

## PUBLIC MEETING

April 3, 2007

Vice-Chairman Tinsley called the meeting to order at 9 a.m.

Commissioner Hunthausen was present. Commissioner Murray was absent on personal leave. Others attending all or portion of the meeting included Ron Alles, K, Paul Stahl, Nancy Everson, Kelly Blake, Marni Bentley, Christal Ness, Lindsay Morgan, Stephen Krawiec, Mathew Elvbakken, Jesse Ennis, Doug Sparrow, Bob Drake, Jerry Shepherd, Tim Bury, Chris Goodman, Vern Evans, Shawn Bryant, Ed Larson, Greg Bahny, Chris Strainer, Jerry Shepherd, and Carole Byrnes-Recording Secretary.

Pledge of Allegiance. Everyone recited the pledge.

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

- a. Project Agreement with the U.S. Department of Transportation, Federal Highway Administration, Western Federal Lands Highway Division for the Marysville Road Improvement Project. (Janet Pallister)
- b. Request for One-Year Extension to April 7, 2008 for the Amended Plat of Lot B1A-Silver City Airpark Estates Subdivision. (Applicant, Ricky Lopez) (Planner, Lindsay Morgan)
- c. Resolution Relating to \$10,475.14 Bond for the Middlemas RID No. 1987-4 and 4C. (Marni Bentley)
- d. Resolution Declaring County Property Surplus Property Less Than \$2,500.00. Kabota Riding Lawnmower, Forestvale Cemetery.
- e. Impact Fee Consultant Contract with Tindale-Oliver & Associates, Inc. in the Amount of \$99,791.00. (Nancy Everson)

Hearing no public comments, Commissioner Hunthausen moved approval of the consent agenda and authorized the Chair to sign. Commissioner Tinsley seconded the motion and it carried 2-0.

Proposed Subdivision, Preliminary Plat to be Known as Krawiec Subdivision. (Applicant, Stephen Krawiec) (Planner, Lindsay Morgan) (Tabled from 3/1/07) The Commissioners will consider creating 5 lots, each for one single-family dwelling. The proposal is generally located north of and adjacent to Snowdrift Road, just east of Ferry Drive.

Deputy County Attorney Paul Stahl reported that last week the district court rendered judgment declaring that the fire regulations contained in the Lewis and Clark County Subdivision Regulations were invalid or unlawful. Those regulations allowed a developer to either pay \$1,000 per lot or to provide water or sprinklers; fire sprinklers cannot be used and there is some question about the \$1,000 requirement. As it stands now, all of Appendix L within county subdivision regulations have been determined to be unlawful.

Because the commission has a fiduciary duty to protect public health and safety and because the subdivision act does not have any enforceable provision for fire protection, there were some legal concerns. It was Mr. Stahl's legal opinion that if the commission goes forward with any subdivision today they would violate their fiduciary duty and his recommendation was not to go forward with any subdivision today. The alternative is to deny the applications as they come forward today. We have the best ability to go forward to require all subdivisions to provide water and those provisions that fire sprinklers and \$1,000 per lot probably will not be one of our options as required at this time.

Commissioner Tinsley stated a full commission would be present on April 17 and according to Mr. Stahl, moving forward on subdivisions that are on the agenda we have two options; to either continue or deny based on our fiduciary duty to protect health safety and welfare. He asked Mr. Stahl if it would be appropriate as acting Chair to ask all of the applicants here this morning if they would be willing to extend their review period to April 20 and schedule each hearing on Tuesday, April 17.

Mr. Stahl said it would be appropriate and would hope that each of them would agree to the extension.

Mr. Krawiec stated he understood the dialog, agreed to the extension, and would like to schedule the public hearing on April 17.

Hearing no public comments, Commissioner Hunthausen moved to extend the review period to the April 20 and continue the presentation to April 17, at the applicant's request. Commissioner Tinsley seconded the motion and it carried 2-0.

