

**PUBLIC MEETING**  
**April 26, 2005**

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioners Varone and Murray are present. Others attending all or portion of the meeting included Ron Alles, Jerry Grebenc, Frank Rives, Lindsay Morgan, Michael McHugh, Dean Retz, Roque Wardell,

**Pledge of Allegiance.** Everyone recited the Pledge.

**Recommendation for Sheriff's County-Wide Paging System Request For Proposal.** (Jack Spillman) **(This item was postponed to April 28)**

**Grewett Request for Family Exemption.** (Continued from 04/10/05) Commissioner Varone moved to approve the family exemption. Commissioner Tinsley seconded the motion and it carried 2-1. Commissioner Murray voted no.

**Resolution Establishing The Effective Date of the Wolf Creek/Craig Fire Service Area Annexation, Lewis & Clark County Pursuant To Resolution 2005-24.** (Marni Bentley) No protests were received. Staff recommends approval. Commissioner Murray moved to approve the resolution. Commissioner Varone seconded the motion. Motion passed 3-0.

**Resolution Clarifying The Boundaries Of The Wolf Creek/Craig Fire Service Area To Include Recent Annexations.** (Marni Bentley) Staff recommends approval. Commissioner Varone moved to approve and Commissioner Murray seconded. The motion passed 3-0. The commissioners will consider the resolution.

**Proposed Major Subdivision, Preliminary Plat To Be Known As Northwest Major Subdivision.** (Applicant, M&W Investments) (Planner, Lindsay Morgan) (Continued from 04/12/05) The commissioners considered creating 21 lots, each for one single-family dwelling. The subdivision is located west of North Montana Avenue and is south of and adjacent to Prairie Road. Lindsay Morgan went over questions asked prior by commissioners.

Condition of Approval #11: The 40-foot right of way variance was discussed. Commissioner Varone moved to approve the variance. There was no second. Commissioner Murray moved to deny the variance. Commissioner Tinsley seconded the motion. The variance was denied for a 40-foot right of way.

Commissioner Varone moved to approve the Northwest Major Subdivision Phase 2 and Commissioner Tinsley seconded the motion. Commissioner Varone discussed that the applicant complied with the regulations and that the commission cannot deny the subdivision based on the testimony given by the public even though it was a tough decision.

Commissioner Murray moved to approve and add Condition #24 that all well easements are to be shown on the face of the final plat prior to filing. Commissioner Varone seconded the motion. The motion passed 3-0. Condition #24 was incorporated with Condition #19f. It was recommended by staff and approved by the commissioners.

The motion to approve the proposal subject to 23 conditions as recommended by staff and the planning board carried unanimously 3-0.

**Proposed Minor Subdivision, Preliminary Plat To Be Known As The Sun Crest Minor Subdivision (Reviewed Under The New Regulations).** (Applicant, Roque Wardell) (Planner, Lindsay Morgan) The commissioners considered creating 5 lots, each for one single-family dwelling on approximately 93 acres. The subdivision is located west of and adjacent to Mountain Heritage Drive, approximately ½ mile north of Lincoln Road. DEQ said there is ample water on that site. They are exempt from wastewater regulations due to the lot size. There is a \$1000 per additional lot fee for Lakeside Fire Department. The applicant requested a variance for overall dead end road length. Staff recommends approval subject to 16 conditions.

Commissioner Varone: She asked about Condition 8 and suggested the wording be changed from “should” to “shall”. Jerry Grebenc agreed.

Roque Wardell: He showed on a graph the 20-acre triangle located in the center of the property. The property was owned by an absentee landowner/developer. Last fall the process began to develop the 20-acre piece of property and the access road would go through the Wardell's property. Mr. Wardell stated he has no interest in having that piece of property developed due to that. He is the elected president of Mountain Heritage Water Users Association. There are 3 wells on the 20 acres that supply water to 77 households. The water is supplied by an absentee water developer, who is not the property owner mentioned above. It was originally filed as “Mount Heritage Common Ground” and the understanding was that this 20-acre parcel and the water on it would someday be would be turned over to those who use it. This understanding has never been in writing and last fall the developer decided he was going to develop this property. Mr. Wardell proposed the minor subdivision so he could do a 1031 land swap with the owner/developer. He'll trade 2 of the 5-acre tracts for the 20-acre tract. The other 2 5-acre tracts will be used to recoup the investment in building the subdivision.

