

DRAFT – NOT APPROVED BY BOCC

SUBDIVISION MEETING
October 27, 2005

Chairman Ed Tinsley called the meeting to order at 9:05 a.m. Commissioner Murray are present. Commissioner Varone is absent. Others attending all or portion of the meeting included, Ron Alles, Audra Zacherl, Mike Ruppert, Kevin Riordan, Larry Cole, Dr. Marsha Davis, Nancy Everson, Sharon Haugen, Craig Riley, Andy Adamek, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Chairman Ed Tinsley: Good morning and welcome to our regularly scheduled Thursday morning subdivision meeting. I'm Commissioner Tinsley. To my left is Maria Penna, our Executive Assistant. Commissioner Varone is out today. To my right is Commissioner Murray. To his right is Ron Alles, our Chief Administrative Officer, and to his right is Jerry Grebenc, our Director of Community Development and Planning.

First item this morning are the Consent Action Items. Mr. Alles.

Consent Action Items.

Ron Alles:

- a. Health Department Renewal Contract with DPHHS. The purpose is for Parenting classes and Parent Support Group. Funding amount \$85,607
- b. Resolution for Combined Funding for the Friendship Center. It's kind of a house keeping measure to combine the CDBG and the Home Program funds and allocate those.
- c. Resolution to Support a Proposal by Boyd Andrew Community Services to the Montana Department of Corrections to build and operate a secure methamphetamine treatment facility to be located in Jefferson County.

Chairman Tinsley: Would the Commission like to remove any of the items and consider them separately?

Commissioner Murray: I move approval of the consent agenda and authorize the Chair to sign.

Chairman Tinsley: Second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 2-0

The next item on the agenda is the Helena National Forest Presentation. We have our Chief Ranger, Kevin Riordan. Welcome Kevin.

Helena National Forest Presentation.

Kevin Riordan: Thank you. I'd really like to take a minute to reflect and stop, you know, as you climb a mountain peak you sit up there and enjoy the view a little bit until you're off for the next one, and that's what I would like to do, is stop and enjoy the view and celebrate some accomplishments that we've had in Lewis and Clark County. With me is Larry Cole, and we

have some individual presentations we'd like to make and then one to the Board. So, Larry?

Larry Cole, Realty Department on the Helena National Forest. We're here this morning to acknowledge and thank the County for their awesome role in what we're calling the York Town Site Project. Over the past year we've conveyed 38 acres of National Forest Lands to Lewis and Clark County, who turned around then to re-conveyed it to the permanent landowners and permittees and it culminated roughly a 32 year process to make all that happen. Nothing to take lightly. It was very complicated and I think most every person in this room that's affiliated with the County played a key role in that, some more so than others, and we would really like to acknowledge everybody's participation and help in that capacity and in that role. First of all, I've got awards to make to 4 individuals. I think only Sharon Haugen of the 4 is in the room now. Sharon, if you could come up for a second here? Sharon, of course, was the past Director of Community Development and Planning and played just such an awesome role in all of this.

Sharon, thank you very much for all your help and oversight for all your can-do attitude. A little something we put together through Birds and Bees and I've got one for yourself, Frank Preskar, K. Paul Stahl, Mr. Stahl.

Ron Alles: Since Sharon got that when she was a County employee is that County property? (Laughter).

Larry Cole: You guys will have to deal with that yourself. (Laughter) K. Paul, for you. I appreciate all of your help.

K. Paul Stahl: Thank you very much.

Larry Cole: So I've got one for Frank Preskar and for Eric Griffin also. All 4 folks helped us immensely, so thank you.

Chairman Tinsley: Congratulations Paul. Congratulations Sharon. Thank you Larry.

Kevin Riordan: And your folks are probably just like all of the other people in public service and the other public sector, they're not here today to accept these awards because they're not in public service for recognition and for the big paychecks they receive, they're here because they have a higher belief and so we really appreciate the folks that aren't here and hope you will pass on our thanks for us.

I have a presentation for the Board as well, on this York project and I hope you'll accept this graciously and again this project is not possible without your participation and the way it was done. Our land exchange rules and laws are very cumbersome and they're meant to be that way so that rash decisions don't happen. But sometimes they get more cumbersome on some projects than they need to be and your patience and understanding working with us and taking the issues and being real creative on how to approach this and solve this, it worked better not only for the taxpayers of the United States but the York residents as well. We really appreciate your help and support and I can't thank you enough, it's just one more great example of partnership that the Forest Service and Lewis and Clark County have had. So, thank you very much. ***Presented Commissioners with plaque.

