

**DRAFT – NOT APPROVED BY BOCC**

**PUBLIC MEETING**  
**November 29, 2005**

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioner Murray and Commissioner Varone are present. Others attending all or portion of the meeting included Ron Alles, Frank Rives, Robert Bryant, Owen & Becky Voigt, Lindsay Morgan, Ron Solberg, Mike Henderson, and Maria Penna.

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

Chairman Tinsley: Good morning and welcome to the regularly scheduled Tuesday morning public meeting. My name is Commissioner Tinsley. To my left is Commissioner Varone. To her left is Maria Penna our Executive Assistant. To my right is Commissioner Murray. To his right is Ron Alles our Chief Administrative Officer. To his right is Frank Rives our Deputy Director of Community Development and Planning. There's a sign in sheet up front if you wouldn't mind signing in if you haven't already. Our first item is our Consent Action Items. Mr. Alles.

**Consent Items.**

Ron Alles:

- a. Settlement Agreement between Robert Bryant and Lewis and Clark County.
- b. Resolution Declaring County Property Surplus. The Clerk of Court has a Podium, which they no longer need and she wanted to donate that to Kessler School.
- c. Health Department Renewal Contract with DPHHS. This is to continue providing HIV and Aids prevention education services and this contract is in the amount of \$74,046.00.

Chairman Tinsley: Questions for Staff? Is there a motion?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, I would like to pull out the settlement agreement between Robert Bryant and Lewis and Clark County and just ask for a little more explanation.

Chairman Tinsley: Without objection. Do we have any other items to be pulled out?

Commissioner Murray: I move approval of the remaining consent agenda.

Commissioner Varone: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Opposed same sign. Motion passes 3-0. Mr. Alles do you want to walk us through this.

Ron Alles: Mr. Chairman, this agreement calls for the County to pay the amount of \$8,000.00 to Mr. Bryant. If you recall, we had a subdivision hearing before the County Commissioners. Action was taken to approve that subdivision with certain Conditions of Approval. I believe Mr. Rives was the Planner on that subdivision. In going through the course of the hearings and modifications to the subdivision it became known to the County that we required some modifications that probably shouldn't have been placed. I'm not sure how else to explain that. Our County Attorney has met with the Applicant and this is the settlement to make things whole.

Chairman Tinsley: Questions for Staff?

Frank Rives: If I might add just one thing and that is that the, to complete the modification process they will be coming before the Commission again. I believe the date is December 27<sup>th</sup>. This is just to make sure that we meet all of the legal requirements, so you'll probably see them in about a month or so.

Chairman Tinsley: Mr. Rives or Mr. Alles, I have a question. On item 1-B of the agreement portion, were curbs and gutters originally planned or conditionally approved in the original agreement?

Frank Rives: Yes they were. It's my recollection that was something that the original engineer proposed and so we placed it as a condition. It's a greater standard than we would have required otherwise we would have required #2 Peccia which would have been a paved road but no curb and gutter.

Chairman Tinsley: Ok. Further questions?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Thank you Frank for giving that information because as I read this that was one of my questions and why I wanted it pulled in addition to a further explanation. I wanted to know if this was the end of it or if it needed to come before us again. Thank you for answering that.

Chairman Tinsley: Is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve the settlement agreement between Robert Bryant and Lewis and Clark County.

Chairman Tinsley: Is there a second?

Commissioner Murray: Second.

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

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Mr. Rives or Mr. Alles you will go ahead and schedule the next portion that we have to deal with is that correct?

Frank Rives: Yes, it's already been scheduled and the hearing date will be the 27<sup>th</sup> of December.

Chairman Tinsley: Great. Next item on the agenda is the proposed minor subdivision, preliminary plat to be known as Bowhunter. The Applicants are Owen and Becky Voigt. The Planner is Lindsay Morgan. This was postponed from November 22<sup>nd</sup> of '05. Are you Mr. And Mrs. Voigt? Have you received your packet from Staff for this morning and are you prepared to go forward? And they have nodded and said, "yes" in the affirmative. Miss Morgan.

**Proposed Minor Subdivision, Preliminary Plat to be Known as Bowhunter.**

Lindsay Morgan: Good morning Commissioners. This is the preliminary plat to be known as the Bowhunter Subdivision. The site is located west of Birdseye Road and south of Chapparral Drive along Bowhunter Drive. A vicinity map has been attached with the application and I have that up on the screen for you to view.