Commissioner Tinsley asked Mr. Wardell to leave a copy of his comments with staff.

Commissioner Murray moved to render a final decision May 5. Commissioner Varone seconded the motion and it carried unanimously 3-0.

**Proposed Major Subdivision, Preliminary Plat to be Known as Wheat Ridge Estates Major.** (Applicant, Aaron Helfert/H&H Inc.) (Planner, Michael McHugh) (Continued from 04/12/05) The commissioners considered creating 34 lots, each for one single-family dwelling. The subject property is located in SE¼ of Section 36, T10N, R2W; generally located north of the flashing yellow light on Highway 12 East at Spokane Creek Road on the S Curve.

Michael McHugh: The public hearing has been held. The planning board recommended approval with 19 conditions.

Commissioner Murray moved to approve subject to 19 recommendations of the planning board. Commissioner Varone seconded the motion.

Commissioner Varone: She asked Michael McHugh to explain the fire report since there was no report supplied for the commissioners.

Michael McHugh: The Fire Department requirements were proposed condition #13. The applicant must install a 90,000-gallon water storage tank and the exact location of the installation of water tanks has not yet been determined. There should be a 750-gallon tank (instead of 1000 gallons per minute). This was negotiated between the applicant and the fire department.

Commissioner Varone moved to amend Condition #13 to read 750 gallons. Commissioner Murray seconded the motion and it carried unanimously 3-0.

The commissioner motioned to approve the proposal subject to 19 conditions as recommended by the planning board and as amended carried unanimously 3-0.

**Proposed Major Subdivision, Preliminary Plat to be Known as 3-D Ranchettes Major Subdivision.** (Applicant, Rick Diehl/Winston Livestock Co.) (Planner, Michael McHugh) (Continued from 04/12/05) The commissioners will consider creating 11 residential lots, each for one single-family dwelling. The subdivision is located in the NE¼ of E½ of Section 36, T10N, R2W; generally located approximately 1½ mile north of Highway 12 East and west of Spokane Creek Road.

Michael McHugh: The planning board recommended approval with 19 conditions.

Commissioner Varone moved to approve the proposal subject to 19 conditions as recommended by planning board. Commissioner Murray seconded the motion. Commissioner Tinsley asked for amendments or questions.

Commissioner Varone: She asked if it's legal to re-subdivision lots to less than 5 acres in size.

Michael McHugh: If there is a public health and safety reason to require the prohibition of further subdividing it's legal. The applicant is willing to make that a covenant of his and should not be reflected in the county covenants.

Commissioner Varone moved to remove approval Condition #20.t. There was no second to the motion so the motion to amend died.

Commissioner Murray stated that there was no action the board of commissioners can take since it's the applicant's covenants and the applicant already said they'd add the prohibition of re-subdivision to their covenants.

The motion to approve the proposal passed unanimously 3-0

**Proposed Major Subdivision, Preliminary Plat To Be Known As Fort Harrison Estates Major.** (Applicant, Frank and Bonita Gruber) (Planner, Michael McHugh) The commissioners will consider creating 62 lots; 57 lots for one single-family dwelling and 5 lots for community water, wastewater and storm water detention facilities. The property is located in the NE1/4 of Section 9, T10N, R4W; generally located southwest and adjacent to Birdseye Road and north and west of Chaparral Drive, approximately 2.6 miles north and west of the existing city limits of Helena.

The Commission recessed for five minutes so staff could review new information brought by the applicants that morning.

Commissioner Tinsley asked if the commissioners want to continue with the normal staff report and public comments or hold off and go back to the planning board?

Commissioner Murray moved to proceed with the hearing.

Michael McHugh said the commissioners must determine whether or not the recommendation of the planning board would change. Staff stated that the proposed changes would not have altered the planning board's recommendations.

Commissioner Tinsley seconded the motion.

Commissioner Varone: She stated that the board has been counseled by Attorney K. Paul Stahl

that if new information is presented it should go back to planning board for discussion first and they can make a recommendation to the Board of county Commissioners.  
Commissioner Murray stated the statutory deadline is May 6.

Ron Alles: SB 116 effective immediately states if the governing body constitutes approve, conditionally approve, if the governing body determines that the new information is irrelevant or not credible.

