

PUBLIC MEETING
May 11, 2004

Chairman Mike Murray called the meeting to order at 9:00 a.m. Commissioner Tinsley was present. Commissioner Varone was absent on medical leave. Others attending all or a portion of the meeting included Ron Alles, Sharon Haugen, K. Paul Stahl, Sheriff Cheryl Liedle, Deputy Vance Lavinder, Sharlene La Rance, Michael McHugh, Dennis Iverson, Jason Mohr, Paul Spengler, and Carole Byrnes.

Pledge of Allegiance. Everyone recited the pledge.

Proposed Major Subdivision, Preliminary Plat to be Known as Northwest Lot 2A-1 Amended Major. (Applicant, M & W Investment) (Planner, Michael McHugh) The Commissioners will consider creating 92 lots; 83 lots for one single-family dwelling and 8 lots for water and wastewater treatment facilities. The subdivision proposal is located in the NE1/4 of Section 7, T11N, R3W; generally located south of and adjacent to Prairie Road and approximately ½ mile west of North Montana Avenue. The applicant has withdrawn the proposal. No commission action is necessary.

Resolution for Public Road Easement Application. Sharon Haugen reported the resolution acknowledges the county will apply for a public easement from the U.S. Forest Service for York Road, Nelson Road County Route 4, and York Gulch Road No. 4136 as part of the county road system from the Forest Service. This action will finalize the roads as a county public access easement and the county accepts the roads as part of the road system. The Forest Service will relinquish all claims on these roads. This is the first step in the completion of the York Townsite project.

Sharlene La Rance, Helena National Forest, reported all of the roads are within the York Townsite Project area. The intent of the forest service is to turn everything on federal land from the river to Vigilante Campground to the county on the main York Road.

Commissioner Tinsley moved to approve the resolution and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Lewis and Clark D.A.R.E. Interlocal Agreement for FY 2004-2005. Deputy Vance Lavinder, DARE Coordinator, reported this DARE Program teaches kindergarten through grade 12 and has been expanded to teach child safety seats.

Sheriff Liedle reported this interlocal agreement is to continue coordination of the DARE program between the Lewis and Clark County Sheriff's Department and the City of Helena Police Department.

Commissioner Tinsley moved to approve the agreement and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Proposed Major Subdivision, Preliminary Plat to be known as Holmberg Village Estates, Block 2 Major. (Applicant, H & I Development) The applicant proposes to create 56 lots; 52 lots each for one single-family dwelling and 4 lots to accommodate water facilities and storm water retention. The subdivision proposal is generally located 1.5 miles east of and Lake Helena Drive and north of Canyon Ferry Road. H & I Development is represented by Dennis Iverson who indicated his willingness to proceed.

Michael McHugh presented the staff report. This is the second phase of the Holmberg Estates Major Subdivision. The property located to the west of the proposal is a 340 acre parcel that has been issued a permit for a gravel operation and will be valid until 2020. There is no special zoning district or zoning regulations in this area.

The City-County Health Department has conducted all of the soil tests on the property and has identified that there are suitable well locations on the proposed subdivision.

The existing water supply system would need to be expanded to a 120,000 gallon storage tank with six inch delivery lines. The Water Quality District has determined there is adequate water in this area to serve this proposal. The applicant should submit an application to the Department of Natural Resources and Conservation adjusting the location of the proposed water use in this area.

The applicant proposes to provide access easements constructed to county asphalt standards to allow additional access for future development. The Lakeside Fire Service Area and the applicant have reached an agreement that the water supply and storage system will provide a minimum of 1,000 gallons per minute for 120 minutes. Fire hydrants are located at the middle of each lot. The homeowner association will be responsible for the maintenance and repair of all fire improvement facilities on the property. An irrigation regulating reservoir is located approximately ¼ mile to the north of the property. A proposed covenant recommends a condition of approval requiring notification of potential impacts to air quality associated with the sand and gravel mining operation. No floodplains were identified on the subject property. The developer should notify future landowners about the radon potential in this area and notification that the Helena Regulating Reservoir fault line transects the northeast part of this property. The applicant has indicated using both land dedication and cash in lieu of parkland dedication for 2.77 acres. The Consolidated Park Board recommends cash payment instead of the combination of land and cash in lieu.