The Applicants propose to create 2 lots each for one single-family dwelling. If approved the existing tract will be divided into two lots each. Each proposed lot is currently developed with a single-family dwelling served by a shared well, an individual on-site wastewater treatment system and utilities. Again, access to the lots is off of Bowhunter Drive. Road construction may be required in order to provide standard physical access. And because this is a minor subdivision no parkland dedication is required.

The size of the existing parcel is 1.97 acres. The proposed subdivision lies within Zoning District #7 which is Fort Harrison. According to the zoning regulations the minimum lot size is 20,000 square feet. Both single-family residences and duplexes are permitted however only 1 single-family dwelling is allowed per parcel. Or one dwelling unit in general.

Staff has received no comments in favor of or opposition to the proposed development.

As far as effects on agriculture: The site has not been identified has not been identified as having prime farmland.

As far as streets and access: It will be Birdseye Road via Chapparral Drive and Bowhunter Drive. All lot owners within the proposed development must waive their right to protest an RID for road maintenance and improvements. The Applicants have requested 4 variances from the County Road Standards: 1) Bowhunter Drive lacks an emergency vehicle turnaround, 2) Bowhunter Drive has a 30' access easement, 3) Both Bowhunter and Chapparral Drive do not meet the new road construction standards which is Typical Section No. 1, and 4) Bowhunter Drive is a dead-end road in excess of 700' in overall length. If the variance for the emergency vehicle turnaround on Bowhunter Drive is not granted the Applicants will need to dedicate an easement for and construct the turnaround in accordance with County Standards Typical Section No. 1. If the turnaround is constructed the dead-end road will be approximately 950' plus from Birdseye Road. If the turnaround is not constructed the distance between Birdseye and the terminus of Bowhunter Drive is approximately 1685 feet. If the variance for the road easement is not granted for Bowhunter Drive the Applicants will need to provide a 60' public access and underground utility easement for that portion of Bowhunter Drive that lies north of the southernmost proposed lot within the development. If the variance for the road construction is not granted the Applicants will be required to construct both Chapparral Drive and Bowhunter Drive to County Standards Typical Section No. 1. Also they will be required to install a asphalt mat apron on Chapparral Drive at the approach onto Birdseye Road.

As far as schools: There's currently a bus stop located at the junction of Chapparral Drive and Birdseye Road that will potentially serve this subdivision.

With exception of the requested variances if all Conditions of Approval can be met, the proposal appears to comply with the minimum subdivision standards and therefore Staff is recommending approval of the proposed preliminary plat and it's subject to 13 Conditions. I do

have an aerial photo and pictures of the site. \*\*\*\*\*Showing photos of the proposed site.  
\*\*\*\*\* Do you have questions for me?

Chairman Tinsley: Miss Morgan I have a couple of questions. One, you indicated there were only 4 variances and I count five and you went through them very quickly and I wasn't sure if you covered the 5<sup>th</sup> one or if it's not necessary or what.

Lindsay Morgan: I'm assuming that the 5<sup>th</sup> one is at Chapparral. There's 2 variances that are, it's the same variance, but Chapparral Road does not meet County Standards and Bowhunter does not meet County Standards so there's 2 separate variance applications that were filled out but that wasn't necessary, they could have filled out one.

Chairman Tinsley: For both roads. All right. 2<sup>nd</sup> question is: So both homes are already existing?

Lindsay Morgan: That's correct.

Chairman Tinsley: When were they constructed? I mean how did this happen? How did it get to the point where we have to do it after the fact?

Lindsay Morgan: I don't know exactly when they were constructed. That's probably something the Applicant would be able to answer but during the pre-app, it was my understanding that this was done before the Applicant purchased the property. I don't know when it was done though. But one if violates zoning, so they have no choice, they can't ask for a second development right, they have to divide the property, otherwise they would have to amend the zoning.

Chairman Tinsley: Ok. I'll ask a couple of questions of the Applicant then. Any questions for Staff?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray, if I may, Lindsay, since there's so many variances and on the maps that were provided with us, I didn't know exactly where Bowhunter was, would you go through the variances and then on the map explain to me what our regulations require them to do and why the variance?

