

PUBLIC MEETING
August 2, 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, Lindsay Morgan, Dean Retz, Kim Smith, Jason Mohr, Ron Solberg, and Carole Byrnes.

Pledge of Allegiance. Everyone recited the Pledge.

Chairman Tinsley: Good Morning and welcome to our regularly scheduled Tuesday morning Public Meeting. To my left is Commissioner Varone, to her left is Carole Byrnes, to her left is Maria Penna our new employee, I'm Commissioner Tinsley, to my right is Commissioner Murray, to his right is Ron Alles, our Chief Administrative Officer, to his right is Jerry Grebenc, our Director of Community Development and Planning.

First item on the agenda this morning is our Consent Items. We have two of them. Ron, I'll let you read them but I'd like to have the first one pulled off please. Commissioner Murray would probably like to read that one to the public.

Consent Items.

Ron Alles: You bet. Mr. Chairman, Commissioners. You have 2 items on there, one is a proclamation declaring the week of August 1st National Clown Week, and the second is a Federal Annual Certification Report for the Missouri River Drug Task Force. That second item, the report, is something our County Attorney, as Chairman of the Board, files on an annual basis with the Feds. It relates to our Drug Task Force and their expenditure of funds, etc. And as you stated I know you wanted to pull the first item off.

Chairman Tinsley: Thank you. Commissioner Murray, would you be so kind for the Commission?

Commissioner Murray: Mr. Chair, before we get there, I move for approval on Consent Item B.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Further discussion? All in favor of the motion signify by saying Aye. Aye. Motion Passes 3-0. Thank you Commissioner Murray.

Commissioner Murray: Commissioner Tinsley, since some youngster thought I was still Chair of the Lewis and Clark County Commission from Yellowstone County, he asked us to join other Counties in Montana in a proclamation and the proclamation reads "Lewis and Clark County Proclamation", and it's appropriate giving the way many people feel about us at the moment, that we chose today to issue this proclamation. "Whereas in this perilous and uncertain times, Clowns bring uplifting spirits to light and cheerfulness and can provide a renewal of self both to children and adults and whereas Big Sky Clown Alley Number 284 representing all of Montana, is a volunteer organization that performs free of charge at health related fund raising events, hospitals and parades. And whereas in recognition of the efforts of all clowns to share their gifts of imaginations by being Ambassadors of joy of and good will proclaim August 1st through August 7th National Clown Week. Now therefore, be it resolved by the Lewis and Clark Board of County Commissioners, and hereby proclaims the week of August 1st through August 7th National Clown Week and invite everyone to join with all of our clowns in their jollity and all their spirits dated this 2nd Day of August 2005, and signed by All Three Members of the Board of County Commissioners.

Chairman Tinsley: Commissioner Murray, that was probably one of the finest readings of a resolution that I've ever heard. (Laughter.) Do we have a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve a Proclamation for Clown Week and authorize all of us to sign.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0. This is one we won't take any public comment on. (Laughter.)

Proposed Major Subdivision, Preliminary Plat to be known as the Amended Plat of Lot A, Guettler Minor Subdivision.

All right, next item on the agenda is a proposed major subdivision, preliminary plat to be known as the Amended Plat of Lot A, the Guettler Minor Subdivision. The Applicant is Larry Kim Smith; the Planner is Lindsay Morgan. This has been continued from July 26th of 05, and this is decision day. Does anybody have any questions for Staff? Is there a motion? Oh, first of all we have a variance. Is there a variance? We have a variance for "no lot shall have an average depth greater than 3 times it's average width." Will you speak to the variance directly, Miss Morgan.

Lindsay Morgan: Basically, they're requesting a variance for lots 1, 27 and I believe 45. A portion of each of these lots is part of the easement for Applegate. And, if Applegate was actually the right-of-way, the variance would not be needed.

Chairman Tinsley: Is there a motion?

Commissioner Murray: Mr. Chair, I would move approval of the variance request in this subdivision.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

Chairman Tinsley: Commissioners, you have before you.

Commissioner Murray: Mr. Chair I have a motion if you're ready.

Chairman Tinsley: We have 28 Conditions of Approval. Please include those in your motion
Commissioner Murray.

Commissioner Murray: Mr. Chair, I would move approval of the major subdivision subject to the 28 conditions as recommended by the Planning Board.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. Any amendments or discussion?

Commissioner Murray: Mr. Chair.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: I believe Staff has asked that we make a correction on Condition

number 14; it should be lot 37 instead of lot 35.

Chairman Tinsley: I think we can do that one by consensus. I don't think we have to approve that. Thank you for pointing that out. Any further amendments or discussion?

