

**PUBLIC MEETING  
MARCH 1, 2012  
MINUTES**

The Lewis and Clark County Commission Public Meeting was held on Thursday, March 1, 2012, 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. Commissioners Mike Murray and Derek Brown were present. Others attending all or a portion of the meeting included Eric Bryson, Kelly Blake, Lindsay Morgan, Greg McNally, Katie Jerstad, Marni Bentley, Cheryl Green, Dean Retz, Matt Hayes, Glenn Hayes, Ryan Casne, Michael and Priscilla Bode, Ray Johnson, Luci Dutton, Tom and Shirley Mangan, George hall, Don Lites, Ed and Becky Carter, Michael and Linda Carella, Harlan Coverdell, Sheri Schofield, Seth Dombach, John Lagerquist, Jim and Ronda Stumbo, Kevin Schafer, Susan Swanberg, L. K. Devore, Steve Bostrom, Keith Johnson, Kim Milburn, Tom and Kim Harrison, Jim Howard, Glenn Bailey, Mike Fasbender, Kathy Tavegia, 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 February 27, 2012. (Marni Bentley)
- b. Independent Contractor Contract Between Lewis & Clark City-County Health Department and Catholic Social Services to Provide On-Site Child Care for Classes Offered by the Health Department's Home Visiting Program in an Amount not to Exceed \$2,300.00. (Dorothy Bradshaw)
- c. Resolution 2012-26 Ordering a Refund of Taxes/Fees/Assessments Paid by Richard E. Stafford in the Amount of \$48.33. (Cheryl Green)
- d. Resolution 2012-27 Ordering a Refund of Taxes/Fees/Assessments Paid by Michael S. & Joy M. Roberts in the Amount of \$67.01. (Cheryl Green)
- e. Resolution 2012-28 Ordering a Refund of Taxes/Fees/Assessments Paid by Clara W. Holliday in the Amount of \$46.23. (Cheryl Green)
- f. Resolution 2012-29 Ordering a Refund of Taxes/Fees/Assessments Paid by Ronald R. & Sandra L. Peterson in the Amount of \$52.69. (Cheryl Green)
- g. Resolution 2012-30 Authorizing the Purchase of a Tract of Land at 1815 Orofino Gulch Drive for the Lewis and Clark County Fire Service Area. (Nancy Everson)

Eric Bryson reported that staff has requested Consent Item 'b' be pulled until further documentation has been received. He recommended approval of the remaining consent agenda items.

No public comment was received.

Commissioner Brown moved to approve the consent action items with the exception of 2.b. and authorized the Chair to sign where appropriate. Commissioner Murray seconded the motion. The motion carried 3-0.

Special Zoning District No. 41 (Lamb Ranchettes). (Applicant: Victor A. DeTienne) (Planner: Lindsay A. Morgan) The Commissioners will consider proposed amendments to the regulations of Special Zoning District 41. The district is located east of and adjacent to Frontage Drive between Carmen Road and Custer Avenue, and lies approximately ¼ mile south of Carmen Road and ¾ mile north of Custer Avenue.

Lindsay Morgan presented the applicant's two proposed amendments: (1) to allow one religious facility per lot meeting specific definition; and (2) to remove the current specifications for accessory uses and replace them with specific criteria. Following the hearing on February 22, the Planning and Zoning Commission recommended approval of the amendments to allow a worship facility as a conditional use, along with any accessory uses for said worship facility, instead of allowing it as a permitted use as requested by the applicant. The recommended regulations are in compliance with the intent of the district, the development pattern neighborhood plan for the district, the Lewis & Clark County Growth Policy, and the Montana Code Annotated.

In addition to the comments and the petition, the applicant has requested additional amendments to the regulations. Should the Commission decide that they would like to consider these amendments, staff recommended that the proposal be sent back to the Planning and Zoning Commission for a new hearing. The Planning and Zoning Commission recommendation was included in the staff report. Staff explained the difference between a permitted use versus a conditional use. A permitted use is allowed in the regulations. A conditional use is a site-specific review that is not guaranteed.

Commissioner Murray moved that the minutes from the Planning and Zoning Commission be brought forward and incorporated into this Commission record. Commissioner Brown seconded the motion. The motion carried 3-0.

Commissioner Murray moved that all written comment received between the Planning and Zoning Commission and this morning shall be incorporated into this commission record. Commissioner Brown seconded the motion. The motion carried 3-0.

Public hearing -

Ryan Casne, representing the applicant and the prospective buyer, the Helena Alliance Church gave a presentation on changes to the draft regulations in response to the public comments and concerns at the Planning and Zoning Commission on February 22<sup>nd</sup>. The applicant still proposes a text amendment to the current regulations to allow one worship facility per parcel as a permitted use. The language in the modification is consistent with other Special Zoning Districts.