Lindsay Morgan: Ok. One of the variances is because Bowhunter is a dead-end road in excess of 700'. Here is Bowhunter, it isn't labeled on the map, but it is located right here and you can see that it dead-ends right here. There's no emergency vehicle turnaround. Chapparral Drive does have or appears to have an emergency vehicle turnaround. It is also a dead-end road, so the dead-end road would start at Birdseye, the length, and I believe I had calculated it as being 1685' in overall length from Birdseye and our regulations don't allow a dead-end road to be any longer than 700'. Also, Bowhunter only has a 30' access easement and that's, it starts right here. Chapparral has 60' but Bowhunter only has 30', so if that variance is not granted the Applicant would have to come up with another 30' and it may be a problem for the Applicant because there is this small area here that they would actually have, they can't dedicate it on their own property they would have to ask a neighbor for that additional 30'.

Commissioner Varone: Is that the one that says "width of right-of-way"?

Lindsay Morgan: Exactly. Then the 3<sup>rd</sup> variance is because both Chapparral I believe was probably constructed to Peccia No 3 our old standard, it looks like a very good road. Bowhunter definitely wasn't constructed to any of those standards. So they need to get a variance because

it doesn't meet our current County road standards. Also, they don't have an emergency vehicle turnaround which is also something that's required. So if an emergency vehicle comes to a development they can get in and out of there safely and quickly and so they're also requesting a variance from that.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: One of these variances says Bowhunter Drive construction and talks about it's crowned and maintained. And the other one says Bowhunter Drive with a right-of-way. Is there anyway that they could construct this road without the additional right-of-way to meet any kind of standards.

Lindsay Morgan: In 30' it's not really possible. For the Glacier Point Major Subdivision that we just reviewed they were required to pave and do curb and gutter to meet that standard. In this case they would be required to bring this up to a gravel standard and with that they would have the barrel ditches and they wouldn't have enough room.

Chairman Tinsley: Further questions of Staff? Miss Morgan you indicated when you were presenting the variances earlier, I think it was regarding the variance on the dead-end road. I can't remember something about an easement would have to be dedicated if it wasn't passed, the variance was not approved. Do you recall what you said?

Lindsay Morgan: If the variance for the dead-end road isn't granted then they're going to have to find another way out which I don't think is possible. For the emergency vehicle turnaround, they would dedicate the easement on their property and so they could do a hammerhead or they could do a cul-de-sac but they'd have to dedicate an easement for that and then also they would have to construct that emergency vehicle turnaround along with the road to County standards. Then the other issue is requiring them to dedicate the full easement for the road which right now they're saying it's 30' and our regulations say we need 60'.

Chairman Tinsley: Another question if you don't mind. Looking at this aerial photo where the easement is for Bowhunter Drive coming along the left side where you're cursor just was, and then it shows, it doesn't look to me like Bowhunter is being utilized at that bottom end of the picture. It looks like it breaks back off, nobody's been driving across it I guess, across it, do you see where I'm talking about?

Lindsay Morgan: Yes.

Chairman Tinsley: So, where did that portion of Bowhunter Drive come from? That we're calling Bowhunter Drive?

Lindsay Morgan: I'm not sure. I would, the easement is dedicated there so if the road isn't constructed the easement still exists. What would happen the southern most lot starts here so the emergency vehicle turnaround would be in this location and then the Applicant would have to construct that emergency vehicle turnaround and dedicate the entire easement on their property and then the same thing would go for Bowhunter Drive. They would only be upgrading this portion. They wouldn't have to be doing anything down here because all they need to do is provide adequate access to all of the lots within the development and that second lot starts right here.

Chairman Tinsley: But the easement, wait a minute now, the second lot starts where?

Lindsay Morgan: Right about, somewhere in this location. I can show you on this map. See,

right here.

Chairman Tinsley: Oh Ok. I see. That's where it's split. But the easement would remain non-the less along their property line, correct?

Lindsay Morgan: That's correct. The 30'.

Chairman Tinsley: Right.

Commissioner Varone: Mr. Chair, I guess I'm confused.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: If we go to the variance that says "emergency vehicle turnaround, cul-de-sac or hammerhead" if we, does this mean that you're asking that Subdivision Regulations require them to build a hammerhead or emergency at the end of Bowhunter and if we grant this they will still be required to provide a easement south of the houses where you just indicated there will be one, is that what this means?

