



PUBLIC MEETING

May 10, 2016
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, May 10, 2016, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Mike Murray called the meeting to order at 9 a.m.

Commissioner Susan Good Geise was present. Commissioner Andy Hunthausen was excused on personal business. Others attending all or a portion of the meeting included Eric Bryson, Michele Peterson-Cook, K. Paul Stahl, Matt Heimel, Christal Ness, Greg McNally, Keith Hatch, Nancy Everson, Kevin Hamilton, Rodger Nordahl, Beth Norberg, Jack Walsh, Bret Bodlovic, Trisha Bodlovic, Alan Davis, Ryan Casne, Mike Mueller, Ryan Werner, Gabe Nistler, Brian Colin, Autumn Coleman, Al Knauber, and Nichole Nisbet, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Public Meeting Minutes: April 12, 21 and 26, 2016. DeTienne Family Transfer Hearing: April 11 and 13, 2016. (Nichole Nisbet)
- b. Task Order Between Lewis and Clark County and Land Solutions, LLC. (Kevin Hamilton)

Eric Bryson reported on the consent action items 2a-b and recommended approval.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

RFP Audit Proposals Opening. (Nancy Everson)

Nancy Everson, Finance Director, presented the proposals received in response to the request for proposals for audit services for the fiscal year 2016, 2017 and 2018. The first bid received is from WIPFLI CPA and Consultants of Helena, MT. The last bid was from Anderson ZurMuehlen of Helena, MT.

A motion was made by Commissioner Geise to direct staff to take the proposals under advisement and report back to the Commission on May 24, 2016 and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

**Resolution 2016-27 Establishing Fee Schedule for the Lewis and Clark County Fairgrounds.
(Keith Hatch)**

Keith Hatch, Fairgrounds Manager, presented the resolution establishing the fee schedule for for fiscal year 2017 the Lewis and Clark County Fairgrounds. The Fairgrounds operates as an enterprise fund and the fee schedule includes a 2 percent increase in rental rates to help cover the increase in operating costs. Staff and the Fair Board recommend approval of the resolution.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

Contract Agreement Between Lewis and Clark County Wastewater Revolving Loan Program and Montana Business Assistance Connection. (Beth Norberg)

Beth Norberg, Environmental Health Specialist, presented the contract with Montana Business Assistance Connection (MBAC) to provide low interest loans for the repair or replacement of failed or malfunctioning septic systems to qualified home owners whose property lies within Lewis and Clark County and the Lake Helena Watershed area of Jefferson County. The loan program can also be used to connect to City services if the home is currently located in the County. The contract period begins May 15, 2016 through December 31, 2016. The current fund amount is \$79,447.79.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

Encroachment Agreement Between Lewis and Clark County and Bret and Trisha Bodlovic. (tabled 5/5/16) (Christal Ness)

Christal Ness, Ombudsperson, presented the encroachment agreement for a permanent dog kennel encroaching into a utility easement, created for the Amended Plat of Lot A-1, Rosemary Acres Subdivision, located at 7230 Rosemary Drive.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

**Open Lands Program Specimen Creek Acquisition (Sponsor: Rocky Mountain Elk Foundation)
(Planner: Matt Heimel)**

Matt Heimel, Special Districts Planner, presented the proposed \$260,000 Specimen Creek Project and added the Commission may open a 30-day public comment period, after which a public hearing will be held for a decision on the funding request. The application, received April 19, 2016, requests \$260,000 from the County Open Space Bond Fund, proposed to be applied to the acquisition price of the property. The property is approximately 729 acres in size. On May 3, 2016, the CAC voted to recommend to the Commissioners that the Specimen Creek Acquisition Project receive priority funding of \$260,000, and that the level 2 application, which has been deemed complete and is subject to County legal staff's review to confirm its

compliance with the due diligence requirements of the Open Lands Program Guide. The motion also included that the recommendation is based on a determination that the level 2 application meets project evaluation criteria for protecting habitat for fish and wildlife; providing opportunities for outdoor

recreation; protecting water resources and water quality; preserving open lands and natural areas; and managing growth and development. The CAC unanimously voted 11-0 affirmatively on the motion. Mr. Heibel noted that Commission options that include upon reviewing details of the Specimen Creek Project, the Commission may open a 30-day public comment period, after which a public hearing will be held for a decision on the funding request. The public hearing may be scheduled for any regularly scheduled meeting of the Commission on or after Tuesday, June 14, 2016.

