



PUBLIC MEETING

January 11, 2018
MINUTES

The Lewis and Clark County Commissioners Public Meeting was held on Thursday, January 11, 2018, at 9:00 AM in Commission Chambers Room 330.

Roll Call

Chairman Andy Hunthausen called the meeting to order at 9 a.m.

Commissioner Jim McCormick and Commissioner Susan Good Geise were present. Others attending all or a portion of the meeting included Roger Baltz, Kerry Bartlett, John Gilmore, Nicho Hash, Matt Heimel, Justin Nielson, Peter Italiano, Charles Lane, Eric Merchant, Lindsay Morgan, Dan O'Malley, Margaret Wilkison, Wade Wilkison, and Nadine McCarty, Recording Secretary.

Pledge of Allegiance

Everyone recited the pledge.

Proclamation Declaring January 21-27, 2018 as Lewis and Clark County School Choice Week.

Commissioner Hunthausen recognized the proclamation declaring January 21-27, 2018 as Lewis and Clark County School Choice Week.

Consent Action Items

- a. Resolution 2018-5 Declaring County Property Surplus Property. (Amy Reeves)
- b. Resolution 2018-6 Declaring County Property Surplus Property. (Amy Reeves)

Roger Baltz reported on the consent action items 2 a-b and recommended approval.

Mr. Baltz explained the surplus items listed are part of the theft occurring at the fairgrounds.

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 3-0 vote.

Bid Opening. Five (5) New 2018 Model Year Pickups. (Audra Zacherl).

Roger Baltz, Chief Administrative Officer, stated there were no bids received. Per Audra Zacherl, Assistant Director of Public Works, an advertisement was done with no responses. No action is required today. They will work with the County Attorney's Office to take the process forward and see what the options are for reaching out to dealers directly. Once this is completed the item will come back before the Commission.

Commissioner Good Geise stated per County policy the vehicles are put on a rotating basis and are contemplated purchases with the Capital Improvements Program. Mr. Baltz confirmed that approval occurs during the budget process and these pickups were identified for this year.

No public comment was received.

Commissioner Hunthause stated there is no action to take on this item.

Grant Application to the State of Montana Board of Crime Control. (Dan O'Malley)

Dan O'Malley, Detective, presented the grant application to the Montana Board of Crime Control for continued funding of the assigned deputy for the Violence Against Women Act. The funding pays the majority of costs for the deputy including wages, cell phone cost, and training/travel. The amount applied for is \$97,627.74 of which \$73,220.80 is federal funding and \$24,406.04 will be local match.

Detective O'Malley stated the violence has increased over the years, with an increase of violence against male victims, and it all seems to be drug related.

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 3-0 vote.

Task Order 18-07-4-51-006-0 to Master Contract Between Lewis and Clark City-County Health Department and the Montana Department of Public Health and Human Services. (Eric Merchant)

Eric Merchant, Administrator for Disease Control and Prevention Division, presented the Task Order with the Montana Department of Public Health and Human Services and associated Grant Award in the amount of \$20,570 for HIV prevention services. This was tabled on January 4, 2018 to allow for more review time. The effective date for services provided is January 1, 2018 through December 31, 2018.

Mr. Merchant gave an overview on HIV in Lewis and Clark County; with two primary HIV transmission pathways of concern: intravenous drug use and sexual behaviors. In the last five years approximately 120 rapid HIV tests have been conducted annually with one HIV positive. Over the last ten years there have been 12 positive results; total number identified of living with HIV or AIDS is 30 individuals. While significant the numbers are relatively low partially as a result of efforts that take place under funding provided by this grant. The Health Department works directly with the local providers to ensure they understand the coordinated role in these services and to limit any duplication of services in the area. The goals for the new five-year funding cycle were presented. New is the ability to use the funds to support existing needle/syringe exchange programs; of which Lewis and Clark Public Health does not support this type of program. They do however partner with Bozeman based Connections, under the program Friends with a Point; on a referral basis. In the event of an HIV breakout in the community this grant allows appropriate response by Public Health and prevents or limits the extent of transmission. Staff recommends approval of this Task Order.

Commissioner Good Geise stated Mr. Merchant's job is to make sure that there is not an outbreak. She asked Mr. Merchant to share an event that occurred. Mr. Merchant gave an overview on the small Indiana town that had less than five cases of HIV; however intravenous drug use was a problem resulting in 138 cases of HIV in a short amount of time. This is what the Public Health Department is trying to prevent in Lewis and Clark County.

Commissioner McCormick referenced the ancillary services and asked what other services are provided. Mr. Merchant explained many things happen under this grant. In addition to testing: counseling is provided to high risk individuals; referrals to programs, specifically aimed at getting individuals connected to care; connected them with insurance services; an emphasis on reducing social and health disparities. There is hope to hire a HIV Prevention Coordinator position.

No public comment was received.

