

**DRAFT – NOT APPROVED BY BOCC**

**SUBDIVISION MEETING**

**December 8, 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, Laura Erickson, John Huyg, Michael McHugh, Lindsay Morgan, Sharon Haugen, Ron Solberg, Jeremy Fadness, Jason Mohr, Debra LaFountaine, Sheila Cozzie, and Maria Penna.

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

Chairman Tinsley: Good morning and welcome to the regularly scheduled Thursday morning Subdivision meeting. I'm 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.

Chairman Tinsley: Announcement: The Department of Environmental Quality is going to be holding a Home Energy Workshop for consumers on December 14<sup>th</sup> at the Great Northern Hotel from 6:30 to 9:00 p.m. Registration will start at the door at 6:00 and it will teach attendees how to reduce their energy bills by 10-30% by adding insulation, upgrading heating systems, etc. It looks like a pretty good workshop for folks given the temperatures we've been experiencing in the last week or so. If you like more information you can call Paul Schida at 406-841-5232 and I will announce it again at the end of the meeting. It sounds like a really good workshop so it's December 14<sup>th</sup> at the Great Northern from 6:30 to 9:00 p.m.

**Consent Action Items.**

Ron Alles:

- a. Resolution of Intention to Consolidate the Office of the Public Administrator with the Office of the County Attorney. Just to expand on that a little bit. The office is currently consolidated with the Coroner's office. Statute does allow for that office to actually be a separately elected office. Lewis and Clark County consolidated that office many years ago with the Coroner and what we have found is that we may be able to expedite disposition of assets and such by consolidating this with the County Attorney's office. We will be able to expedite those dispositions quicker because there are some legal documents that need to be filed, going through probate, etc. So, by taking this action, what we will do is hold a public hearing at a later date and this is, as I stated, just an intention to consolidate the office.
- b. Agreement with Robert Peccia & Associates to Furnish Wastewater Engineering Services in the Town of Craig. I believe this will be paid in part with our STAG money and the purpose is we are just going to explore different wastewater service capabilities within the town of Craig. Compensation not to exceed \$29,950.

Chairman Tinsley: Questions for Mr. Alles on either one of these items? If not is there a motion?

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

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 Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Thank you Mr. Alles. Next item on the agenda is the Doral Management, Ltd tax abatement request. The owner is Jim Wolf. This is continued from December 1<sup>st</sup>, 2005 where it was heard at the joint City/County monthly meeting. The Commissioners will consider a tax abatement for Riley's Pub. Good Morning.

### **Doral Management, Ltd. Tax Abatement.**

Debra LaFontaine: Good Morning. I'm Debra LaFontaine. I'm with the Community Development staff for the City of Helena. Jim Wolf, Doral Management, is the owner of the commercial space housing Riley's Pub and he is the person applying for the tax abatement under provisions of state law for remodeling, reconstruction or expansion of existing buildings or structures. Under these provisions of state law, Applicants must add to an existing building or structure so as to increase its taxable value by at least 2.5% to qualify for this abatement. If approved the property taxes abated are phased in over 5 years at 20% each year. Upon local approval of tax abatements the Department of Revenue determines eligible improvements and applies the abatement to the property.

Under City and County policy the Commissioners may consider granting abatement for the property if the following criteria are satisfied:

- 1) The project must cost a minimum of \$100,000 as evidenced by the building permit. And in this particular case the building permit estimate of the value of the new construction is about \$250,000.00.
- 2) The remodeling reconstruction or expansion must result in at least 2.5% increase in taxable value. And the Department of Revenue determines that taxable value. It's current taxable value for 2005 is \$6,815.00. The future taxable value 2006 is \$7,838.00. The increase in improvement taxable value is \$1,023.00. The increase in taxable value is 15%.
- 3) The property must be commercial, non-residential in nature. And in fact it is commercial property.
- 4) The project must comply with all covenants and zoning requirements. And in fact this particular piece of property does.
- 5) The owners must be current on all property taxes. And they in fact are current on all property taxes until the 9<sup>th</sup> of December.
- 6) The property must be considered for tax abatement under the Historic Preservation program. And in this particular case he wasn't restoring the property to any historical significance. It's basically a new interior and not a restoration.
- 7) The Applicant must have satisfactorily completed the state for AB-56. And that's attached to your application.

And also attached to your application is the Estimated Amount of the Abatement by Jurisdiction and if you look at the total abatement the total for 5 years is \$1,854.00. And there's a couple of pictures attached. Basically there's a sign on the outside, really no exterior change to the building and then since part of the abatement covers part of the construction period you're looking at a couple of the pictures that have the construction in progress and basically he is finished and opened for business and the reason this process took a little bit longer is that the property is condominium and the Department of Revenue was struggling a little bit with coming up with just exactly what the taxable value was and a portion of the property that had 3 units that were condominium. Eric the owner of Riley's Pub had intended to be here but I don't see him, so if you have any questions?

