



PUBLIC MEETING

December 19, 2017
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Tuesday, December 19, 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 Andy Hunthausen and Commissioner Jim McCormick were present. Others attending all or a portion of the meeting included Bryan Backeberg, Roger Baltz, Stephanie Beckert, Katrina Chaney, Jason Danielson, Paulette DeHart, Kari DesRosier, Nancy Everson, Pat Ford, Karie Fryndelund, Eric Gilbertson, Brittany Hogan, Donna Amaro, Susie Dyba-Hogan, Jerry Hamlin, Nicho Hash, Charles Lane, Nina Martello, Lindsay Morgan, Steve Story, Tammy Potter, Paul Spengler, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Consent Action Items

There were no consent action items.

Resolution 2017-160 Naming Pollack Lane. (Jason Danielson)

Jason Danielson, Addressing Coordinator, presented the road-naming request initiated by the City-County Addressing office to name a road located 800 feet north of the intersection of Craig Frontage Road and Rocky Road. The road begins off Rocky Road and travels northeast approximately 1,400 feet. Existing addressing standards states that a road with three or more structures shall be given a separate and unique name. Naming a road in Lewis and Clark County requires the completion of a road-naming petition and a majority of adjacent property owners must agree to a proposed road name. On December 7, 2017 Ms. Brenda Gruel submitted a signed petition proposing Pollack Lane. Since she is the owner of two adjacent parcels her request is the majority. Staff recommends naming this road Pollack Lane. If approved notification letters will be sent to the applicant and service providers. County Public Works will also be notified to create and install the road sign.

No public comment was received.

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

Resolution 2017-161 Ordering the Consolidation of the Office of County Coroner with the Office of County Sheriff. (Nancy Everson)

Nancy Everson, Chief Financial Officer, presented the resolution to consolidate the office of County Coroner with the office of County Sheriff. The Commission passed the resolution of intent to consider consolidation on December 5, 2017. In August 2016, Coroner Mickey Nelson passed away and at that time, the Commission appointed Bryan Backeberg to complete the term. The current office consists of the appointed coroner Bryan, a deputy coroner, and an administrative assistant. The consolidation proposes to transfer the three positions and the employees in the positions under the Sheriff's Office. The current coroner would be reclassified to Chief Coroner with the other positions remaining in the same job classification under the consolidated office. There are known and unknown financial consequences to be considered. The estimated financial consequences of consolidation are neutral. All three positions will move over at the same pay with a slight decrease to the Coroner position as it transfers to the Chief Coroner position. A stipend could be paid to sheriff's deputies that act as coroner. There could also potentially be additional compensation to the Sheriff. The current Coroner's Office budget allows \$13,000 for fill-in coroners when needed, that funding would be used to compensate the deputies.

A consideration in the consolidation is an increase in the Sheriff's salary for the additional duties of coroner. Statute requires that the Sheriff's salary is used in compensating the sworn deputies under him and is set as a percentage. If additional compensation of \$5,000 for coroner duties in the Sheriff's base salary that would be a cost to the County of approximately \$265,000 annually. Considerable discussion has been had on whether compensation for coroner duties be part of the sheriff's base salary. A survey was conducted of about 35 counties that have consolidated offices and majority of them compensate the sheriff the additional amount and exclude that from the base pay. The County Attorney's Office believes if additional compensation to the sheriff for coroner duties is excluded from the base pay to compensate the deputies the chances of prevailing in court would not be good for the County.

There is a considerable benefit in consolidation including having deputies that could perform the coroner duties on every shift. This would relieve the 24/7 nature affecting the current coroners. Ms. Everson added that if the consolidation is approved it would not take effect until January 2019 and the filing for election would be for a combined Sheriff/Coroner and the current coroner would not need to file.

Commissioner Good Geise stated it would be her preference that if the offices are consolidated the pay would remain the same for the current Coroner's Office employees; the issue of additional compensation for the Sheriff would be handled in the spring by the Compensation Board. The Compensation Board makes recommendations regarding elected officials salaries; it is the Commission's final decision to accept or reject those recommendations.

