

NOTICE OF SUBDIVISION MEETING

August 26, 2004

Others attending all or part of the meeting: Carol Hanel

Pledge of Allegiance. (Everyone recited the pledge)

Chair Murray: Good morning and welcome. My name is Mike Murray, to my left is Commissioner Varone, to her left is Mrs. Byrnes our executive secretary. To my right is Commissioner Tinsley, to his right is Sharon Haugen our Director of Planning, to her right is Ron Alles our Chief Administrative Officer. Today is the regularly scheduled subdivision meeting of Lewis & Clark County.

Proposed Minor Subdivision, Preliminary Plat to be known as Amended Plat of Lot 14A, Lowe Tracts.
(Applicant, Ben Lesofski) (Planner, Lindsay Morgan) (cont. from 8/24/04)

The Commissioners will consider creating 3 lots, each for one single-family dwelling. The proposed subdivision is located in the NE1/4 of Section 12, T10N, R3W; generally located east of Pioneer Park Drive and south of York Road.

Chair Murray: Are there questions of staff? Is there a motion?

Commissioner Tinsley: Mr. Chair I make a motion that we approve the staff report on the proposed minor subdivision preliminary plat to be known as Amended Plat of Lot 14A Lowe Tracts Minor Subdivision with the 19 conditions of approval as indicated by staff and authorize chair to sign.

Commissioner Varone: Mr. Chair because, Commissioner Tinsley because I wasn't here for the public hearing, I'm familiar with it but I wasn't here and I'll take your direction on whether you think I should abstain from this vote.

Chair Murray: I'll second the motion, there was, no-one testified so if you're familiar with the subdivision, there was no public testimony in favor of and opposition to or in general. Mr. Lesofski agreed with the conditions I believe.

Lindsay Morgan: He did request that condition #7 be removed.

Chair Murray: Thank you. Ms. Morgan would you speak to why you put as a recommendation condition #7 in, why you think it should remain.

Lindsay Morgan: When I drove down Pioneer Park Drive, there are several washboards on the road, it's a very difficult road to drive down. It was brought up to County standards in 2002, it's my understanding that it's brought up to county standards every year. Just at this point in time, the road is difficult to drive down because of all the washboards and the applicant has stated that it will be brought up to county standards prior to final approval it's just whether or not he is the one who does it on his own or if he along with the other homeowner's get together and do it. Either which way it doesn't really matter to me, I just want it brought up to standards prior to final plat approval.

Chair Murray: Thank you. Questions of Ms. Morgan? Comments on the applicant's request to change the condition.

Commissioner Varone: Mr. Chair, if I may. There's non-formal RID it's just something that the neighbors do themselves or is there a formal RID?

Lindsay Morgan: I'm thinking that it's probably part of a homeowner's association as opposed to an RID.

Commissioner Varone: Well if that's the case if there's a homeowner's association, it seems to me that the homeowner's association has that obligation, he's going to be improving his internal streets and building those and become part of the homeowner's association I'm assuming, is that correct?

Lindsay Morgan: I'm not certain if he's going to become, I guess he probably would become part of that homeowner's association that already exists if his lot is already subject to that. I don't know how you'd feel about this but the condition could be made more general that says the road be brought up as opposed to the applicant bring the road up.

Commissioner Varone: I believe the language needs to be in there but I am more comfortable with saying the road rather than the applicant if he's a part of a homeowner's association. I'd be willing to make that motion.

Commissioner Tinsley: Mr. Chairman, Commissioner Varone would you restate your motion?

Commissioner Varone: The road, it would say the road shall improve, or the road shall be improved, help me with it would you

Lindsay Morgan: Pioneer Park Drive shall be improved to the specifications required by the County Subdivision Regulations typical section number peccia, #3 peccia from the intersection with York Road to the South end of the approach for the internal access road. The road improvements will have to be certified as meeting County Road Standards by a registered engineer in the State of Montana.

Commissioner Varone: Thank you.