PUBLIC COMMENT-

Mike Mueller, Rocky Mountain Elk Foundation (RMEF) Land Manager, presented the project highlights, benefits and the background of the RMEF. It was noted that the acquisition will preserve fish habitat, enhance recreational opportunities including fishing and hunting and provide legal access across the property connecting to the Helena National Forest and Canyon Creek Wildlife Management Area. The total project cost is estimated at \$575,000.

Alan Davis, CAC Chair, stated his support for the project and noted the unanimous support of the CAC.

A motion was made by Commissioner Geise to open a 30-day public comment period and to schedule the hearing on June 14, 2016 and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

Proposed Copper Creek Estates Major Subdivision. (Applicant: Werner Nistler Properties, LLC) **(Planner: Greg McNally)**

Greg McNally, Planner II, presented the proposed Copper Creek Estates Major Subdivision. The Applicant proposes to divide the existing 198.45-acre tract of land into 17 lots, each for one single-family dwelling. The lots will range in size from 10 acres to 26 acres. All lots will be served by individual wells, individual on-site wastewater treatment systems, and utilities. Direct access to the lots will be off of an internal road network connecting to Old Iron Drive and Copperhead Road with access to Head Lane and Franklin Mine Road. The applicant has requested three variances from the Lewis and Clark County Subdivision Regulations: Chapter XI.F.9: Double Fronted Lots; Chapter XI.G.2: Block Length; and Chapter XI.H.11, Appendix J.3.3: Length of Dead End Roadway. Prior to the subject property's current configuration of 198.45 acres, the subject property was part of property approximately 325 acres in size and the focus of three prior subdivision applications. In April 2006, a proposal for 216 total lots was granted preliminary subdivision approval. In April 2008, a subsequent subdivision application was submitted which included a proposal was for 800 single family dwellings which was later suspended. In October 2010, a third application was reviewed which would have created 33 lots for single-family dwellings and was later withdrawn by the Applicant. The existing parcel is 198 acres. The subject property is currently undeveloped and has two ephemeral drainages transect the property in a generally north/south direction. The proposed subdivision is located within Special Zoning District (SZD) No. 45. SZD No. 45 was established in February 2009. Permitted uses within SZD No. 45 include single family residential and accessory uses; home day care and agricultural land uses. Places of worship, primary and secondary education uses, and family hardship residential are allowed with a Conditional Use Permit. There are existing covenants that apply to the property and the proposed Subdivision complies with the existing and proposed covenants. A public hearing has been scheduled before the Helena/Lewis and Clark County Consolidated Planning Board on Tuesday, April 19, 2016 and a legal ad was published in the Independent Record, and letters were sent to adjacent landowners and the appropriate agencies notifying them of the proposed Subdivision, three letters of public comment have been received. The written public comments expressed concerns about water availability; a lack of irrigation water recharging the groundwater; the location of Franklin Mine Road with respect to existing easements and property lines; heavy metal contamination due to mining activities on or near the subdivision; noxious weeds on the subject property; and the need for fencing off the area where mine waste and tunnels as said to be present. The project issues addressed include mining activity on or near the property as the proposed lots are located near the site of the former Franklin Mine mining operation. Past mining activities created significant land disturbances at the mine site including accumulations of mine waste materials. There are at least three-mine shafts near the property and significant stoping. Reclamation work done on or near the property was voluntary and not subject to local, State, or Federal