Staff recommends approval of the proposed subdivision subject to 16 conditions as outlined in the staff report.

The planning board had some concerns about water availability in this area. Several people expressed concerns about water quantity and the impacts on existing wells.

The applicant discussed issues regarding the water use permit and the planning board amendments to the proposed conditions of approval.

Commissioner Tinsley. Mr. Chairman. Mr. McHugh, if you wouldn't mind briefly describing in general the process that is indicated when we talk about the applicant who has a water right or permit for an annual withdrawal of up to 82.75 acre feet per year and if the EA calls for a possibility left at 355 and I understand that you qualified that by saying if every faucet was turned on—but what is the process, you say the applicant would be required to amend their water right to increase withdrawals or require mandatory low flow fixtures. Number 1, what is the process for this in general for going to amend your water right? Number 2, how do you mandate low flow controls? I know you can do it at the time of construction, but after that I can't understand you can possibly...

Michael McHugh. Answering the last question first, you can make a covenant that there be low flow facilities associated with the construction of that. The enforcement of that is difficult because we do not have building inspector in the county. The other issue is that when anyone applies for a water right in excess of 35 gallons/min. they are required to have a public hearing. All adjacent property owners are notified there is a public hearing that the Department of Natural Resources can determine whether there is a need for a public hearing. If there is there is a public hearing held for an arbitrator then if necessary the developer who would have the right in excess of 35 gallons/min. can reach an agreement about potential impacts and copied with your transmittal memo is the final agreement between the protestors and the applicant. Within that agreement, the developer has indicated that he will either deepen or redrill wells if there is any diminished capacity of the wells that can be proven that these production wells have impacted existing things. One thing that needs to be considered in this is that even though there is a signed agreement, the applicant does have a water right that is senior to several of the protesters in that area.

Commissioner Murray. Thank you. Mr. McHugh, in your effects on wildlife, you say this was a prime fawning area—that's past tense—so it's no longer?

Michael McHugh. The area is still utilized as nesting and fawning habitat but because of the encroachment of developments, not only this proposal but the numerous minor subdivisions that have occurred on both sides of this the habitat has been diminished.

Commissioner Murray. Paul Stahl, Mr. McHugh, in mail delivery—Is the cluster mailbox there off Canyon Ferry Road on the interior of Holmberg Drive?

Michael McHugh. Yes sir, they are located in an area right here and then there is another mailbox cluster in that area.

Commissioner Murray. Thank you. On page 5 of the transmittal document, can you summarize a little bit—Planning Board member Throssel's concerns where he states again, "it is an example of putting off what are going to be expenses for the people in the subdivision, but also people adjacent to the subdivision and to the county taxpayers." Was Mr. Throssel just talking about busing?

Michael McHugh. He's talking about the total impact. One of his main concerns was the impact on the school district and the requirement that the students be bused at the general taxpayers' expense. He did have other concerns about water availability and was also concerned about the use of the individual on-site wastewater treatment systems why a community system couldn't be developed at that time. Again, he indicated that he thought this was an example of lack of planning, a lack of capital facilities, planning, and we're putting off the expense until the future.

Commissioner Murray. Thank you. Further questions, Commissioner Tinsley?
Commissioner Murray. Mr. Iverson, this is your opportunity to present the subdivision and for the record we need your name and business address.

Dennis Iverson, 1820 N. Last Chance Gulch. I don't there is much more than I can add to Michael's report, it was an excellent and very thorough staff report. I'd be happy to answer any questions you might have. There are a couple of people here that may have other comments, but I would like to have an opportunity to respond to later if it will help clarify things. We agree with all of the Conditions that had been proposed. We will also in addition will include in our new covenants the requirement for water metering.