Chair Murray: Is there a second?

Commissioner Tinsley: Second. For purposes of a discussion Mr. Chairman

Chair Murray: Commissioner Tinsley?

Commissioner Tinsley: Mr. Chairman, Commissioner Varone, Ms. Haugen is this something we can do or we should do or we have ever done.

Sharon Haugen: Mr. Chairman, Commissioners, let me answer your question first. No, we haven't done that that way, with regard to that we usually specify the applicant that way and the reason we've specified who is responsible for that, when it comes time for the final plat the designated party who is responsible to that, if this doesn't get fulfilled, you haven't indicated it is a direct responsibility of the applicant to do that, that's why we prefer to have the applicant in there but you can, we haven't done it that way, if Mr. Stahl is here he could give you a legal opinion in terms of what kind of liability that leaves us if the road is not brought up to standards or what kind of complications it will bring with the final plat.

Chair Murray: I believe the way it is written now, Mr. Lefoski can go to the homeowner's association and use what influence he may have to ensure the road is brought up to standard. In the way it is proposed, no one is responsible for condition #7.

Ron Alles: Mr. Chairman, Commissioners I would add as I recall from his testimony, he already is a part of that homeowner's association

Chair Murray: and that it's his intent, his concern in his testimony, his concern is with construction the trucks are still using this road and prior to Fall it was his intent to, his intent through the homeowner's association was to see that the road was graded prior to Winter setting in so he's, he plans on doing it so whichever way you want to get to

Commissioner Varone: Mr. Chair, if I could based on the discussion from staff and since I wasn't here, I'm going to withdraw my motion.

Chair Murray: Okay with agreement of the second?

Commissioner Tinsley: Absolutely.

Chair Murray: The motion is withdrawn. The motion before us Commissioners is approval of the proposed subdivision subject to 19 conditions as recommended by staff. Further discussion? All in favor of the motion signify by saying Aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries. Thank you Ms. Morgan.

Proposed Minor Subdivision, Summary Review to be known as EZ Access Minor. (Applicant, Phil & Terry Lamping) (Planner, Frank Rives) (cont. from 8/24/04)

The Commissioners will consider creating five storage structures on a 2.95 acre tract that has two existing single-family dwellings. There is also an existing 12x24 foot billboard in the southeastern area of the property. The proposed subdivision is located in the NE1/4 of Section 31, T10N, R2W; generally located approximately 1 mile east of East Helena and north of Highway 12 East.

Chair Murray: Is there a motion?

Commissioner Varone: Mr. Chair I move approval of the proposed minor subdivision summary review to be known as EZ Minor and the 9 conditions as recommended by staff and authorize the chair to sign.

Chair Murray: Second. Discussion

Commissioner Tinsley: Oh, I'm sorry. I'm sitting here reading, I would have second that I apologize.

Chair Murray: There was a condition or a comment Commissioner Varone on yard lights and we may want to take a look

Commissioner Varone: Mr. Chair if I may, the language on the yard lights on this one is correct, it does have the new language, I think the one that I was referring to was one of the major subdivisions before. But I do have a question regarding condition of approval #3 relative to the fire protection plan as you recall there was some discussion about leaving a plan open without any real concrete information and if I can ask Frank if there has been any other discussion?

Chair Murray: Mr. Rives

Frank Rives: Chairman Murray, Commissioner Tinsley, Commissioner Varone. I spoke with Ken Mergenthaler on two occasions, yesterday morning and this morning, he has not had an opportunity to speak to his consultant regarding the mini storage units, his concern is that mini storage units as far as fire fighting are kind of a surprise I guess you might say you don't know what's in them. There's old furniture, there's chemicals, there's wood, papers all sorts of things they don't know what's going on when they respond to the fire and the fire can either be just be a little smoldering fire or the whole thing can just go down and you have the aluminum and the chemicals and what not so he was not prepared to set a particular fee per lot his recommendation was to go with staff's recommendation that the applicant's prepare a fire plan acceptable to Eastgate and give Eastgate an opportunity to run the plan through their consultant to see that it meets the requirements for addressing the potential hazards of fires at mini storage units.

