

DRAFT – NOT APPROVED BY BOCC

SUBDIVISION MEETING
November 10, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioner Murray and Commissioner Varone are present. Others attending all or portion of the meeting included, Ron Alles, Jerry Grebenc, Carol Hanel, Aaron Helfert, Michael McHugh, John Huyg, Jaci Grenfell, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Chairman Tinsley: Good Morning and welcome to our regularly scheduled Thursday morning meeting. I'm Commissioner Tinsley. To my left is Commissioner Varone. To her left is Maria Penna, one of our Executive Assistants. To my right is Commissioner Murray, to his right is Ron Alles, our Chief Administrative Officer and to his right is Jerry Grebenc our Director of Community Development and Planning.

Consent Action Items.

Ron Alles:

- a. Independent Contractor Contract. It's between the Sheriff's Office and Helena School District #1. To use Montana Board of Crime Control DUI Grant funds for an advertising campaign, in an amount not to exceed \$4,800.
- b. Montana Arts Council Final Narrative Report. Grandstreet Theatre on behalf of the Montana Arts Council.
- c. Final Plat Approval and Subdivision Improvements Agreement for Wheat Ridge Major.
- d. Independent Contractor Contract. Helena Sand & Gravel, Inc. For Roadwork for Sunny Vista RID, in an amount not to exceed \$36,880.

Chairman Tinsley: Commissioners you have 4 Consent Action Items before you. What is the pleasure of the Commissioner?

Commissioner Murray: I move approval of the Consent Agenda.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Chairman Tinsley: Next item on the agenda is a proposed Minor Subdivision, Preliminary Plat to be known as Huyg Minor Subdivision. The Applicant is John Huyg and the Planner is Michael McHugh. This is continued from November 8th 2005. Mr. McHugh is here to answer any questions before we get started. Any questions for Mr. McHugh? Mr. McHugh do you have anything for us?

Proposed Minor Subdivision, Preliminary Plat to be known as Huyg Minor Subdivision.

Michael McHugh: You do have the 3-variance requests; I believe you should have received copies of those yesterday.

Chairman Tinsley: Commissioners, if there are no questions, we have 3 variance requests and we'll attempt to walk us through them. The first one is to allow proposed cul-de-sac- to extend the maximum length of 700 feet to the length of 775.9 feet. I believe this is the cul-de-sac that comes off, goes west off of Spokane Creek Road, turns south about half way through the property and dead-ends into a cul-de-sac into the center of the property. Is that correct Mr. McHugh?

Michael McHugh: That's correct.

Chairman Tinsley: Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve the variance and authorize Chair to sign the appropriate papers.

Chairman Tinsley: We have a motion. Is there a second? Is there a second? Is there a second? Motion dies for a lack of a second.

Commissioner Murray: Mr. Chair, I move that we deny the request.

Chairman Tinsley: We have a motion to deny the variance request. Is there a second? Is there a second? I'll second the motion. Discussion. Well, I'm going to have a little discussion. Mr. Huyg, we last year passed our subdivision regulations and it was a pretty lengthy process and it was a pretty contentious process and in the process we made a, as a County, we made a statement I think by saying we're going to, from this point on, do our best to ensure that this Valley and this County rose in a way that's consistent with the wishes and values of the people that live in it and we have regulations in place for those reasons and to vary from those regulations, in my opinion, it has to be an extraordinary circumstance and I don't think it's met that level in this particular case, however, I've been working since Tuesday to try and come up with some kind of possible way to mitigate the problem that we have with our subdivision regulations here which precipitated your request for a variance. I don't think we've fully explored and I don't think we've come to a point we should just throw our hands up and say well lets just deny the variance and leave it at that. If we deny the variance in effect I don't think you could do the subdivision. I do think we can, if give a little bit of time, figure out a way to reconfigure your lay out here and come up with an alternative that will allow us not to have to grant a variance for a dead-end road. The reason why we have that regulation in there in the first place is for public health and safety. We want to ensure that people who live in that area can get out in an emergency and to have one dead-end road that exceeds the set amount of feet that we set which is 700 feet in our regulations, that's our way of, as a County ensuring that we know the people who are going to eventually buy this property, their health, safety and welfare is going to be protected in the event of some kind of an emergency. I went out and visited your place yesterday and a couple of the ideas that I have, if you look at the screen, going south to that cul-de-sac, possibly extending that over to your southern boundary and then running a road along the fence line and pursuing an access point onto Spokane Creek Road. This brings up one problem which is there would then be 3 access points in the particular subdivision. The northern part is called Drake Road, is that correct Michael?