review and approval. Development within any reclaimed areas, mine shafts, and areas of stoping must be avoided. Furthermore, development activity on contaminated soils, if any, should be avoided, unless remediated. These areas must be graphically shown and described on the final plat. At the request of Community Development and Planning Staff, Bill Snoddy, Abandoned Mines Lands Project Manager with the Remediation Division of DEQ conducted a record search for the Franklin Mine property and provided electronic copies of multiple documents in their library. Mr. Snoddy provided a brief summary of reclamation work that has been performed by the State and private parties in area of the proposed subdivision. A memorandum from Kathy Moore of the Lewis and Clark County Health Department, dated January 25, 2011, provided some comments to the County Commissioners on the previous Subdivision proposed in this Area (Cornerstone Village Estates). This memorandum commented that limited soil sampling by the DEQ has previously indicated levels of lead sufficient to warrant an evaluation of the proposal with respect to potential public health impacts. It further suggested the establishment of an institutional control program to protect the existing reclamation work that has occurred and provide notice and education to future land owners about existing on-site conditions and how those conditions might affect their health. Anecdotal information provided to Community Development and Planning Staff indicates that owners of the subject property have, within the last few years or more, been actively mining the surface. This anecdotal information is supported by scarring on the landscape as seen on the western portion of the property in the 2015 aerial photograph. The potential suitability for developing the Copper Creek Estates Subdivision with residential home sites is unclear. While the Subdivision technically does not include the former Franklin Mine Site, the Subdivision's proximity to the former mine site and the potential for unknown hazards associated with mining activity in the area suggest a need for more information prior to any development activity. Another area of concern is water availability as the Copper Creek Estates Subdivision proposes 17 individual wells drawing from an area of fractured bedrock to serve the 17 proposed residential lots with an average density of one well per 11.50 acres. According to the Subdivision Application, well logs in the area demonstrate adequate water supply in the area to support the subdivision. The subject property was located within the boundaries of a DNRC controlled groundwater area, the Temporary Green Meadow Controlled Groundwater Area was originally established on April 11, 2008 and extended three times. This controlled groundwater area was allowed to expire on April 11, 2014. Concerns from local residents over potential impacts to local water resources resulted in establishing the Green Meadow Temporary Controlled Ground Water Area. As a result of this designation, the Montana Bureau of Mines and Geology (MBMG) included this area within the Scratchgravel Hills study area as one of the inaugural projects for the Ground Water Investigation Program (GWIP). Despite the expiration of the Green Meadow Temporary Controlled Ground Water Area and the study completed by the MBMG, water availability in this area was identified as an ongoing concern by those residents who provided written comments. The Hydrogeologic Investigation of the Scratchgravel Hills Study Area Lewis and Clark County, Montana Interpretive Report, 2013 prepared by the Montana Bureau of Mines and Geology Ground Water Investigations Program was completed to study an area where factors such as current and anticipated growth of industry, housing and commercial activity or changing irrigation practices have created elevated concern about groundwater issues. Results of this study suggest that if development at a density greater than one home per 10 acres is proposed, adaptive management should be used to ensure that excessive groundwater level declines do not occur. In addition, septic system requirements should be considered due to the limited ability for nitrates to be broken down in areas of thin soils and granite bedrock. The aforementioned MBMG Study is available in the Community Development and Planning Department upon request. Lewis and Clark County Water Quality Protection District (WQPD) Hydrogeologist, James Swierc provided comments on March 24, 2016 reflective of the MBMG study and other sampling results from unpublished WQPD sampling programs. His recommendations were as follows: potable wells should be installed as deep as practical below the water table to limit potential impacts to water quality from septic systems, agricultural fertilizers and/or manure, or other surficial sources, potable wells should be sampled after installation for trace metals, sulfate and nutrients to ensure that water quality meets regulatory standards for drinking water. Annual sampling for well owners is recommended since water quality may change with time due to changes in ground water flowpaths from the different wells in the area. The LCWQPD can assist homeowners with water sampling. Water levels in potable wells should be monitored regularly, consistent with MBMG study recommendations, to ensure that local depletion is not occurring. If extended drawdown is detected early, than local residents may work together to limit withdrawals to conserve water. This is only possible with regular monitoring. The LCWQPD can do the water level monitoring, placement of septic systems and drainfields with respect to well locations should consider