Michael McHugh: Stated that the subdivision is being approved under the old regulations. He said the board must decide if the new information is of significant difference.

The motion passed 2-1 to proceed today. Commissioner Varone voted no.

Michael McHugh: He presented the staff report. There is no zoning. There is some opposition to the proposal due to density and impacts on water supply and drainage. There is some agricultural use of the property. The applicants propose to develop a community water supply system. There are 3 wells located on the property now, but it will add several wells and storage tanks. The applicants moved the southern access to the north to accommodate the separation distance. Birdseye road is the current access road and it's not currently to county standards of minimum of 24 feet wide. The applicant would have to obtain easements from the BNR (Burlington Northern Railroad) running on the property. School bus stops would be on Birdseye Road and there was some safety issues were expressed, but the schools state that the bus routes were out and back so the children would never have to cross that road. The property is located within the Lewis & Clark County Fire Service area and additional documentation presented this morning confirms the fire district's request of 750 gallons per minute for 2 hours. Obtain a beneficial water user right. No noxious weeds were found on the property, but a five-year weed management plan should be submitted for review and approval. There will be a major visual impact. Due to the density wildlife would probably avoid traveling through the property in the future. The railroad is located east of the property and high volume of traffic—an evacuation plan should be prepared with the Homeowner's Association due to the hazardous materials they carry. There is a requirement of notification for military activities due to the proximity of Fort Harrison. This property is subject to parkland dedication and the applicant has indicated a preference for cash payment in lieu of parkland equivalent to 3.34 acres of undeveloped land. Park board would like to see a walking/bicycle path, but any improvements would need to be done in conjunction with the railroad. Public Works recommended a 4-foot shoulder to accommodate Birdseye road's already in place path. Staff recommends approval of the proposal subject to 18 conditions as recommended by the planning board with parkland cash equivalent condition recently added. The main concerns deal with water and wastewater issues, access to school bus, increased traffic, and improvement needed for roads already in place. The planning board recommended denial 4-3 of this proposal.

Dean Retz, 1430 Shirley Road, Representing the applicant: This proposal is under the old regulations. Did not attend the planning board's hearing, but read the memo. The planning board was confused thinking you have to cross railroad tracks, but you do not. The covenants do not allow modular homes. They would like option to use existing wet hydrant. The hydrant is on the north side of the tracks—but can move it south of the tracks. County covenants g.3, applicant covenants k—can delete if necessary. Thanked Michael McHugh for his help.

Patrick Faber, Aqua Bona Consulting: He discussed physical water availability and the legal aspects of the planning board hearing. He objects to the word "strong" in Kathy Moore's language in the planning board memo. He does not see any evidence of that and she did not review the pump test. He discussed the precipitation graph (for the Helena Airport). Right now there is a 5-year drought, but nothing can be told from just groundwater levels about future participation. He will be doing further tests that are geared towards DEQ requirements.

Commissioner Murray: Asked if the weather pattern for the subdivision is the same as the airport weather pattern.

Patrick Faber: He stated there isn't much difference in elevation so it's similar.

Commissioner Varone: Asked if he could explain the 72-hour pump test.

Patrick Faber: He explained the test and showed some PowerPoint slides of the past test he did. The goal is that the level should remain the same through the entire test.

Tony Prothero: He stated that he did not need to speak at this time.

The Commission recessed for five minutes.

The public hearing was opened for comments.

Terri Burgess, 3930 Chapparel Road: She does not feel this development is appropriate for the area because so many lots bunched together does not fix the existing neighborhood scheme. She attended the planning board meeting and understood the only legal point to deny this subdivision is road issues. There are many problems with traffic on Chapparel Road already. She is concerned about further septic systems.

Marcia Ala, 4025 Chapparel Road: She attended the planning committee meeting and agrees with their findings. Her number one concern is the water. The traffic on Birdseye Road is another concern. She cited the Lewis & Clark County Growth Policy. She adamantly opposes this proposal.