Commissioner Murray. Thank you, Mr. Iverson. As I understand at this time you do not wish to use any of your consultants to make a presentation?

Dennis Iverson. No, Jim Taylor is here in case a question comes up that I'm not able to answer.

Commissioner Murray. We'll reserve for you the right to close.

Commissioner Tinsley. Mr. Iverson, just one quick question on the parkland dedication. I notice you originally indicated you are willing to split it and do the half. Are you okay with that?

Dennis Iverson. Oh yea, absolutely. Actually that was a matter of ignorance. I didn't really understand what the rules were and that's totally appropriate.

Commissioner Murray. Before I open the public hearing, I would like to point out there is a sign in sheet going around someplace in the room. If you haven't had the opportunity to sign it, I would ask that you do sign the sheet to make it easier on Mrs. Byrnes when she's attempting to do the minutes of today's meeting. For the record, Tom and Marjorie Williams have submitted testimony, a Russell Brewer and a Mr. and Mrs. Dolan, and their written testimony is part of the public record. This is a public hearing. Anyone that wishes to testify in favor of, in opposition to, or speak in general about the proposed subdivision, now is your opportunity. We ask that you go to the podium please and if we can have your name and address please.

Russell Brewer, 3275 Ranger Drive. I am one of the members of the agreement we signed

with Mr. Iverson. I do have some concerns with this additional development. I do not think that his existing water right is adequate to supply the proposed subdivision and will need to apply for a second water right. I do believe there is adequate water supply within the _____ and thinking he will have to apply for a second water right. He has not made his application to DNRC yet to amend his existing water right. I would also like to see a memorandum of understanding with the Department of Transportation on the Canyon Ferry Road project as far as additional turn lanes to the project. As far as I know there are no proposed turn lanes in this area they are just going to widen the shoulders and widen the roadway. I'd like to the memorandum of understanding with the Commission and Mr. Iverson and the Department to be presented to the Commission before completion of the development. I'd also like to --- before he is allowed to continue building homes, I'd like to see him expand his water system and the roadway to begin preparing building homes; and I'd like to see his water issues resolved before he builds any more homes. That's all I have for now. Are there any questions?

Commissioner Murray. Anyone else present that wishes to comment either in favor of, in opposition to, or speak in general about the proposed major subdivision? For the second? For the third and final time this closes the public hearing. Mr. Iverson, you now have the right to close.

Dennis Iverson. Mr. Chairman, I don't have a lot to add, but I would like to comment on what Mr. Brewer had to say. To be honest, I don't have an issue at all with the _____. It was absolutely fair. I think they have every right to be concerned and I think and I hope that what we've done in that agreement makes certain that it will remain whole. The one thing I would like to clarify is the adequacy of our current water rights. There are three numbers that are important to keep in mind. The first number is the capacity of the wells themselves. You will note that one of them makes just under 500 gallons a minute earning the capacity to do that. And the other around 250. Use 700 for a number. The wells are easily capable of producing 700 gallons/minute. The second number I think is important to note is the number contained in our water right permit. We have a letter from DNRC to withdraw water at a rate of up to 300 gallons per minute. The other number that is important to keep in mind that at full build out the calculations show that our water requirement will be around 94 gallons a minute or 96 whatever that number was---94 I think. So, to recap that the wells are capable of 700 gallons a minute. We have a water right that allows us to withdraw 300 gallons a minute and our actual at full build out will be somewhere around one-third of that. Now, the way the process works is that our permit gives us until the year 2014 to actually quantify our use. As you are aware, under Montana Water Law, you can only claim water you put to beneficial use. So at the end of our full build out before the trigger year 2014, the date that we have supplied and have been supplying for a couple of years to DNRC which is our rate of use will be calculated and then we'll know whether our actual use is 94 gallons a minute, 103 gallons a minute, 97 gallons a minute and whatever that number is our water right permit will be reduced down to that. So it's a pretty safe system. I think it's clear that we have enough water. We do have to apply for a change in place of use. The application that we are preparing now, in fact, I'm waiting on wells surrounding well log information that we have to submit to DNRC, probably get it into them some this week will be a request not to change the amount of water, not to