topography, placing the wells away from mixing zones downgradient from septic system drainfields. Since the actual mixing zones may be larger than regulatory defined areas, no wells should be installed downgradient from any drainfields. The next project concern is in regards to legal availability as according to the Subdivision Application, the distance between the proposed wells and the areas in which the wells are located have been analyzed for compliance with the DNRC's current definition of an exempt well and beneficial water rights are not expected to be necessary for this Subdivision. In support of this analysis, the Applicant has provided a letter from DNRC indicating that the proposed domestic and lawn and garden water use for the subdivision will remain below 10 acre-feet per year. The DNRC considered each of the 15 lots subject to DEQ review that would provide water to one domestic household and 0.13 acres of lawn and garden irrigation. The next project concern is in regards to Franklin Mine Road and Head Lane as during an informational visit with Staff, neighbors of the proposed Subdivision, Beverly and Stephen Weber, raised concerns about the easements and locations of Franklin Mine Road. They provided copies of their deed, Book 282, Page 609 and 610 describing a 30 foot wide road easement along the southerly boundary thereof. A previous Staff Report on the subdivision of this property also suggested some potential ambiguity related to the location of this road. The Staff Report dated March 7, 2006 for the Cornerstone Village Subdivision indicated the following: Based upon comments by the County Road Manager and anecdotal evidence, it appears that portions of Franklin Mine Road may not be located within the center of the easement for the road. The Director of Public Works indicated to Planning Staff that much of the Franklin Mine Road may need to be relocated southward to be in the center of its easement. Several adjacent property owners in Sunny Vista have indicated that their property lines are located south of the current physical construction for Franklin Mine Road. If this private property separates the proposed subdivision from the easements for Franklin Mine Road then the Applicants may not have legal access to the road. The Staff Report, dated December 1, 2010, for a less dense version of Cornerstone Village Subdivision, did not address any ambiguity in regard to easements or location of Franklin Mine Road. Planning Staff contacted the Applicant's Surveyor, Chris Ries, who identified the notation on the preliminary plat establishing the existing right-of-way limits for both Head Lane and Franklin Mine Road and he also noted that the most recent survey of property dedicated additional County Road Easements for Both Head Lane and Franklin Mine Road; however, Staff notes this survey failed to delineate the actual width of the dedicated easement with the exception of a description which reads, "R/W varies greater than 60". The next project concern is prime farmland as soil units identified adjacent to the majority of the subdivision are identified as prime farmland. Mitigation to adjacent prime farmland is described in Chapter XI.T of the County Subdivision Regulations which states the following: adjacent agricultural lands identified as prime farmland shall be protected from adverse impacts by requiring a 200-foot non-development buffer between the adjacent prime farmland and any residential structure in the subdivision. The County Subdivision Regulations definition of prime farmland is, "as defined by the Natural Resources Conservation Service, those lands that are best suited due to physical and chemical characteristics to produce food, feed, forage, fiber, and oilseed crops. Typically, these lands have an adequate and dependable supply from precipitation or irrigation, favorable temperature and growing season, and acceptable soil acidity and alkalinity." A 200-foot non-development buffer between adjacent prime farmland and any residential structure should be graphically shown and described on the plat and the restrictive covenants should provide notice of its existence. The next project concern is in regards to the Green Meadow Study Area as the Board of County Commissioners adopted the Green Meadow Study on April 19, 1977. The division of the Green Meadow Ranch in 1972 precipitated this study, and the conflicts that occurred between the subsequent property owners who wanted the ability to further subdivide their land in the area and those who did not want to see further subdivision. The Study examined the following: physical limitations of the area for development; opinions of land-owners; and recommendations. The Green Meadow Study was not adopted as a regulatory document, but one that provides information and recommendations. The Green Meadow Study Area was considered in the adoption and creation of Special Zoning District No. 45. As proposed, the density of approximately 10 acres per dwelling unit or greater and land uses being single-family residences of Copper Creek Estates reflect the recommendations of the Green Meadow Study Area. Additional recommendations of the study include: maintaining a rural atmosphere and broad open spaces through the use of clustering of housing and the screening of housing with vegetation; maintain agricultural potential for those who wish and to maintain irrigation systems; minimize number of roads. The next project concern is in regards to the Growth Policy as according to the Lewis and Clark County Growth Policy, the subject property is located within the Helena Valley Planning Area as a Rural Growth Area. Rural Growth Areas are intended to accommodate low-density development based on the combined