Commissioner Hunthausen, Commissioner Good Geise, Mr. Lane discussed the additional compensation for the sheriff. If the consolidation is approved and the Compensation Board recommends the additional compensation for the Sheriff then the risk being discussed remains. Commissioner Good Geise noted only if the recommendation is accepted. Mr. Lane stated if the Sheriff's salary is increased there is a probability that the county would not prevail in preventing the money from filtering down to the deputies. The county would be liable for the salaries.

Mr. Lane added that if the consolidation were to happen, the decision regarding the pay would need to occur seven days prior to the filing deadline because those filing for election need to be informed regarding the pay.

Commissioner McCormick and Ms. Everson discussed the budget and if the sheriff's salary was increased by \$2,000 that would be an approximate overall increase in \$100,000; an increase of \$5,000 would be an approximate increase of \$265,000 annually if the salary equation applies to all of the deputies. Ms. Everson stated the current budget for the Coroner's office is about \$340,000. The Coroner's current budget would roll into the Sheriff's Department budget. A large financial savings is not expected by consolidating, it is more the operational efficiency. Commissioner McCormick stated the unknown is how the salary structure would roll out if the Sheriff's salary is compensated for the additional coroner duties.

PUBLIC COMMENT -

Bryan Backeberg, Coroner, stated he submitted a document on December 8, 2017 expressing his concerns with staffing considerations. He is very weary of the unknowns. He is satisfied on the portion of the staffing part and the employees remaining at the same salary level. But he is concerned budgetary wise as to what would happen once the Coroner's Office budget is consumed by the Sheriff's Department. He is concerned that this will affect the Coroner's training which could ultimately affect the public in a death investigation.

Mr. Backeberg has had conversations with neighboring counties and they stated it works for their smaller county, but it would be interesting as to how it would work for a large county such as Lewis and Clark. He has not had conversation with larger counties such as Yellowstone, Missoula, and Flathead, which have consolidated offices.

Commissioner Hunthausen pointed out that if the offices were combined the Commission would have limited control as to how the budget is spent within the department. Ms. Everson stated the Commission approves the final County budget, but the department heads have a lot of liberty in allocation of the resources within their budget. Commissioner Good Geise asked if the Commission thought the coroner function didn't have enough funds allocated for things such as training could the commission direct the sheriff to augment that portion of the budget. The answer was it could be directed.

Eric Gilbertson, Office of the Sheriff stated he has concerns regarding a comment made that if a deputy was on shift and a coroner was not available the deputy would be able to take the call. There are three patrol deputies on the street at any given time, a limited amount. He understands approximately 500 death investigations are handled annually by the coroner's office. He calculated about 8 1/2 hours per case. There would be a deputy on shift that would potentially be pulled away, leaving two deputies on the street to respond to all other calls. His recommendation would be if a deputy is to do the additional work, that it be a call-in person.

Susie Dyba-Hogan, 3555 York Road, stated the consolidation does have potential and the County in time would benefit. She asked if the Commission has brought the two offices together to meet at least three times for discussion on how they can better serve the community by consolidating. The staff in the coroner's office has worked continuously to serve and it shows through their relationship with other agencies. Her recommendation is to bring the offices together for discussion prior to the consolidation. What the Coroner's Office currently has should be taken with them to share. Does the Sheriff's Office have any policies or procedures in place as to how to take the first step?

Commissioner Good Geise stated there are policies and procedures in place. Currently there are very set protocols adhered to by the Sheriff's staff and the Coroner's staff. If this consolidation passed there would be a year to discuss everything prior to the consolidation taking place. The legal staff would demand there be very strict protocols that is within the law.

Commissioner Good Geise stated there are two things before the Commission today: one being a policy decision, if that decision is in the best interest of Lewis and Clark County that the two offices be consolidated; the second issue is compensation and that will be dealt with at a later time. They are two separate issues.

