

**PUBLIC MEETING**  
**March 26, 2002**

Chairman Mike Murray called the meeting to order at 9:00 a.m.

Commissioners Varone and Loendorf were present. Others attending all or a portion of the meeting included Ron Alles, K. Paul Stahl, Sharon Haugen, Frank Rives, Dean Retz, Andy Adamek, Robert Hudnall, Steve and Karen Moore, Nancy Matheson, Jeff and Terri Claassen, Everett and Beverly Stiger, Joe Eckroth, Wayne Bennett, Mark Mackin, Bill Ries, Ed Casne, Marvin Debuff, Carl Suurendonk, Christina Quinn, Andy Skinner, and Carole Byrnes.

Pledge of Allegiance. Everyone recited the pledge.

Proposed Subdivision Opre II Minor, Summary Review. (cont. from 1/29/02). The Commissioners will consider creating two lots, each for one single-family dwelling. The proposal is generally located west of Eames Lane and south of and adjacent to Keir Lane. Dean Retz was present representing the applicant. The applicant, Thomas Opre, was not present.

Frank Rives presented the staff report. The BoCC held a public hearing on a proposed two-lot subdivision, which was previously called Awesome View Minor and was subsequently denied October 25, 2001. In January 2002, the applicant submitted a new proposal, Opre II Minor. Each lot will have a one-acre building envelope and the remainder of the lot would be reserved in an agricultural easement strictly for agricultural purposes. Access to this property is from Keir Lane connecting to Hart Lane. Tract A has a single-family dwelling with an attached garage and on-site well and wastewater treatment system and utilities. Tract B was recently an irrigated alfalfa field with no improvements and is currently being used as pasture land. The applicant has recently completed a boundary line relocation, which moved the north line of Tract A 733.87 north and increased the acreage to 7.51 acres. The reconfigured Tract A is now designated as Tract A1 and newly configured Tract B is 14.99 acres and now designated as Tracts B1 and B2. Covenants currently affect the property and the applicant is proposing additional covenants. An irrigation ditch runs along the southern and western portion of Tract A1. The applicant will provide an irrigation easement across Tract A1 and establish irrigation easements for Tracts B1 and B2. The applicant will also re-establish an agricultural easement across the neighboring property to the south to connect with the main ditch of the Helena Valley Irrigation District. The District has commented that getting irrigation water to the tract would be difficult and also commented that the preliminary plat did not show an easement for water delivery. At the request of the BoCC, staff did a LESA on the subject property and the results are included in the staff report. The Lakeside Volunteer Fire Department stated they had no problems with the subdivision as proposed, but want proper access for fire equipment and requested a \$200 per lot fee be assessed. The property is located in the Lewis and Clark County Air Quality District. A five-year weed management plan should be submitted to the County Weed Board. There are no floodplains identified on the property. The Spokane Hills fault is located north of the property and the regulating

reservoir fault is located southeast of the property. Soil mapping is considered prime farmland and rated as agricultural group 1 soil. The LESA score total is 241. Staff recommended approval subject to 14 conditions as outlined in the staff report. The neighborhood plan has been put on hold until the growth policy has been modified.

Dean Retz, 1430 Shirley Road. Mr. Retz stated the building envelopes changed as a result of a recent meeting with staff. The applicant concurs with conditions 2, 3, and 4. He understands that the weed plan should be finalized and certified before disturbance. The applicant requested that a deed of agricultural easement be placed in the HOA covenants and the county's covenants. The applicant is complying with the original covenants which states no parcel shall consist of less than 7 acres.

Attorney, Andy Adamek, 139 N. Last Chance Gulch. Mr. Adamek discussed remedial efforts and changes made to address valid concerns that were addressed in the previous hearing and mitigate potential harm and potential loss to the agricultural use of this property. He has contacted some of the interested parties and whether they were aware of modifications that were made since the application for this subdivision. He met with Steve Moore and has spoken with Mark Mackin. He has attempted to contact Mr. Maloit and Mr. Eckroth.