change the amount of water we're going to withdraw or what we're going to use it for. It will simply be to expand the place of use from here to include that. The reason we didn't do that when we applied originally was that we didn't know at the time that people were going to like to live out there to the extent that they do and really do have any idea whether or not it would be practical. So at that time, it just seemed more sensible to only ask to apply for the water right when we're making the subdivision application. So that application will be in probably sometime this week or as soon as I get the information from a geologist. I think that's the only one thing I wanted to clarify.

Commissioner Murray. Thank you Mr. Iverson. And thank you for assuming the Commission understands water law.

Dennis Iverson. I didn't mean to lecture you.

Commissioner Murray. Commissioner Tinsley, do you have any questions?

Commissioner Tinsley. I'm willing to --- Thursday would be fine with me but we've got until the end of the month keeping in mind that I'll be gone all of next week. I think I can get out to the site by Thursday to look at it if that's okay with you; otherwise we'll work around your schedule.

Commissioner Murray. I would be prepared this Thursday, the 13th.

Commissioner Tinsley. Mr. chairman, I make a motion that we render a final decision on the proposed major subdivision, preliminary plat to be known as Holmberg Village Estates Block 2 Major on Thursday at our regularly scheduled subdivision meeting at 9:00 a.m. in this room, Thursday, May 13.

Commissioner Murray. Second. All in favor of the motion signify by saying Aye. Aye.

Commissioner Tinsley. Aye.

Commissioner Murray. The motion carries. Mr. Iverson, we'll render a final decision this Thursday at 9:00 a.m. in this room.

DES Statement of Work for FFY 2005 & FEMA Summary Sheet for Assurances and Certifications. Paul Spengler reported these documents are an annual requirement by FEMA for the county to sign off on the statement of work of the DES Coordinator which is part of FEMA's Performance Grant. The grant assists the county with reimbursement of the DES Coordinator's salary and benefits. This past fiscal year the county has received \$37,369. Commissioner Tinsley moved to approve the statement of work and summary sheet and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Health Department Contract with DPHHS/TB Cases. Libbi Lovshin reported this contract is for follow-up and control of TB cases. The contract amount is \$6,000 for 2004 calendar

year. Staff recommends approval. Commissioner Tinsley moved to approve the contract and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Health Department Contract with DPHHS/Immunization Action Plan. Libbi Lovshin reported this contract is a continuing program to improve immunization levels of children under two years of age. The contract amount is \$15,240 for calendar year 2004. Staff recommends approval. Commissioner Tinsley moved to approve the contract and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Contract with IT&M Division, Inc. Dave Schmitz reported the contract is for upkeep of the fire/sprinkler system at the Cooney Home. The contract is in the amount of \$12,860 to flush the system, \$150 for a rebate as part of the replacement program, labor at an hour rate, and time and materials plus 10%. Staff recommends approval. Commissioner Tinsley moved to approve the contract and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Lewis and Clark Conservation District / Verification of Mills Levied. Ron Alles reported this document verifies the number of mills levied on behalf of the Lewis and Clark Conservation District. The District is applying for a grant to the DNRC for the 223 Cooperative Noxious Weed Control for Private Land project. Staff recommends approval. Commissioner Tinsley moved to approve the contract and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Resolution Declaring County Property Surplus Property. Ron Alles reported the resolution declares surplus a broken printer from the Sheriff's office. Staff recommends approval. Commissioner Tinsley moved to approve the resolution and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Public Comments. None.

There was no other business and the meeting adjourned at 10:05 a.m.