Kim Milburn, member of the building committee for the church, offered some clarification regarding this proposal. The intent of the church is to abide by all of the building codes and requirements of not only the state and the county, but also the city. The church will be an addition to the area, not a detriment. Churches have been included in residential areas for many years and are not characterized as a commercial activity.

Priscilla Bode, 3505 Juniper Drive, presented an original petition requesting that the zoning enacted in 1992 remain intact. The petition included the addition of two signatures from George Hall and Patrick Hurley. Eighteen out of the 21 property owners in the subdivision opposed any changes from the single-family residential and agricultural use. No third-party which does not own property should be making a presentation. She requested that the Commissioners respect the wishes of 90 percent of the property owners and reject the application to amend the zoning.

Michael Bode, 3505 Juniper Drive. Concerned that the petition has been mischaracterized as not wanting to allow a church, in fact, it is a demand not to change the current zoning regulations. The church is not the applicant; it should not be represented as such.

Ray Johnson, 1620 Stable Road, signed the petition and finds the proposal reasonable. He is in favor of a church being built as opposed to more buildings and more homes.

Tom Mangan, 1610 Stable Road. All of the facts should be made available to the public prior to any decision being made in view of all of the items that have been presented today.

Becky Carter, 3570 Juniper Drive. Opposed any zoning changes. Her 10 acres border the DiTienne property to the north. They purchased their property specifically for the existing zoning and to promote and preserve the rural residential atmosphere.

Linda Carella, 3585 Juniper Drive. Opposed the zoning change.

George Hall, 3490 Juniper. Opposed the church proposal. The covenants should stay the same.

Michael Carella, 3585 Juniper. In favor of a church in the community, but needs more information before a complete zoning change is enacted.

Susan Swanberg, 3440 Juniper Drive. Farmland needs to be protected. Do not break the zoning regulations.

George Hall, 3490 Juniper. Lamb Ranchettes has one entrance and exit. An added road onto the Frontage Road would create a safety hazard.

Glenn Bailey, 3545 Juniper Drive. Opposed the proposal. Building a community garden will increase the traffic.

Ryan Casne. Eight test pits and monitoring wells have been installed on the subject property and five locations were acceptable for on-site wastewater treatment systems. The applicant proposed an on-site wastewater treatment system consisting of a pressure-dosed, elevated sand mound system. The system is designed with a large septic tank and discharge is metered on a weekly flow which helps for non-degradation and the impact on neighboring groundwater users.

The Bodes are concerned that water from a large septic system will drain down onto their property and Ms. Hollow's property which will impact their ability to build a home where they want. There is no assurance that the wells will not be contaminated by seepage from the septic fields.

Jim Stumbo, 1014 Chateau, Church Pastor. The congregation has about 150-170 parishioners that attend on a Sunday and 10-20 people in the course of a weekday.

No other public comments were received.

Commissioner Murray moved to refer this proposal back to the Planning and Zoning Committee due to receipt of new testimony this morning and to gain a better understanding of this proposal. Commissioner Brown seconded the motion. The motion carried 3-0.

**BREAK:** 10-minutes

Public Hearing for Proposed Modifications to Conditions of Approval for the Timberworks Estates Subdivision, Phases II-VIII and Variance Request from Chapter XI.H.3 of the Subdivision Regulations. (Applicant: Frontier Builders, Inc.) (Planner, Greg McNally) The subdivision is located on the corner of N. Montana Avenue and Lincoln Road West. The applicants, Glenn and Matt Hayes, were present.

Greg McNally presented the staff report. No written public comments regarding the proposed modifications or the variance request was received by staff. Staff addressed modification of conditions related to four items and reasons for denial: Item A, to allow for a financial guarantee for future payment of percentage of impact to impacted off-site roads. Item B, to provide the MDT the sole discretion to require improvements to the intersection of Lincoln Road and N. Montana Avenue. This proposal also included a variance request from the Subdivision Regulations to address that request to modify. Item C, to allow for a financial guarantee for future construction of a left-turn deceleration lane on N. Montana Avenue. Item D, a clarification to include wastewater conveyance and treatment system in the list of improvements that can be financially guaranteed.

Based on his presentation, staff has recommended denial of the request to modify conditions of approval in Phase II, III, IV, V, VI, VIII and VIII.

Staff has recommended denial of the applicant's request to modify Phase II Condition of Approval 11.

Staff has recommended denial of the applicant's request to modify Phase II Condition of Approval 12.

With additional modifications, staff has recommended approval of the request to modify conditions of approval Phase II Condition 20, Phase III Condition 16, Phase IV Condition 17, and Condition 1.y in Phase V, VI and VII.

If the variance is approved, staff recommended that in consideration of the applicant's request to modify Phase II Condition 11 the additional modification in Phase II in

Condition 19 include notice of a restrictive covenant. The variance granted for offsite road improvements was presented.