Chairman Tinsley: Well we just like to say thank you on behalf of Lewis and Clark County to the Forest Service for helping to facilitate this project and getting it off. I know when I came on board as a County Commissioner 3 years ago, there was this thing at the bottom of our Administrative Staff Agenda called the York Town Site and forever I kept asking, "what is this thing? What is this thing, it's still on here, we never talk about it, what's going on?" And then finally one day it came up and then it was gone, so it was a long process like you said but through the help of folks like Paul, Sharon, Frank and Eric we got it done. So thank you very

much, and thank you Larry, we appreciate it.

Chairman Tinsley: Next item on the agenda is the revised Lewis and Clark County Levies for Schools 2005-2006. Presenting is Dr. Marsha Davis our Superintendent of Schools.

Revised Lewis and Clark County Levies for Schools 2005-2006.

Dr. Marsha Davis: Well Northwest Energies reassessment resulted in a reduction of the taxable value for us in the County and of course it impacted all of the school districts so the timing was rather poor since the budgets were all submitted. Because the tax notices hadn't gone out yet, we were graciously able to make some revisions to those school district budgets. I have in your packet a revised levies for all of the school districts and the countywide levies for schools. Really, the results of these revisions only resulted in anywhere from .04 mill increase to less than ½ a mill increase overall. So, I ask for your approval of these revised mil levies and ask, well, you'll need all to sign it too. Thank you.

Chairman Tinsley: Thank you Dr. Davis. Any questions for Dr. Davis? Is there a motion?

Commissioner Murray: Mr. Chair, I would move a resolution amending 2005-116 and providing for the revised annual tax levy in mills for the fiscal year July 1, 2005 through June 30, 2006 and authorize the Chair to sign.

Chairman Tinsley: Second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion carries 2-0. Thank you Dr. Davis.

Next item on the agenda are our County-wide Revised Tax Levies. Our Chief Financial Officer, Nancy Everson is here to talk about that. Welcome.

Countywide Revised Tax Levies.

Nancy Everson: Thank you Commissioners. You have before you in your packet a resolution revising the mill levies, the annual tax levies for fiscal year 2006. As Dr. Davis talked about, we received in early October notice of a reduction in the market value for Northwestern Energy. At that time the entities requested that the Department of Revenue recertify our taxable and market values, and the Department of Revenue did so. The effect of that recertification decreased the Countywide taxable value \$410,000.00. It also decreased the new growth calculation approximately \$398,000.00. When we run this, this will highlight how complicated the mill levy calculation and the tax system in the State of Montana is but the calculation for mill levies is based on the ability for the County and the City entities to levy the same amount of revenue as the prior year adjusted for some inflationary factors. Excluded from that calculation is the new growth, so with this revised reduction what the net result was, because of the decrease in new growth as well, we were able to increase the countywide mill levies by .02 of a mill which is approximately \$1850.00. Across the County mill levies that was an increase of .01 and our all-purpose mill levies an increase of .01 and the public safety mill levy, all other mill levies remained the same. The difference between the new growth from the original certified to the newly certified resulted in a loss of approximately \$65,000.00 to the County, which we cannot recoup. The new growth is not part of the mill levy calculation to that prior year revenue number. I could go on for quite awhile on the complexities of this, but I'll be happy to answer any questions.

Chairman Tinsley: Questions for Miss Everson?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Miss Everson, when will the tax bills go out?

Nancy Everson: We're hoping they can be out the first week of November. The City of Helena is also revising their mill levies and that will be decided on Monday the 31st. The Department of Revenue is working with our Tax Department in getting those charges ready to go and hopefully as soon as the City of Helena adopts their revised mill levies they can be printing tax bills. So they will be delayed. The due date will not be the 30th of November like it normally is; it will be in December probably a week maybe two weeks.

Chairman Tinsley: Miss Everson, this is a phenomenon that's occurring across the State, correct?

Nancy Everson: Correct, yes. And it really was a timing issue because these things happen all year long. Changes in the evaluation. The timing of this Northwestern Energy and the significance of the decrease was enough that we stopped the process and asked for it to be recertified. If the notice had come out say today example it would have been too late. We would have had the tax bills out.

Chairman Tinsley: Further questions for Miss Everson? Is there a motion?

Commissioner Murray: Mr. Chair, I move that we accept the report by Miss Everson and adopt the combined resolution and authorize the Chair to sign such.