Chairman Tinsley: I have a question, the 2005 Legislature passed provisions for “claw back” clause. I believe it would apply to this particular request and I’m wondering if it does has Mr. Wolf been notified of the “claw back” clause provisions which essentially says if any promises are made or if any claims are made and they’re not followed through, and this is my cliff notes version of the law, they can be required to reimburse the taxpayers of the County for the amount that’s been abated if they feel they haven’t lived up to their end of the bargain.

Debra LaFontaine: I’m not familiar with that clause in the law but I’ll check into it.

Chairman Tinsley: It’s probably, well I know it’s in the new code books that just come out. It’s a very new clause and I think this is only the second one we’ve even, the first one we heard we actually didn’t go all the way through with it because it didn’t qualify in the end, so this will be the first one I believe that we’ve done since the law took effect. So if you could just take a look at it and give him notification if it in fact does apply, that would be good.

Debra LaFontaine: Ok.

Chairman Tinsley: Any other questions?

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. 23 jobs were created as a result of this new business but I don’t think the jobs created are part of the request for tax abatement. The investment in the remodel is the request for the tax abatement is that right Miss LaFontaine?

Debra LaFontaine: Yes.

Commissioner Murray: So since he’s spent his money, to answer Commissioner Tinsley’s question I think he’s made his investment, there isn’t anything left on the table for the claw back provision and I want Commissioner Tinsley is the one that proposed to make all this claw back provision to the law that if you promise you’re going to hire so many people you have to keep them employed while you’re enjoying the benefit of the tax abatement.

Chairman Tinsley: Commissioner Murray I believe though if the owner of the building intended at some point during the abatement period to change the use of the property that’s where the claw-back clause could come into effect. If you change the use and eliminated the jobs, if you turn it into a storage area, or into an office area or something other than what it was intended for when he received the abatement that’s when the provisions are allowed to be kicked in I believe. And that’s why I wanted you to check into that.

Debra LaFontaine: Ok. I’ll check into that.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. If I could make a motion, if motion is required to bring forward the Public Testimony from December 1<sup>st</sup> and the minutes can be added to our meeting today.

Chairman Tinsley: I don’t think we need a motion we can just add them to the record. Any more questions for Miss LaFontaine? Thank you very much for the nice presentation. Is there

a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve Doral Management Ltd tax abatement, the owner's Jim Wolf of Riley's Pub and authorize Chair to sign.

Commissioner Murray: Second.

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

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 3-0.

Chairman Tinsley: Next item on the is the public hearing on the United States Environmental Protection Act Brownsfield Grant Application. Laura Erickson is the Staff person and will present this to us.

### **Public Hearing. U.S. EPA Brownsfield Grant Application.**

Laura Erickson: Good Morning. I'm Laura Erickson, Grants Coordinator for Lewis and Clark County. The County is applying for an inventory and assessment grant from the EPA to inventory the City of Helena and surrounding area and East Helena for hazardous substance contamination and as part of that application we just wanted public input so that's been advertised in the newspaper and on our website. It's a \$200,000 grant and we have an agreement with the City of Helena and East Helena and they're providing letters of support for the grant program.

Chairman Tinsley: Ok, and will this be the only public hearing on this request?

Laura Erickson: Yes.

Chairman Tinsley: Ok, and is there a comment period that will remain open for another period of time?

Laura Erickson: No, actually the application is submitted December 14th and so it's open until December 14<sup>th</sup>.

Chairman Tinsley: Ok. Well, are there questions for Staff? We'll have a public hearing to see if there's any public comment. I'd like to open a public hearing on the US EPA Brownsfield Grant Application that is being submitted on December 14<sup>th</sup>. Is there anybody in the audience that wishes to testify? For the first time. For the second time. For the third and final time. This closes the public hearing.

Chairman Tinsley: What is the next step in the process? Miss Erickson you will just go ahead and submit the application?

Commissioner Murray: I believe it's a motion from me.

Chairman Tinsley: Well, after that.

Commissioner Murray: Mr. Chair, I would move the County endorse the application that's been prepared and authorize the Chair to sign and submit it for funding.

Commissioner Varone: Second.

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

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. Laura I read this last night and I just wanted to commend you for the high level of expertise you showed here and the professional way in which you prepared it. For those that are watching and are here in the audience, Laura is our new Grants Administrator and this is an example I believe of how Lewis and Clark County and Laura is not only going to earn her salary but a lot of wonderful projects for the community.

Chairman Tinsley: You can continue to receive public comment probably until December 13<sup>th</sup> because you're submitting the application on the 14<sup>th</sup> so thank you very much Miss Erikson. We have a motion. All in favor of the motion signify by saying Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0.