The applicant is committed to the draft document regarding the agricultural easement. The purpose of the easement is to insure agricultural values would be maintained forever and to prevent any use or activity on the property that will significantly impair those values. Outbuildings will be limited to the building envelopes. The restriction is perpetual in nature. The reserve rights are limited to the property owners for the remaining portion of the parcels. The agricultural easement document will be attached to the deed to convey ownership of this property. The easement will also be referenced on the final plat. Attached to the easement document is Exhibit B, which lists the uses permitted under the agricultural easement. There will be no HOA. Mr. Adamek has provided in the application the legal documents that create this easement that guarantee access across A1 to B1 and access across A1 and B1 to B2. The applicant will put in place easements diagonally across A1 to get the water to B1 and B2. This proposal has not changed the way the water flows. The agricultural easement will run in perpetuity with the land.

Terri Claassen, 5545 Keir Road. Ms. Claassen asked the Commission to protect the community. The only benefit of this proposal is to the applicant. She urged the Commission to deny this subdivision.

Steve Moore, 3740 Eames Lane. Mr. Moore's concerns are the negative impacts of urbanizing in a predominately rural neighborhood and loss of Class 1 irrigated agricultural land. The return to flood irrigation from sprinkler irrigation will be difficult. The building envelope for B-2 develops into a small lake attracting waterfowl. There is also possible flooding around the home sites of the developer and Mr. Eckroth during flood irrigation.

Water along Keir Road occurs at least twice a year. The culverts are inadequate and additional ditches will be required. He suggested that the building envelopes be extended to the furthest eastern location to minimize flooding.

Frank Rives stated the proposed building envelopes can be re-configured to better serve the proposal.

Steve Moore. In a conversation with Mr. Adamek, they discussed the diagonal vs. non-diagonal irrigation line. At that time, the applicant's plan was to divert the water to the west with another 90-degree turn. Mr. Moore believes this plan is impractical and will not work.

Nancy Matheson, 3845 Hart Lane. Ms. Matheson stated the agricultural easement is not recognized by the Federal IRS because it is considered a "term" easement. She encouraged the applicant to consider a true easement in perpetuity. The diagonal approach makes more sense.

Jeff Claassen, 5545 Keir Lane. Mr. Claassen makes his living by custom farming in the area. He strongly opposes this proposal based on the negative effects on the prime soils, field size, and parcel boundaries. The proposal is incomplete until the applicant addresses the complex water issues. There are negative effects on the natural environment and the wildlife. The character of this neighborhood has not been addressed. The comprehensive plan encourages continued land uses and therefore the proposal is not in compliance with the goals of the plan. Lastly, he was not notified of this meeting.

Mark Mackin, 4286 Hart Lane. He was not aware that this area was part of the water quality protection district. He continues to oppose the proposal and does not see significant improvements on the major issues of continued land use. Further division of this land will make it more difficult to control weeds. The agricultural base is critical to the irrigation district. His residence relies on a well that draws from the canal system. He submitted another copy of a neighborhood survey, which was completed in March. He urged the Commission to encourage development in preferred development areas.

Andy Adamek. Mr. Moore showed him the low spots in the center of B-1 and they discussed remedial measures to prevent flooding. The applicant will do what is required with the building envelopes to avoid the potential flooding issue. The agricultural easement has merit and restricts the use to agricultural use, change will only be allowed by the BoCC. The building envelopes will help keep open space with this development. Conflicts between agricultural use and residential use do occur and the proposed lots attempt to provide mechanisms to reduce this conflict.

Hearing no other comments, the Chairman closed this portion of the public hearing. Commissioner Loendorf moved to render a decision Thursday, March 28. Commissioner Varone seconded the motion and it carried unanimously.

The Commission recessed and reconvened at 11:00 a.m.

Proposed Minor Subdivision, Preliminary Plat to be known as the Clink Minor No. 3.