Chairman Tinsley: Second. Any discussion? All in favor of the motion signify by saying Aye.

Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 2-0.

Nancy Everson: Thank you.

Chairman Tinsley: Thank you. We are now at the point in the agenda where we will accept public comment on any matters not mentioned above. Welcome Mr. Adamek.

Public comments on matters not mentioned above.

G. Andy Adamek: Good morning Chairman Tinsley, Commissioner Murray and Staff. Thank you for giving me the opportunity to present public comment on Thursday's Subdivision meeting. I know you normally don't do this but due to extenuating circumstances you've allowed me to do this today. I have two topics that I want to address this morning.

The first one, kind of similar to the Forest Services presentation this morning, I'd like to thank the Commission and the County on behalf of the Menlo Park Homeowners Association who I represent. If you all recall we had an issue arise regarding the Sierra Road and Lodestar Road condition back in April/May of this year and that arose from an assessment of the RID there to pay for improvements of Lodestar Road and there was concern by my clients, the Association, that the road had not been properly constructed in the first place. And I presented those concerns to the Commission and the response from the Commission was very positive in terms of willing to continue to discuss the issue with all of the interested parties and what has resulted from that process is a new and improved Lodestar Road at a savings of approximately \$17,000 to \$20,000 to the RID members. And, how we got there was by constructive dialogue with the

County and with the original contractor who installed that road, Helena Sand and Gravel, and in particular Gene Shot, Vice President of Helena Sand and Gravel, who came to the table, literally, with I and the President of that Homeowners Association and with several other members that I would like to thank of the Commission, of the County, Eric Griffin, Public Works Director, Carol Hanel, Public Works Administrator, Gene Shot, Vice President of Helena Sand and Gravel, Ron Alles, Chief Administrator Officer of the County, Paul Stahl, Deputy County Attorney, Byron Stahly, who was the Engineer involved in looking at the design plans, and his associates worked with Byron, it's my understanding, to come up with an alternative design standard that would still comply with the County regulations but resulted in a cost savings. Marni Bentley was also helpful in this process as well as, of course, the Menlo Park Homeowners Association. I hope that I have named everyone. If I haven't, I thank them as well. It was a good process and it resulted in a good outcome and it shows what constructive dialogue and kind of teamwork that they can do in terms with dealing with a problem. The resources that would have been expended in litigation were used instead to fix the problem and that problem was Lodestar Road and it's now a beautiful road, if there is such a thing. I drove it the other day and it's a nice road now and the only complaint that the Homeowners Association President has now is this road is so nice and beautiful it makes the rest our roads look back but that's not the Commissions or County's fault, I want to assure you. So thank you for a job well done and listening to their concerns and assisting in resolving that problem. I don't think you'll be hearing from me on that issue again.

Chairman Tinsley: Thank you very much.

G. Andy Adamek: Thank you. The second item that I want to address with the Commissioners this morning is to inform you that I represent the Crestwood Green Estates Homeowners Association. I was retained last week and the scope of my representation is to address the Commissioners October 13, 2005 decision to remove the Norris Road/Applegate Drive gate and also to address the County's apparent desire to designate Norris Road, Crestwood and Rosewood Drive as County Roads. As we all know, those roads run through Crestwood Green Estates, a development that was created by final plat approval in 2000 and 2001 and is situated between Green Meadow Drive and North Montana Avenue. I want to advise the County today that the Homeowners Association for Crestwood Green Estates intends to oppose both of these actions that the Commission has taken or appears to be moving towards. I don't intend to repeat the public debate that this Commission has already heard on this issue today, but I have reviewed the Commission meeting notes for the October 11, 2005 Public Meeting and the written comments that were submitted, and after doing that, I must conclude that the Commission has elected to ignore the desire of the majority of the persons that appeared before the Commission to speak in favor of keeping the gate. And I also conclude that the premise for placing the item for the gate removal on the agenda for the October 11th meeting was that there were a number of Applegate Rural Improvement District members who had raised this issue in a May 2005 Public Meeting where their assessment for RID improvements was addressed. When I looked at those meeting minutes for that May 3rd meeting, I don't see any public comment. I don't see anyone who came and appeared before the Commission and complained of the gate as being related, the gate on Norris Road as being related to Applegate's RID funding issues. I do know that Commissioner Murray raised the issue of the gate at the end of that discussion and asked that the gate issue be placed on a future agenda item. There may be other public comment or other written communications that have been submitted to the Commission and that I'm not aware of and I would ask for assistance with the Commission and identifying those comments but I haven't seen them in the paper trail that I've looked at in the last week. Now, by the time we move forward to the May 11th 2005 Commission Meeting where the gate removal was to be addressed, the Planning Department had already prepared a report dated September 30th entitled Gate at Norris Road and Applegate and in reviewing this report, what I believe this report really did was to provide a "boot strap" argument for converting Norris, Crestwood and Rosewood Drive through Crestwood Green Estates into a County road by resolution under the guise of speed limit enforcement because the members of Crestwood Greens Estates obviously