Commissioner Varone: Mr. Chair.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Condition of Approval number 12, requires the Applicant to improve Applegate to the County standards and after discussion during the public hearing and the information provided by one of our Staff, Wayne, indicates that it is just not possible to do that safely. What I would recommend that we do is just require the Applicant to re-surface with that it currently is, until such time that the road can be sufficiently widened and the easements purchased to be able to do it safely. And I don't know how the language should read for that. But if I understand it correctly, Wayne was visited and he indicated that they just couldn't do it to the standards.

Chairman Tinsley: Commissioner, that was a motion, I'm assuming?

Commissioner Varone: Yes it is. I'm sorry.

Chairman Tinsley: That's OK.

Commissioner Murray: Second

Chairman Tinsley: We have a motion and a second. Discussion. Commissioners if you wouldn't mind, for my own benefit. Jerry would you be able to speak to this proposed motion that Commissioner Varone has regarding the Condition of Approval number 12, and the comment by Staff regarding the width of the road.

Jerry Grebenc: Mr. Chairman, Commissioners, I believe that the road right now is about 24 feet wide, and difference would be the recommendation is to pave it to 28 feet wide, so I suspect you could require that Typical Section but to a 24 foot width, and I'd have to defer to Lindsay.

Chairman Tinsley: And Lindsay I apologize, I was just thinking Jerry.

Lindsay Morgan: No, that's correct. And I'm not sure. I've talked with both the engineer, I guess I haven't talked with Wayne regarding that specific issue, but according to the Applicants they have talked with Wayne and he has stated that you can't do that and their engineer has also stated that it can't be done.

Chairman Tinsley: For my edification, the arguments were made that seemed reasonable to me and I just wanted to verify with Staff.

Lindsay Morgan: Ok.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone, could I suggest that if the motion before us passes that the language be constructed with Miss Morgan and the Applicant would reflect our intent that's incorporated in today's memo?

Commissioner Varone: I agree with that and I would also like our Road Staff to be involved so that the language can be drafted so that it's appropriate.

Lindsay Morgan: Ok.

Chairman Tinsley: Assume those are all taken as friendly amendments to your motion Commissioner Varone.

Commissioner Varone: Yes.

Chairman Tinsley: All right. Further discussion? We have before us a motion to amend item number 12 as indicated, All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0. Did you understand that Lindsay?

Lindsay Morgan: Yes.

Chairman Tinsley: Ok. Thank you. Further amendments?

Commissioner Varone: Mr. Chair. Condition of Approval number 16. The Planning Board recommended that additional language be added that states the "Applicant shall also dedicate an adequately sized pedestrian access easement from the internal access road along lots 14 and 69 to access the existing trail along Lincoln Road." There was discussion among the Parks Board about where the appropriate walkway should be and that's why they recommended that the walkway be adjacent to Applegate rather than any place else. For all intense and purposes do whatever we can to force the kids to go to the west rather than along the ditch, and by providing easements as recommended by the Planning Board, that kind of nullifies what the justification was, so I'm going to make a motion to reluctantly remove that language from Condition of Approval number 16, for safety reasons.

Chairman Tinsley: We have a motion is there a second? Is there a second? Hearing none the motion dies for lack of a second. Further motions or amendments?

Commissioner Varone: Mr. Chair. Condition of Approval number 24 deals with a chain link fence and if I remember correctly this is a first time a chain link fence has been required. The Applicants representative recommended alternative language that I think would be more sufficient, and that language reads, and this is a motion, to replace Condition of Approval language with, at a minimum the fence shall be constructed of woven wire with 2 strands of barbed wire at the top, that's language that I added, with 2 strands of barbed wire at the top, or equivalent building materials at least five feet in height and shall be of sufficient construction to effectively restrict the access of small children to the irrigation ditch."

Commissioner Murray: Second. Discussion Mr. Chair.

Chairman Tinsley: We have a motion and a second. Commissioner Murray.

Commissioner Murray: Mr. Chairman, Commissioner Varone. Thank you for making that correction. That correction in reviewing the testimony before the Planning Board is also a recommendation from the Fish and Wild Life. They see that as a limited use but a corridor for wild animals that the chain link fence they thought was a barrier.

Chairman Tinsley: Further discussion? Hearing none all in favor of the motion signify by saying Aye. Aye. Motion passes 3-0. The condition is amended, number 24. Further amendments or discussion? Hearing none, Commissioners, you have before you a subdivision application for the preliminary plat to be known as the Amended Plat of Lot A, Guettler Minor Subdivision, with 28 Conditions of Approval as amended. All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0. Congratulations Mr. Smith. Work with Staff and you're on you're way.