Michael McHugh: That's correct.

Chairman Tinsley: There would be Drake Road and then your access point for the existing lot and then the new one that I spoke of. I've also thought maybe we could trade the existing access point that you have for your existing property and move it down to the southern point and accomplish the same thing, possibly allowing your existing place to be accessed via the loop that would be created. In essence where the cul-de-sac sits now if you traveled east towards your existing lot 1, that's a possibility. I don't think it's something we can accomplish

this morning by putting conditions on you and then hoping you could live up to them. My question to you is we cannot also, because your review period ends today, we have to act on something today, unless you grant us the ability to extend it, via tabling this and allowing us to work together to try and come up with something. So that's what I'm asking you this morning. I want to tell you that I've made a commitment to myself that as I said at the beginning before I grant any variances on these new subdivision regulations it needs to be extraordinary and I don't think it has met that level of being extraordinary, so I guess my question to you Sir, is if you would be willing to, I don't know what your time line is and I know you probably have one, but if you would be willing to extend this for a period of time to allow us to maybe talk with DOT and come up with some alternative here that would allow you to go forward. And if you want to respond would you please come forward and state your name and address for our record because we are recording this. I'm asking you that as one Commissioner. It's takes two to tango here, just so you know. The other folks haven't spoken yet. In the event, it appears because there was not a motion to approve, or a second to the motion to approve, it appears to me that it's probably going to be denied, that's why I'm asking you this question.

Commissioner Murray: Just so you understand I have a real problem with the variances. My intent is when we get to your subdivision, I'm going to vote for your subdivision. So I think the subdivision makes sense, I went out and looked at it since our last meeting, have been there. I have real heartburn over the variances and what I would hope is that in the interim you could apply for a permit from MDOT to see if we can get a second entrance point, or a first entrance point for your subdivision if you will and let Drake Road be somebody else's even though your going to connect with it.

John Huyg: 2930 Spokane Creek Road. I don't have any problem with working however we need to through the process. I would prefer that we didn't leave it open-ended as to how long this would take.

Chairman Tinsley: And I don't you should either. I guess what I would suggest to you Mr. Huyg, if possible, just to give Staff, and understand when I say "work with you" you would be working with Staff, we would be working with Staff, we would not be working together just because of the rules we operate under. Everything has to be done in a public process however we are authorized and allowed to work with our Staff on matters like this and we would be willing to do that. I guess my suggestion to you would be to see if maybe you could give us a month. Today is November 10th, maybe if you would give us until December 8th or December 15th to see if we could come up with some kind of alternative that would mitigate the question here. And we can get to that point and if we need more time we can ask you or maybe we can deal with it at that point.

John Huyg: When you say "working with Staff" do you mean working with Mike?

Chairman Tinsley: Right.

John Huyg: Just to know who my contact person would be. If we want to push it out to December 8th that would be fine. I worry about getting into the holiday season because then we will be getting into other issues, so I don't have any trouble with extending that out if that's what we need to do to make things right.

Chairman Tinsley: Commissioner Murray did you have a question?

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. Huyg. Rather than working with Staff it appears that you have to work with MDOT to apply for an access on the road. Is that not true Mr. McHugh?

Michael McHugh: Spokane Creek Road is a state secondary highway and they approve all

approach permits. It's the policy of MDOT and the County in both the 1993 and the draft transportation plan as to try to limit the number of approaches onto secondary highways and also to ensure that we establish separation distances from the existing driveways. Mr. Huyg's existing driveway access to the home there is grandfather of vested right and the County cannot require abandonment of that because we do not control the states secondary roads there. Again, the, in discussions previously with Staff and the various approach coordinators for MDOT they are trying to achieve their goal minimizing the number of approaches. Perfect examples of that would be Canyon Ferry Road, Custer Road and things like that where we have multiple approaches to single properties. And again it's their policy to try to minimize the number of approaches onto the secondary highways.

Commissioner Murray: Mr. Chair, Commissioner Varone, Mr. McHugh. The question was MDOT grant's it, do they not?

Michael McHugh: That's correct but they need to coordinate it with the County and it needs to be done in conjunction with the goals of the existing transportation plans and draft transportation plans.

