

**PUBLIC MEETING
SEPTEMBER 12, 2013
MINUTES**

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, September 12, 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, George Theborge, Marni Bentley, Nancy Everson, Cheryl Green, Greg McNally, Carrie Severson, Frank Rives, Tony Prothero, Mark Floerchinger, Steve Tennant, Judy Groombridge, Steve O'Brien, Phil Porrini, Al Knauber, Kyle Courchane, Jack Walsh, Juan and Lucy Lozano, Debbie Valdez, Lucy St. Onge, Joyce Evans, Stephen O'Brien, Valerie Jaffe, John Horne, Jim Horne, 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 September 9, 2013. (Marni Bentley)

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

No public comment was received.

Commissioner Good Geise moved adoption of the consent agenda item, as outlined by Staff. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Memorandum of Understanding Between Lewis & Clark County and Montana Wool Growers Assn. (Nancy Everson) The Commissioners will consider the MOU for the Predator Control Program in the amount of \$1,871 for the period July 1, 2013 to June 30, 2014.

Nancy Everson, Director of Finance, reported on the Memorandum of Understanding between the County and the Montana Wool Growers Assn. in the amount of \$1,871.00. Annually, the County collects via tax bills a fee on the sheep owned in the County and remits the money to the Predator Control Fund. Staff recommended approval of the MOU.

No public comment was received.

Commissioner Good Geise moved adoption and signing of the Memorandum of Understanding Between Lewis & Clark County and the Montana Wool Growers Association. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Resolution 2013-86 Levying and Assessing a Tax Upon All Benefitted Property Within the Lime Kiln Road Rural Improvement District No. 1993-3, (Nunc Pro Tunc). (Eric Bryson)

Eric Bryson reported on the Resolution Levying and Assessing a Tax Upon All Benefitted Property within the Lime Kiln Road Rural Improvement District No. 1993-3, addressing a clerical error contained in Resolution 2013-75 dated August 27, 2013.

No public comment was received.

Commissioner Good Geise moved approval of Resolution 2013-86 Levying and Assessing a Tax Upon All Benefitted Property Within the Lime Kiln Road Rural Improvement District No. 1993-3, Nunc Pro Tunc. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Resolution 2013-84 Directing the County Treasurer/Clerk and Recorder to Issue a Tax Deed for a Certain Property Located in Lewis and Clark County for Which Real Property Taxes are Delinquent for Three or More Taxable Years. (Cheryl Green)

Cheryl Green, Property Tax Supervisor, presented the Resolution for Tax Deed for property that had delinquent taxes back to 2009, located in the New York Lode Mining Claim, Lot No. 7592, containing 13.87 acres, located in Sec. 36, T10N, R4W (1/4 interest), M.P.M., Lewis & Clark County, Montana.

No public comment was received.

Commissioner Good Geise moved adoption of Resolution 2013-84 Directing the County Treasurer/Clerk and Recorder to Issue a Tax Deed for a Certain Property Located in Lewis and Clark County for Which Real Property Taxes are Delinquent for Three or More Taxable Years. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Tax Deed for The New York Lead Lode Mining Claim, Lot No. 7592, Located in Sec. 36, T10N, R4W, (1/4 interest), M.P.M., Lewis and Clark County, Montana, (Ref: 3 Pat 388). (Cheryl Green) The Commissioners will consider the tax deed for the real property described as 1887-36-3-01-13-MS03.

Cheryl Green, Property Tax Supervisor, presented the Tax Deed for the New York Lode Mining Claim, Lot No. 7592, located in Sec. 36, T10N, R4W, (1/4 interest), M.P.M., Lewis and Clark County, Montana, (Ref: 3 Pat 388).

No public comment was received.

Commissioner Good Geise moved adoption of the Tax Deed for the New York Lode Mining Claim, Lot No. 7592 located in Sec. 36, T10N, R4W, (1/4 interest), M.P.M., Lewis and Clark County, Montana, (Ref: 3 Pat 388). 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. (Cont'd from 9/10/13.)

Lindsay Morgan, Planner, noted the Proposed First Minor Subdivision to be known as Saddle Rock Subdivision, a 4-lot subdivision located south of and adjacent to Tea Road, was tabled from the Sept. 10 Public Meeting. The Staff Report had since been completed and provided to the applicant, the applicant's representative, and hand delivered to members of Tuesday's Public Meeting audience. The main points of the Staff Report, including the three variance requests, were reviewed. Ms. Morgan provided a memo dated Sept. 12, 2013, containing recommended amendments to Condition of Approval 6. reflecting revised percentage of impact calculation for Collins Drive, between Tea Road and Fantasy Road, 23.90% ITE and 18.79 TIS.