Lindsay Morgan: Ok, the easement, the 30' easement would stay as it is, so that doesn't have anything to do with the subdivision. Now the Applicants, when they go through subdivision review, they have to provide standard physical access and standard legal access to both lots so we're talking about their requesting a variance to not have to dedicate a 60' easement. The only part that they would have to dedicate a 60' easement is right in here, all the way up to Chapparral, just in this area. That's a variance in itself. So they have 30' feet, we're telling them you have to have 60 if the variance isn't granted, so they would have to come with the other 30' which they would probably have to dedicate on their own property. This property that's just north of theirs, there's a 30' easement here, they would have to come up with the other 30' and they can't give it themselves, they're going to have to ask a neighbor for that. I don't know if that's possible or not. As far as the emergency vehicle turnaround that's a separate variance in itself that requires a different amount of easement to be dedicated and that variance would also require that the emergency vehicle turnaround would be constructed.

Chairman Tinsley: Right where the cursor is, I believe is where she's pointing out.

Lindsay Morgan: Yeah, this would be where the emergency vehicle turnaround would have to go, and they could do a hammerhead, or they could do a cul-de-sac and it just has to meet out standards.

Chairman Tinsley: It doesn't appear to me that all of the 30' of the easement is being used at this point, is that correct? Just by looking at the photo.

Lindsay Morgan: The road itself is like 12' wide, but the easement still exists so somebody could widen it.

Chairman Tinsley: Within the existing easement?

Lindsay Morgan: Only within the existing easement.

Chairman Tinsley: Ok. Further questions for Staff?

Lindsay Morgan: Did I explain it well enough?

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: I guess one reason I'm confused is when it talks about the variance request on 5 variances, what I guess I would like to the Staff or someone to do is for each one of these variances on a map show exactly what this request is. I've been doing these variances for you know like 5 years and I still have some confusion about what's really being requested because there are two roads here, both of them are dead-ends and they are asking for variances but I'm, even when I read through the information its hard for me to exactly understand where on the map we're talking about. So before we make our decision maybe you and I could meet or you can provide something written to help me make my decision.

Lindsay Morgan: Sure.

Chairman Tinsley: Further questions for Staff? Thank you Miss Morgan. Mr. Voigt, would you like to come forward? This is your opportunity to speak to the Commission and let us know what is on your mind, I guess.

Owen Voigt: Thank you Mr. Chairman, Commissioners, thank you for the chance to come and meet with you and thank you for your time in considering this. I want to thank Lindsay and the Staff for all of the work that they did in helping us through this, we've never done anything like this before, so it's been a challenge for them I think to lead us down this path. For little bit of clarification, my wife and I purchased this property about a year and a half ago and the reason Bowhunter Drive continues down to the south and then west is there is a 12.5 acre piece that we live on and that piece came with these homes on this 2 acre piece. So anyway that's where Bowhunter Drive does go and Lindsay had mentioned where is says Bowhunter Drive we have a 20' easement there is what we actually drive on that's how that was established I think in '87 when the other subdivision piece occurred. So anyway Bowhunter Drive does come off of Chapparral like Lindsay has mentioned, comes south and then goes west and it actually comes into some property we own down below where we have a home. These two homes were in existence, the modular home or the double-wide trailer which is further to the east and north, was placed there in 1985 and the smaller home was there, we can't tell for sure from the records but it looks like pre 1970 something. It's an older home. We purchased this and we weren't aware of the building districts zoning, I mean that's kind of our problem, but these two homes have been there, they're both permitted, they both have septic permits. The older home was, a new permit was issued because the old system failed in the early 80's and then the other home was permitted in 1985 so both of those permits were in place and have been there for 20 years. We were just aware of the fact that this is in violation of the zoning this spring with Kelly Blake let us know that. So we just tried to find out what the ways were for a resolution to try and correct the problem. Actually what this subdivision would do is simply allow us to leave the two homes there. We rent both of these houses to people and they've been in there since we remodeled the homes for them. My wife and I invested about \$35,000.00 in fixing these two homes up so people could live in them. There will be no new construction with this subdivision at all. It's simply to make it so it complies with the zoning requirement. There's no impact on the roads. There's no impact for law enforcement, schools, fire departments, any of that. They are on a shared well, each of them has, as Lindsay has pointed out, each of them has their own septic system in place. Each home has it's own address, had it's own address when we purchased them. We have separate solid waste permits for each residence that we've had since we purchased them. We just relied on the fact that all of these things seemed to give each home an identity. We didn't know that we had to have a lot for each one. So anyway that's all this is about. The variances are simply to allow us to use the road as we have been using it and the people living in these 2 homes that continue to use the roads as they have been. Lindsay had mentioned to the north right where it comes off of Chapparral we have a 30' easement from the neighbor. I don't think a 60' easement is possible unless we are able to get some from 2 different neighbors because the one neighbor has a garage that's built fairly close to the turnoff. The portion of Bowhunter Drive that we would need to access these two lots is about 300' off of Chapparral and like Lindsay said Bowhunter does continue on so Bowhunter is

