



PUBLIC MEETING

October 5, 2017
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, October 5, 2017, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Susan Good Geise called the meeting to order at 9 a.m.

Commissioner Jim McCormick was present. Commissioner Andy Hunthausen arrived at 9:17. Others attending all or a portion of the meeting included Roger Baltz, Marni Bentley, Brian Coplin, Misty Edwards, Nicho Hash, Larry Hoffman, Charles Lane, Greg McNally, Jim Mitchell, Scott Svee, Audra Zacherl, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

- a. Vendor Claims Report for Week Ending October 6, 2017. (Marni Bentley)

Roger Baltz reported on the consent action item 2 a and recommended approval.

Marni Bentley, Budget Coordinator, addressed the baggage fee charge of \$25 on a county credit card. The baggage fees were reimbursed to the County with the receipt attached to the claim.

No public comment was received.

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

Grant Application to the Montana Department of Agriculture Noxious Weed Trust Fund. (Audra Zacherl)

Audra Zacherl, Assistant Director of Public Works, presented the Special County Reservation grant application to the Montana Department of Agriculture Noxious Weed Trust Fund for an amount up to \$7,500 to be used for the noxious weed program. The funds would be used to purchase a replacement spray truck reel for \$1,000; build a community rental trailer for \$4,100; purchase noxious weed identification books for \$1,800; and to purchase insects that fight Tansy Ragwort and St. Johnswort in the areas affected by this year's wildfires, specifically Alice Creek and Rodgers Pass for \$600. No matching funds are required on this grant. Staff recommends approval.

Larry Hoffman, Weed District Coordinator, stated this would be a positive for the County. The noxious weed identification booklets will be for the public and will also be sent to those that receive complaints from the Weed Department. The insects will be purchased from a private company in Bozeman, MT.

No public comment was received.

A motion to Approve was made by Commissioner McCormick and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Contract Between Lewis and Clark County and Diamond Construction, Inc. (Audra Zacherl)

Audra Zacherl, Assistant Director of Public Works, presented the contract with Diamond Construction, Inc. to complete a minor interior two-phase remodel at the PureView Health Clinic. The first phase is to increase the existing pharmacy area by demolishing an existing wall between the pharmacy and an adjacent office for a cost of \$26,560. This phase is time sensitive and to be completed by November 30, 2017. Phase II will separate the group counsel room into two individual counsel rooms by adding a wall and door for a cost of \$9,350. This phase will begin as funding allows, to be completed within one year of contract execution. Staff recommends approval for a total amount not to exceed \$35,910.

No public comment was received.

A motion to Approve was made by Commissioner McCormick and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Resolution 2017-143 Levying an Assessment Upon Customers of the Lincoln Solid Waste Management District Who Own Real Property in the District and Owe an Unpaid Overage Charge for FY2017. (Misty Edwards)

Misty Edwards, Finance Coordinator, presented the resolution to place unpaid solid waste charges on the tax bills of customers in the Lincoln Solid Waste District who own real property in the district and owe an unpaid charge. Customers that exceeded their assessed cubic yard limit were mailed statements on July 21, 2017 showing the breakdown of the charges and the amount due. Customers were advised that if their accounts had not been paid by September 15, 2017 the charges would be added to their tax bill. Staff recommends approval.

No public comment was received.

A motion to Approve was made by Commissioner McCormick and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

Resolution 2017-144 Levying an Assessment Upon Customers of the Lincoln Solid Waste Management District Who Own Personal Property in the District and Owe an Unpaid Overage Charge for FY2017. (Misty Edwards)

Misty Edwards, Finance Coordinator, presented the resolution to place unpaid solid waste charges on the tax bills of customers in the Lincoln Solid Waste District who own personal property in the district and owe an unpaid charge. Customers that exceeded their assessed cubic yard limit were mailed statements on July 21, 2017 showing the breakdown of the charges and the amount due. Customers were advised that if their accounts had not been paid by September 15, 2017 the charges would be added to their tax bill. Staff recommends approval.

No public comment was received.