Proposed Minor Subdivision, Preliminary Plat to be Known as the Amended Plat of Tracts 1A & 2A Hampton Subdivision. (Applicant, Mathew Elvbakken) (Planner, Lindsay Morgan) The Commissioners will consider creating four lots, each for one single-family dwelling. If approved the existing 4.814-acre tract will be divided into lots ranging in size from 1.000 acres to 1.521 acres. The site is generally located south of and adjacent to Old York Road and west of and adjacent to Tizer Road.

Commissioner Tinsley asked the applicant if he would be willing to extend the review period to April 20 and schedule the hearing on Tuesday, April 17.

Mathew Elvbakken asked if he could waive his right to litigation and continue with the proceedings? Mr. Stahl replied it would be difficult to meet the court order. Mr. Elvbakken agreed to the extension.

Hearing no public comments, Commissioner Hunthausen moved to extend the review period to the April 20 and continue the presentation to April 17, at the applicant's request. Commissioner Tinsley seconded the motion and it carried 2-0.

Final Plat Approval and Subdivision Improvements Agreement for the Overlook Acres 3 Lot Subdivision. (Applicant, Hamlin Construction and Development Co.) (Planner, Greg McNally) The Commissioners will consider the final plat approval and Subdivision Improvements Agreement.

Jesse Ennis was present representing the applicant.

Commissioner Tinsley asked the applicant if he would be willing to extend the review period to April 20 and schedule the hearing on Tuesday, April 17.

Mr. Ennis agreed to the extension.

Mr. Stahl stated this one is a little different in that they have already completed all of the work. The applicant is one of the main plaintiffs in this lawsuit and declared these regulations were illegal and the county would have to work around that particular decision. He hoped things would not have to be put on hold until June 15, which was another option looked at.

Commissioner Tinsley stated 35 working days on this particular application was May 18 but for right now, extend it to April 17.

Hearing no public comments, Commissioner Hunthausen moved to extend the review period to the April 20 and continue the presentation to April 17, at the applicant's request. Commissioner Tinsley seconded the motion and it carried 2-0.

Proposed Minor Subdivision, Preliminary Plat to be Known as Trout Shop Subdivision. (Applicant, Missouri River Trout Shop) (Planner, Greg McNally) The Commissioners will consider creating one additional space for a ten-unit storage facility on a one-acre lot. The existing one-acre lot is already developed with an existing commercial use (The Trout Shop). The subject property is generally located in Craig, Montana south of and adjacent to Bridge Street.

Tim Bury from Morrison-Maierle and the applicants, Chris Goodman and Chris Strainer, were present and stated they understood the situation.

Commissioner Tinsley asked the applicant if he would be willing to extend the review period to April 20 and schedule the hearing on Tuesday, April 17.

Tim Bury stated the proposal was to add a storage unit to the current site which are not required to be sprinkled. Would there be any gain waiting two weeks.

Greg McNally stated the staff report reflects our lack of ability to impose those fire requirements based upon the court order; however, as Mr. Stahl has indicated, we must make sure we are meeting our fiduciary requirements to ensure the public health, safety and welfare.

Mr. Stahl recommended that everything be on hold until April 17.

Chris Goodman agreed to the extension.

Hearing no public comments, Commissioner Hunthausen moved to extend the review period to the April 20 and continue the presentation to April 17, at the applicant's request. Commissioner Tinsley seconded the motion and it carried 2-0.

Tim Bury stated the next item, Lookout Lodge, is scheduled for April 24 and asked that Trout Shop Subdivision be continued to the 24th as well.

Chris Strainer agreed to the 24th.

Commissioner Hunthausen amended his motion that Trout Shop Subdivision be heard on April 24 and extend the review period to the 27<sup>th</sup>, at the request of the applicants. The motion carried 2-0.

Proposed Minor Subdivision, Preliminary Plat to be Known as Lookout Lodge Subdivision. (Applicant, Gerald Lappier) (Planner, Greg McNally) The Commissioners will consider creating two lots each for one single-family dwelling. The existing 2.95-acre tract would be divided into two lots ranging in size from 1.29 acres to 1.66 acres. Lot 1 is developed with a single-family dwelling served by an individual well, individual on-site wastewater treatment system and utilities. The subject property is generally located approximately 3.5 miles south of Craig and adjacent to Craig River Road.