Chairman Tinsley: Next item on the agenda this morning is a Resolution of Intention to amend the Rural Improvement District No. 2004-1, North Hills. And standing in Marni Bentley's stead is Ron Alles, our Chief Administrative Officer.

### **Resolution Of Intention To Amend Rural Improvement District 2004-1, North Hills.**

Ron Alles: What you have is a resolution of intent to amend an existing Rural Improvement District. This RID was created in 2004 and it became apparent to the County that some of the intentions or the uses that were applied within that resolution in terms of maintenance were not applied consistently throughout the RID so what we're proposing to do here is amend the application of services within the RID to extend to some of the other roads that aren't currently being maintained within the road. What you will do by adopting this resolution, if you do this, we will notify all property owners within the maintenance district and hold a public hearing at a later date.

Chairman Tinsley: Ok. Questions for Mr. Alles? Hearing none is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to approve a resolution of intention to amend Rural Improvement District 2004-1, North Hills and authorize Chair 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.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. The motion Passes 3-0.

Chairman Tinsley: Next item on the agenda is the proposed Minor Subdivision, Preliminary Plat to be known as Huyg Minor Subdivision. The Applicant is John Huyg and the Planner is Michael McHugh. This is continued from November 10<sup>th</sup>, 2005. Today is decision day. Mr. McHugh, I know we got into the variances at the last meeting and then we ended up taking action on one, and stopping there and tabling the package until today. Would you like to

present anything?

**Proposed Minor Subdivision, Preliminary Plat to be known as Huyg Minor Subdivision.**

Michael McHugh: With the initial application there were 3 variances requested. The variances were for two dead-end roads to be in excess of 700' and the other variance was not to construct the cul-de-sac at the terminus of proposed Lot 3, off of Drake Road. The Applicant has revised his preliminary site plan for Kit Court which is the cul-de-sac going into the subdivision going between lots 3 & 4 to where it would be less than 700', or exactly 700' from, and it would meet the necessary subdivision regulations. What is required of the Board today is act on the other 2 variance requests and in that the Board is required to make "findings of fact" to grant the 2 variances for Drake Court and again those are not to construct the cul-de-sac and also to have a dead-end road in excess of 700' from the intersection of Spokane Creek Road to the western boundary of Lot 3.

Chairman Tinsley: There were 3 total variances to begin with is that correct Mr. McHugh?

Michael McHugh: Well, with the revision if the Board accepts the Applicant's submission for the revised site plan there would only be 2 requests.

Chairman Tinsley: The one for the length for 749' is the one that's out because it's been reconfigured?

Michael McHugh: It's been reconfigured yes.

Chairman Tinsley: But the one to allow the proposed cul-de-sac to extend past the maximum length is this the one that is off of Drake Road?

Michael McHugh: If you have the preliminary site plan in front of you, it'd be from the intersection of Spokane Creek Road to the western boundary of Lot 3.

Chairman Tinsley: I have in my notes we already passed.

Michael McHugh. You haven't taken final action, you haven't done anything, you have discussed it but you haven't taken final action and again you will be required to make "findings of fact" for the 2 variances if you do grant those variance requests, and those are based on the conditions within the subdivision regulations as it's not going to be detrimental to public health and safety, general welfare and that there aren't any particulars, topographical conditions that would preclude the development of it, that the variance will not cause a substantial increase in public cost and it's not against any adopted plan such as the growth management policy and zoning regulations.

Chairman Tinsley: I want to check with my other 2 Commissioners because I have on my notes we have already taken action on one of these remaining two variances and I want to see if they have the same notes. Commissioner Varone?

Commissioner Varone: Mr. Chair, the one that I have that we took action on is the one I believe that Michael talked about is to allow the proposed cul-de-sac to extend past the maximum length of 700' to a length of 775.9' and if that's correct that motion was denied 2-1 but I would like to bring that up for discussion if we could.

Chairman Tinsley: Commissioner Murray do you have the same notes?

Commissioner Murray: As Commissioner Varone, yes.

Chairman Tinsley: Ok. And that's what I have as well. Which would mean then we only have one variance to consider and that's to allow the proposed dead-end road to not have a cul-de-sac or turnaround.

Michael McHugh: To approve the subdivision you have to take action in whole, Ok.

Chairman Tinsley: But we tabled the item so we're still in that action item.

Michael McHugh: I will defer to Mr. Alles.

Chairman Tinsley: Well, I'm asking, I'm not trying to debate you here. I'm trying to find out is that the case?

Ron Alles: Mr. Chairman, Commissioners. I don't think sufficient action has been taken on this subdivision in it's entirety and I think you can readdress your previous action if you chose to do so. If you already made the decision on the variance and you wish not to reconsider that then that's fine but if you want to take a look at that again you certainly may.