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

Proposed Revocation of an Agricultural Covenant on the 14.09 Acre Tract of C.O.S. 342358 (Applicant: Wade Marcus Wilkison) (Planner: Matt Heimel)

Matt Heimel, Special Districts Planner, presented the proposed revocation of an agricultural covenant on the 14.09 Acre Tract of C.O.S. 342358 owned by the applicant. The property is located north of the boundary of Jefferson County along South Hills Road and southwest of Sweetgrass Road and Lodgepole Road in Section 15, T09N, R03W, P.M.M., Lewis and Clark County. This item was tabled on January 4, 2018. Nine written comments from other property owners were received and a letter from the applicant received overnight.

Mr. Heimel stated he has not had an opportunity to discuss details with the legal staff. Commissioner Good Geise would like legal to review the proposal prior to moving forward.

Mr. Heimel gave a brief overview of how the process would work if the agricultural covenant was removed. The process is four steps: preliminary conditional approval can be granted, does not lift the restriction immediately, one condition would be an application for subdivision; if preliminary approval is granted for the subdivision application those set of conditions would need to be met; upon meeting the conditions, the final plat could be approved; after final plat approval a resolution would be submitted considering the lift of the covenant; once lifted construction could commence.

Commissioner McCormick is a property rights person and landowners have the right to do what they want as long as it fits within the guidelines. However, there are questions about the legal opinion of the removal of the covenant.

Commissioner Good Geise asked if discussion was had with the applicant to get his project brought to fruition while mitigating the concerns of the neighbors. Mr. Heimel has gone over the neighbor's concerns with the applicant with no direct recommendations for action; in turn the applicant submitted a letter to the Commission addressing some points on potential mitigation action he has considered or begun regarding the concerns.

Peter Italiano, Director of Community Planning and Development, stated if the Commission chooses to take the first preliminary step revocation of the covenant then the next step subdivision review would be the most appropriate place for discussion with both the applicant and the landowners.

Wade Wilkinson, 2007 Sweetgrass Road, stated he appreciates that this is a multi-stage process and this is not the immediate removal of the subdivision. He would like to discuss whether the property is fit for agricultural purposes. His initial letter indicated the aggressive slope and poor

soil content are evidence of this. In addition, the County's report also described the small size and irregular shape as further limitations. During the January 4th meeting it was mentioned that trees located on the property may be the only potential agricultural product. In 2016 he contacted a logging specialist to determine if there is value in the harvesting of the trees to meet the needs of fire mitigation and tree value determination. After a viewing of the property he was told due to the parcel location, shape, rotting trees, and the size of trees made any harvesting cost prohibitive.

As previously mentioned he has lived near the property for twenty-six years the natural setting and the wildlife is the reason for the purchase of the property. His intent is to build a home; not to subdivide it into lots or destroy the natural setting.

A recent concern expressed was the affect the covenant change would have on the neighborhood. By the revocation it would be contingent on the subdivision process and he would be required to meet the standards about the road, fire mitigation and neighbor concerns. Revoking the agricultural covenant would reduce the risk of danger by reducing the fuel sources and increase the property value by removing the dead trees. In preparation for the application he began removing dead trees and trimming down trees with 2 acres completed at this time. He met with Lewis and Clark County planners multiple times for several years and he understands the additional steps to begin the process. He has contacted the local fire departments as well as a fire mitigation specialist to create a plan.

Commissioner Good Geise asked Mr. Wilkinson if he has heard his neighbors concerns; it seems their main concern is privacy. When they purchased their properties one of the key points to their purchase was the agricultural restriction not allowing any development. She brought up the possibility of a conservation easement.

Mr. Wilkinson stated he has not spoken with all of the people with concerns. He spoke to his neighbor east of him and explained the plan was to build a house and have it towards the middle of his land, several hundred feet away from any potential privacy issue. At that time he perceived that to be okay with his neighbor and was surprised by his letter submitted. A number of letters were submitted by neighbors a considerable ways down the street; of which he has not contacted them primarily because he does not use Lime Kiln Road for access.

Mr. Wilkinson stated he cares about the neighborhood. He gave an example of the sale of a property encroaching on his property and after multiple meetings they came to an agreement. He is open and willing to negotiate with the neighbors.

Mr. Italiano stated the conservation easement is a great idea and would like to meet with legal staff and Mr. Wilkinson prior to the next meeting to see if there is an opportunity to review different legal options with the easement, or some other type of covenant that could be attached to the property prior to subdivision to develop a sketch plan that could be the start for the design of the subdivision and possibly a condition of approval for the first step of lifting it prior to subdivision.

Commissioner Hunthausen stated he is also an advocate of property rights. When restrictions are on the properties, the purchaser is fully aware of such restrictions.

Mr. Wilkinson stated he was aware of the covenant at the time of purchase and had spoken with the previous owner who had initiated the steps to remove the agricultural covenant.