Ryan Casne distributed an email message from the Department of Environmental Quality which outlines current state laws of a public water or wastewater system. Justification for the modifications was reviewed. The DEQ will take a very active enforcement role in a public system being used that is not certified.

There was discussion about financially guaranteeing the wastewater system and a future left-hand turn lane.

Public hearing –

Kim Harrison, 848 W. Lincoln Road, owns the Lincoln Road RV Park at 850 Lincoln Road, and the developers for Grand Valley Estate, which abuts the subdivision in question on the west side. Addressed two concerns; (1) increased traffic would increase their maintenance costs and wear and tear on the roads. Proposed that their connectivity road not be allowed for through traffic until approaches onto Montana Avenue and Lincoln Road have been addressed; and (2) wastewater treatment problem. They were not allowed to bond or financially guarantee our wastewater treatment system and are still having financial difficulty because the lots can't be sold.

Tom Harrison, 848 Lincoln Road West. Had a difficult time getting his subdivision done; and between the county planner and his engineer it cost him a lot of money.

Mike Fasbender, 3925 Deal Lane. Does the county have a method of coming up with the remainder of the funds to do the improvements?

Deputy County Attorney Katie Jerstad clarified the facts that the variance pertains to the condition of approval that relates to the intersection, not to Montana Avenue.

Kathy Tavegia, 1145 Erickson Road. Has not seen other subdivisions required to make improvements on North Montana.

The Commission offered Mr. Casne a sample of questions that they would like addressed on or before March 8<sup>th</sup>, such as (1) the point in time that determines the need for a left-turn lane; perhaps when 80 or 90 percent of that requirement has been reached. The Commission would like to see construction completed when it reaches 100 percent; (2) level of service about the wastewater system; (3) ability to contribute to the improvements to N. Montana Avenue if the County comes up with a plan within that 3-year period.

Commissioner Brown moved to continue this hearing until March 8<sup>th</sup>, with a proposed decision on March 13<sup>th</sup>, and leaving the public hearing open through the March 8<sup>th</sup> meeting. Commissioner Murray seconded the motion. The motion carried 3-0.

Resolution to Create the Boundaries of Special and Zoning District No. 48 (Timberworks Estates Phases II-VIII Planning and Zoning District) and the Creation of a Planning and Zoning Commission or Appointment of the Existing Planning and Zoning Commission. (Applicant: Frontier Builders, Inc.) (Planner, Greg McNally) The Commission will consider the resolution and Creation of a Planning and Zoning Commission.

Greg McNally presented the staff report. A public meeting was held on January 24, 2012 and the Commission voted unanimously to create the boundaries as proposed by the petitioners. No protests were received within the 30-day protest period. At this point, the Commission must consider appointing the existing Planning and Zoning Commission. In the interest of proceeding forward on the applicant's request for zoning, staff has scheduled a public hearing for the consideration of the neighborhood plan and the development pattern and the regulations for this special district for March 14, 2012, at 5:30 p.m. Also noticed is a meeting before the Commission to consider the recommendation made by the Planning and Zoning Commission on March 20<sup>th</sup> in this room.

Commissioner Brown moved to approve the resolution and authorized the Chair to sign. Commissioner Murray seconded the motion. The motion carried 3-0.

Utility Project Agreement Between Lewis & Clark County and NorthWestern Energy of Montana for Rimini Road Project No. PFH 98-1(1) in an Amount not to Exceed \$51,882.37. County Share: 82.14% of Eligible Costs Incurred. (Eric Griffin) The Commissioners will consider the agreement.

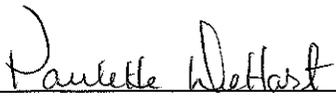
At the request of staff, Eric Bryson recommended that this item be tabled until March 8<sup>th</sup>.

Commissioner Murray move to table this item until March 8<sup>th</sup>. Commissioner Brown seconded the motion. The motion carried 3-0.

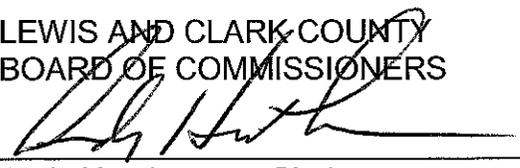
Public comment on any public matter within the jurisdiction of the Commission that is not on the agenda above.

There was no other business, the meeting adjourned at 11:42 a.m.

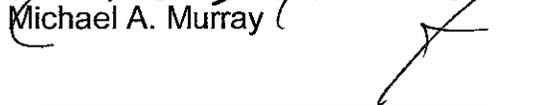
ATTEST:

  
Paulette DeHart, Clerk of the Board

LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Andy Hunthausen, Chairman

  
Michael A. Murray

  
Derek Brown