

December 24, 2013

The Lincoln County Board of Commissioners met for a special session on December 24, 2013, in the Lincoln County Courthouse. Present are Commissioner Tony Berget, Commissioner Ron Downey, Commissioner Mike Cole, Executive Assistant Bill Bischoff and Clerk and Recorder Tammy Lauer.

10:00 AM: Commissioner Berget **opened the meeting** with the Pledge of Allegiance.

10:00 AM: **Mariners Haven Subdivision:** Present are Eric Milkahey, Don Schuman, Larry Stewart, Dave Harman, Greg Hanson, County Attorney Bernard Cassidy and County Planner Kristin Smith. County Planner Kristin Smith sent the subdivision package to Tara DePuy, JPIA Land Attorney. Ms. DePuy has sent Lincoln County her opinion of this subdivision. It is her opinion that the preliminary plat on the Mariners Haven Subdivision Phase I expired in 1991. Tara stated that there is no legal authority for Lincoln County to grant final plat approval for Phase I for the subdivision in 2013. Larry felt that this decision was not valid because Ms. DePuy made a quick decision on something that took nearly 20 years to arrive to this day. The commissioners have stated that this decision could be very costly to the county if not made correctly. David Harman, Attorney for the developers, suggested that this subdivision was an exception to the rule in several ways. He read parts of the letter from Tara DePuy and argued the points of the letter. Don said that the mayor of Rexford is 100% for this and is available for a phone call this morning to encourage the subdivision approval. Greg Hanson represents the homeowners for Phases II and III. Greg said the Homeowners Association has been dealing with the subdivision for 5 years now and planning for the future of it. He asks the commissioners what could be done to solve the problems and get this project moving. Greg stated that no one that he has spoken to is against this project for the good of the county. Dave Harman said that the emphasis should be on what it will take to put this together to be passed rather than relying on a MACO opinion. Don said that Kristin Smith, Planning Director, refused to work with them in November. Kristin stated she took exception to that statement. Kristin has maintained that nothing was submitted to her until December. Larry said that it is certain that this will go to court if denied and the commissioners are refusing to approve it with a possibility of going to court. Dave Harmon said that he doesn't feel litigation needs to be discussed but just that the project is in front of them and needs to be approved for the good of the county. Larry said that he thinks the communication could have been better but he feels that the county could fix this right now. Don made a speech about the good of the county and the people. Eric said he has worked with MACO attorneys and planning in Montana for over 20 years and he said the "black and white" view of this is that the laws were not sufficient at the time this was created. He said planning has never been black and white so he feels in 1991 the commissioners were trying to solve a problem and made a decision. The gray area is that there was an agreement and then there was a reliance on that agreement to do the next two phases and to engineer the sewer agreements and working with the Forest Service to keep this project working over the past 20 years. He showed a letter from the planner in 2008 which shows the extension in affect. He said he understands where MACO is coming from on their opinion but he doesn't feel that MACO had enough information or time to make a strong opinion. He doesn't feel that there is a danger of litigation if approved because they have no opposition to the subdivision continuing. Larry agreed and said that the Forest Service has been more than cooperative with them in going forward with this project. Don asked if MACO had been told the impact of rejecting this subdivision related to the \$2 million that has to be spent in the next 2 months. The commissioners said that they didn't believe that MACO was aware of this as they only received the paperwork that had been submitted. Don said he feels the precedence has been set already, in 2009 a different subdivision was extended with a simple handshake. Mike Cuffe said that this project is a long time project. He said there is a letter of the law and a spirit of the law, and he thinks the two differ. He said that this project excites him because it may kick the economy of Lincoln County forward. Commissioner Berget said he feels a lot of good information has been given and asked for a 10 minutes recess to discuss this with County Attorney Bernard Cassidy.

Bernie talked about the open meeting law and the penalties of breaking that law. He spoke about the process and what needs to happen to get this project completed. The original agreement stated that a preliminary plat needed to be filed. The meeting resumed with everyone present. Commissioner Berget noted that this is not a public hearing or 48 hour noticed meeting so no decision can be made today. He stated that the MACO attorney and the County Attorney have advised that there needs to be a preliminary plat filed. Kristin Smith has said that she would expedite the process as quickly as possible. Larry said that he has spent \$200,000 on the promise that the commissioners would fix this. He would like to be on the agenda Monday so that he can be denied. Commissioner Berget told him that Mariners Haven would be on the agenda for Monday, December 30th in the late afternoon. This will be a review of the final plat request and Kristin will make a recommendation. Kristin told the developer that there are some things missing from the final plat request even if the preliminary plat was found sufficient. The meeting ended at 12:15 PM.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Anthony Berget, Chairman

ATTEST: _____
Tammy D. Lauer, Clerk of the Board