Provided the Commission approved the subdivision, Condition 6. would require further amendment, to reflect the appropriate percentages. The amendment was necessary due to an error in calculating the number of vehicle trips as reported on Sept. 10.

Commissioner Hunthausen noted the letter from the Fire Chief, Lewis & Clark County Fire Dept. The report also included the Draft Finding of Facts and Conclusions, and the Conditions of Approval, and the variance application.

Tony Prothero, Intermountain Consulting Engineers, the applicant's representative, provided the rationale for using Ranchview Estates as a representative property to compare traffic and trip generation numbers for Saddle Rock Subdivision. Since receiving and reviewing the Staff Report, the applicant requested consideration of an extension of the subdivision review, to allow time to formulate a proposal for improvements in lieu of a pro rata share contribution.

Steve Tennant, 2376 Tea Road, Helena, stated he, and probably other neighbors, were not properly noticed by mail regarding the subdivision, and supported starting over with the process. The required posting on the property was 5 days, not the required 15 days. He expressed concern that the road study was completed in May and did not account for the heavy use at other times of the year. He restated his question from Tuesday, asking who would be responsible if water wells failed in the area due to increased wells. He requested notification of the proposed improvements to Tea Road, and expressed concern over emergency vehicle access and response time on Tea Road.

Judy Groombridge, Collins Road, Helena, expressed concern over the traffic estimates on Collins Road, noting the increased seasonal traffic accessing BLM lands and the dusty conditions.

Joyce Evans, 2276 Tea Road, Helena, cited the potential for approx. 12 new lots, with wells and septic systems, in the immediate area, not including JAMVAR subdivision, and the remaining undeveloped properties owned by Mr. Utick. She took issue with statements in the Staff Report; that Tea Road was up to County Standard, and that creation of new wells should not affect existing wells. Increased development would put further pressure on Jim Darcy School, which was already full; taxes would increase to pay for construction of an additional elementary school in the area. Ms. Evans questioned whether wildlife studies had been conducted and requested a moratorium on granting the subdivision to allow residents time to consider the impacts.

Commissioner Hunthausen cited State Law that required the Commission to review and rule on a subdivision proposal in a certain period of time; in this case, probably in the next two weeks.

Stephen O'Brien, 2623 Tea Road, Helena, provided written comments and read them into the record.

Lucy St. Onge, 2275 Snowdrift Road, stated she had not received information from the previous public meeting. She questioned the reference to mailboxes in the original application, stating there was no local mail service, and questioned the reference to school bus stops on Tea Road, as she stated the bus services stopped at Wooten Road.

Commissioner Good Geise asked who would be responsible if area wells were negatively impacted as a result of the subdivision moving forward.

K. Paul Stahl, Deputy Co. Attorney, responded the Legislature had not given local governments the authority over water rights; water rights were controlled by the State Dept. of Natural

Resources and Conservation. The County could have liability for approving a subdivision when there was a suggestion that there might not be enough water. It was Mr. Stahl's legal opinion the Commissioners could not deny a subdivision on water issues, as the Legislature had not given them control over water rights.

George Theborge, Director of Planning, stated that under Montana Law, a single-family home was exempt from having to go through appropriation of water rights for single-family home use. A community water system was required to obtain approval from DNRC and prove they had water rights for that withdrawal. He advised there was an upcoming hearing on exempt wells on Sept. 19 at DNRC to consider whether to continue the current policy. He acknowledged mistakes were made on the original notifications and postings; Staff has done everything possible to correct the discrepancy.

Eric Bryson confirmed considerable effort was made in hand-delivering a copy of the Staff Report to everyone who had attended Tuesday's public meeting. He explained the 20-acre parcels adjacent to the subdivision were created by an exemption authorized by the Legislature. The land was divided, individual certificates and deeds were issued for each parcel without subdivision review by the Commission. The Commission was required to follow the Subdivision Regulations which did not address water rights, as that was reserved for the State DNRC.

Lindsay Morgan addressed the question related to mailbox placement; a Condition of Approval could be drafted requiring the installation at a specific location in accordance with Postal Service requirements. Regarding bus routes, the students might be required to wait for a bus on Collins, instead of Tea Road.

George Theborge, responded to Mr. Tennant's question regarding whether public safety agencies had reviewed the adequacy of the roads and fire protection, confirming they were addressed in the Finding and Conclusions. Next he addressed Mr. Tennant's question regarding whether withdrawal of water from a fire well would affect groundwater. Fire wells were exempt from the well water rights requirements under Montana Law. Finally, he addressed Mrs. Evans' comment related to wildlife concerns, noting wildlife impacts had been reviewed and addressed by the applicant and the Staff.