Commissioner Tinsley reported the applicant has submitted a letter requesting the review period be extended from April 9 to May 4 and moved the public meeting from April 3 to April 24.

Commissioner Hunthausen moved to extend the review period to May 4 and schedule the public hearing for April 24, at the applicant's request. Commissioner Tinsley seconded the motion and it carried 2-0.

Vice-Chair Tinsley: Ok, the last one we have up before us this morning is a request for modification of Conditions of Approval for the Hayfield Estates Major Subdivision. The Applicant is the Tenneson Family, LLC; Jeffery M. Anderson of Schwartz Architecture and Engineering is the project manager and engineer and I'm assuming the representative. Would you come forward and as you're coming forward I need to ask Staff for direction on this particular one.

Request for Modification of Conditions of Approval for the Preliminary Approved Hayfield Estates Major Subdivision. (Applicant, Tenneson Family, LLC) (Planner, Greg McNally) The Commissioners will consider the request for Modification of Conditions of Approval No. 7: "The Applicant shall install a 30,000 gallon concrete water storage tank with a 6-inch NH male thread dry hydrant for fire protection purposes...." The Applicant requested that this condition be modified to allow for installation of two wells,

connected to a pressurized hydrant, located in the southeast corner of the preliminary approved Hayfield Estates Subdivision.

Doug Sparrow was present representing the Tenneson Family, LLC, and indicated his willingness to proceed.

Greg McNally informed the commission that this modification is subject to review under the same regulations which were in place in June 1999. So, in this case, although we will be talking specifically about fire protection requirements for this particular subdivision today, they are subject to the previous regulations.

K. Paul Stahl stated the commission would review a subdivision under the regulations in place at the time. Those regulations have not been declared unlawful even though they may contain part of the same provisions and we can go forward.

Mr. McNally presented the staff report.

Condition 7 currently reads, "The applicant shall install a 30,000 gallon concrete water storage tank with a 6" NH male thread dry hydrant for fire protection purposes. The tank shall also include an auto fill system. The tank shall be located in the northeast corner of the Subdivision, near the wastewater treatment system. The East Valley Fire Department shall review and approve the installation of the tank, the hydrant and the auto fill system." The modification would allow applicant to utilize two 500 gallons per minute wells and a pneumatic activated duplex pump controller located in a concrete vault connected to a fire hydrant. The East Valley Fire District has reviewed and approved the modification. A turnout should be installed and the hydrant should be installed adjacent to the turnout to allow for fighting apparatus, and the pump housing should be installed within close proximity of the turnout to allow for ease of maintenance and repair. It appears that the proposed design and the additional conditions of approval ensure that the proposal would meet all of the fire protection requirements. The essential utilities have already been installed along the internal access route roads for this subdivision and no utilities have been installed in the required side-yard 10' utility easements. An encroachment agreement with the county may be required prior to final plat approval for the location of some fire equipment. Staff recommended approval of the modification to the conditions of approval.

Doug Sparrow said the turnout has been addressed and the drawings, etc. would be provided because of necessity. His deadline for completion is May 3 but if necessary he may request an extension.

Jerry Shepherd, West Valley Fire Chief asked who owns the well and who would be responsible for maintaining it and paying the power bill.

Commissioner Tinsley stated the concerns were addressed in the conditions by the formation of a homeowners' association to provide for the ongoing maintenance and repairs.

Doug Sparrow said the association has a fire protection well agreement which states all of the lot owners own the well and pay for the power. The agreement would be part of the final plat.

Hearing no public comments, the public hearing is closed. Commissioner Hunthausen moved to render a final decision on April 5. Commissioner Tinsley seconded the motion and it carried 2-0.

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, the meeting adjourned at 9:52 a.m.

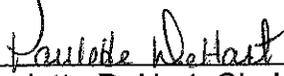
LEWIS AND CLARK COUNTY  
BOARD OF COMMISSIONERS

  
Michael A. Murray, Chairman

  
Ed Tinsley, Vice-Chairman

  
Andy Hunthausen, Member

ATTEST:

  
Paulette DeHart, Clerk of the Board