Commissioner McCormick read into the public record a statement made by attorney Cherche Prezeau, counsel to the Sheriff's Association with regards to the legal rights of the Association to take the position that an increase in the Sheriff's salary should result in a scaled salary increase to each deputy, referencing the associated MCA. Also in the public record, Montana Association of Counties (MACo) has made it clear that any litigation over this issue will not be covered; the County will be liable for any claim in any way connected with collective bargaining negotiations or agreements, referenced Provision 16 of MACo policy. In addition, there could be penalties of up to 110 percent for reimbursement should the County not increase the deputy's pay and found later by a court that the deputies were entitled to additional compensation. A modest increase of the Sheriff's pay to \$2,000 would result in an increase of \$100,000 additional costs for deputy salaries.

The Commissioners discussed the consolidation. Many counties have shown combining the offices can work. But as pointed out by Commissioner McCormick the consolidation and the salary piece cannot be separated easily. Unless it is stated, the offices will be combined with no pay increase at all, avoiding all risk. If the offices are combined stating they are two separate issues and in the spring the Compensation Board makes a recommendation the Sheriff is entitled to an increase in pay, it comes back to the Commission for a decision. Do they increase a person's wage that has extra duties or do they continue to say there will be no wage increase for having extra responsibilities in order to avert a possible risk in the future. Is it better to leave things as they are and not have to consider the possible issue or better to consolidate and make the decision today or down the road. Out of fairness, Commissioner Hunthausen's first response would be if two positions are combined with more responsibilities extra compensation would be expected.

Paulette DeHart, Treasurer, Clerk and Recorder, stated the filing period opens January 11, 2018 and the filing fee is one-half percent of the base salary for the position being filed for. Putting the salary off would mean the filing fee would be based on the existing salary for 2019. Ms. DeHart added that it would be best that the base salary be known prior to January 11, 2018.

Mr. Backeberg spoke regarding the efficiencies with consolidation. He stated at times having only having two staff can be overwhelming and that having more staff trained in coroner duties would be beneficial. The continuity of the care with the decedent and the family would be also beneficial. Other efficiencies would be with the chain of command regarding property and evidence.

Commissioner Good Geise asked if there has ever been an issue with the collection and custody of evidence that became problematic. Mr. Backeberg responded there was the issues with the previous coroner's office being understaffed.

Donna Amaro, Mortician at Big Sky Cremations, stated in her experience deputies miss a lot of things with personal property when they go out on a call. This has been a problem in the past.

The deputies are busy and not necessarily properly trained. The coroner plays a vital role for funeral directors and that should be taken into consideration.

There being no further public comment, Commissioner Geise closed the public hearing.

A motion was made by Commissioner Hunthausen to approve Resolution 2017-161 to consolidate the Office of County Coroner with the Office of County Sheriff and was seconded by Commissioner McCormick.

Commissioner Hunthausen stated there are good people currently in the offices. It is the responsibility of the Commission to look at efficiencies in government. The issue of compensation will come before the Commission and the right thing to do would be to compensate someone for the additional work. If the Compensation Board recommends no increase in pay, he will vote against that recommendation.

There is a motion on the floor. The motion Passed on a 2-1 with Commissioner McCormick opposed.

Appeal. Floodplain Development Permit Application Denial for Red Fox Meadows Subdivision. (Tabled 11/30/17) (Appellant: Hamlin Construction and Development Co., Inc.) (Floodplain Administrator: Paul Spengler)

Paul Spengler, Disaster and Emergency Services Coordinator, read the November 21, 2017 response from Steve Story of Department of Natural Resources and Conservation (DNRC) to Mr. Hamlin's November 11, 2017 written appeal. Mr. Story reviewed and considered Mr. Hamlin's written testimony and DNRC's position has not changed.

Mr. Spengler stated that he relied on DNRC for technical assistance in denying the floodplain application. Additionally, the County contracted with Michael Baker International for review and additional technical assistance on the application.

The question to be addressed today is whether the denial of the floodplain permit application was proper.