Chair Murray: Commissioner Varone in the testimony that was presented on this subdivision, the applicant

pointed out that it's their intent to have metal storage units, which I think, would be less inclined to have the fire spread than the normal wood storage units. I'm certainly no expert on fire.

Commissioner Varone: As do I and in the time that it takes to begin these plans and end these plans it seems to me there was appropriate time frame for the volunteer fire department to contact their consultant and I don't know what happened there, I do know that the fire season thankfully wasn't as bad as it has been in the past several years and because of the mill building and because there's several of these in the valley already, I'm prepared to make a motion and Frank you're going to have to help me with the language to, that provides for a \$500 and I believe that's the dollar amount that's generally been used \$500 fee to the fire department, can you help with the language.

Chair Murray: Is there a second? Motion dies for lack of a second. Potentially on the lot Commissioner Varone, potentially there are five separate storage units for whatever that's worth.

Commissioner Varone: Commissioners, I have a real problem with leaving this wide open for the volunteer fire department and or their consultant to make a determination, it says prior to filing of the final plat, a fire protection plan shall be submitted to the Eastgate Fire Department for review and approval. All specifications of the approved plan shall be met. Staff provides ample opportunity for all entities to respond to these and since the Fire Departments response was so nebulous since they say they didn't have time, I feel that we're not providing for applicant's the way that we should and I simply don't believe that anyone including the volunteer fire department should be allowed the latitude to deal with their plans after we've approved it and to require the applicant to do whatever they tell them to do and that's basically what we're doing here.

Commissioner Tinsley: Mr. Chairman, Commissioner Varone. I have full faith in our Volunteer Fire men and women and their corresponding department heads and boards. I truly believe that they will come forward with a very workable plan, that the Lampings can implement. There's nothing ___ about the way our Fire Departments operate in this county, these folks are there to protect the lives and the safety and the welfare of our citizens, they're not out there to make life harder on anybody, they're out there to protect and serve and that's what they do and most the time they do it for free. I am completely comfortable in allowing them the latitude to come up with a plan that I know will be workable for both the Lampings and the Fire Department and therefore I'm ready to go forward on this vote.

Commissioner Varone: Obviously we disagree, in the past one of the biggest contentions is the inability of people to continue with the subdivision because the requirements are so unbelievably complicated and unreasonable that they haven't been able to move forward, that's one reason we have these continued discussions.

Commissioner Tinsley: And as I stated I guess Mr. Chairman, Commissioner Varone as I stated previously, I don't believe that our fire men and women volunteer fireman and women and their corresponding boards are in the business of trying to make things complicated for people, they're in, for developers, they're in the business of protecting lives, safety and welfare in the event of a catastrophic event and I have full faith and credit and belief that they will do so in a professional manner.

Commissioner Varone: Most of what you say Commissioner I absolutely agree with, the part that I don't agree with is their ability to determine after the fact given complete authority after we approved it, I want to be able to do that, that was what I was elected to do and we're allowing them that authority. What they proposed in the past, many of the things I've agreed with but the thing I don't agree with is just allowing them to do whatever they want after we approve it.

Commissioner Tinsley: Mr. Chairman, Commissioner Varone, I know that we are going to disagree on this issue, but the fact remains that we were elected to serve the people of this County and the number one priority that we have as elected officials is the safety and protecting the safety and welfare of our citizens and we use our volunteer fire departments as part of that mission and again I have full faith that they will conduct themselves in a professional manner and I stand by my statements.

Commissioner Varone: As do I and I hope that this will be the last word.

Commissioner Tinsley: It appears you were looking to get the last word.

Commissioner Varone: I am, there's no question about it and so are you. I, since I lose on this as I always do with the volunteer fire departments; I just want to say that my hope is that the word reasonable is used in this plan.