Lindsay Morgan addressed Ms. Evans' question related to the JAMVAR subdivision on Fantasy road, which was granted preliminary approval and had less than 3 years to meet the Conditions of Approval placed on the subdivision.

Tony Prothero agreed to extension of the review period, set to expire on Sept. 16, to October 12, 2013.

Commissioner Good Geise moved to table the item until the Sept. 19th 10 a.m. Public Meeting Commissioner Hunthausen seconded the motion.

Commissioner Good Geise moved to grant, at the applicant's request, extension of the review period for 30 days. Commissioner Hunthausen seconded the motion.

The motion to table to Sept. 19 carried 2-0. The motion to extend the review period 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. (Cont'd from 9/10/13.)

Lindsay Morgan, Planner, noted this item was continued from the Sept. 10, 2013, Public Meeting. The Staff Report which was not available on Tuesday has since been completed and made available to all parties. The approval letter from Dave Sammons, East Valley Fire District, regarding use of the fire water supply at Lisa Road and York Road was also now in hand. The three variance requests were restated. The absence of Mr. Porrini's stamp on the Engineer's Certification for Helberg Drive was noted.

Phil Porrini, 1221 LeGrande Cannon, the applicant's representative, confirmed receipt of the Staff Report. He requested striking Condition 2, related to Weed Management Plan requirements, and supporting the three variance requests. There was general discussion on the State Law and Subdivision Regulations requiring the 2-page Weed Management Plan, and subsequent inspection by Weed District staff. Inclusion of the engineer's stamp was discussed; Mr. Porrini suggested inclusion of, "certified and stamped," on future documents.

Public hearing –

John Horne, 3890 Helberg Drive, Helena, requested striking Condition 2, Weed Management Plan, as the property was currently a grain field and was treated annually for weeds.

Jim Horne, 2890 Helberg Drive, Helena, echoed John Horn's comments.

The public hearing was closed.

Commissioner Good Geise moved acceptance of the Proposed Subsequent Minor Subdivision known as Amended Pate Minor Subdivision. Commissioner Hunthausen seconded the motion.

Commissioner Good Geise moved to grant the variance request from the County Subdivision Regulations, General Design and Improvement Standards XI.H.11, regarding dead end streets, stating it would not be detrimental to public health, safety, or general welfare or injurious to other adjoining properties regarding the dead-end road. Commissioner Hunthausen seconded the motion.

Discussion –

Commissioner Hunthausen cited the Conclusions of Law in the Sept. 11, 2013, memo related to the variance request for the dead-end street longer than the 700 feet. There were five Findings of Fact, and four Conclusions of Law spelled out in the Subdivision's criteria for meeting the requirements of granting a variance which were acknowledged and accepted into the record as part of the Commission's decision.

The motion carried 2-0.

Commissioner Good Geise moved approval of the variance request from the County Subdivision Regulations, General Design and Improvement Standards XI.H.15 regarding at least two different ingress-egress vehicular access routes, and providing standard legal and physical access. Commissioner Hunthausen seconded the motion.

Commissioner Good Geise stated that after reviewing the six Findings of Fact in the Sept. 11, 2013 Staff Report, and the four Conclusions of Law, she believed the applicant had demonstrated that the variance request met all four of standards, and therefore should be approved.

The motion carried 2-0.

Commissioner Good Geise moved approval of the variance request from the County Subdivision Regulations, General Design and Improvement Standards XI.H.3.c. regarding the required Preliminary Engineering Report. The 10 Findings of Fact, and 4 Conditions of Law in the Sept. 11, 2013 Staff Report were noted. The variance request met all four standards named in Section II, Subsection B (1) of the L&C County Subdivision Regulations.

The motion carried 2-0.

Commissioner Good Geise moved to approve the subdivision as presented with the approved variances and the 13 Conditions of Approval based on the Findings of Fact and Conclusions of Law as set out in the Staff Memo dated Sept. 11, 2013. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Contract and Encroachment Agreement Between Lewis and Clark County and Bridge Creek Estates and Phil Wirth, Owners. (Carrie Severson) Center pivot traverses the parkland, dedicated and deeded to L&C County, located north of Lincoln Road, west of North Montana Ave., in the NW ¼ of Sec. 19, T11N, R3W, north of Helena, Lewis and Clark County.

