

SUBDIVISION MEETING

March 25, 2004

Chairman Mike Murray called the meeting to order at 9:00 a.m.

Commissioners Tinsley and Varone were present. Others attending all or a portion of the meeting are Ron Alles, Sharon Haugen, Frank Rives, Lindsay Morgan, Michael McHugh, K. Paul Stahl, Bill Bahny, Greg Bahny, Debbe Pistoria, Garry Pistoria, Harry Jacobs, Janet Neumiller, Eugene Pizzini, Frank Preskar, Dave Gallick, John Huftel, Carol Stefely, Steve Stefely, Ralph Sorenson, Brenda Strong, Sharon Ryan, Randall Kaiser, Lyle Hostetler, Lorraine Hostetler, Edith Taylor, Mary Schuller, Jason Mohr, and Carole Byrnes.

Pledge of Allegiance. Everyone recited the pledge.

Proposed Subdivision, Summary Review to be Known as Austin Minor Tract B Amended. (cont from 3/23/04)

The applicant Bill & Greg Bahny will propose creating three lots, each for a single-family dwelling. The proposed subdivision is located in the NE1/4 of Section 12, T11N, R5W; generally located 9 miles north of Helena, on and adjacent to Birdseye Road.

Commissioner Varone moved to approve the proposed subdivision, summary review to be known as Austin Minor Tract B Amended, to include 14 Conditions and authorize chair to sign. Commissioner Tinsley seconded the motion.

Conditions:

Condition #6: Fire protection plan. Commissioner Varone stated that there had been discussion on a monetary amount for this. Commissioner Varone would like to see what the plan is rather than leaving it open.

Frank Rives stated that the Fire Chief of the Birdseye Fire Department e-mailed a request for an adequate turn around for fire equipment.

Commissioner Varone asked Frank Rives to put together language to comply with their request, rather than have the general language.

Commissioner Varone moved to approve. Commissioner Tinsley seconded the motion.

Commissioner Tinsley asked if Condition #5 met their concerns, being that it is for Approach Permits.

Frank Rives stated that yes it should address their concerns. Frank added that when the Approach Permit was submitted, the e-mail from Birdseye Fire Department will be attached so that the road department is aware of the standards that need to be applied.

Commissioner Murray stated that the approach only covers 30 feet. The motion before us would cover the entire subdivision.

Frank Rives stated that yes, the widening of the road would be included in Condition #7. The primary concern of the e-mail was that the approach be adequate enough to get in and out.

Commissioner Varone stated that the e-mail says that they would like to see an approach off of Austin Road that is 15-20 feet wide to accommodate our Tender and Structure engine, which are both semi style trucks.

Commissioner Murray stated that there was a substitute motion for Condition #6. The motion carried unanimously.

Commissioner Murray stated that there was a motion to approve the Summary Review to be known as Austin Minor Tract B Amended subject to 14 Conditions as amended. The motion carried unanimously.

Proposed Minor Subdivision, Preliminary Plat to be Known as Lowe Tract 10 Amended Minor Subdivision. (cont. from 3/23/04)

The applicant Lyle Hostetler will propose creating five lots, each for one single-family dwelling. The subject property is located in the NE1/4 of Section 12, T10N, R3W; generally located south of York Road and west of and adjacent to Pioneer Park Drive.

Commissioner Tinsley moved to approve subject to 13 conditions and authorize the chair to sign. Commissioner Varone seconded the motion.

Commissioner Tinsley commended Mr. Hostetler on his property having no identified noxious weeds. The Weed Board also wanted to commend him.

Commissioner Murray stated that on Conditions #4 and 5, staff requests that we look at an easement in #5 going beyond an cul-de-sac, that this be dedicated as a condition of approval. Does condition #5 fully meet the request of staff.

Commissioner Varone asked if there was recommended language to replace this or if this language is adequate. Commissioner Murray stated that he was fine with the language. Commissioner Varone agreed. Commissioner Murray stated that he wanted to point out that it was an issue of concern. Commissioner Tinsley stated that the language was fine.