have an interest in monitoring the speed limit through their subdivision which is currently posted at 25 miles per hour. And I understand that there's a jurisdictional issue because those roads are not designated as County roads. So I had to ask myself what's really going on here in looking at the paper trail. And what I think is going on here is that the County wants to clearly create an east/west connector between Green Meadow Drive and North Montana along Norris, Crestwood and Rosewood Drive right through the Crestwood Green Estates Subdivision. And like most entities or individuals the County wants to do this through the path of least resistance and I, after meeting with the Homeowners Association and reviewing the record, I want to inform the County that I don't think that path of least resistance will wind through Crestwood Green Estates. The County already has east/west connectors between these major arterial drives, those being Lincoln Road, John G Mine Road and Sierra Road. We're basically looking at a situation where the County wants to create a minor or major connector through a major subdivision. Now, our own Helena area transportation study classifies minor connectors as roads accommodating up to 5,000 vehicles per day. The 2003 traffic studies that were conducted within that study show that John G Mine was then carrying 800 vehicles per day and the forecast for 2025 are 1500 vehicles per day. The Norris, Crestwood and Rosewood connector would be closer to town and have more traffic than John G Mine, and when we extrapolate the 2025 predictions for John G Mine Road, Crestwood Green Estates would likely have over 2,000 vehicles per day running through this connector probably in excess of 55 MPH. That is what the 2002 traffic study showed that traffic averaged driving through this subdivision was 400 vehicles per day, at that time. So who could blame the residents of Crestwood Green Estates from opposing a County road designation or any measures that would at least in the short term likely double the amount of through traffic through their subdivision and before they pay their mortgages for the new homes they developed over the next 25 years, that designation would like increase through traffic five fold. I think the core legal issues here is the scope of the public access easement that was mandated for subdivision approval and Chairman Tinsley has addressed this issue in his inquiries of the public comment. And I think you've gone right to the meat of the matter, Chairman. When this subdivision was conditionally approved this developer like most developers, or all developers in this County is required to designate all roads as public access easements and the applicant did this and that easement is reserved on the certified final plat that is filed with the County. It established a 60-foot public access easement for the roadbed of the subdivision. The developer also had to, in further compliance of the Subdivision Regulations that applied at the time, provide a second access point to that subdivision. The primary access point was obvious; it's North Montana Avenue through Rosewood. The secondary access point is at issue here and that is where the gate traveling down Norris Road is located and I think that we all know why second access points are required in major subdivisions. They provide a second point of ingress and egress especially in emergency situations. The density and the size of major subdivisions require these second access points. We don't refute that. I think that's sound planning. But the intention of creating a second access point, I think, is clearly as a secondary access point in those events, in those cases of emergency, not as a entranceway to create a connector to promote through traffic through a subdivision for non-residents. And I think that's consistent with other provisions of the subdivision regulations that were applicable to this development, those being the 1999 versions. At Chapter 10 of those regulations in section A-8F, it states local streets shall be designed to discourage through traffic except where the public health and welfare would be enhanced by through connections. Now this identical provision is contained in the current subdivision regulations and now where in the Public record that I have reviewed have I seen anyone articulate how removal of the gate or the designation of these roads as County roads would promote or enhance public safety. To the contrary, it would decrease public safety to the residents of this subdivision. I even saw that the County Public Works Director wants to even raise the speed limit to 35 MPH. The speed limit is currently 25 MPH and the 2002 traffic study showed that the average speed in that subdivision is 55 MPH. So if we raise this another 35 MPH we obviously can't assume that the commuter traffic whose coming through this subdivision in the morning and who is coming back through it in the evening is going to comply with the 35 MPH speed limit and what we're probably going to have is 60 to 65 MPH travel

through this subdivision. And the lengths of the roads within this subdivision would allow that rate of speed. It already evidently allows 55 MPH. But we have to kind of speculate about what would happen, or what will happen now that the gate has been ordered to be removed because the County didn't perform the traffic study that it promised to perform in 2002 when it gave this developer permission to install the gate in the first place. And I don't understand all of the reasons for that. I understand one concern that has been raised was that it would cost money and it's uncertain who would have to pay for that, and I would just simply suggest that it might be more costly not to do the study. I mean, the County's actions are promoting and increasing a situation of increase speed and the potential for people to get hurt out there, not to mention the legal issues that may arise with respect to the gate removal and the intention to create County roads through this subdivision.

