

**PUBLIC MEETING  
MARCH 12, 2013  
MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, March 12, 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, Audra Zacherl, Fred Rice, Michael McHugh, Lindsay Morgan, Tony Prothero, Glenn Hayes, Ryan Casne, Kim Smith, Al Knauber, Matt Elvbakken, Chuck Fricke, Jerry Ridgeway, Randi Triem and Rita Cortright, Recording Secretary.

Pledge of Allegiance. Everyone recited the Pledge.

Consent Action Items. (Eric Bryson)

- a. Resolution No. 2013-19 Requesting Prosecutorial Assistance in the Case of State v. Richard Anthony Pembroke (Leo Gallagher)

Eric Bryson reported on the Consent Agenda Item 2.a. and recommended approval.

No public comment was received.

Commissioner Hunthausen moved approval of Consent Action Item 2.a. and authorized the Chair to sign. Commissioner Murray seconded the motion. The motion carried 2-0.

Bid Opening For Purchase of One New or Used Vibratory Roller. (Audra Zacherl) Audra Zacherl assisted with opening seven bids.

1. Roland Machinery Company, Spokane, WA. The base bid amount was \$134,625.17.
2. Tri-State Trucking & Equipment, Great Falls. The base bid amount was \$127,856.00.
3. Tri-State Trucking & Equipment, Great Falls. The base bid amount was \$115,981.00.
4. Titan Machinery, Inc., Great Falls. The base bid amount was \$97,415.00.
5. Titan Machinery, Inc., Great Falls. The base bid amount was \$119,272.00.
6. Tractor & Equipment Co., Great Falls. The base bid amount was \$114,386.00.
7. RDO Equipment, Great Falls. The base bid amount was \$122,635.00.

Commissioner Hunthausen moved that staff take the bids under advisement and report back with a recommendation next Tuesday. Commissioner Murray seconded the motion. The motion carried 2-0.

Memorandum of Agreement Regarding the Criminal Investigation Bureau Between Lewis & Clark County Sheriff Employees' Association and Lewis & Clark County. (Fred Rice)

Fred Rice, Human Resources Director, presented the Memorandum of Agreement regarding a couple of ongoing grievances which allowed the Sheriff to make assignments to the Criminal Investigation Bureau based on need and to more equitably distribute overtime pay. Previously, assignments were understood as permanent; instead of assuming a higher rate of pay, a stipend or small increase in pay would be implemented for the assignment and staff would maintain their rank.

No public comments were received.

Commissioner Hunthausen moved approval of the Memorandum of Agreement regarding the Criminal Investigation Bureau, as presented. Commissioner Murray seconded the motion. The motion carried 2-0.

Final Plat Approval for Timberworks 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 3/7/13.)

Michael McHugh presented the request for Final Plat for Phases II and III of Timberworks Estates Subdivision. Phase II was preliminarily approved for 24 lots for non-residential use, infrastructure and open-space lots. Phase III was approved for 11 single-family lots and 3 lots dedicated for parkland. The remaining Lot 39 would be for Phases IV – VIII. The unmet Conditions of Approval were reviewed, noting the applicant had provided a copy of an Irrevocable Letter of Credit from First Community Bank in the amount of \$24,885.00. The second improvement covered by the Subdivision Improvements Agreement was paying for the pro rata share of off-site improvements associated with increased traffic production. The applicant had provided a Letter of Credit from First Community Bank in the amount of \$51,001.54 that expires Nov. 14, 2013. To cover work on internal roads, at the previous meeting the applicant provided a copy of a Cashier's Check drawn on Valley Bank in the amount of \$6,750.00. Lastly, there was a punch list of general earth work and the estimated 25 percent which totaled \$11,968.75. To date, the County had not received a copy of the third-party agreement providing for fire protection improvements, nor a copy of the Letter of Credit in the amount of \$133,290.63. Until the addendum was completed and signed, the Subdivision Improvements Agreement could not be signed for Final Plat. There was no clear indication that the IRS had released the lien on the subject property. For the Commission to proceed today the following items were necessary: addressing the requested changes to the covenants and Conditions of Approval, deleting the requirement for the turn-lane, changing the covenants and the setback and the utility easement requirements of the various conditions. The Commission could then sign the addendum to the Subdivision Improvements Agreement, which involves a 3<sup>rd</sup> party contractor. The County would need a copy of a written agreement between the contractor and the applicant, along with the necessary financial bond in the original form. The Commission could then sign the overall Subdivision Improvements Agreement dealing with the five areas previously discussed and sign the Final Plat. Staff had drafted a Subdivision Improvements Agreement and Addendums that had been reviewed by Planning and Legal Staff; the attachments were necessary before signatures could be obtained.