Commissioner Murray stated that there was a motion to approve the proposed minor subdivision, preliminary plat to be known as Lowe Tract 10 amended minor subdivision subject to 13 conditions as proposed by staff. The motion carries unanimously.

Proposed Minor Subdivision, Preliminary Plat to be Known as Westview Estates Minor Subdivision #2. (cont. from 3/23/04)

The applicants Deborah Pistoria, Harry Jacobs, & Janet Neumiller will propose creating five single-family residential lots. The proposed subdivision is located in the SE1/4 of the NE1/4 of Section 36, T10N, R5W; generally located north of U.S. Highway 12 West, immediately west of Baxendale Drive.

Commissioner Varone moved to approve subject to legal agreements and conditions of approval as recommended by staff and authorize chair to sign. Commissioner Tinsley seconded the motion.

Commissioner Tinsley suggested there is a line of sight and ask the applicants to take this into consideration during construction.

Gary Pistoria stated that when they first considered this project, they went out with the County, the road crew, and Morris & Maierle, who were representing us, that is where the County suggested we put our approach. So we determined our lots based on that approach, but we will take another look at it. Mr. Pistoria clarified that the County was sued, not both the County and the applicants.

Commissioner Murray stated that there was a motion to approve the proposed minor subdivision, preliminary plat to be known as the Westview Estates Minor Subdivision #2 subject to 19 conditions as proposed by staff. The motion carried unanimously.

Proposed Minor Subdivision, Preliminary Plat to be Known as Strong Minor Subdivision. (cont. from 3/23/04)

The applicants, Jerry & Brenda Strong will propose creating five single-family residential lots. The proposed subdivision is located in the SE1/4 of the NE1/4 of Section 36, T10N, R5W; generally located north of U.S. Highway 12 West, immediately west of Baxendale Drive.

Commissioner Murray asked if everyone received the proposed condition change to #6. Everyone had.

Lindsay Morgan stated that in talking with the applicants before the meeting they would prefer to pay the \$600 fee per lot. The fire district recommended that the applicants dedicate a sixty (60) foot emergency access easement and turnaround (fifty (50) foot radius for turnaround to the Baxendale Fire Department for the purposes utilizing pond water on Lot 5 for future fire suppression within the district along with the installation of a draft hydrant at a location agreed upon by the Fire Department.

Mrs. Strong stated that they are concerned. In a drought, they do not want people coming to the pond drawing out the water. We don't want to put it at risk.

Commissioner Varone moved to approve subject to 16 conditions of approval as recommended by staff and authorize the chair to sign. Commissioner Tinsley seconded the motion.

Based on the applicant request, Commissioner Varone believes we should honor their request.

K. Paul Stahl stated that we could go back 3 years to collect delinquent taxes on the mobile home that has been there and to his knowledge the County has not done that in the past.

Commissioner Murray stated that there was a motion to approve the proposed minor subdivision, preliminary plat to be known as the Strong Minor Subdivision subject to the original 16 conditions. The motion carried unanimously.

Authorization by County Attorney to Collect Water System Fees for Scratch Gravel District.

Ron Alles will propose authorizing the County Attorney to collect the fees. This came before the Scratch Gravel Board. He stated that the County has an agreement with a number of property owners near the old Scratch Gravel landfill to assist in the payment of some of the electrical fees. A particular individual, Mr. Rippengale, has not complied with paying fees for wastewater bills. Staff is recommending that the County Attorney proceed with action to collect some of those fees per the agreement for past utility bills.

K. Paul Stahl stated that the bill is in the amount of \$1400. This issue went before the Scratch Gravel Board and they recommended this action being taken. K. Paul Stahl received an e-mail after the Scratch Gravel meeting stating that an agreement is trying to be worked out and to not sue until an agreement is reached. K. Paul Stahl added that it was not his recommendation to sue Mr. Rippengale.

Commissioner Varone stated that the discussion at the Scratch Gravel meeting was that several years ago, the County drilled wells for a group of people because their wells were contaminated. There is an agreement where the County pays a certain portion of the maintenance, repair, and replacement. All of the homeowners have complied with the agreement except Mr. Rippengale. All of the members of the Scratch Gravel Board voted on moving forward with this legal action.