Chairman Tinsley: Well, since we don't have an adequate answer for this and I think we need to pursue this for future reference because this is the first time that I recall where we've been into the guts of an application, started taking action and then table it. My understanding of the way the motion to table works is you still, the item is still active, it's just set forward for a future date, so it's not like we're not still in that entire item. I know it sounds like a matter of semantics but I'm willing to go back and talk about this other variance if the other two Commissioners are as well.

Ron Alles: And that's correct Mr. Chairman. What I meant to say, if I didn't say it is that the action you took on the previous variance stands unless you wish to open that back up.

Chairman Tinsley: That's the way I thought it was too.

Michael McHugh: It's necessary to make "findings of fact" to grant the variance.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, for discussion purposes I would like to reopen the extension of the cul-de-sac if I could.

Chairman Tinsley: I guess is that in the form of a motion?

Commissioner Varone: Yes Sir.

Chairman Tinsley: Ok. We have a motion. Is there a second?

Commissioner Murray: Second.

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

Commissioner Varone: Mr. Chair, first of all I was happy to see that the Applicant was willing to go back and do some reconfiguration, I appreciate that, and I drove out there and I know the 2 of you did too and if you recall if you go to the end of that street it "T's" to the left, there's a street that goes to a house that's to the right, there's a street that goes to a house and if we don't approve the extension of the cul-de-sac I believe what that would require is the Applicant

to move back 75' feet nearly 76' in order to comply and that would create a "y" to those properties and I'm wondering if that's even a reasonable thing to do considering that behind that there's a relatively steep incline that I don't believe homes would be built on and a stream that's adjacent to that, so I see, Michael, tell me again what we need to consider for justification?

Michael McHugh: The 4 conditions that are on the application for variances require that there's not a detrimental impact to public health and safety, general welfare and that there's particular physical surroundings or topographic conditions that would preclude and initiate an undo hardship, that the variance would not cause a substantial cost to the public and that the variance is not in non-conformance with any zoning regulations or comprehensive plan.

Commissioner Varone: The reason I'm asking for this to be reconsidered is I plan on denying the Applicant's request not to build a cul-de-sac at the end or turnaround at the end. It seems to me that if we approve this variance and not approve the cul-de-sac that the cul-de-sac could be constructed in such a way that it wouldn't extend the end of it wouldn't extend beyond the 75' and it would still allow a turnaround and not create a "y" situation. I'm not sure if I'm making myself clear or not, but it would require that cul-de-sac to be built up into his property and I still think that would take care of the safety, it would take care of the other 2 residences that are out there and could probably satisfy our needs.

Chairman Tinsley: Before we, because that would require a motion to reconsider and we don't need to go there yet, so lets see if there's any more discussion. Commissioner Murray?

Commissioner Murray: Mr. Chair, Commissioner Varone. With you're permission the only certified fireman in the room is the Applicant and I'd ask your permission to allow him to tell us how a fire truck serving his subdivision would turn around, if there isn't a cul-de-sac and this is unusual but I need your permission to agree to it.

Chairman Tinsley: Without objection from anybody, sure.

Michael McHugh: Before we enter into that discussion it would be Staff's recommendation because the undeveloped property to the south that there be a requirement that there be an easement extending to the southern boundary to the property between lots 3 & 4 to hopefully, when there would be additional development in that area to not have a dead-end road in that area that you would have 2 approaches.

Commissioner Murray: I want to go there with the approaches Mr. McHugh. I'd like to deal with the ability to turn a emergency vehicle around servicing this subdivision whether it's at the end of the road or on this cul-de-sac that appears here.

Chairman Tinsley: Mr. Huyg. Do you understand the question from Commissioner Murray?

John Huyg: I do but I'm not sure. Oh, it's John Huyg, 2930 Spokane Creek Road. I think what we're looking at is how we're going to turn a fire truck around in the subdivision. The cul-de-sac that I'm talking about for servicing the subdivision where all the approaches would be for all of the lots would be what I'm calling Kit Court on the diagram, which goes to the center and touches all of those 4 lots. So, turning a truck around in there wouldn't be any trouble as far as servicing that subdivision. I think the one that we're talking about right now is the northern boundary and headed down, which wouldn't actually, there would be no service to the subdivision on it. That's Bob Drake's driveway is what that road is. That's been his driveway since 1987 so taking the truck in there would be just like taking it down into anybody's driveway.

Commissioner Murray: Thank you.

Chairman Tinsley: Thank you Mr. Huyg. Ok. We have, well we're still in the discussion phase

of whether or not we want to reconsider. Would you like to make a motion Commissioner Varone?

Commissioner Varone: Mr. Chair, I make a motion to approve the variance to all the proposed cul-de-sac to extend past the maximum length of 700' to the length of 775.9'.