Ryan Casne, Casne & Associates, the applicant's engineer, questioned the need to produce original copies of financial guarantees prior to filing for Final Plat, adding he had the originals in hand and was ready to file them. He stated the County had been in possession of the third-party agreement as part of the original Final Plat application; having received no comments, he assumed it was acceptable. He offered to provide the original copy today with notarized signatures and saw no reason to not proceed with Final Plat today.

K. Paul Stahl, Deputy County Attorney, explained an addendum to the Subdivision Improvements Agreement had been prepared for Mr. Kim Smith's and Frontier Builders' signatures, and Mr. Smith was to provide a \$133,000 check. A legal question remained whether the lien had been removed by payment. The Commissioners could assume the risk; however, he requested tabling until Thursday's meeting.

Randy Triem, Casne and Associates explained the lien notice for \$8,600 of federal tax liability appeared on the first title report when the final plat package was submitted in January. The applicant had paid the IRS and received a receipt of delivery; it would take the Federal Govt. time to remove the lien from the property. The title company had removed the lien from the title report; paying for the report was, in essence, paying for title insurance. Lastly, Frontier Builders was hoping to Final Plat Phases II and III today; the large tract of remaining land would become Phases IV-VIII. In the event the \$8,600 payment was not deemed acceptable to the Federal Govt., the option existed of placing a lien on the remaining tract of land. Therefore, she suggested the County's risk was minimal. She confirmed the 3-way notarized agreement regarding the fire protection system was submitted in January with the Final Plat package.

Michael McHugh said the 3-way agreement done in January relied on the existing private water source that was serving the Lincoln RV Park. Today's proposal of a dedicated well came up when an RID could not be established, as a RID could not be utilized to maintain private resources. The original water supply cost was \$40,000; the new amount was \$133,000.

Commissioner Hunthausen moved to table the item until Thursday, March 14. Commissioner Murray seconded the motion. The motion carried 2-0.

Break – 5 minutes.

Public Hearing. Proposed Subsequent Minor Subdivision to be known as Elvbakken Commercial and Variance Request from Ch. XI.H. (Applicant: Matt Elvbakken) (Planner: Frank Rives) 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 2/19/13)

Michael McHugh presented the Staff Report in Frank Rives' absence. The subdivision, located at 2805 York Road, had one existing non-residential lot formerly used as a convenience store, a 26-unit self storage unit, a single-family residential home and two accessory buildings, all served by an existing community wastewater treatment system provided by Leisure Village. A manufactured home was previously removed from the lot. Three issues were associated with the proposed subdivision: wastewater treatment, fire protection, and traffic. The applicant desired to connect all proposed structures and change uses to the Leisure Village Subdivision community wastewater treatment system. The proposed use for the commercial structure was a meat processing and sales facility that might include a slaughtering operation. Leisure Village sewer users indicated an unwillingness to permit the commercial use to be added to their waste water treatment facility. Communications from the Beal Law Firm were attached to the Staff Report. County Environmental Health indicated there was sufficient soils and area on the lot to accommodate a wastewater treatment system and replacement field.

Two variance requests were reviewed: (1) from Chapter XI.H.3.c Adjacent and Off-Site Road Improvements that requires traffic counts for a traffic impact statement. The applicant requested the historic nature of the property be considered and that they not be required to do a traffic impact statement or pay the additional costs. And, (2) from Sec. XI.Q.1 and Appendix J, Sec. 3(5) Two Approaches on a Single Lot. Currently, three approaches existed; one would be abandoned and the remaining two would allow for drive-through traffic from York Road to Herrin Road. Regarding fire protection, available sources in close proximity to the property were reviewed. Staff recommended approval of the subdivision with 20 Conditions of Approval.