Commissioner Tinsley asked K. Paul Stahl if this was an item that could be placed on his tax bill.

K. Paul Stahl stated that it was not.

Commissioner Tinsley asked if the e-mail from Will Selser appeared that Mr. Rippengale was willing to pay the back fees that he owed.

K. Paul Stahl stated that it did not appear that way. He wanted to clear up that it is potential contamination of the wells. There is no proof that we contaminated the wells. There were many things being discarded in that area. We tried to make agreements with the 9 people in the Scratch Gravel area. Two people's agreements are different than the rest, one being Mr. Rippengale's.

Commissioner Varone stated that Mr. Rippengale has been difficult to work with, and he has not complied with the agreement already made with the County, why would he comply with another one.

Commissioner Tinsley moved to authorize the County Attorney to proceed with a lawsuit and report back with any nuances and includes a 60-day time frame. Commissioner Varone seconded the motion and it carried unanimously.

Proposed Minor Subdivision, Summary Review to be known as Griffin-Davis, Lot 32 South 252 Feet Minor. (cont. from 3/09/04)

The applicant, John Huftel will propose creating four spaces for lease or rent on a 1.002-acre parcel. The subject property is located in the NE1/4 of Section 24, T11N, R4W; generally located north of and adjacent to Hope Road, in the Griffin-Davis Subdivision.

Dave Gallick stated that they had the well tested as recommended by Commissioner Varone. The nitrate level is well below the EPA requirements in the staff report and is about 1/3 of the nitrate levels of the surrounding wells.

Frank Preskar, Environmental Health Specialist, stated that the property has 2 septic permits one is for replacement of two trailers and one for a home. The garage is not shown for a permit and unaccounted for as far as wastewater treatment.

Commissioner Varone asked if the property is a significant enough size to accommodate an additional system, or can the one that is already there accommodate the additional one.

Frank Preskar stated that the existing system is not large enough to handle a 4th permit, and do not meet the current standards for the converted garage.

Commissioner Tinsley asked if the occupants of the converted garage, which is now an apartment, would have to immediately vacate the premise if this proposal was denied. Would it be possible for one of the other structures to be unoccupied and allow the converted garage to remain as an occupied dwelling.

Frank Preskar stated that one of the mobile homes could be taken off of the property and the garage connected to that system in its place. We would like to see a plan to see if the slope to be achieved from that structure to the existing septic tank. If not, where a new tank would be placed and how it would be connected to that system along with the other structures. If any new components were needed, permits would need to be obtained.

Sharon Haugen clarified that if this subdivision was denied, it is only entitled to one development right so there couldn't be more than one structure on the lot regardless of the septic situation.

K. Paul Stahl added that even if this is approved, the septic does not meet the standards and will have to be changed. One structure more than likely will have to be removed and John Huftel will have to be licensed as a trailer court before he can come into compliance.

Commissioner Varone stated that what has been done has been done over a long period of time. On the one hand, looking at all of the information, I think this proposed subdivision should be denied. On the other hand, if there is an opportunity to come into standard people should have an opportunity to do so.

Dave Gallick stated that there have always been 4 structures on this property since 1975 forward. He added that when the garage was being made into an apartment, one of the trailers had been taken off and that the County was aware that the garage was hooked up to the septic. The property owners were not informed that this was a problem. This well is well below the nitrate levels of the surrounding wells.

Frank Rives pointed out that the well report as far as the lower nitrate level, the concern is not John Huftel's well that is upslope of his two drain fields, but the potential effects on public health and safety in regards to groundwater down slope, which would be the two wells below. In the staff report, Frank states that he specified the he could not categorically say that this drain field or any of the drain fields up slope were necessarily responsible for the high nitrate levels on the two lots found down slope and to the southeast of the property, but it is a potential possibility that it is effecting the groundwater.

Commissioner Tinsley moved to abide by staff recommendation and deny proposed minor subdivision and authorize the chair to sign. Commissioner Varone seconded the motion.

Commissioner Murray offered a third condition to allow the applicant to July 1, 2004 to come into tenant compliance on the lot. Commissioner Tinsley offered a substitute motion to September 30, 2004 to allow the residents to find other living space.