Chair Murray: As Chair I will have the last word

Commissioner Varone: Thank you

Chair Murray: I'm going to come down on the side of staff on this particular condition. The applicants have the opportunity if they feel the condition or the fire plan that they're required is unreasonable to come back to the Commission as we've been changing conditions rather frequently in the last year or so, the Lampings if they can't meet the condition or don't feel they're presented with a reasonable compliance they have the right to come back. Commissioners you have before you a motion to approve the subdivision subject to 9 conditions as proposed by staff, all in favor of that motion signify by saying aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries.

Resolution Levying an Assessment Upon Customers of the Scratch Gravel Solid Waste Management District who own Real Property in the District and Owe a Pay-As-You-Throw Program Charge as of August 10, 2004. (Carol Hanel)

The Commissioners will consider the resolution.

Carol Hanel: Good morning Chairman Murray, Commissioners Tinsley and Commissioner Varone. For the record my name is Carol Hanel, Public Works Coordinator for Lewis & Clark County. In your board packet you have a resolution levying an assessment upon customers of the scratch gravel solid waste management district who own real property in the district and owe a pay as you throw charge for, this is overage of the 1.5 ton limit. Staff recommends approval of the resolution.

Chair Murray: If I may Commissioners, Ms. Hanel if you'll review the program with us. It's my understanding that the people that are in arrears in payment of their taxes in past years many people have elected to have this appear on their tax bill. You have billed these people as late as July and they had until a date in August to pay this.

Carol Hanel: Exactly. Correct. Every year each property owner within the solid waste management district, scratch gravel solid waste management district is assessed on their tax bill for 1.5 tons. Anything over that is placed, they pay for anything over the 1.5 tons. They're sent a statement the first month they exceed their limit, it's an informational notice letting them know they have exceeded their 1.5 ton limit. They continue using their permit, they can pay that amount and continue accumulating charges. At the end of the year, when the program, we run from a fiscal year of July 1st to June 30th. The first of July I send out statements along with a, well I send out a statement showing their final balance and they have thirty days to pay that. If they choose not to pay it, it will be placed on their taxes and it's split between the first half and the second half on their tax bill. It doesn't affect their credit rating, it's a one time deal, once it's paid it's off their taxes. We have a July 31st deadline for accepting payments and that the direction of the scratch gravel board we have extended that until August 10th for those who for one reason or another didn't make the deadline just to give as many people as possible the opportunity to pay it. The lists on exhibit 'a' that is attached to your resolution are those who had not paid as of August 10th.

Chair Murray: Ms. Hanel, this charge will appear on the November tax statement rather than being split?

Carol Hanel: Yes.

Chair Murray: Thank you. And it appears the list grows from year to year that this appears to be more names than

Carol Hanel: It has grown from last year. Last year the total assessment between the real property and the mobile properties was 22,000 and this year it was 33,000 so it has gone up quite a bit, those that were going over the 1.5 ton.

Chair Murray: Thank you. Commissioners questions of Ms. Hanel? Is there a motion?

Commissioner Tinsley: Mr. Chair I move approval of the resolution levying an assessment upon customers of the scratch gravel solid waste management district who own real property in the district and owe a pay as you throw program charges of August 10th, 2004 and authorize the signature of the chair.

Commissioner Varone: Second.

Chair Murray: We have a motion and a second, all in favor of the motion signify by saying Aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries.

Resolution Levying an Assessment Upon Customers of the Scratch Gravel Solid Waste Management District who own Mobile Homes as Personal Property in the District and Owe a Pay-As-You-Throw Program Charge as of August 10, 2004.

The Commissioners will consider the resolution.

Carol Hanel: Yes, once again Commissioners this resolution pertains to mobile home or personal property only. The first resolution was for real property. The same applies to this, they're all assessed the same amount, they're all allowed 1.5 ton of solid waste per year and the list that is attached to this resolution exhibit 'a' is a list of those personal properties that have exceeded the 1.5 ton limit and had not paid as of August 10th.