PUBLIC COMMENT -

Jerry Hamlin, Helena, stated he would like to review the letter from the DNRC. If it is true that that DNRC and Michael Baker never insisted the USGS equations be used, how did they come up with the 1,330 cfs? He presented an explanation of what 500 cfs looks like. Mr. Hamlin does not agree that 1,330 cfs could fit into the channel. He referenced that when the Eastgate II wastewater treatment plant was installed they did a lot of flood mitigation. According to a letter that Mr. Hamlin received from the Eastgate Homeowners Association, they retain all of the water on their site so there isn't any water coming from there. Every report he has read shows that the canal acts as a retardant for water that flows through his property. Mr. Hamlin asked where is there a perennial stream or creek in the area that would flow at 1,330 cfs. He was told by engineers that that is the flood stage of Prickley Pear Creek. He worries that using the USGS calculations have no bearing on this existing site. The soils in his drainage are not like the soils in other drainages that USGS uses for comparison.

Mr. Hamlin added that he considers it arbitrary to allow the state or the county to design a road at one standard and then tell him the same standard does not apply to him and that he has to increase the amount of flow. He stated that he hired three technical experts and that all 3 disagree with the experts the county relied on.

Mr. Hamlin stated it is important to him to know whether or not the Commission has reviewed the report from his expert Shawn Higley as well as the letter they submitted to Paul Spengler on October 23, 2017. Knowing that will make a difference in his testimony he gives today. He will assume that the Commission has reviewed those documents.

He would like to offer six reasons for the Commission to possibly think about overruling the existing denial of the floodplain permit application. First, Mr. Spengler admits he has no experience or formal training about floodplain management. When Mr. Spengler accepted the applications number one and two, he admits he did not follow county, state or federal regulations or procedures. Mr. Spengler further admitted that he has never reviewed a floodplain application for a major subdivision but only for small one lot projects. Mr. Spengler stated he did not follow the County regulations because his first priority is to get the information to the DNRC immediately. Mr. Hamlin stated his point was that there be a process and that it be followed.

Second, Mr. Higley's affidavit dated March 10, 2017 as well as his letter to Paul Spengler on October 23, 2017 both state what happened during the review process and why Mr. Higley feels his calculations are correct and that Mr. Story's are incorrect. It also shows that there are different methods to get to a reliable answer, none of which are perfect as they express variability.

Third, one of the experts concluded that the rigorously developed and calibrated HEC-HMS model developed by WWC with its more extensive use of localized soil and land cover provides the most reliable estimate for the 100 year peak discharge for the Red Fox drainage. That estimate was in the range of 500-600 cfs and is consistent with the previously approved estimate put out when the state, the county and DNRC approved the roads and the culverts.

Fourth, he feels he did not create the problem.

Fifth, at purchase time he was assured that the culvert that were being installed by the state during reconstruction of Canyon Ferry Road were more than sufficient to accommodate the 100 year flood event.

Sixth, they believe their application was never given much consideration during the review process because no site visit was performed by either Michael Baker or the DNRC. He feels that a site visit is important to the process. Michael Baker's report stated it is not possible to evaluate the input data for the act of handling bank flow without a site visit.

Seventh, Michael Baker's report on June 23, 2017 specifically stated 800-900 cfs would be sufficient but then on September 25, 2017 recommends 1,330 cfs. Mr. Hamlin doesn't understand the shift in the recommendation and feels it shows how we are dealing with estimates in flow numbers.

Mr. Hamlin read his statement and added that throughout the process he has learned that the numbers they are searching for are only estimates and that there are many methods that can produce acceptable results to protect public health and safety and that there is no perfect answer. He believes that WWC's methodology and hydrological analysis is the most appropriate and reliable approach to determine the floodplain impacts. The regression equations used by DNRC are not representative for this drainage above the 6,000 foot level. They have evaluated the watershed with many different hydrological methods and they believe the most defensible method produce results around the 500-600 benchmark.

Charles Lane, Deputy County Attorney, asked if Mr. Hamlin if there was an error or if Mr. Hamlin had any concerns in the procedure followed in the second application. Mr. Hamlin responded that the second application did not have any procedural errors.

Mr. Lane stated the first and second applications are intertwined because they are both for the same drainage but the second application was submitted with the intent of satisfying comments made during the first application process; however, there are procedural differences between the two.

Commissioner Good Geise clarified that this agenda item is just for application number two.