A motion to Approve was made by Commissioner McCormick and seconded by Commissioner Hunthausen. The motion Passed on a 3-0 vote.

James and Dorothy Mitchell's Appeal of Community Development and Planning Director's Determination. (Tabled 9/26/17) (Appellant: James and Dorothy Mitchell) (Planner: Greg McNally)

Greg McNally presented the James and Dorothy Mitchell's appeal of the Community Development and Planning Director's Determination regarding the legal status of Ranger Drive. Extensive conversation was had during the September 26, 2017 Commission meeting and was tabled for further discussion between the appellants and the Planning Department. Mr. McNally added that Planning staff and Deputy Attorneys Charles Lane and Nicho Has met with Mr. Mitchell and Mr. Svee, the appellant's attorney.

Charles Lane, Deputy County Attorney, referenced Mr. Theborge's letter that stated a provision was not seen in the County Subdivision Regulations that were in place at the time of the application that gave county staff the authority to determine if Ranger Drive was a public road. He walked through the procedure on who makes the decisions and why they are made. Statutorily, Section 76.3.611 of the MCA states that the governing body that will examine each final subdivision plat and will approve the plat only if it conforms to the conditions of approval. Inherent in that is the authority for the Commission to grant the authority to make these decisions to its agents and it appears the County has done so through the Subdivision Regulations Section 3c3 Final Plat Review. This occurs after the applicant has made the application for final plat. Mr. Lane's understanding is that staff assists applicants in knowing what the requirements are and what is required of them to meet the conditions of approval. He believes Mr. Theborge was looking for guidance from the Commission on how they should proceed in determining whether or not a letter from the developer satisfied that condition of approval. The condition that the Commission placed on the preliminary approval is that the applicant shall establish or demonstrate that Ranger Drive meets the requirements for legal access of the Lewis and Clark County Subdivision Regulations. The question presented by Mr. Theborge and has been appealed is whether or not County staff has the authority to make a determination that Ranger Drive meets the requirements for legal access and satisfies Condition of Approval No. 21. Implicit in that question is whether or not the County should accept as determinative of the public access nature of this road a written opinion from an attorney for the developer.

Commissioner Good Geise stated the very specific question before the Commission today is was Mr. Theborge correct in saying that the Planning Department does not have the authority to make this determination on the legal status of Ranger Drive.

Mr. Lane stated the issue is whether County staff can make a determination that Ranger Drive meets the requirements for legal access. In Mr. Theborge's reasoning he was implying that doing so would be County staff making the determination that there is public access. That is distinct from whether or not the materials submitted by Mr. Mitchell satisfy the condition of approval. The underlying issue is whether or not the County will accept as evidence of a public road, a contested road that has been undetermined as to its public nature by County staff. Will the County accept a letter from a private attorney hired by Mr. Mitchell as evidence that it is a public road? To clarify the question does County staff have the authority to make the determination that the condition of approval is met by the material submitted by Mr. Mitchell.

Commissioner Good Geise stated the Commission could make the determination at final plat, but by that time all of the work would have been done. What are the other ways the applicant can get a definitive answer as to whether Ranger Drive is a public or private road.

Mr. Lane stated the County Attorney's Office legal recommendation has been that as evidence of public nature of the road that the applicant present recorded evidence, as in a District Court

decision on a declaratory judgment that is a public road or something from the Clerk and Recorders Office on a final plat that clearly demonstrates it is a public road, of which they have not done so. They have presented a letter provided by their attorney that for legal reasons it should be a public road; however that does not make it a public road.

Mr. Lane added that the applicant's options are to get a declaratory judgement or they could have the landowners petition to make it a public road. The applicant could also wait until final plat and see if County staff would recommend that he has met the condition of approval. County staff would likely present an application that states that legal access is undetermined and request the Commission make that decision.

Mr. Lane stated that the County Subdivision Regulations define legal access in Appendix A as accessing a county road easement or a public right-of-way. That access is needed to get to a subdivision. The issue here is a section of Ranger Drive, which is the road leading to the subdivision, is undetermined on its public access. The access on that road is also verbally contested. The appellant could get a determination as to the status from a District Court. That determination would satisfy Condition of Approval Number 21. Mr. Lane recommended the Commission remained neutral on road issues and place the burden on the applicant.