Chairman Tinsley: And you're basis for that is what you explained earlier in the previous discussion?

Commissioner Varone: I plan on denying the cul-de-sac one.

Chairman Tinsley: Right. Is there a second.

Commissioner Murray: Second for the purpose of discussion.

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

Commissioner Murray: Commissioner Varone you're suggesting that we don't need a cul-de-sac then on Kit Court but that it would come via hammerhead at the very end where there's an entrance to Chief Drakes home? Help me understand the motion that I just seconded.

Commissioner Varone: Mr. Chair, Commissioner Murray. No, I'm suggesting that we need, based on the recommendation of Staff, that we need a cul-de-sac at both ends. What I'm saying is that if we approve the maximum length to extend 775.9' that part of that cul-de-sac that the Applicant is requesting that he not be required to build that that be part of the cul-de-sac that he moves back into his property and creates the appropriate cul-de-sac and that he doesn't have to extend it.

Chairman Tinsley: Into the other property.

Commissioner Varone: Into the other property.

Chairman Tinsley: Commissioner Murray the Kit Court one is now off the table because Mr. Huyg has reconfigured his subdivision to where that is not even a variance request at this point, and at the risk of speaking for Commissioner Varone I believe you're saying is you want to make the motion to approve the distance and then deny the motion to, the variance request to not have to build the cul-de-sac, correct?

Commissioner Varone: Correct. If we could look at this right now it's 775' to here and if we require him to build, if we deny that then he's going to have to build here, but if we deny the, if we approve this but deny the cul-de-sac and require him to build a turnaround then it could be built here. That's what I'm saying.

Chairman Tinsley: Right.

Michael McHugh: To clarify things it would require that a cul-de-sac be constructed on Lot 3 on the western boundary of Lot 3.

Chairman Tinsley: At that northwest corner?

Michael McHugh: Correct.

Chairman Tinsley: Ok. Any further discussion on the motion and the second to approve the variance request to allow the proposed cul-de-sac to extend past the maximum length to the length of 775.9'? Hearing none all in favor of the motion signify by saying Aye.

Commissioner Murray & Commissioner Varone: Motion passes 3-0.

Chairman Tinsley: Aye. Commissioners, we have one more variance before us this morning and it's to allow the proposed dead-end road to not have an approved cul-de-sac or turnaround. The dead-end road in question is the road that has been referred this morning as Drake Road, or Drake Lane?

Michael McHugh: Correct.

Chairman Tinsley: Ok, is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to deny the variance request to allow the proposed dead-end road to not have an approved cul-de-sac or turnaround.

Chairman Tinsley: We have a motion. Is there a second? Second. Discussion.  
Commissioner Varone.

Commissioner Varone: I think I've done it.

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. What essentially is there now is a hammerhead, which allows a turnaround using the 2 driveways. I don't believe that the cul-de-sac needs to be built there.

Chairman Tinsley: Is there any further discussion? All in favor of the motion signify by saying Aye.

Commissioner Varone: Aye.

Chairman Tinsley: Aye. Opposed same sign.

Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 2-1.

Chairman Tinsley: Now lets get into the actual subdivision with 19 Conditions of Approval. Is there a motion?

Commissioner Murray: I move approval of the proposed subdivision subject to 19 Conditions of Approval.

Commissioner Varone: Second.

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

Commissioner Murray: Commissioners, I believe No. 6, either the Applicant objected to this or there's a reason I have it flagged in my notes. Is there anything that needs to be done with that Mr. McHugh?

Michael McHugh: Staff would suggest that because you've required that there be a cul-de-sac at the western boundary of Lot 3 that there be additional conditions requiring that to be constructed to County Road Standards. It could either be a subsection of Section 6 or it could be a totally different condition, which would make it 20 conditions.

Commissioner Murray: Thank you.

Chairman Tinsley: Is there a motion? Anyone? Any further discussion? Mr. McHugh without an addition of that condition how does it stand?

Michael McHugh: Well we're assuming that Condition No. 6 – it says "be constructed to County Road Standards, it doesn't say where the end of that is. With the variance it's probably for clarity sake and necessary to specify the exact location of where that cul-de-sac would need to be and Staff would strongly recommend that.

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Commissioner Murray. I'll make a motion to ask Staff to add language where appropriate on the Conditions of Approval to make sure that the Applicant doesn't have to extend into the other property.

Chairman Tinsley: We have a motion. Is there a second? Second. Discussion?

Commissioner Murray: Question.

Chairman Tinsley: Question has been called. All in favor of the motion say Aye.

Commissioner Murray & Commissioner Varone: Aye.

Chairman Tinsley: Aye. Motion passes 3-0

Chairman Tinsley: Any further amendments or discussion? Commissioners you now have before you the Huyg Minor Subdivision with 19 Conditions of Approval as amended. All in favor of the motion signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion 3-0. Mr. Huyg thank you very much and we appreciate your time and willingness to address the concerns of the Commission and good luck on your future plans. Thank you.

