

PUBLIC MEETING
March 13, 2007

Chairman Murray called the meeting to order at 9 a.m. Commissioners Hunthausen and Tinsley are also in attendance. Others attending all or portion of the meeting included, Ron Alles, Kelly Blake, Laura Erikson, Kim Smith, Michael McHugh, Jim Mitchell, Jerry Grebenc, Nancy Everson, Larry Kline, Tyler Emmert, Vivian Drake, Jim Taylor, Keith Hatch, Larry Chapman, Doug Nesbitt, Kathy Moore, Dick Thweatt, Trevor Taylor, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Recognition. Chairman Murray recognized county employees Doug Nesbitt and Larry Chapman for competing in the National Master Road Grader Championship in Colorado.

Consent Items. Ron Alles reported on the consent agenda and recommended approval.

- a. Professional Services Contract with Tetra Tech Inc., To Perform Community Outreach and Environmental Services Needed for the Lewis & Clark County Brownfields Project in the Amount of \$156,318.00. (Laura Erikson)
- b. Intercap Loan Application in the Amount of \$5,032,450.00 for the Purpose of Financing the Fairgrounds Exhibit Hall/Grandstands. The Loan is a 6 Year Variable Rate Loan. I would note on this item that or would ask that the Chair be authorized to sign all related documents.

Hearing no public comments, Commissioner Tinsley moved approval of the consent agenda and authorized the Chair to sign. Commissioner Hunthausen seconded the motion and it carried unanimously.

Public Hearing for Reconsideration of the Denial in 2004 for the Frontier Major Subdivision. (Applicant, Kim Smith) A 36-lot subdivision that consisted of 2 part 20-acre parcels located north of Lincoln Road and approximately ¼ mile west of Applegate Drive. The lots that were proposed would range from 1 acre to 1.7 acres in size.

Michael McHugh reported the Board of County Commissioners held a public hearing on January 13, 2004 and February 17, 2004 and voted 2-1 to deny the subdivision based on concerns about water issues, water quality and water quantity issues in this area. Since then the applicant has done additional studies and is asking for reconsideration. The subdivision was considered under the old subdivision regulations and did not require substantial and credible evidence for water and sewer facilities. Staff's original recommendation was for approval but the Planning Board voted 3-3 so essentially was a non-decision.

Jerry Grebenc, Stahly Engineering, 3530 Centennial Drive, was present representing the applicant.

DNRC's final order addressed groundwater, water quality and quantity concerns. The Groundwater Control Area was allowed to expire on October 11, 2006. He summarized there was no evidence to show wasteful use of water from existing wells or undue interference with existing wells. Conclusion 4, the evidence supported the finding that water levels are likely to decline due to climatic conditions or irrigation rather than from interference from adjacent wells. Conclusion 5, approximately 4% of the annual groundwater supply in the area is consumed by water wells and withdrawals are clearly not in excess of annual recharge. Conclusion 8, the evidence did not support the conclusion that water levels in the groundwater control area were declining or have declined excessively. Conclusion 9, there was no evidence in the record to show that withdrawals are or would cause contamination migration. The evidence showed groundwater contamination was due to localized nitrates. The evidence did not support a conclusion that groundwater withdrawals are adversely affecting groundwater quality or that groundwater quality deterioration would occur as a result of withdrawals. Conclusion 11, there was no evidence to show that water quality within the groundwater control area were not suited for beneficial use except in limited locales due to nitrate levels. Another conclusion pointed specifically to individual on-site wastewater treatment systems that were substandard.

Tyler Emmert, Stahly Engineering, 3530 Centennial Drive reported the applicant went through extensive on-site analysis of water quality and quantity and well sampling. He submitted a table of the results that showed levels of nitrates within reason. Based on the evidence provided he asked the commission to reconsider and approve this proposal as originally recommended by staff.

Vivian Drake, 7463 Cactus Flats Drive, submitted a letter from her attorney regarding due process as well as her letter outlining why the commission should not reconsider this subdivision. She does not believe there is new evidence regarding aquifer test results and water availability. She also provided a letter from state DEQ with a determination that the Guettler Minor Subdivision should only be used as evidence of adequate water only for Guettler subdivision. The application for beneficial water use permit is for irrigation, mining and fire protection, not a permit for a subdivision public water supply. The North Hills Control Groundwater Area final order is in litigation. She urged the commission to send this back to the planning board.

Dick Thweatt, 36 Harrison Avenue, opposed the request for reconsideration. He believed this subdivision should go through a new application process with updated information.

Kim Smith believed he did the right thing waiting for the groundwater study area to be completed. He accepted the state's conclusions as new evidence. This subdivision is in a great location with good accesses and no variances.

Commissioner Hunthausen asked Mr. Smith to restate his intent to consider a community wastewater system.

Kim Smith said his proposal was for multi-family and commercial lots with central sewer and secondary treatment.

Commissioner Tinsley asked Mr. McHugh to comment on Ms. Drake's and attorney Roy Andes' letter regarding notification requirements.

Michael McHugh stated staff followed state statutes by placing a sign on the property, legal notice in the newspaper and notified adjacent properties. There is no statutory requirement for reconsideration but did try to provide notice for individuals that had spoken at the original hearing

Commissioner Hunthausen asked Mr. McHugh to discuss whether there were pump test expectations at the time of this application.

Michael McHugh stated the applicant was required to provide well logs from nearby adjacent properties located within the section indicating water quantity and water quality issues and staff relied on the Water Quality Protection District to review that information to provide some evidence of adequate water. In most cases, the standards required actual tests. As far as the wastewater, under the current standards, the applicant would be required to do test holes.