constraints of water availability, road conditions, and rural fire protection. The variance requests were presented and the first variance request is Variance No. 1 as seven proposed Lots will front onto Franklin Mine Road on their north side and a proposed internal access road on their south side. Therefore the Applicant has requested a variance from the following requirement Chapter XI.F.9 Lots which states: through or double frontage lots are prohibited except where necessary to provide separation from arterials or collector streets, or to overcome specific disadvantages of topography or orientation. The next variance request is Variance No. 2 as a proposed internal access road will be constructed with a block length of approximately 3876 feet. Approximately 876 feet of road is pre-existing. Therefore the Applicant has requested a variance from the following requirement: Chapter XI.G.2 Blocks, Block length shall not be designed, unless otherwise impractical, to be more than 1,600 feet. The third variance request is Variance No. 3 as proposed, the extension of Old Iron Road will create an 881-foot long dead-end road with a cul-de-sac. As proposed, Lots 8A-16 and 8A-17 will access a dead-end road with a cul-de-sac that is 845 feet in length. Therefore the Applicant has requested a variance from the following requirement: Chapter XI.H.11, Appendix J.3.3 which states: a dead-end street must include a cul-de-sac or hammerhead turnaround constructed in accordance with Appendix J unless the dead-end road is proposed as part of a future road connection pursuant to XI.H.16. A dead-end street or cul-de-sac shall not be greater than 700 feet in length. The City-County Planning Board recommended approval of the variance requests and to conditionally approve the subdivision with all draft findings of fact as prepared by staff and three conditions of approval as identified in the memo.

Ryan Casne, applicant's engineer, noted that the proposal is in compliance with the zoning in the area, the Growth Policy and with the Green Meadow Study. The 2013 DNRC study recommended the max density of 10 acre lots and noted that a March 2016 water rights determination that limits lots to 1.3 acres. It was noted that two wells have been recently drilled on the property and pumped at 40 gallons a minutes for 40 hours and the other well was at 260 for 7 hours which will be used for the fire hydrant. Mr. Casne noted the applicants are fine with the three conditions of approval that were added and that the applicants are willing to deed 30 feet along the north boundary to accommodate Franklin Mine Road.

Commissioner Geise stated her concern about Franklin Mine Road and the impacts it may have on the County. She noted the water availability concerns as stated by Mr. Swierc that addressed that fact that local residents may work together to limit withdrawals to conserve water and asked how that would occur.

Ryan Casne stated that this should be done regularly as residents should be testing their wells regularly. Mr. Casne noted that it cannot be enforced but ideally the residents would work together.

Commissioner Geise asked how the requirements of the lawns will be addressed.

Ryan Casne noted it will be addressed in the DEQ approval and the restrictive covenants.

Commissioner Geise asked about the buffer for prime farmland and how the requirement will be addressed.

Ryan Casne stated the proposal has large lots and the farmland buffer will affect the western and other boundaries of the proposal.

Greg McNally noted the prime farmland will be shown on the final plat and will be in the restrictive covenants. Discussion was had on how prime farmland is identified and it was noted that the soils are identified by the Natural Resources Conservation Services.

Commissioner Murray asked about where the land has been surface mined if there is a proposal on how to prevent weeds in that area.

Ryan Casne noted that Helena Weed Control sprayed the area last week and the applicant intends to seed the area to reclaim the area.

A motion was made by Commissioner Geise to table the item until the regularly scheduled meeting on May 19, 2016 and seconded by Commissioner Murray. The motion Passed on a 2-0 vote.

Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

Adjourn

There being no further business, the meeting adjourned at 10:31 am.

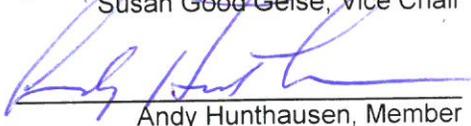
LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS



Michael Murray, Chairman

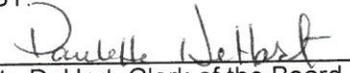


Susan Good Geise, Vice Chair



Andy Hunthausen, Member

ATTEST:



Paulette DeHart, Clerk of the Board