Tony Prothero, Intermountain Consulting Engineers, 3262 Harness Loop, the applicant's representative, addressed the variance requests. The applicant, Matt Elvbakken, owner of Tizer Meats, was proposing a meat processing and sales facility on the site originally known as the Central Valley Market. The variance request was to allow the historic traffic generated to be grandfathered so as to avoid a pro rata share of impacts to Herrin Road. Reopening the location was projected to increase traffic by 22.3 percent. The second variance addressed access. The current primary access would be retained for the store. The access off of York Road would be gated off and used only for emergency access. The third approach on Herrin Road services the current dwelling and storage units and would be retained to allow cross-traffic access. Plans included a hard-surfaced holding area and shelter for animals that would be screened from view by residents and along Herrin Road. Regarding wastewater, the applicant preferred utilizing a sewer line that crossed the property and eventually flowed into the Leisure Village lagoons. Discussions were under way with Leisure Village; however, an alternate plan included a septic system, drainfield and replacement area. Sampling and testing at Tizer Meats indicated their wastewater was domestic strength. Solids from the new site would be separated off into a holding tank and transported offsite; the remaining water would basically be wash water strength. Presently, animals brought to Tizer Meats for processing are killed off-site, which was different than the proposed plan for this location.

Matthew Elvbakken, 3550 Tizer Drive, addressed the Commission. He began the process in February, 2011; the property was purchased in November, 2012, without Leisure Village's consent to utilize their sewer system. Small additions were planned for the existing store to house a freezer and cooler facilities and a smokehouse room. The killing floor and aging facility would be a 40x60-foot addition encompassing the present garage area. The garage would be moved to the north for use by tenants in the current residence. In 3-5 years a possible expansion at the site would result in a location similar to Bob's Valley Market. Presently, Tizer Meats was limited to custom slaughtering; a small retail section in their store allowed for inspected, boxed meat to be brought in and sold. He envisioned an operation that provided locally grown and processed meat for the Helena area that would employ 3-4 people at the outset and maybe 6-8 in the future. The slaughtering process was explained, as well as the waste treatment. Regarding the variance for traffic impacts, the convenience store was closed in 1999, which Mr. Elvbakken felt would generate more traffic than a present-day meat market. Herrin Road had not been upgraded since 1999, and had handled the historic traffic numbers. He was willing to share the burden of upgrading the road with other landowners along the road.

Chuck Fricke, President of Leisure Village Home Owners' Association, addressed the Commission by agreeing with the applicant's variance request related to access. He requested more specific requirements related to screening now that plans for a slaughter facility had been clearly stated, and requested retaining as much green space as possible. Mr. Fricke asked if an alternate kill location could be employed and the carcasses brought to this location. He referenced the Staff Report and suggested two corrections, changing dates from 2013 to 2012. He requested clarification on the section of the Covenants dealing with commercial signs. He reiterated that Leisure Village was not in favor of allowing the applicant access to their

wastewater treatment system, which he said took almost 10 years to complete, but preferred the applicant develop his own system. Regarding fire protection, he did not think Leisure Village would allow outside use of their well and fire protection system and suggested the installation of 1,000 gallon holding tanks as an alternative. He then referenced the Draft Findings and Conclusions, noting corrections, and questioned whether this was the proper location for a slaughter operation. Regarding the 30-foot "no-build" zone, he offered that Leisure Village would have it surveyed at their own expense. Where Herrin Road meets York Road, Mr. Fricke suggested striping to delineate a 90-degree stop. He reviewed the Draft Conditions of Approval next, noting Mr. Beal would write a letter denying hookup to Leisure Village's wastewater treatment system. They would also want proof that connections to the system had been disconnected and permanently sealed. He agreed with the permanent removal of the access approach onto York Road. Commissioner Murray thanked Mr. Fricke for his thorough testimony.

Matt Elvbakken noted that regulation for livestock, pens and slaughter operations was done by the Bureau of Livestock, Meat and Poultry Division. A drive through lane from Herrin Road to York Road would be basically in the middle of those permanent holding pens that would be constructed of removable panels to facilitate green space.

Michael McHugh confirmed the 30-foot easement was already surveyed and recorded, and any development within the easement would require an encroachment agreement.

Tony Prothero revisited the fire protection variance, stating it was his understanding the criteria in the Appendix of the County's Subdivision Regulations called for 250 gpm for two hours. He referenced a fill site 1.1 miles from the proposed site with a capacity of 515 gpm and another well at the Fire Station that produced 250 gpm for two hours. He believed Dave Sammons also had the authority to obtain water from the well in Leisure Village that flow tested at 765 gpm. He raised a question regarding the legality of the easement through the property.

Commissioner Hunthausen moved to take the Staff Report and the public comment under advisement and render a decision at Thursday's public meeting.

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.

There was no further business and the meeting adjourned at 11:24 a.m.

ATTEST:

  
Paulette DeHart, Clerk of the Board

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Michael Murray, Chairman  
  
Andy Hunthausen

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(Vacant)