Chair Murray: Questions of Ms. Hanel?

Commissioner Varone: Mr. Chair I approve, I move to approve a resolution levying an assessment upon customers of the scratch gravel solid waste management district who own mobile homes as personal property in the district and owe a pay as you throw program charge in the amount of totaling in the amount of \$5,660.37 as of August 10th, 2004 and authorize the chair to sign.

Commissioner Tinsley: Second.

Chair Murray: We have a motion and a second, further discussion, all in favor of the motion signify by saying Aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries. Thank you Ms. Hanel.

Independent Contractor Contract with Valley Excavating, Sand and Gravel. (Carol Hanel)

The Commissioners will consider the contract for roadwork for the Big Valley RID in an amount not less than \$8,155 and not to exceed \$9,475.

Carol Hanel: Commissioners, in your packet is a contract for some roadwork to be done in the rural, the Big Valley Rural Improvement District. The work consists of pulling ditches, removing sod and brush, blading, watering and rolling $\frac{1}{2}$ mile of Woodland Hills Road, $\frac{1}{2}$ mile of Prairie Road and 1 mile on Diamond Springs Road and they will be hauling approximately 770 cubic yards of onsite fill from the Engel's residents. County staff recommends approval of this contract so the contractor which is Valley Excavating Sand and Gravel be allowed to do the work for the RID.

Chair Murray: Questions of Ms. Hanel. Ms. Hanel, if you will for the people that may be watching us on television this morning, would you explain the term pulling ditches for people that don't deal with road work everyday.

Carol Hanel: I will attempt. If there's not enough existing mix on the road that they can work with and if there is material within the ditch that they can use to put on the road and save them money not having to haul in extra material, the contractors looked at that and County staff has looked at it, they can pull, there's enough material in the ditch to pull on to the road and save some money and work it into the road when they grade it.

Chair Murray: Thank you and it's my understanding this is a common practice in the County if we can

Carol Hanel: If possible, if there is material there they can work with they will use that, yes.

Chair Murray: Other questions? Is there a motion?

Commissioner Tinsley: Mr. Chair I move approval of the Independent Contractor Contract with Valley Excavating Sand and Gravel for roadwork for the Big Valley RID in an amount not less than \$8,155 and not to exceed \$9,475 and authorize signature of the chair.

Commissioner Varone: Second.

Chair Murray: We have a motion and a second, discussion, all in favor of the motion signify by saying Aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries. Thank you Ms. Hanel.

Controlled Access Agreement for Stemple Pass. (Eric Griffin)

The Commissioners will consider the agreement.

Eric Griffin: Mr. Chairman, Commissioners there seems to be a logistic problem with you not having this contract, so I would have to recommend that we do this on Tuesday.

Chair Murray: Commissioners, if there is some urgency in it, if you can explain it the Commission may entertain it.

Commissioner Varone: I'm willing to listen because I know this is something that needs to be done.

Eric Griffin: Mr. Chairman, Commissioners what this is, is the an agreement that I kind of drafted and then sent to Leo, the County Attorney, for him to basically redo and what this is it will be an access agreement, the signatures on the agreement will be Lewis & Clark County, will be five property owners and this is at that lower bridge on Stemple Pass, it will be ___ there's two culverts, a WC Field and also a Mrs. Grimes and they are the property owners and then there will be users of this agreement. What it is it will be basically a detour that will go around while the bridge is constructed and very simply it basically, everybody is going to hold each other harmless if anything happens as they cross each others property and it's a similar type agreement, where it originated from was when we had the Sierra Bridge, the first bridge that we did out there and we put on the key, we put a gate and a key up there and we allowed people to cross the bridge even though we had condemned the bridge at their own risk and their own liability so that's the, I guess what the agreement says and I have fed ex the agreement to five property owners, they should have received that yesterday and the agreement also allows to that each party may sign a different piece of paper and then we will take all these pieces of paper because these people are all over the state and bring it together to have one agreement and Leo included the language to counter part of the signature in it which will allow us to do this also to. That would be what the agreement includes and I don't know why it's not here, but I'll find out about that.