The applicant proposes to create four lots from an existing 7.13-acre tract, each for one single-family dwelling. The proposal is generally located ½ mile north of John G Mine Road, west of and adjacent to Green Meadow Drive. Bill Ries was present representing the applicant. The applicant Richard Cary was not present. Frank Rives presented the staff report. The property is not located in a special zoning district and there are no covenants affecting the use of the property. The soils are not considered prime farmland or statewide importance. The property is located within the north hills control study area for water quality and quantity. The water quality is considered fair to poor. The internal access road would need to meet road construction standards for a standard length cul-de-sac. The applicant would be required to obtain a road approach permit from MDT for an approach to Green Meadow Drive. The West Valley Fire Department may require a \$200 per newly created lot fee to improve and maintain water supply, and a fire protection plan would need to be submitted to the fire district for its review and approval. The subject property is located within an air quality district. The soil is considered a low-erosion potential and no sediment control plan is necessary. A five-year weed management plan would be required. No floodplain is identified on the subject project. A storm water drainage plan is necessary. The proposal is located adjacent to the Scratch Gravel Hills Fault. There is some concern that increased development in this area would make it more difficult for the movement of wildlife. Staff recommended approval of the proposal subject to 17 conditions as outlined in the staff report.

Bill Ries, 1650 Green Meadow Drive. The applicant is in agreement with the recommended conditions of approval.

Hearing no public comments, the Chairman closed this portion of the hearing. Commissioner Varone moved to render a final decision on Thursday, March 28. Commissioner Loendorf seconded the motion and it carried unanimously.

Proposed Minor Subdivision, Preliminary Plat to be known as Holter Lake View Tracts,

Lot 9 Amended. The applicant proposes to create four lots, each for one single-family dwelling. The proposal is generally located on the east side of Holter Lake approximately one mile south from the Holter Dam. The applicant, Marvin Debuff, was present and indicated his willingness to proceed. His representative, Ed Casne, was also present. Frank Rives presented the staff report. Access to the lots would be from an internal access road connecting to Beartooth Road from east and a driveway access from the west side of Beartooth Road. The applicant has requested variances from county road standards and county subdivision regulations. There is no parkland requirement for this proposal, but the applicant may devote a portion of the land to the common use for those in the subdivision. Most of the parcels are located in a small box canyon, which is dominated by steep hills and a significant drainage swale that limits available building sites.

Access to Beartooth Road from proposed lot 9-1 would require earthwork and an approach platform built level to the road surface. The lots are moderate to steep slopes with significant drainage swales. The internal access road right-of-way divides proposed lot 9-4 and would require a variance. There are covenants with this proposal. There are no agricultural uses, no irrigation facilities, or agricultural easements identified with this property. The soils were found to be acceptable. The applicant proposes to construct a cul-de-sac in a narrow box canyon; however, there is an existing 40-foot easement to access tract 17. The cul-de-sac exceeds the maximum length and the applicant has requested a variance from county regulations. The applicant is also requesting a variance to permit the existing 40-foot access easement.

The Wolf Creek/Craig Volunteer Fire Department has requested the applicant to submit a fire protection plan, as well as recent guidelines for wildland residential interface development. The fire department's comments include a fire behavior analysis indicating there are extreme rates of spread and dangerous fire intensities with this fuel type. The FSA strongly recommended that no residential construction take place near the east end of tract 8 or tract 9 without an escape route suitable for two-wheel drive automobiles.

A five-year weed management plan would be required. Impacts to visual resources can be expected due to increased development in this rural area. The long-term availability of water quantity is unknown at this time. There are no floodplains located on the subject property. The internal access road does not intersect at a 90-degree angle as required by county subdivision regulations and would require a variance. The applicant has indicated that he plans to reconstruct the approach to meet county regulations. Sight distances are very poor for vehicles on Beartooth Road and residents entering or exiting the driveway for proposed lot 9-1 due to a "fishhook" curve. The narrow box canyon, natural fuels, long cul-de-sac, and steep slopes present a serious potential fire hazard. The proposed subdivision does not conform with county subdivision regulations and the applicant is requesting variances from some of the following regulations: (1) no single lot shall be divided by a public street, road, alley, or right-of-way. The applicant proposes either a boundary line relocation or create a common area for residents of the subdivision; (2) the arrangement type, extent, width, grade and location of all streets shall be considered in their relation to existing and planned streets. The applicant proposes to reconstruct the approach on Beartooth Road; (3) the applicant is requesting a variance from the 1,000 foot maximum cul-de-sac requirement; (4) streets shall intersect at 90-degree angles. The applicant proposes to reconstruct the approach onto Beartooth Road; and (5) the applicant is requesting a variance from the right-of-way width requirement.