quite a lot longer but it just comes into our yard. So that would be the only distance from Chapparral to the northern most part of the southern lot would be about 300'. There is room there and that front part is just a yard and you can see there are lilacs and bushes and things in for development purposes. Each of these homes were shown on the tax bill when we looked at purchasing them, so I guess we just thought this was two houses and two garages and this was OK and when we talked to Kelly about that I guess the County had started doing more enforcement for the subdivision stuff in the last year or so, so we just kind of got into the middle here somewhere and we're just trying to kind of figure out how to solve this because we obviously would like to keep the two homes and the people living there rather than removing a home or whatever the alternative might be. So I guess that's as far as information to give you that's really about all I have but I would be more than happy to answer any questions you might have.

Chairman Tinsley: Mr. Voigt I have a question. You indicated that you currently use Bowhunter to access your, where you reside is that correct?

Owen Voigt: That's correct.

Chairman Tinsley: So this portion you drive down that and then go west?

Owen Voigt: That's correct. We come straight south on that western most property line.

Chairman Tinsley: Do you own the property right next that we see there?

Owen Voigt: Lindsay, would it be possible to show the map that shows the different lots and I can show you on that where we actually live. We actually have a home that's right about at the point of that arrow is where we live.

Chairman Tinsley: That's the only access to your home there?

Owen Voigt: It's the only we have. At one time, I think it was in '84, this piece and this piece were one and there was an occasional sale, or I'm not sure how that works, but anyway the gentleman who owned this one lot, he was allowed to subdivide these two and the only access he provided to this lot then was technically \_\_\_\_\_ was to purchase a 20' easement here from a gentleman that lives right there.

Chairman Tinsley: Ok.

Owen Voigt: So that's how we get in.

Chairman Tinsley: Do you have any, or I guess I shouldn't ask this, or I'll make it in kind of a statement. You understand if you have any future desire to subdivide that bigger portion that you own there might be some access problems and there might be some road problems.

Owen Voigt: That's a gentle way of saying it. There would be significant access problems. We don't anticipate subdividing that at all. That's where we live; we have 2 horses and a little pasture there.

Chairman Tinsley: Ok. Because what we do now could affect what would happen later is my point.

Owen Voigt: Right. I think if anything ever happened with the lot that we live on currently would almost have to be off of Barrett Road and right now there is a nice road that goes by right up this line right by our home to access this property but we don't have access through that and it's not even a problem. It's not as convenient as it could be.

Chairman Tinsley: What's the old saying, "Robert Frost – Good fences make good neighbors."

Owen Voigt: That's exactly right.

Chairman Tinsley: Any further questions for Mr. Voigt? Any questions? Thank you very much.

Owen Voigt: Thank you.

Chairman Tinsley: Commissioners we have until December 8<sup>th</sup> for the review period to end. I believe the next commission meeting where we have a full commission is the 6<sup>th</sup> is that correct? December 6<sup>th</sup>. I'm getting a "yes" from Staff. What's the pleasure of the Commission? Don't everybody jump at once now.

Commissioner Murray: Commissioner I'm going to be here through the holidays so to make it easy where we can look at the property.

Commissioner Varone: Mr. Chair, I make a motion to render a final decision on December 6<sup>th</sup>.

Commissioner Murray: Second.

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

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes. What that means is we're going to render our final decision on one Tuesday from now, same time, same place. You don't have to be here you can if you want, there's not going to be any more discussion it's just going to be Commission discussion so thank you. But you're more than welcome to attend.

Chairman Tinsley: Ok Commissioners, seeing nothing else to come for the Commission except for Public comments on matters not mentioned above and I don't see anybody rushing to the podium, we stand adjourned.

**Public comments on matters not mentioned above.** None

**Adjourn.** Adjourned at 9:32 a.m.