Next item on the agenda is a proposed major subdivision, preliminary plat to be known as Hoff Lot 3 Amended. The Applicant is John Herrin; the Planner is Jerry Grebenc. This is continued from July 28th. Today is decision day. Mr. Grebenc.

Proposed Major Subdivision, Preliminary Plat to be Known as Hoff Lot 3 Amended.

Jerry Grebenc: Mr. Chairman, the Applicant is not here, but the Board can move ahead, none-the-less. The only thing Staff would add is, depending upon what the Boards decision is, Staff did recommend to the Planning Board, if they were to approve, recommend approval that Condition of Approval number 10 be amended to clarify that all of Emerald Ridge Loop Road be constructed to County Standards. I just wanted to bring that up. As you know the Planning Board did recommend denial, so if you have any questions, I'd be happy to answer them.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Just a moment Commissioner, if you don't mind. Jerry, you're talking about Condition of Approval number 10, and you're saying if the variance is approved it stands, if it isn't approved then it needs to be amended?

Jerry Grebenc: Correct.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Jerry, if I understand all of the information that I read, there was considerable discussion among the Planning Board about this and it failed 4-3. So there was quite an issue, is that correct?

Jerry Grebenc: Mr. Chairman, Commissioners, the reason the Board had to recommend denial is because they denied the variance for the triple-fronted lot and in doing so, the subdivision was in non-compliance with the Subdivision Regulations. In general, the Planning Board had no choice. Their discussion centered around the road construction and what not. Not so much this variance, but the Planning Board did feel with regards to the triple-fronted lot that the Applicant theoretically could have redesigned the subdivision so that was the reason that the Board voted to recommend denial and you saw it was a 4-3 vote. So, it was relatively close.

Commissioner Varone: Thank you. Follow up?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: As I recall when this subdivision was before us the first time the Commission did approve the triple-sided lot, did they not?

Jerry Grebenc: Correct.

Commissioner Varone: thank you.

Chairman Tinsley: Commissioners, before we start we have two variances to consider. The first is a variance for lot 7, and it says it's a double fronted lot request variance, it's a triple-fronted lot, is that correct?

Jerry Grebenc: Correct. The regulations only talk about a double fronted lot but there is such a thing as a triple fronted lot, I guess, is what you would consider excessive to even a double fronted lot.

Chairman Tinsley: Right. Is there a motion?

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

Chairman Tinsley: We have a motion to approve.

Commissioner Murray: Second.

Chairman Tinsley: And a second. Any discussion? Hearing none, All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

The next variance we have before us Commissioners is a variance exists. A variance from the road standards, Emerald Ridge Loop be excluded from the requirement for road design and construction.

Commissioner Murray: Mr. Chair, I make a motion to deny the variance request.

Chairman Tinsley: We have a motion to deny, is there a second? Is there a second? I'll second the motion. Discussion?

Commissioner Varone: Discussion?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, I didn't second it because I'm really confused. I need some, just maybe some clarification if I could. If we deny this, and Jerry, if we go ahead and we approve the subdivision, I'm going to make a motion that we establish an RID for that entire area because it seems to be the fair and appropriate thing to do. If we deny this and then go ahead and make that change, I'm making a lot of assumptions, but just assuming if we go ahead and do that, can we do it that way?

Jerry Grebenc: Mr. Chairman, Commissioners. Is Commissioner Varone, is your intent to put a Condition of Approval to create an RID or is this going to be a pseudo-resolution by the Board to take that step to create an RID out there to include all of the properties?

Commissioner Varone: Mr. Chair, Commissioner Murray. I'm not exactly sure the methodology that we need to do. My intent is to recommend that an RID be established to pave the road as recommended by Staff, and to improve the gravel portion road as recommended by Staff.

Chairman Tinsley: Mr. Grebenc, Commissioner Varone, if you don't mind, let me read to you from the Staff Transmittal Report from the Planning Board hearing. My friend Steve Mandeville asked if the "Conditions of Approval can be amended to state that the Applicant create an RID to improve the road, or failing that, he pave the necessary road." Staff indicated that the Board could do that. Does that answer your questions?

Commissioner Varone: Yes, it does, but my specific question has to do with the variance. By denying the variance is that the method that we use to move forward like that, or do we approve the variance and then make the recommendation? I just want to make sure that our steps are correct.

Chairman Tinsley: I guess I would argue that we have the Conditions of Approval that require this. If we deny the variance then we would have to change the Conditions of Approval at the time we do the amendments of the Conditions of Approval that amendment could be offered, is that correct?