Alan Christopherson, 2406 Chapparel Road: He is concerned about the impact that will be made on his property. The proposed wells are approximately 200 feet north of his property and the planning staff said all the surrounding wells will be affected. The other wells will go dry with current system. A 72-hour pump test should be done and there's been 2 months time they could have run that test and now it's time for them to start using their wells to water their yards. His property will be impacted by the location of the storm water drainage. He is disappointed no one has contacted him or the other neighbors. He asked the commissioners to deny the request. He's concerned about the deer/antelope that live in the area. He asked that if approved, they should provide a buffer for the current neighbors by providing vegetative screening to help mitigate visual appearance. He is concerned about the security fencing and ending the open space they have. He suggested the wells be put at the other end of the property so it won't affect the current landowners as much. (Michael McHugh pointed out it was in the transmittal letter).

Hearing no other comments, the public hearing is closed.

Patrick Faber: He addressed the points presented by Mr. Christopherson. The Commissioners should not rely on Kathy Moore's statements because she is not a hydrologist. This is a highly technical field and he doesn't believe she has real evidence. The residents will receive DNRC notice to file water right objections even if the subdivision is approved.

## **START OF TAPE #2**

Dean Retz: They would like to give parkland dedication, but unfortunately the park board wants money. They cannot redesign the entire subdivision or they would have to start over again with new fees, new regulations, new planning board, etc. He said they cannot go back and form an RID for Birdseye Road, but only do an RID for maintenance on Birdseye Road. He said they

usually do the 72-hour pump test in conjunction with the DEQ approval and talk to the neighbors after that so they wait for plat approval first. He feels some of the planning board members are looking for ways to deny subdivisions instead of looking for ways to approve. The DEQ are the scientists for water and sewer. He said he made an error earlier when saying Mr. Gruber put in the wet hydrant because Mr. Gruber put a water source in his head gate and the Birdseye Volunteer Fire Department found silt in their hoses so the Birdseye Volunteer Fire Department are the ones who install a fire hydrant. Frank Gruber said it might be possible to move the wet hydrant to the other side of the tracks.

Commissioner Varone moved to render a final decision May 5. Commissioner Murray seconded the motion and it carried unanimously 3-0.

**Request For One-Year Extension of Preliminary Plat Approval For The Capital Court Minor Subdivision.** (Applicant, Scott Goldthwait) (Planner, Michael McHugh)

Michael McHugh: He reported the applicant has requested a one-year extension to April 29, 2006. The applicant has shown due diligence. The staff recommends approval. Commissioner Varone moved to grant a one-year extension to April 29, 2006. Commissioner Murray seconded the motion and it carried unanimously 3-0.

**Resolution Of Intent To Create A Rural Improvement District For Wastewater Improvements For The Woodlawn Park Addition.** (Frank Rives, Planner)

Frank Rives: He reported the RID will facilitate the water and wastewater improvements for the area. Consensus was the residents are in favor of the improvements. Total cost of the project is \$1,094,505 and will be funded through various sources. A TSEP grant would provide some funding. Wells will be monitored so the city can get an idea of future wastewater assessments. Estimated annual cost will be \$28,690 and \$81-\$2418 per lot (\$531 average). Charges collected by the county and paid to the city monthly.

If the Commission approves this resolution the public hearing process will start and a rate hearing will be scheduled. There will be a 30-day protest period. In answer to Commissioner Murray's question regarding geo codes versus lots, Frank reported that the most equitable way to assess the property is by lot instead of geo code. They went with 25-foot lots that could be subdivided or sold in the future.

Jerry Grebenc answered Commissioner Murray's question: He stated if they could get wastewater on the lots in this subdivision. It's an existing lot and will undergo NO review by the county. If the geo code is combined it does not mean the lots are combined. Those lots legally exist and they will be assessed per lot.

Commissioner Varone moved to approve the resolution and authorized the chair to sign. Commissioner Murray seconded the motion and it carried unanimously 3-0.

**Contract And Encroachment Agreement.** (Christal Ness)

Christal Ness: She reported the agreement with Gary A. Nelson to install and/or maintain a domestic water well for property described as Lots 3, 4A, 5A, and 6A of the Brewery Lode Addition to the City of Marysville. The staff and the County Public Works Department have inspected the property. Staff recommends approval of the agreement. Commissioner Murray moved to approve the agreement and authorized the chair to sign. Commissioner Varone seconded the motion and it carried unanimously 3-0.

**Public Comments On Matters Not Mentioned Above.** None.

There is no other business, the meeting adjourned at 11:52 a.m.