Commissioner Murray stated that the property has been out of compliance for many years and would allow the applicant to notify tenants to find alternate living space.

Condition #3: Allows the applicant until September 30, 2004 to come into compliance with the number of residences on the property. This motion carried unanimously.

Commissioner Varone stated that staff rarely recommends denial of a subdivision, so she is reluctantly going to deny this proposal. She added that she believes that this has been unintentional and has been going on for so many years and is believes that the applicant should have a chance to fix the problem.

Commissioner Tinsley stated that he agreed with Commissioner Varone. The standards that are set need to be followed. The reason that we have these standards are for public health and safety.

Commissioner Murray stated that he also agrees with the other two Commissioners. He too supports personal property rights in development within the confines of the law and subdivision regulations.

Commissioner Varone reluctantly moved to deny this proposal. Commissioner Tinsley seconded the motion and it carried unanimously.

Resolution Ordering a Refund of Taxes/Fees/Assessments Paid.

The Department of Revenue will propose that the Commissioners issue a refund to Carol Skinner in the amount of \$27.32. Kory Hofland stated that the property was originally reappraised in error to be a primary building site land. An adjustment was made when the error was realized. Commissioner Tinsley moved to approve. Commissioner Varone seconded the motion and it carried unanimously.

Request for Modification of Conditions of Approval for South Boundary Acres II Major Subdivision.

(cont. from 2/17/04)

The proposal is located adjacent to and south of Boundary Street, approximately $\frac{1}{4}$ mile east of Lake Helena Drive. The Commissioners will consider modifying condition of approval #6 to read: (a) Fire protection would be provided by the use of an existing fire hydrant located at the northwest corner of the subdivision owned and operated by the Eastgate Water and Sewer Association; or (b) Contribute \$500 per lot to the Eastgate Fire Department.

Commissioner Varone moved for approval. Commissioner Tinsley seconded the motion for discussion purposes.

Commissioner Varone stated that this has been going on for a while. More and more the requirements that are put on subdivisions, even though the discussion is that it is for the health, safety, and welfare of the individuals, there is a point that we go beyond that. This sometimes reaches the point of that it is not affordable. Since the Fire Department is so close to the subdivision, that the fire hydrant request is a reasonable one.

Commissioner Murray stated that it was the Commission's understanding that when the subdivision was proposed that it would be new housing, not mobile homes. As an alternative to providing available water, the option for the sprinkling for the newly constructed homes, which is relatively inexpensive was offered. That was removed last month. Commissioner Murray continued that he is in the opinion that the Commissioner has no control nor say over the fire hydrant at Eastgate. I agree with the testimony we received while we heard the proposal. That in an emergency, the fire department may use the fire hydrant or any other water they need to use to respond to the emergency. In our planning and subdivision approval, we are not dealing with the emergency, we are asking developers to provide for emergencies and take care of contingencies with the emergencies. I believe the County has been brought into a dispute between the Eastgate Water and Sewer System, the Eastgate Volunteer Fire Department and the applicant. I believe the recourse rests between the Eastgate Volunteer Fire Department and the applicant. Commissioner Murray will reluctantly vote for denial and support the staff recommendation.

Commissioner Tinsley stated that he did not want the County to have to determine whether a fire hydrant, that is not owned by the applicant could be used in an emergency situation. Commissioner Tinsley added that it could and that was not an argument to be used in the decision making process. We have no authority over that hydrant. We cannot assume that that hydrant will always be there to provide these people with water that they need. I am going to go with the Staff recommendation as well and hope that the applicant can work something out to accommodate the prior districts request. This is exactly why we need to get these fire regulations done. We need to get them done and in place so we do not have these types of situations occur.

Commissioner Varone stated that it was the Commission that initially required the applicant to work with the fire department and water association and come back with a proposal. When that was unsuccessful, it put us in the position to have to make a decision. I understand your reluctance to support my motion when (a) is included on the motion as a condition of approval. I believe that if the applicant is required to contribute the \$500 per lot that we still satisfy the life safety of the people in the area. Commissioner Varone added that it was a reasonable and achievable condition. She added that she believes the fire department and the individual that they contract to put together their requirements are a little bit too hefty in this instance.