Chairman Tinsley: We now have before us a proposed Minor Subdivision, Preliminary Plat to be known as Gruber Subdivision. The Applicant is Jared Gruber. The Planner is Lindsay Morgan. This is continued from November 22<sup>nd</sup>. Miss Morgan.

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

Lindsay Morgan: Good Morning Commissioners. This is the Gruber Subdivision; it's a 2 lot minor subdivision. There are 16 Conditions of Approval and no variances. As far as the 16 Conditions of Approval, when this was heard in front of the Commissioners at the public meeting, Condition No. 2 was a concern of the Applicants, and that's where we require a storm water drainage plan to be done. But within that plan we asked that a drainage easement be dedicated on the face of the final plat for the drainage swale that is located on site. Staff has actually given the Commissioners a revised Condition of Approval that states the exact width of the drainage easement. Staff is requesting a 25' wide easement be dedicated for the full length of the drainage and I've talked with the engineers on the project and the Applicant still does not want to dedicate a drainage easement at that location. Staff has also discussed this with the

City Engineer and with another engineer and with some of the Planning Staff and it's still my belief there should be an easement dedicated at that location. Also, if the property is further divided in the future I don't believe that that would prevent that developer from, in his next proposal, proposing that he cross the drainage in specific locations maybe for a driveway to reach a building site. So do you have questions for me?

Chairman Tinsley: Questions for Miss Morgan?

Frank Rives: If I just might add also regarding the drainage it is an easement would be required under subdivision regulations under the water body setback requirement. It would be an ephemeral drainage and it does require a building setback.

Chairman Tinsley: Thank you Mr. Rives. Any further questions for Staff? And there are no variances requested on this subdivision so I can accept a motion on the.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, since the Applicant has proposed a different solution do you want to allow the Applicant the opportunity to present an opposing argument to Miss Morgan's?

Chairman Tinsley: Mr. Alles, we've already.

Ron Alles: You may do that.

Chairman Tinsley: It's all right?

Ron Alles: Yes.

Chairman Tinsley: The Applicant's representative is here. Is the Applicant here as well?

Jeremy Fadness: Mr. Chair, Commissioners. I believe Lindsay handed out a letter from us stating our reasons why we would not want the drainage easement. I also have a copy for each one of you. I guess I just like to go kind of point-by-point in that letter just to make it a part of the record to our opposition to it. We have gone over, we've looked at the survey information, we've gone on-site, we've looked at the aerial photos, we've performed hydraulic calculations as far as how much water is there. We believe that in, we agree with Planning Staff and Lindsay's done an excellent job with all of the subdivisions that we've been involved with, but on this particular case we believe that there's extenuating circumstances. We believe that this will somewhat limit the development of this property and that it's not really needed. The drainage itself starts on the property and shortly after it leaves the property it disappears. It's not there any more. I don't know if that's because of the railroad embankment. I'm not sure that's the reason why it is but if you look at aerial photos and topographical maps and our survey it doesn't exist, basically after it leaves the property. And that's basically the first point in the thing. The total drainage area for the piece that before it leaves the property is less the acreage of the lot. I mean it's not a significant drainage in our belief. And that's the points, the first few points that make all of those arguments. The channel has no, the swale I should say, has no characteristics of a stream channel of any sort. I mean it doesn't exhibit a bed and bank, it doesn't, it just doesn't. Like I said we performed the hydraulic modeling of the drainage and after post development of the lot and we're talking about, for the 100-year event, we're talking about less than 5 CFS which can be handled with a 1 foot deep ditch if it needs to be handled at that point. But, DEQ requires us to keep on-site, I believe it's the 10-year event, it may even be the 2-year event, so as you can see by the numbers those are insignificant amounts of water. I guess that's basically it, that's it in a nutshell. You do have some photos there that I took on-

site yesterday that show the drainage and the railroad embankment in the top picture. As you can see, if you kind of scale it by the house that's on top of the hill it's not significant in our eyes. And the picture down below is a zoomed in view and it's almost non-existent. We have also provided a larger grading and drainage map that we would like, we have proposed to grade out the existing railroad embankment that is there. In the process of doing that we are proposing to put a detention pond right at the point where the drainage enters the 60' road and utility easement and that way any excess water or material would basically be caught in that detention pond and would not affect any of the adjacent property downstream. Do you have any questions for me?