Chairman Tinsley: Well, since we're doing a little bit of editorial comment, one thing I would say is MDOT has in the past granted exceptions to their own policies as well, and it would astound you at the points at where they would do and where they won't do it. Sometimes it would appear that it would make more common sense to do it and they won't do it, and at other times they would do it where you cannot imagine it should happen. My point is, I think, instead of denying your variance and therefore affectively killing your request there, lets buy us some more time and see if we can be creative and come up with another solution and possibly encourage and persuade the folks at MDOT to allow us to realign this. And granted, that is a grandfathered right that you have there, my point is possibly we could persuade them to allow you to retain that right and just move it a little farther south and possibly realign what you're doing here and ensure that we are going meet all of our goals of the subdivision regulations and you're going to meet your goals of the subdivision plan that you have for your subdivision. So are you still willing to extend this to December 8th?

John Huyg: I certainly do not have a problem with that. I do think we may need to go through the other 2 variances to make sure there's nothing else that could bite us there and then we would have to extend for something else. I don't know if this is the only issue. Because there is another variance that has a 700-foot road on it and I'd rather wrap those all up in one.

Chairman Tinsley: That's fine, we'll go through those as well. So why don't you go ahead and let us act on this one and at the end we'll call you back up and reaffirm your willingness to go forward. Thank you.

Chairman Tinsley: Further discussion?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. I believe if another access is granted the variances are not needed, is that true?

Michael McHugh: You will still have to act on the variances for the distance between Spokane Ranch Road to essentially the dead-end road that accesses the two drive-way approaches here and then the Applicant has requested a variance not to construct a cul-de-sac in this area.

Commissioner Murray: Mr. Chair, Mr. McHugh: ***start of side B**** rather access onto

Spokane Creek Road is granted this would be the secondary access or could be rather than the primary which would negate the need for the cul-de-sac outlined in red, or the other 2 variances I believe.

Michael McHugh: You're correct that the cul-de-sac that's located in the center of property would not be required to be done, but because this is essentially a dead-end road accessing 2 private driveways, a cul-de-sac- or some type of turnaround facility would need to be constructed here. Again, because your proposal to extend the road here, the length of the dead-end would be measured from the center-line of this internal access road to the center of the cul-de-sac here. But it would still require a cul-de-sac or some other approved turn-around facility to be installed here. So if you did do the road network the length of the dead-end road from here to here would not be needed but the construction of the turn-around facility would still need to be required and you would be required to act upon that.

Chairman Tinsley: Commissioner Varone, Commissioner Murray, Mr. McHugh, Mr. Huyg, I would tell you this, I would tell you that as it stands this first variance that we're talking about, I'm not willing to support as is. I would be willing to consider the other 2 variances, given the outcome of the first variance. Obviously, if the outcome of the first variance was the way we would hope, one of them would not be needed and I would be willing to consider the variance for the Drake Road dead-end length, and I think it would, I think if we could get this first issue taken care of that would create an extraordinary circumstance that would allow me to say yes, I don't think it is necessary that we require him to do that, because then, my objectives of commitment to public health, safety and welfare would be met by that first road. I don't know if that makes sense to you. As it stands right now I'm not willing to support this first variance and if it in fact fails this morning I would urge that we table the other 2 to see what the outcome is of what we're trying to pursue here, and table it along with the body of the application and act on them on December 8th.

Chairman Tinsley: Further discussion on this first variance? Any further discussion on the first variance? Ok. Commissioners you have before you a motion to deny the variance request to allow the proposed cul-de-sac to extend past the maximum length of 700 feet to a length of 775.9 feet and this deals with a specific cul-de-sac that comes through the middle of the property as you see on your screen now. All in favor of the motion to deny signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye.

Chairman Tinsley: Opposed, same sign.

Commissioner Varone: Aye.

Chairman Tinsley: Motion passes 2-1.

Chairman Tinsley: Commissioners you have before you now the one dealing with the cul-de-sac. The variance to allow the proposed dead-end road not to have an approved cul-de-sac or turnaround.

Commissioner Varone: Mr. Chair, I make a motion to approve the variance.

Chairman Tinsley: We have a motion to approve. Is there a second? Is there a second? Is there a second? Motion dies for a lack of a second. Is there any other motion?

Commissioner Murray: Mr. Chair, to save coming back and changing my vote, I move to table

this variance until December 8th.

Chairman Tinsley: Mr. Huyg, at this point I'm going to have to ask you if it's all right with you that we go ahead and extend the dead-line to December 8th because we cannot do it without your approval. And this would in fact we would be tabling the other variance and the motion.