Mr. Lane believes the intent of Mr. Thebarga's letter and recommendation was to provide guidance for the staff and the Commission in how to guide the applicant on his options.

Scott Svee, Jackson, Murdo and Grant representing the developer Jim Mitchell, feels like quite a bit of effort has been made trying to determine who makes the decision on the access of the road. Mr. Svee stated that County staff has made a determination on the status of Hines Road as that was a recorded determination. Mr. Svee added that the status of Ranger Drive was decided in 1997 when a neighboring subdivision, Foster Estates, was approved. Based on the staff report from the approval of Foster Estates in 1997, legal physical access was identified as Ranger Drive from Canyon Ferry Road. He believes the condition of approval should be removed as this has already been done previously. He added that the applicant has provided the requested information regarding Ranger Drive but that now staff states they do not have the authority to make the determination.

Commissioner Hunthausen stated that the applicant was asked to demonstrate legal and physical access but that the applicant has not provided that determination.

Mr. Lane stated that he and Mr. Svee are in agreement that County staff can provide guidance to the applicant on how to meet conditions of approval. Mr. Svee stated that guidance should be in the form of telling the applicant what documents are required. Is a recorded document sufficient, does the access have to be insurable, is a declaration from all neighboring landowners sufficient; those sort of questions need answers.

Mr. McNally stated Hines Drive was determined to be public access as designated on the plat of Holmberg Village Estates. It was dedicated as a public access easement and accepted by the County Commission by their acceptance of the final plat.

Commissioner McCormick what he has read is the legal status of the road is undetermined and the condition is whether or not Ranger Drive meets legal access. Commissioner McCormick wants to be sure that what the decision that is made is legal and access is determined.

Mr. Svee stated that if he sought a determination from a District Court, it would only be a declaratory judgement. He would ask only whether or not Ranger Drive meets the County regulation requirements. The applicant already has insurable access therefore legal access is not an issue to them.

Commissioner Hunthausen encouraged the Commission to look at the staff report from December 2016. The condition of approval was put in place for a reason; the reason being that the status of a section of Ranger Drive was undetermined. It was clear at that point that the burden would fall on the applicant on to get that determination.

Mr. Lane stated that he has been trying to figure out a solution to this that does not cost the developer and does not delay the subdivision.

Commissioner Good Geise stated the need is to focus on the real question before the Commission today, which is whether or not to uphold Mr. Thebarga's decision.

Mr. Lane there options for getting these other issues before the Commission; one of which is to modify the conditions of approval. Mr. McNally stated that the regulations do provide for a request to modify. That request would go before the Commission for a public hearing and approval.

James Mitchell, 3947 Valley Drive and applicant, stated he spoke to his engineer and was told it would cost approximately \$150,000 to \$180,000 to complete the 6 lot subdivision. He added that he built Ranger Drive in 1997 and feels that if the County made him bring that road up to county standards; it should be considered a public road. He added that he believes the Commission has the authority to determine the status of that road.

A motion was made by Commissioner Hunthausen to deny the appeal and uphold the Community Development Director's determination. The motion was seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

Commissioner Hunthausen stated a declaratory judgement is the soundest way to make the determination to not put the county taxpayer at risk.

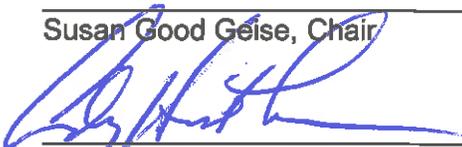
Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

Adjourn

There being no further business, the meeting adjourned at 10:22 am.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

Susan Good Geise, Chair

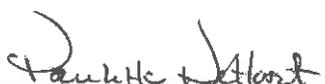


Andy Hunthausen, Vice-Chair



Jim McCormick, Member

ATTEST:



Paulette DeHart, Clerk of the Board