Geise asked for reassurance from Paul Stahl and the Planning Department that at any time during the process related to zoning, everything was done openly, publicly and in a lawful, legal process.

Commissioner Murray responded that the County Commission and the Zoning Commission acted legally with the guidance of Deputy County Attorney Jerstad.

Paul Stahl stated there were numerous discussions between the County Attorney's Office and the Planning Staff about how to interpret the language, and once a conclusion was reached, they moved forward to try and remedy the situation.

Commissioner Hunthausen moved adoption of the Planning and Zoning Commission recommendation, and directed Staff to meet that condition. Commissioner Murray seconded the motion. The motion carried 2-1. Commissioner Good Geise voted no.

BREAK – 5 minutes.

Resolution 2013-74 Adopting Regulations for the Application & Review of Buildings for Lease or Rent. (Greg McNally) (Cont'd from 8/27/13) Decision.

Greg McNally, Planner, presented Resolution 2013-74 and Attachment A, the draft regulations, noting the two previous public hearings on August 20 and 29. Further additions and corrections were presented and reviewed by Mr. McNally. On Aug. 20, Mark Simonich, Helena Assn. of Realtors, and Jack Walsh, HBIA, spoke generally in support of the draft regulations. No further written comment had been received as of Aug. 29.

No public comment was received.

Commissioner Hunthausen moved approval of Resolution 2013-74, as presented by Mr. McNally with the amendments. Commissioner Good Geise seconded the motion. The motion carried 3-0.

InterCap Loan Application in the Amount of \$130,067.00 for Crestwood Green Estates Subdivision Rural Improvement District. (Marni Bentley)

Marni Bentley, Budget Coordinator, presented the InterCap Loan Application in the amount of \$130,067, to be repaid over a 10-year period, and recommended approval.

No public comment was received.

Commissioner Good Geise moved acceptance of the InterCap Loan Application in the Amount of \$130,067 for the Crestwood Green Estates Subdivision Rural Improvement District. Commissioner Hunthausen seconded the motion. The motion carried 3-0.

Dept. of Military Affairs Presentation on Army Compatible Use Buffer Program. (Debra LaFontaine) The Commissioners will hear the presentation and consider a request for a Letter of Support.

Debra LaFontaine, Planner with the Dept. of Military Affairs, Ft. Harrison, and Laura Fister, New Fields Consulting Firm, Helena, addressed the Commission regarding the Army's desire to establish the Army Compatible Use Buffer (ACUB) Program in the vicinity of Fort Harrison. Ms. LaFontaine presented a PowerPoint presentation on the program designed to reach out to partners and identify mutual objectives of land conservation and prevention of development in critical open areas. The program allows the Army to contribute funds to partner's purchase of conservation easements from willing landowners. The partnerships with the Conservation Fund, Elkhorn's Working Group, Prickly Pear Land trust and the Rocky Mountain Elk Foundation preserve high-value habitat and limit incompatible development in the vicinity of military installations. Areas adjacent to Fort Harrison were identified for possible purchase and/or protection. The funding request was competitive with other states; this program request was for \$32 million. The program would also coordinate with the Joint Land Use Study and the Open Space Committee. Ms. LaFontaine requested a letter of support from the Commissioners for the ACUB Program.

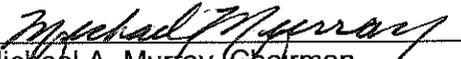
No public comment was received.

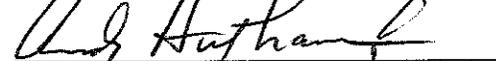
Commissioner Hunthausen moved to provide the letter of support for the ACUB program. Commissioner Good Geise seconded the motion. The motion carried 3-0.

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 and the meeting adjourned at 10:33 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