Chairman Tinsley: Mr. Fadness, you indicated that they, at least in your eyes or your company's eyes as your capacity as a consultant, this is not a drainage of significant concern and I appreciate your opinion. Understand that we have Staff on board that we consider our experts and they do find that this is an area of significant concern, at least significant enough to warrant a condition of approval. That being said, our Staff has attempted to work with the Applicants and with yourself and even agreed to lessen the original Condition of Approval and it appears that that still isn't acceptable, which, me, being a former investigator, leads me to go look at all of the evidence and see, you know, this is a 2-lot minor subdivision, there's something a little goofy going on here. In the words of Billy Shakespeare "me thinks thou doth protest too much" and I can't figure out why. Looking at the map I look across Birdseye Road and I see Stallion Ridge, looking to the north I see the Ryan property, which we just heard which makes the light bulb go on above my head. Is there a relationship to your knowledge between Stallion Ridge and this subdivision? Is there any interest from anybody in the Stallion, affected with Stallion Ridge in this property?

Jeremy Fadness: I believe he is interested in these properties. To my knowledge he hasn't purchased any of the properties and he's not doing the dividing but I can't really answer that, I don't know.

Chairman Tinsley: Do you think that by virtue of that interest he might be driving the Gruber's to their concern regarding this drainage?

Jeremy Fadness: I have no idea. All I know is that we met with Lindsay Morgan and we took what we met with her back to the Applicant and they expressed an interest that they did not want this drainage easement if at all possible.

Chairman Tinsley: Did you only meet with the Applicant or did you meet with the representatives of Stallion Ridge as well to get their approval or information?

Jeremy Fadness: I don't know I wasn't a party to that.

Chairman Tinsley: You weren't a part to that?

Jeremy Fadness: No.

Chairman Tinsley: All right. Are there any other questions for Mr. Fadness? Thank you for your comments this morning, I appreciate it.

Jeremy Fadness: Thank you.

Chairman Tinsley: Commissioners, we have before us a proposed Minor Subdivision, Preliminary Plat to be known as the Gruber Subdivision with 16 Conditions of Approval. We have a recommendation from Planning Staff to amend Condition No. 2 from her original proposal and you also just heard a representative of the Applicant who has an alternative recommendation for No. 2. Is there a motion on the overall subdivision first?

Commissioner Varone: Mr. Chair, I make a motion to approve the proposed minor subdivision, preliminary plat to be known as the Gruber Subdivision and the conditions therein and authorize the Chair to sign.

Commissioner Murray: Second.

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

Commissioner Varone: Mr. Chair?

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, first of all I'd like to make a motion on Condition No. 2, to adopt Miss Morgan's recommendation.

Chairman Tinsley: We have a motion. Is there a second? Is there a second? I will second the motion for purposes of discussion. Commissioner Varone.

Commissioner Varone: Mr. Chair, I've heard a few things too about the possibility of another individual purchasing this property and my decision is not based on any of that, nor do I think that we are legally allowed to do that, but what I do want to talk about is that I want to talk about Lindsay's due diligence in this instance. Lindsay went outside the realm of just the local folks, she went to other folks as well that are in the City and the County but then she also went to an outside engineer and I think that bode very well for Lindsay coming up with this recommendation. I personally believe 25' is a reasonable request and if I were a person going in there, just talking personally wanting to do something with that property, I think it would be advantageous to leave that 25' because I think a very beautiful subdivision, if that's in fact what is going to happen, could be designed around that. I built a house in an area real similar to this 30 years ago and it started out with just a couple of houses and a depression this size was insignificant until a lot of houses were built around it. We just happened to be in the location because we were dumb and the water pooled through our property and I can't help but remember that in helping me make my decision.

Chairman Tinsley: Thank you Commissioner Varone.

Commissioner Murray: Mr. Chair?

Chairman Tinsley: Commissioner Murray.

Commissioner Murray: Mr. Chair, Commissioner Varone. I appreciate the due diligence of Staff and would normally support Staff. I believe the 25' easement in this instance is excessive. With a swale like this I believe a maximum of 15' and probably a 10' easement would suffice. For that reason, even though I appreciate Staff's work, I'm going to vote against the motion.

Chairman Tinsley: Commissioner Varone I wanted to make note of a comment you made and I just wanted to point out that I came to the conclusion on my own by looking at the map, however, I did have a conversation with Staff I believe yesterday regarding the potential of the interests, so I guess you could say I talked to another person and I'm sure that's what you were referring to as well, but it just seem to me I couldn't figure out for the life of me why this 2 lot subdivision, there was such a hang up over this drainage swale and we do these all the time, at least when there's a drainage swale evidence, so that was the purpose for my line of questioning regarding the interests in Stallion Ridge. I didn't expect Mr. Fadness to and he answered the way he, I kind of suspected he would because he didn't have the knowledge to answer my question and that's what he said, however, it was interesting to me that because of

the location, because of the proximity of the 2 subdivisions that we heard previously to this one that's why I wanted to pursue that line of questioning. Nonetheless, I would like to go ahead and support Lindsay's due diligence. I think she went above and beyond by actually lessening her original requirement and I appreciate what she has done trying to get this through and I'll support your motion. Any further discussion? All in favor of the motion to amend Condition of Approval No. 2 with the language as recommended by Staff, signify by saying Aye.