Carrie Severson, Special Districts Coordinator, presented the Contract and Encroachment Agreement between the County and Bridge Creek Estates and Phil Wirth, Owners. A center pivot was currently encroaching by spraying water upon County parkland property that was created in February, 2006. The parkland had not been developed. The Final Plat application for Amended Bridge Creek Estates Subdivision was displayed and reviewed.

No public comment was received.

Commissioner Good Geise moved approval of the Contract and Encroachment Agreement with Lewis and Clark County and Bridge Creek Estates and Phil Wirth, Owners, as outlined by Staff. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Contract and Encroachment Agreement Between Lewis and Clark County and Bridge Creek Estates and Phil Wirth, Owners. (Carrie Severson) Existing water control building, public wells, and all relevant appurtenances are located in the parkland, dedicated and deeded to L&C County, located north of Lincoln Road, west of North Montana Ave., in the NW ¼ of Sec. 19, T11N, R3W, north of Helena, Lewis and Clark County.

Carrie Severson, Special Districts Coordinator, presented the Contract and Encroachment Agreement between the County and Bridge Creek Estates and Phil Wirth, Owners. A water system comprised of a water control building, public wells and relevant appurtenances was encroaching on County parkland.

Tony Prothero, 3196 Brow Tine, Helena, the applicant's representative, provided a brief history on the parkland creation, noting it was in the original application for Bridge Creek Estates.

Frank Rives, Planner, noted the water system was contained inside a locked building.

No public comment was received.

Commissioner Good Geise moved approval of the Contract and Encroachment Agreement Between Lewis and Clark County and Bridge Creek Estates and Phil Wirth, as outlined by Staff. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Resolution No. 2013-85 Discontinuing a Portion of a Platted Subdivision Easement. (Carrie Severson) The Commission will consider the resolution to discontinue a portion of Roper's Loop within Bridge Creek Estates Subdivision.

Carrie Severson, Special Districts Coordinator, presented Resolution No. 2013-85 Discontinuing a Portion of Roper's Loop. An aerial of the area was viewed. A public meeting was held October 2, 2012, on the application and petition to vacate a portion of Public Access Easement within Bridge Creek Subdivision, known as Roper's Loop. Three conditions were placed at that time: requirement of a "No Road" sign, and a Dedicated Emergency Access Easement had been met. The third condition was the Resolution now before the Commission, to be executed simultaneous to the final approval of the amended plat.

Commissioner Good Geise moved approval of the Abandonment of the County Road Easement as originally requested upon fulfillment of the requirements associated with the action, and approval of finalization of the abandonment and authorization to sign the Resolution 2013-85 simultaneous to the signing of the Final Amended Plat of the Bridge Creek Subdivision. Commissioner Hunthausen seconded the motion. The motion carried 2-0.

Public Hearing. Final Plat Request and Subdivision Improvements Agreement for a Major Subdivision Known as Amended Plat of Bridge Creek Estates Subdivision. (Applicant: Phil Wirth) (Planner: Frank W. Rives) The applicant has submitted an application for final plat approval of the subdivision located east of and adjacent to N. Montana Ave. and approx. one mile north of Lincoln Road. Preliminary plat approval was granted Oct. 20, 2011. The Subdivision Improvements Agreement will expire June 21, 2014.

Frank Rives, Planner, reported on the Final Plat Request and Subdivision Improvements Agreement for a Major subdivision known as Amended Plat of Bridge Creek Estates Subdivision. Mr. Wirth submitted the application and paid the required fee for final plat. The subdivision created 15 new lots through a lot adjustment, including a utility lot for a wastewater treatment system. Nine lots were aggregated to create one large lot for future development. Abandonment of a segment of Roper's Loop and two encroachments were approved earlier in today's meeting. All 16 Conditions of Approval had been met by either completing the work or through two Subdivision Improvements Agreements for improvements not yet completed.

No public comment was received.

Commissioner Good Geise moved approval of the Final Plat Request and Subdivision Improvements Agreement for a Major Subdivision known as Amended Plat of Bridge Creek Estates Subdivision, as outlined by Staff. 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.

Eric Bryson noted this was Commissioner Good Geise's 100th day as Commissioner, and she had provided a cake to mark the occasion. Everyone was invited to Room 312 for a reception.

Commissioner Good Geise thanked the Staff for their work and the kindness extended to her during the first 100 days of her service as Commissioner.

There was no other business and the meeting adjourned at 11:45 a.m.

ATTEST:



Paulette DeHart, Clerk of the Board

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Michael A. Murray, Chairman



Andy Hunthausen



Susan Good Geise