Jerry Grebenc: Mr. Chairman, Commissioners. Just for the record, as you know Staff doesn't

make recommendations on variances but I'll go either way. If the Board denies the variance request and the Applicant is required to upgrade the roads to the County Standard you could either put a condition of, amend the conditions and require the Applicant to try to and create an RID, which I would say for an individual to do is extremely difficult, or you could deny the variance and then the Board could take it upon themselves to initiate the process to create an RID for all benefiting properties, and in Emerald Ridge, in my professional experience, that's probably the way to do it rather than put the onus on one individual, because it's extremely difficult. I mean, there are waivers and whatnot out there, but one individual trying to go through the motions of creating an RID there are some hurdles there versus the Board taking the step to create that. If the Commission grants the variance request, I would say it's the same thing. The onus is on the Commission or some property owners out there to create an RID. Does that make sense? Does that clarify?

Commissioner Varone: I guess if I'm. Mr. Chair, excuse me.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. If understand it correctly, it probably would be cleaner then, to approve this variance and then the Commission establish, move forward and establish the RID.

Jerry Grebenc: Whether or not you approve the variance is entirely up to you. And I could defer to Ron, but in creating the RID it's going to be far cleaner if the Commission initiates the process.

Chairman Tinsley: But the Commission can initiate the process, regardless of whether we approve or deny.

Jerry Grebenc: Correct.

Commissioner Murray: Mr. Chair, Commissioner Varone.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: It would be my understanding, though, if we're going to create an RID, it would have to be done, or pass a Resolution of Intent to create an RID, it would have to be done at a future meeting where it's agended. There's nothing on the agenda today to create an RID.

Jerry Grebenc: Correct. And I, you know, my discussions, there's not intent to create an RID. It's basically discussions. You'd have to follow all of the statutory process to create an RID, notification, resolution of intent, the protest, the whole nine yards.

Chairman Tinsley: Commissioners, if you would oblige me. Further, I would argue that if we did approve this and the RID failed, then we would be left with a road that wasn't up to County standards. If we deny the variance and require the RID, however it's supplied, either through the individual or the County and it fails, the Applicants still responsible for upgrading the road.

Jerry Grebenc: That is correct. The only thing I would add is you'll have a substantial number of waivers of the right to protest, you'll have I believe, 60 some lots in the Emerald Ridge major, this one will have waivers if the plat was filed before the RID was created and there should be several other minor subdivisions. So that's just food for thought.

Chairman Tinsley: Further discussion? Thank you Jerry.

Commissioner Murray: Question.

Chairman Tinsley: Hearing none, the questions been called, we have before us a motion to deny the variance for road standards of Emerald Ridge Loop Road. All in favor of the motion to deny signify by saying Aye

Commissioner Murray: Aye.

Chairman Tinsley: Opposed, same sign.

Commissioner Varone: Aye.

Chairman Tinsley: Motion passes 2-1.

Ok, now we need a motion for the subdivision. Commissioners we have before use 20 Conditions of Approval.

Commissioner Varone: Mr. Chair, I make a motion to approve the proposed major subdivision preliminary plat to be known as Hoff Lot 3 Amended, including the 20 conditions, and authorized Chair to sign.

Commissioner Murray: Second.

Chairman Tinsley: We have a motion and a second. Any amendments?

Commissioner Murray: Mr. Chair.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: One of, a small concern I have in Condition #13. Excuse me, #14-j. We require notification of the presence of agricultural operations in the vicinity. I think we need an additional condition notifying residents of the presence of a working landfill, and would suggest we add that as Condition "M".

Chairman Tinsley: Commissioners we have a motion to amend Condition #14 and add "M" which would be a notification of the proximity to a landfill.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion and a second. All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0. Further discussion? Further amendments? Ok.

Commissioner Murray: Question?

Chairman Tinsley: Questions been called. Commissioners, you have before you subdivision known as the proposed major subdivision, preliminary plat to be known as Hoff Lot 3 Amended with the 20 Conditions of Approval as amended this morning. All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: With your approval, I hope that I get your approval that we move forward with establishing the RID for that entire area.

Chairman Tinsley: Is this the time to make a motion for a future meeting, or should this be agendaed, how would we handle this, Mr. Alles?

Ron Alles: Mr. Chairman, Commissioners. Staff has direction to proceed with our normal process. It would, it's not a formal action, we'll just take the ball from here and begin the process to create an RID.

Chairman Tinsley: Is that OK with the Commission?

Commissioner Murray: I have an agreement with Commissioner Varone, Commissioner Tinsley.