Chairman Tinsley & Commissioner Varone: Aye.

Chairman Tinsley: Opposed same sign.

Commissioner Murray: Aye.

Chairman Tinsley: Motion passes 2-1. Any further questions, amendments or discussion?

Commissioner Murray: Commissioners the Applicant I believe it was the Applicant, asked us to reconsider Condition 11 C & D.

Chairman Tinsley: Miss Morgan, and I don't think that's a motion just yet is it?

Commissioner Murray: In my case I don't believe it ever will be. I wanted to point out the Applicant asked us to reconsider.

Chairman Tinsley: I have those starred as well. Miss Morgan how would accepting your recommendation affect Conditions 11 C & D? Does it take care of it by virtue, is it D & E? It's D & E. No it's C & D, drainage easement and no build zone stated within the drainage easement.

Lindsay Morgan: Yes, it's Conditions 11 C & D and 12 D & E and it will not affect the, I guess by amending Condition No 2 as you did it won't affect any of these. It's just basically stating that the drainage easement be shown on the face of the final plat and that it's noted in the covenants.

Chairman Tinsley: Thank you. Any further questions, discussions or amendments? Commissioners you now have before you 16 Conditions of Approval on the proposed minor subdivision, preliminary plat to be known as the Gruber Subdivision and those conditions have been amended. All in favor of the subdivision signify by saying Aye.

Commissioner Varone & Commissioner Murray: Aye.

Chairman Tinsley: Aye. Motion passes 3-0. Thank you Mr. Fadness for your time this morning.

Chairman Tinsley: Next item on the agenda is public comments on matters not mentioned above. We have asked Staff to brief the Commission on an item that was not on the agenda but it will be on our Administrative Agenda later today. Sheila Cozzie our Human Resources Director is here. Miss Cozzie.

**Public comments on matters not mentioned above.**

Sheila Cozzie: Mr. Chairman, Commissioners. Basically I'm here today to announce that Lewis and Clark County is launching a prescription drug discount program. It's available to anybody who is a resident of Lewis and Clark County. It offers discounts on prescription drugs an average of about 20% off the retail price. I think it's a program that is sponsored by MACo and administered by a company named Care Mark. Almost all of our pharmacies in Lewis and Clark County participate in the discount program. I do have a list of those pharmacies but I failed to put with the press release and I will do that later. We have already distributed the prescription

cards at various locations throughout the city. There's a list of the locations attached. A lot of the County departments will have them available at their place of business, specifically the Health Department. I think the only important thing that I wanted to note is that it doesn't replace insurance prescription card. If you have an insurance prescription card you still should be utilizing that but this will work if you do not have insurance or if you're getting a prescription that's not covered by insurance, you can get a discount on the prescription.

Chairman Tinsley: Questions for Staff?

Commissioner Murray: Mr. Chair, Commissioner Varone. Miss Cozzie, where does one get one of these cards and is it necessary to have the card in your possession to get the discount from local pharmacies?

Sheila Cozzie: Yes it is necessary to have the card in your possession and there's location on the back of that press release that we have put them out at. We've put them at Rocky Mountain Development Council, the library, various County offices, Friendship Center, the Helena Housing Authority. We have them distributed trying to hit places where we think people who might utilize these most. And you don't have to fill out anything, you just grab the card and show it to the pharmacy. There's no application and it just has Lewis and Clark County resident on the form.

Commissioner Murray: Mr. Chair, Miss Cozzie. The one requirement is that you must be a Lewis and Clark County resident?

Sheila Cozzie: That is correct.

Commissioner Murray: Thank you.

Chairman Tinsley: Thank you. Any further questions? Well good job and we appreciate your help in implementing this Miss Cozzie. Thank you very much. Any further public comment?

Chairman Tinsley: I would like to again point out for the people watching at home and for those in the audience, the DEQ is going to have a workshop on December 14<sup>th</sup> at the Great Northern Hotel from 6:30 to 9:00 p.m. Registration will start at 6:00 p.m. and it's a workshop on how to energize your home, how to save money, homeowners will be able to save hundreds of dollars in home energy costs by attending this conservation workshop. They're going to have a whole line of different workshops on how to upgrade your heating systems, window improvements, adding insulation etc. So December 14<sup>th</sup> from 6:30 to 9:00 p.m. and the Great Northern Hotel. Seeing no further public comment, we stand adjourned.

**Adjourn.** Adjourned at 10:00 a.m.

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*Announcements*  
*Public Meeting Canceled. Tuesday, December 20*  
*Holidays. Monday, December 26 & January 2*