John Huyg. Yes.

Chairman Tinsley: Thank you very much. Commissioner Murray I'd ask for a friendly amendment that we include in your motion, or, I'll second your motion. I would ask for a friendly amendment that we include the second variance; the third variance is to allow the proposed dad-end road to extend past the maximum length of 700 feet to a length of 749.4 feet and also include the application itself for the subdivision.

Commissioner Murray: I agree.

Chairman Tinsley: It's agreed. Is there any discussion?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. I guess I'm a little bit concerned about the, no pun intended, road we're beginning to take. This is a minor subdivision, it's 4 units, the request is for one is less than 50 feet, the other is 75 feet. I think that's a reasonable request, the fire departments can get in it, they can turn around, if need be they can fight the fire right from the road, or from Spokane Creek Road, if there is a fire. And if this were a major subdivision I'd be right in line with you and support what you're recommending, but I think we're being onerous on this particular application.

Chairman Tinsley: Thank you Commissioner.

Commissioner Murray: Mr. Chair, Commissioner Varone.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Every time we grant a variance it weakens the standard, it moves the standard. Is it your intent to vote for every variance for a minor and take a serious look at only major?

Chairman Tinsley: Commissioner I'll consider that a rhetorical question.

Commissioner Varone: Mr. Chair, I would like to respond.

Commissioner Murray: And I'd like a response.

Commissioner Varone: Mr. Chair. No, I look at each variance individually. I think variances are allowed for a reason. We changed our subdivision regulations from 1,000 feet to 700 feet and in an area as rural as this location; I personally believe that's onerous. I made those statements when we had discussions about the 1,000 to 700 feet. I believe that it's important for us that we take a look and see how we can help people be successful and the variance is a method to do that. If this were 1,000 feet or 1,100 feet I'd be looking at it in the same category you are. This variance is one of them 75 feet and one of them 49 feet and I believe that we should be granting it.

Chairman Tinsley: Further discussion? Commissioners, Mr. Huyg. I kind of stated my belief in the beginning; I'm going to reiterate it just a little bit. There's a couple of points I want to make. This is a minor and I understand that. It's not a major subdivision, however, stand up on the south hill or over at the Scratch Gravel Hills and look across at our valley, and take a picture that we've got hanging on our wall from 1972 and look to see how this valley has grown in the last 30 something years. You will see that a majority of it has grown this way, in these small minor subdivision that have not been done in a way, in my opinion that's consistent with the wishes and values of the people in this country. At some point, we has a County Commission, have to take a stand and say from this point forward we have a set of rules and regulations and we're going to live by those rules and regulations, unless there are extraordinary circumstances that ask us or that move us to go beyond those regulations. I believe Commissioner Murray is exactly right. Every time you pass a variance you approve a variance, you weaken your standard. And point 2 that I want to make is, our standard is 700 feet. Both your variance requests, one if them is about 76 feet farther than the standard, one of them is 45 I believe, and one of the Commissioners has indicated a willingness to pass a variance, or not pass a variance at a certain point and that point was around 1,000. My question is where, and this is not a question for anybody and I don't want an answer, but it's a rhetorical question, at what point do you cut off? Well, I guess my personal feeling is, our standard is 700 feet and if you would have come in with a request at 708 feet or 709 feet, of course that makes sense, but at some point you have to stand up and say, we have a standard and my standard is tight. Other Commissioners are not so tight and it doesn't reflect on anything other than that's their personal viewpoint. That's why I'm taking this stand on this particular variance. And I'm confident we can come up with some kind of solution that will mitigate this and allow you to go forward. And I do support your subdivision as well, if we can get through this variance question. Thank you for coming this morning.

Chairman Tinsley: Commissioners, you have before you a motion to table the 2 remaining variances and the subdivision application until December 8th, at the Applicants request to allow us some time to try and figure out a way to fix this. All in favor of the motion signify by saying Aye.

Commissioner Murray: Aye.

Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes unanimously 3-0.

Chairman Tinsley: Commissioners, the last item on the agenda is public comments on matters not mentioned above. Are there any public comments on anything that we didn't have on the agenda this morning? Seeing none, we stand adjourned.

Public comments on matters not mentioned above. None

Adjourn. Adjourned 9:29 a.m.

November Holidays
Veteran's Day, November 11
Thanksgiving, November 24