Steve Story, DNRC Water Operations Bureau Chief and technical advisor to the County, explained hydrology analysis and added that site visits are not always necessary. The data that was provided in the applications provided substantial information about the site including photographs and aerial photography. There is also accurate topographical and soil data that was referred to. The comment made by Michael Baker regarding needing a site visit was specific to using a channel-width methodology and that methodology was not selected or employed in the current analysis. The methods that were employed do not require a site visit.

Mr. Story added that his background allows him to review and evaluate methodologies with new standard. He referenced the MDT culverts that went in and stated that the standards at that time were different and that MDT is not required to follow the 100 year flow through their standards for highways and interstates. Their standards are different and for this specific road MDT was looking to meet a 50 year event standard. Standards change over time and when you do a hydrology analysis, it is based on that point in time and the data that is had at that time.

Mr. Story added that DNRC has given this permit application a more in-depth review than most. They have met with the WWC engineers to express their concerns about the analysis and what they could consider as alternatives such as putting in a detention facility.

Mr. Lane asked Mr. Story if the soil analysis is used in determining the peak flow. Mr. Story stated the soil type can be used as part of the rainfall run-off analysis methodology. The current application submittal is using this method as the methodology of choice.

Mr. Story stated he does not believe he has not reviewed Mr. Higley's report and letter that Mr. Hamlin referenced but that he has reviewed all documents that Mr. Spengler has sent to him.

Mr. Story stated that the USGS Regional Office develops the regression equations and that those are the standard of practice for site locations for determining flood frequencies. Those equations were last updated in 2016. If those equations were applied to this drainage, the peak flow would be approximately 1,330 cfs. There were prior flows but those were before the updated 2016 regression equations.

Mr. Story explained what a peak flow is. The peak flow is generally referred to data collected during the highest flow recorded at a specific gauge for that year so each year each gauge ends up with one peak. That data is used to develop flood frequency estimates for that gauge, which are then in part used to develop the regional regression equations.

Commissioner Good Geise stated Mr. Hamlin referred to holes dug for soil sampling and asked if that data was shared with DNRC. Mr. Story stated he didn't recall seeing anything verifying soil samples, however, they hydrologic soil group that they have reported is stated as a moderate rate of absorption.

Mr. Story added that none of the information or data he has received since he gave his opinion on the second application has changed his position or recommendation to the County. It is still his recommendation that the flows presented in the second application are too low.

Mr. Hamlin stated in every DNRC publication, Federal publication, FEMA publication and county subdivision regulations a required element is a site visit. Lastly, the USGS recommendation makes no difference to him, as MDT was not asked to use that.

There being no further public comment, Commissioner Good Geise closed the public hearing.

A motion was made by Commissioner Hunthausen to adopt the 38 findings of fact and two conclusions of law. The motion was seconded by Commissioner McCormick. The motion Passed on a 3-0 vote.

A motion was made by Commissioner Hunthausen to uphold the denial of the floodplain permit application for Red Fox Meadows Subdivision and seconded by Commissioner McCormick.

Commissioner Hunthausen stated that he feels Mr. Spengler followed the process and used the best technical assistance that he could and found that analysis to be credible and reliable. Commissioner Good Geise read a statement giving an overview on all the issues that they decide and added that it is the County's job is to safeguard the public safety, health, and welfare. Commissioner Good Geise further stated that the DNRC recommendation was to deny the application and out of caution, the County, at its own expense, contracted with Michael Baker for additional analysis and recommendations. The County has tried ensure that it makes the best informed decision. Michael Baker arrived at the same conclusion as the DNRC.

There is a motion on the floor. The motion to uphold the denial Passed on a 3-0 vote.

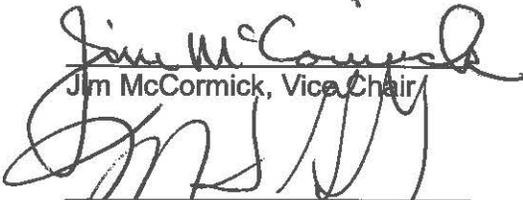
Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

Adjourn

There being no further business, the meeting adjourned at 12:10 pm.

LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS

Andy Hunthausen, Chair



Jim McCormick, Vice Chair

Susan Good Geise, Member

ATTEST:



Paulette DeHart, Clerk of the Board