Commissioner Tinsley: Mr. Chair, Commissioner Varone. Assuming, would it be a problem, if all of the five affected residents do not sign, say four of them do would that affect this in any way if we decide to go forward with this today? You see my point, we haven't seen if they've signed

Eric Griffin: Mr. Chairman, Commissioner, I have talked to all of the parties verbally and they are all in agreement, so I don't see any reason why they would not, they are agreeable, it's kind of a neighborly thing to help out themselves and their neighbors or who live above them to so I have no reason why any of them won't sign it.

Commissioner Tinsley: Follow up Mr. Chair. Is there really a resident there named W.C. Fields?

Eric Griffin: Maybe not W.C., I know it's W. Field.

Commissioner Varone: Mr. Chair, Commissioner Tinsley. Eric just for the record we're not talking about any money crossing hands one way or another this is just a simple hold harmless agreement until the bridge is replaced and completed.

Eric Griffin: Mr. Chairman, Commissioners, that's correct. This is something that the property owners just kind of wanted to have as a whoever is going to cross their property if they slip off the road or something, who knows, I don't know if anything would happen, it's not a serious situation up there but they just want the neighbors saying that if a tree fell on them while they're driving through their property they're not going to hold them responsible to fix their car basically.

Chair Murray: Mr. Griffin it's my understanding that the general public will not be allowed to use this temporary easement or access, is that correct?

Eric Griffin: Mr. Chairman that is correct. The County will be the keeper of the keys and there is, all the keys will basically be approved by Mr. Culvert and there is 8 or 9 or maybe 10 people who will probably get keys. The whole thing will not, we'll start September 7th and I think the agreement says we'll be done close to the 24th of September, so it's a limited amount of people who will do this.

Chair Murray: Mr. Griffin is there a chance that you could find this contract by 10:30 this morning?

Eric Griffin: Yes there is.

Chair Murray: Commissioners if you wish, although it's not on the agenda for the public 10:30 administrative staff and public works meeting with your concurrence we could move the actual signature to that meeting.

Commissioner Varone: Mr. Chair, Commissioner Tinsley, that was a question that I was going to ask if we could do that with both this one and the contract for the radio room that's next on the agenda and I'm assuming we don't have that contract either.

Eric Griffin: Let's finish this one and I can speak to that one.

Commissioner Varone: So than do we need a motion to table until the 10:30 meeting? So moved.

Commissioner Tinsley: Second.

Chair Murray: We have a motion and a second to table until the 10:30 administrative staff public works meeting this morning in room 309 of this building, the controlled access agreement for Stemple Pass Road, all in favor of the motion signify by saying Aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries.

Eric Griffin: Thank you.

Contract for Radio Room at Law Enforcement Center. (Eric Griffin)

The Commissioners will consider the contract.

Eric Griffin: Mr. Chairman, Commissioners I just need to move this until Tuesday. I was still getting details last night and I don't have it done yet, it's not complete so I need to move it to Tuesday.

Commissioner Varone: Mr. Chair I move to table the contract for the Radio Room at Law Enforcement Center to this next Tuesday, date is August 31st.

Commissioner Tinsley: Second.

Eric Griffin: Thank you

Chair Murray: We have a motion and a second, all in favor of the motion to table this item until next Tuesday public hearing, signify by saying Aye.

Commissioner Tinsley: Aye

Commissioner Varone: Aye

Chair Murray: Aye. Motion carries.

Public comments on items not mentioned above.

Chair Murray: Commissioners this is the point in our meeting when anyone present that has public comment over issues the Commission has authority over now is your opportunity to come forward and there being no one present we are adjourned until our 10:30 public meeting.

Adjourn.