I think there are two legal principals that the association intends to establish either by constructive discourse with the County or by litigation. The first principal and this speaks to Chairman Tinsley's concerns is that designation of a public access easement on private property for the purpose of creating roads for the ingress and egress of a subdivision such as Crestwood Green Estates is not synonymous with a road that is dedicated for public use in the County. The dedication for public use distinction is being improperly interpreted by the County or it was and your intention to designate these roads as County roads is by resolution and basically create an east/west connector by resolution.

The second principal that I want to, that we will establish is that there are strict statutory mechanisms for creating County roads. A simple resolution will not suffice in this situation because of the distinction between the reservation of a public access easement versus the dedication of a public use. What the County has to do if its intention is to go forward with creating a County road is to do that by petition and there are 2 statutory mechanisms for that. One of them would require at least 10 members of the road district in the area to petition the County to create a County road designation. The other would be a petition by 2/3rds of the adjacent lineal landowners along the roads proposed to be County roads to petition the Commission. Neither of those have happened. Even if they did, the County would still have to pay damages resulting from the County road establishment. You're, the roadbed that's an issue here, is owned by 38 different lot owners. Their property lines go to the center road of these roads and at that center there is an easement that backs out 30 feet in each direction. You're taking private property by designating this road as a County road and there is a statutory mechanism to pay for that. It is section MCA 7142704 and if there is not some agreement in terms of damages that are offered to these property owners, they have a right to sue the County in District Court. That could potentially be 38 different lawsuits.

So lets look at some practical considerations here. These roads are Peccia No. 3 roads. They weren't designed for the wear and tear or the traffic volume of a minor or major connector between North Montana and Green Meadow. I don't think the County has a set policy in adopting existing County roads or creating new ones. Maybe it's the time to set that policy but I would submit that litigation is not the best form to do that. I don't think that litigation, in my experience resolves in constructive forward looking planning policy. In litigation, a District Court judge in this County or perhaps Montana Supreme Court, will tell us what that distinction is and will effect the growth policy of this County. I don't like that scenario. If the County is going to facilitate an east/west connector it should be done in a straight shot between Green Meadow and Montana Avenue, affecting the least number of property owners. Where talking about eminent domain here, and in eminent domain fights it's typically more efficient for there to be only two fighters who fight rather than 38 different boxers and that's what may potentially happen here.

Finally and most importantly I think the County needs to recognize that it broke a promise to do a traffic study before the gate was to be removed. But we know what that study will show. It will not show that removal of the gate is serving the public health and welfare. I think what that

traffic study will show is that it's endangering it for the residents of Crestwood Green Estates and perhaps for those commuters who chose to use this connector if its created at a higher rate of speed on a road that was not designed to handle the volume or the rate of speed that these commuters have demonstrated that they will drive if they are allowed to proceed.

I'd like to ask the Commission to reconsider your decision to remove the gate. Place it on the agenda next week, provide notice, allow the Applegate Drive people to come, allow them to make their statements into the record, allow the record to be developed to determine whether removal of the gate would promote public safety. I think that record will not exist and I don't think the current record exists in support of increasing public safety by removal of the gate, nor do I think that public safety would be served by an attempt to create or make these roads County roads.

That concludes my statements. I entertain any questions that the Commission has. I'd like to continue this discussion with the County Attorney and with any members of the Commission and perhaps Jerry Grebenc as the Planning Director and see if we can come up with some sort of resolution to this issue. Thank you.

Chairman Tinsley: Mr. Adamek, thank you for your comments this morning. We try to avoid a question and answer period during our Public Comment portion and I think based on the situation we're in now, it wouldn't be wise for us to engage in something like that until we have had a chance to talk with the County Attorney and have him have a chance to talk with you as well, but we do appreciate your comments this morning and thanks for coming here.

Andy Adamek: Thank you.

Chairman Tinsley: Any further public comment? Any further public comment? Hearing none we stand adjourned. Thank you for you comments this morning.

Adjourn. Adjourned at 9:41 a.m.