Commissioner Varone: Thank you.

Chairman Tinsley: Ok. Thank you Mr. Alles.

Public comments on matters not mentioned above.

Last item on the agenda is Public Comments on matters not mentioned above. Are there any public comments? Mr. Solberg. Please state your name and address for the record.

Good Morning Commissioners. My name is Ron Solberg. I live on Horseshoe Bend Road, which is on the northern boundary of the Fairgrounds, the northeast boundary. And I'm here to complain about the noise level at events at the fairgrounds, and the time of day that they are being held, or the time of night, or the morning hours that they're being held. And wondering if there are some policies concerning the events and the noise levels.

Chairman Tinsley: Is there a specific day or time that you were experiencing this? Or was it just all along?

Ron Solberg: It was on Friday and Saturday nights at 1:30 in the morning. I was awakened by music playing.

Chairman Tinsley: Was it coming from some of the people who might have been working at the fair and staying?

Ron Solberg: No, it sounded like an event was going on over there on a loud speaker. So, I was wondering if there were policies on the noise level and the time of day and night that these events can be held.

Chairman Tinsley: Mr. Alles, can you?

Ron Alles: Mr. Chairman, Commissioners, Mr. Solberg brings up a good point. I know the Fair Board will place on its agenda and address this issue. I can't recall exactly the time the band was playing when the dance was going on or whatever, but I know the Fair Board does want to address the timeliness of those events as it relates into how far into the evening it goes, so the Board is going to look at that.

Chairman Tinsley: Do you have any further comments Mr. Solberg?

Ron Solberg: So at this point, we have no policy.

Ron Alles: There is no policy. The County does not have a noise ordinance, but we do know and recognize that there's quite a dense population in that area and it does affect not only the homeowners around there in the residence but I know that sound carries up to Mount Helena in

certain evenings, so the Fair Board is aware of it, they do want to address it. There's not a policy in place today, but they are going to look into that for next year.

Chairman Tinsley: So we are going to pursue that matter.

Ron Solberg: Ok, I have one more comment. On the noise level, and the Monster Truck event that's coming I guess in a couple of weeks. I experienced that last summer, I shared that with Commissioner Murray as we had a hard time talking on my phone from my kitchen because of the noise level was just so high.

Chairman Tinsley: I believe that event occurs during the day or evening correct?

Ron Solberg: I believe it was close to 10:00 that night, when I called Commissioner Murray on that event. But anyway, so there is a policy going to be developed on?

Ron Alles: That's correct. On the timing of those events those with loud noises. Now I can't, and won't tell you that I don't know what that time limit is going to be, whether it's going to be 9:00 or 10:00, I don't know that those, some of the events.

Chairman Tinsley: Or some other time. It could be some other time other than those two times.

Ron Alles: Right, exactly. I mean I can't, we need to have the Board discuss that on the timing of those. Those Monster Trucks can't help but have noise because it relates to that. Now they can address the time of which it occurs, and certainly would invite your input to that one when they hold that at the Fair Board level.

Ron Solberg: And when would you anticipate coming up with a policy.

Ron Alles: Well, the next Fair Board meeting isn't until the end of this month. I don't know if this will be addressed at that meeting, it's not scheduled to be on this meeting, and we haven't addressed that as being an agenda item, but certainly, so that isn't going to help as it relates to the Monster Truck show, either. I know they've already got that event scheduled with the time so I can only apologize as it relates to that time today.

Commissioner Murray: As a result of last years Monster Truck Show, I know Mr. Solberg and I both asked the Board in place at that time, if they would hold it earlier and I don't know if that accommodation has been made or not.

Ron Alles: I know it hasn't been discussed at the Fair Board level, probably an oversight on my part. There's been a lot of other issues they've been addressing and that one probably got overlooked and I apologize.

Commissioner Murray: The one thing we need to know, Commissioners, is I don't believe the County Commission has the authority to set a County wide noise level. Because we don't have self-government powers. But in a facility we operate, I certainly think we have the right to establish a noise level at that facility.

Chairman Tinsley: Mr. Solberg, I'll make it a point that when the Fair Board does address this issue that you are notified so you are aware of it and you can come in.

Ron Solberg: I would appreciate that Commissioner Tinsley.

Chairman Tinsley: Ok. And as I reminded you earlier, we do need that Preliminary draft back, it's the only copy we have.

Ron Solberg: I will get that to you.

Chairman Tinsley: Thank you very much. All right. Further issues to come before the Board? Hearing none, we stand adjourned. Thank you.

Adjourn. Adjourned at 9:32 a.m.