Without objection, Commissioner Tinsley asked Mr. Thweatt to expand on his concern regarding statements raised by the applicant.

Mr. Thweatt is of the opinion that Mr. Smith and perhaps the county is suffering under a misapprehension of the law as to the effect of his having filed a complaint within 30 days after denial of his petition. The effect is he can sue the county over its decision on his original application, he may proceed with that, but that does not toll anything and it does not affect the requirement that he should come in with a new application under the new subdivision regulations whether the county was arbitrary or capricious or unlawful in denying his application under the facts. The court would consider that decision based on the record before this commission at that time. It would not take into consideration new information. It seems only if the commission felt it was erroneous under the facts before it at that time should it reverse itself now, otherwise it should stand with its decision and require a new application.

Commissioner Tinsley moved to revisit this topic on April 26 and retain the right to render a final decision at that time. Commissioner Hunthausen seconded the motion.

Additionally, Commissioner Tinsley directed staff to speak with the county attorney regarding the statements made by the parties and render some advice regarding the legal questions that had been raised, including whether the commission can make a recommendation for a condition of approval suggested by Mr. Smith.

The motion carried unanimously.

Proposed Major Subdivision, Preliminary Plat to be known as Foster Tracts Lot 1A Amended. (Applicant, Jim Mitchell) (Planner, Michael McHugh) The applicant proposed creating 11 lots each for one single-family dwelling. The existing 12.33-acre tract would be divided into 11 lots ranging in size from 1.0 acres to 3.14 acres. Currently Lot 1A-2B and Lot 1A1-9 are developed with single-family dwellings. The subject property is generally located north of Canyon Ferry Road and west of and adjacent to Ranger Drive. Jim Taylor was present representing the applicant and indicated his willingness to proceed.

Michael McHugh presented the staff report. This property was created through a boundary line relocation. The proposal was submitted prior to interim zoning and therefore not subject to the minimum 5 acre and Level II wastewater treatment requirements. The applicant proposed individual on-site wastewater treatment systems individual wells. The applicant contacted the operator of Holmberg Village Estates Subdivision for possible connection to the community water supply system, however, due to difficulties associated with amending the beneficial water right permit it was determined not feasible to allow for a connection. All necessary utilities are located adjacent to the subject property. Ranger Drive terminates in a cul-de-sac. The applicant proposed an internal access road connecting with Hinds Drive. The applicant requested variances not to reconstruct Ranger Drive to the new gravel standard and not to bring Holmberg Drive and Hinds Road up to county asphalt standards. The Planning Board recommended granting a variance for construction of Holmberg Drive and Hinds Road to old county standards and required the applicant to participate proportionally based on average daily trips and the construction costs of the new roads in that area. The Planning Board did not grant a variance or recommend granting a variance for construction of Ranger Drive and they did require that all of the internal roads be brought up to the current standards. The applicant has expressed a preference to pay \$1,000 per lot fee to Tri-County Fire Service Area for fire suppression services. The natural drainage area would be used for the retention area. Applicant has offered cash payment in lieu of parkland dedication of approximately .6 acres. The planning board further recommended that an RID be set up to include this subdivision and the Holmberg subdivision and would require participation by the existing residents on Ranger Drive. The Planning Board recommended approval of the proposed subdivision subject to some changes in staff's original 19 recommended conditions.

Variances.

1. Requirement to bring Holmberg Drive from Canyon Ferry Road to current county asphalt standards.
2. Request not to improve Ranger Drive into the subject property.
3. Request for double-fronted lots which included Lots 1A-14, Lots 1A015. The planning board recommended approval.

The Commission recessed at 10:10 a.m. and reconvene at 10:20 a.m.

Jim Taylor, Tech-Net Ltd., 8422 Diamond Springs Drive. His concerns were the requirement to do the road standards was primarily focused on the safety aspects. He discussed moving the drain field to no longer overlap property lines; water supply; safety issues regarding off-site roads and fair and equitable participation through a Rural Maintenance District; development of Ranger Road; and comparison of old and new standards. Mr. Iverson has indicated that intends to finish paving Holmberg Road to the old county standard. Mailbox location would be on Ranger Road. The applicant was willingness to participate with Holmberg Subdivision in an RID for ongoing maintenance. He urged the Commission to approve the variances and form a regional or an area-wide RID.

Commissioner Hunthausen asked how many driveways and culverts are on Ranger Road? Jim Taylor guessed probably 4 or 5.

Mr. Taylor requested an extension of the statutory deadline to April 20 and that the commission render a decision on April 17.

Hearing no public comments, the comment period is closed. Commissioner Hunthausen moved to accept applicant's request to extend the deadline to April 20. Commissioner Tinsley seconded the motion and it carried unanimously.

Commissioner Tinsley moved to render a final decision on Tuesday, April 17 at 9 a.m. Commissioner Hunthausen seconded the motion and it carried unanimously.

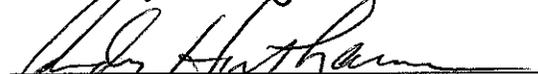
Public comments on any public matter within the jurisdiction of the Commission that is not on the agenda above. None.

There was no other business and the meeting adjourned at 10:41 a.m.

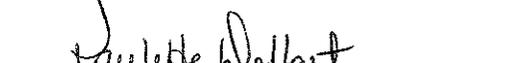
LEWIS AND CLARK COUNTY
BOARD OF COMMISSIONERS


Michael A. Murray, Chairman


Ed Tinsley, Vice-Chairman


Andy Hunthausen, Member

ATTEST:


Paulette DeHart, Clerk of the Board