Christal Ness, Land Use Ombudsman, stated she has met with Mr. Wilkinson numerous times. She was very instrumental in the earlier litigation and the attempted removal of the agricultural covenant on the parcel of land where the home was built. The neighbors comments that they purchased their property being told that there was an agricultural covenant on this property; they have detrimentally relied on information that was incorrect. An agricultural covenant can be removed; it is not permanent and is statutory. Had this agricultural division come before the survey

review committee today, it would not have been allowed as there is no agricultural value to this piece of property. Have to first deal with the agricultural covenant, then through the subdivision process can review the property in detail to include all concerns. A structure may be able to be erected that does not invade the privacy of the neighbors. It has not been reviewed in sufficient detail for recommendations to be made for conditions on removal of the agricultural covenant. Also needed is lifting of the sanitary restrictions. Mr. Wilkinson will have to work with the Environmental Health Department and determine proper drain field location, which will affect the building location. Recommendations cannot be made to restrict where the construction can occur until some of this information is obtained. At the subdivision review process all adjacent neighbors will have an opportunity to comment at that time the subdivision approval will be conditioned to address all of the impacts. They cannot get to that point unless he is allowed to remove the agricultural covenant.

PUBLIC COMMENT -

Justin Nielson, 325 South Hills Road, stated he purchased his house December 9, 2016 and purchased it due to the wonderful view with nothing in front of him. He is an advocate of property rights and hopes Mr. Wilkinson has the opportunity to build a house on his property but is concerned as a neighbor. Even though he is in Jefferson County he feels he has a voice as an adjacent neighbor; he was not aware of this and wished better communication had occurred. It automatically puts questions in his mind; what is the future plan for this property as it directly impacts the reasons he purchased his home and the potential traffic on the narrow South Hills Road. He has zero issues with the building of one house, but has concerns. Would appreciate open, honest communication and is willing to be a good neighbor.

Kerry Bartlett, 333 South Hills Road, stated he is the person Mr. Wilkinson spoke to previously. Mr. Wilkinson did not explain he wanted to be a long ways away. He told him he is going to be his new neighbor and build a nice house right next to him. After living there for fourteen years with privacy and all the desired space and he is told a house is going to be put right next to his; he is not happy. He also explained it was an agricultural covenant and it had to be used for agriculture. The rest of his neighbors many in Jefferson County, are directly across from this property and were not informed. They are upset as they have lived there a long time, like the privacy, they are on a private road and maintain their own road. Have had a bad experience all year long with constant trucking noise all summer and still is not over. Do not know the cost of repairing the infrastructure of the roads. He has no problem with one house, but very distrustful that years later the decision would be made to subdivide. He would like to know if some type of restriction could be put in place allowing only one house.

Commissioner Good Geise stated she wants assurance for the concerned that this is also what Mr. Wilkinson intends and will be held to.

John Gilmore, 303 South Hills Road, stated a big eye opener is being in a different county they have not received any notice. He understands why they were not receiving notices from Lewis and Clark County but he would urge Mr. Wilkinson to make sure he includes the Jefferson County neighbors. If he had known the property was for sale he might have bid on it. Right now the discussion is over the agricultural covenant when the big discussion will be at subdivision process. At this point everything discussed regarding removal of the agricultural covenant does not matter; at subdivision process time it may not look anything like was previously discussed. Can only judge intent at this time and define what is going to happen to the property once the subdivision phase begins. What is happening with the property, it's a matter of will a house be allowed on the property. He does not see a problem with lifting the covenant. His biggest reason for being here today is to make sure he and the other Jefferson County neighbors are included when this point is reached as that is when they will be able to see the intent for the property.

Mr. Heibel stated notices were sent to all adjacent property owners and included addresses on South Hills Road in Jefferson County. He will review this to see why those in Jefferson County did not receive the letters. Regardless of county if the property is adjacent all property owners should receive notice.

Mr. Italiano stated about two to three weeks should be allowed. After the discussion today he has several ideas to discuss with legal; after that sit with Mr. Wilkinson. Charles Lane agreed a minimum of three weeks to get meetings arranged and discuss with the applicant.

A motion was made by Commissioner McCormick to table this item to February 1, 2018 at the regularly scheduled meeting for further review. The motion was seconded by Commissioner Good Geise. The motion Passed on a 3-0 vote.

Board Appointments. (Roger Baltz)

Roger Baltz, Chief Administrative Officer, presented the board appointments for the Fair Board and recommended the reappointment of Allen Cormany and Skip Hatveldt to the Fair Board to terms that will expire December 31, 2020; the appointment of Kelly Hanson to the Fair Board as an At Large Member to a term that expires December 31, 2019; the appointment of Melissa Huntington to the Fair Board as an At Large Member to a term that expires December 31, 2019 and; the appointment of Judy Rolfe to the Fair Board as an At Large Member to a term that expires December 31, 2020.

Mr. Baltz presented the board appointment for the Planning and Zoning Commission and recommended the reappointment of Joyce Evans to the Planning and Zoning Commission as a Citizen of SZD#49 to a term that expires December 31, 2019.

No public comment was received.

A motion to Approve was made by Commissioner Good Geise and seconded by Commissioner McCormick. The motion 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 10:25 am.

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