Condition 6 (a): Use the fire hydrant as fire protection. Commissioner Varone made a motion to approve the amendment to remove this condition 6 (a). Commissioner Tinsley seconded the motion and it carried 2-1. Commissioner Murray opposed the motion.

Commissioner Varone made a motion to approve condition #6 that the applicant shall provide \$500 contribution per lot to the East Gate Fire Department. Commissioner Murray and Tinsley opposed the motion. The motion died for the lack of a second.

Commissioner Murray stated that the request to order the fire department to accept the \$500 contribution was denied. It is incumbent upon the applicant and the fire department to make further arrangements.

Sharon Haugen stated that at the previous meeting, the fire sprinkler condition was removed, which was one of the conditions of approval. The condition as it stands now is that the applicant has to provide a water supply. It does not provide the applicant an option of working with the fire department to find an alternative. Sharon added that if that is the Commissioners intention, we would have to go through this process one more time.

Mosquito Control Program Contract for 2004-2005.

The Commissioners will consider the contract with JHS, Inc. in the amount of \$95,950.

Commissioner Tinsley asked at the Mosquito Board meeting why the increase in price from last year. John Stemple, JHS, stated that it was due to the increase in liability insurance for the company for the aircraft, fuel, wages and benefits, and the pesticides going up in price. JHS is also hiring an extra part time person to do some study and testing on the West Nile virus. Commissioner Tinsley added that this is going to be the year that we get the West Nile virus significantly in our area.

Commissioner Varone stated that she was on the Mosquito Board the prior two years and this is a very important program.

Commissioner Tinsley added that the Mosquito Board will be putting on a public education session at the 4-H building at the fairgrounds on April 21, 2004, 5:30pm. There will be 3 nationwide well-known experts on the West Nile virus that will be speaking.

Commissioner Murray stated that what was being considered was the program to provide for the aerial spraying and killing of larva.

Commissioner Tinsley moved to approve the contract. Commissioner Varone seconded the motion and it carried unanimously.

Public Comments.

Eugene Pizzini, 2575 Colt Drive, President of the Eastgate Water and Sewer Association. Thanked the Commission for the denial of South Boundaries. Eugene added that they have received two correspondence and had one 2-3 minute in person meeting with Mr. Taylor and his representatives. Mr. Pizzini added that Mr. Taylor has not come to the Eastgate Water and Sewer Association to propose any type of agreement for emergency use. He welcomed a discussion on an agreement. What Mr. Taylor wanted initially was a letter stating that Eastgate will provide water to fight the fires. That puts Eastgate in a legal bind, if at the end of July there is no water in the tank and is a fire. That is why we said no initially.

Commissioner Tinsley stated that he would encourage you to extend an invitation to Mr. Taylor to attend one

of your board meetings.

Commissioner Varone wanted to add for the record that her initial proposal, until she read the information that was provided by Staff, was to take those funds and apply them directly into your water users association to work together to develop something like you are doing. Commissioner Varone added that because of the letters that we have received in the past, I did not think that would pass, but I thought maybe the \$500 would pass to help the fire department out. She added that it would be great if you could work together.

Eugene Pizzini wanted to add that from going through their files and reading letters that they have, the only thing that Eastgate Water and Sewer ever did was respond to the specific questions asked by Mr. Taylor and the attorneys.

Steve Stefaly, 6220 Jasper Road. Mr. Stefaly stated that he has a concern with the water ease in the Austin Minor Subdivision. Would additional wells be put in that area. Steve Stefaly also wanted to know if Tract B (1) could be further subdivided.

Commissioner Murray stated that it was up to the property owner. If they wish to subdivide, they can come back before the Commission. Right now they have one development right on that large piece of property.

Steve Stefaly also stated that they property to the east and south, the Gehring Ranch, is all open land and the Bahny property is a corridor that deer and antelope use to access the Gehring Ranch. Steve wanted to know how this was going to effect the animals access to the Gehring Ranch.

Commissioner Murray stated that the area that the animals are using as a corridor is still open.

Adjourn. 10:50 a.m.