Staff addressed three issues that make the proposed subdivision unsuitable for development: (1) the subject property is located in a potentially high fire risk area, (2) the proposed cul-de-sac is over 1,200 feet in length and is located in a narrow box canyon. The long cul-de-sac, steep slopes and abundance of fuels during a fire could result in an excessive expenditure of public funds, (3) the two approaches are located within a fishhook curve and the site distance is very poor for traffic accessing lot 9-1, 9-

2, 9-3, and 9-4, and (4) the subject property is located in a narrow box canyon which provides winter shelter for wildlife. The Holter Lake area is an important recreation area valued for its scenic and wildlife characteristics.

Staff recommended denial of the proposed subdivision subject to 5 reasons: (1) the proposal is unsuitable for development due to potential hazards, such as steep slopes, polluted water supply, vehicular traffic hazards and increased fire risks, (2) the proposal is detrimental to public health, safety, and general welfare of residents of the county and the State of Montana, due to natural, physical, and man-made hazards, (3) the proposal is located in a wildland residential interface area and is a high fire risk, the proposed cul-de-sac is in excess of 1,200 feet in length and is located in a narrow box canyon. Fire departments responding to a fire are located more than 6 miles away and could result in excessive expenditure of public funds, (4) approaches onto Beartooth Road are located within a fishhook curve and site distances are seriously impaired, (5) the property is located in a narrow canyon that provides winter shelter for wildlife habitat.

Marvin Debuff, HC 85, Lewistown and 1540 Beartooth Road. The applicant distributed photographs to the Commission and planning staff. He discussed the road intersection and fishhook curve and he will ask for a variance to build a flatter, wider approach to lot 1. There is no potential for surface water getting into the wells. He will guarantee the water quality and quantity on all 4 lots. He does not believe the lots are considered box canyons, except for lot 4. As a condition of approval, he proposed an escape route from the east end of the lots. The staff report does not accurately describe the property.

Ed Casne, 733 Third Street. The staff report does not reflect the accuracy of the property from a technical point of view. He encouraged the Commissioners to visit the site. The applicant proposes sand filters for each lot. The cul-de-sac is already in place and is not constructed in a narrow canyon. The speed limit accurately reflects the fishhook curve. He distributed lab reports from other wells showing lower nitrate levels than what is stated in the staff report. Mr. Casne reviewed the photographs presented by Mr. Debuff. He also commented on the recommendations for denial that the property does have some steep slopes, traffic hazards are minimal since the approach was reconstructed, the long cul-de-sac can be reconstructed if necessary, traffic is not a real concern because of the 15 mph speed limit through the curve, and wildlife will not be adversely affected.

Everett 'Sonny' Stiger, 1555 Beartooth Road. The Wolf Creek/Craig FSA adopted the wildland fire guidelines. The proposed subdivision can meet most of the guidelines except for the length of the cul-de-sac and the two ingress-egress routes. The box canyon is a major fire hazard. The Tri-County Fire Working Group is in the process of mapping the fuel hazard classification. With the drainage running through the middle of the property, it would be difficult to install septic systems and leach fields without encroaching on the drainage. Several neighbors in the area have had water problems with their wells. More development will affect the aesthetics of this area.

The Commissioners and Mr. Stahl discussed scheduling a time to view the proposed site with the applicant, his representative, and the general public.

Wayne Bennett, 1520 Beartooth Road, Wolf Creek. His concern is to maintain the integrity of the environment. The access to lots 2,3,4 on the east side of Beartooth Road has been greatly improved. The grass fuels are less than 2 feet. There is some advantage to building homes, with lawns to provide barriers. He does not see the wildlife as a problem. He would like to see the decision based on fact and not on assumptions, because the report can be misleading.

Andy Skinner asked how the Commission will be able to obtain further information on subdivision proposals without meeting with developers/landowners?

Commissioner Murray responded that the Commission is accepting comments in favor of, in opposition to, or in general on the subject proposal along with the three variances.

Hearing no other comments, the chairman closed this public hearing. The applicant offered to extend the deadline if the Commission wishes to view the property.

Commissioner Loendorf moved to close the public hearing and render a final decision in Lincoln on Friday, April 5. There being no second, the motion died.

Commissioner Varone offered a substitute motion to render a final decision April 4. Commissioner Loendorf seconded the motion. Commissioner Murray stated he will be out of town on April 4.

The applicant requested an extension of the public hearing to April 19. Commissioner Loendorf moved to grant the applicant's request to continue the public hearing to April 19. Commissioner Varone seconded the motion. The motion carried unanimously.

After further discussion, the Commission agreed to continue the public hearing to April 12 at 2:00 p.m. on the site of the proposed subdivision allowing everyone who wishes to attend and comment in favor of, in opposition to, or in general, and comment on the three proposed variances. The Commissioners will render a final decision Thursday, April 18, 2002 at 10:00 a.m. in room 309. (This was later continued into May 2002 at the applicants request.)

The Commission recessed and reconvened at 12:45 p.m.

Rural Community Assistance Grant Application. Historic Preservation Officer, Paul Putz, reported that the U.S. Forest Service has funds available in its RCA Program. The Heritage Development Project is a marketing plan for sites that exist in the county that are appropriate for public visitation and appreciation. The application is for \$5,000 to support the creation of a plan, make them accessible to the public, and to create a marketing program. A traveling brochure to be distributed to places of lodging will also be a part of this plan. Commissioner Varone moved to approve the grant application

and letter of support and authorized the chairman to sign. Commissioner Loendorf seconded the motion and it carried unanimously.

Rural Community Assistance Grant Application. Sharon Haugen reported on the U.S. Forest Service RCA grant on behalf of the City for an Open Space Management Plan. The City is requesting \$5,000 from the Forest Service. The city will match it with \$45,000 for a total project cost of \$50,000. The purpose of the grant is to develop a plan that will be a framework to protect and enhance open space bond purchases. Staff recommended approval. Commissioner Varone moved to approve the grant application and authorized the chairman to sign. Commissioner Loendorf seconded the motion and it carried unanimously.

Rural Community Assistance Grant Application. Commissioner Murray stated this U.S. Forest Service RCA grant is on behalf of the Augusta Fire Department for site preparation work for a new fire hall for the fire department. This application will be submitted to the Lewis and Clark National Forest Supervisor in Great Falls. The amount of the application is \$12,550. Commissioner Varone moved to approve the grant application and the letter of support and authorized the chairman to sign. Commissioner Loendorf seconded the motion and it carried unanimously.

Historic Preservation Grant. Paul Putz reported that this application is submitted to the State Historic Preservation Office for Historic Preservation funding through the National Park Service. The application is to renew the appropriation to fund the salary for the City-County Historic Preservation Office position and operating expenses. Ron Cullen, Chairman of the HPC thanked the Commission for its support for the hiring of this position. Commissioner Loendorf moved to approve the grant application and authorized the chairman to sign. Commissioner Varone seconded the motion and it carried unanimously.

Budget Amendment. The amendment is for the ITS department to purchase a multi-media projector for use in the Commission Chambers in the amount of \$5,600. Commissioner Varone moved to approve the budget amendment. Commissioner Loendorf seconded the motion and it carried unanimously.

Ex Parte Communication. Commissioner Murray stated the Commission has before them a proposed amendment to the exparte communication policy approved on February 26, 2002.

Commissioner Loendorf read the proposed amendment and moved to amend it by striking the word 'officials' in the first Whereas clause. Commissioner Murray seconded the motion.

Andy Skinner urged the Commission to put this policy on hold to try to gain some consensus that everyone can agree on and get something that is fair.

There being no further public comment, Commissioner Murray closed the public hearing on the amended resolution.

Commissioner Murray moved to table the amended resolution to the Thursday, March 29. Commissioner Loendorf seconded the motion.

Commissioner Varone responded to Commissioner Loendorf's comments.

Commissioner Murray stated that exparte pertains only to those decisions made by the Commission that involve findings of fact and conclusions of law. Other administrative decisions are not bound by exparte.

Commissioner Loendorf moved to table the amended-amended resolution to Thursday, March 28. Commissioner Murray seconded the motion. Commissioner Varone opposed the motion. The motion carried 2-1 to table the matter to Thursday.

There being no other business, the meeting adjourned at 1:40 p.m.