

PUBLIC MEETING
May 20, 2003

Chair Anita Varone called the meeting to order at 9:10 a.m.

Commissioner Murray was present. Commissioner Tinsley was absent due to personal leave. Others attending all or a portion of the meeting included Sharon Haugan, Ron Alles, Jerry Grebenc, Frank Rives, Sheriff Cheryl Liedle, Wesley Pool, Chris Sinrud, Steve Utick, Jason Mohr, Tammy Reich, Marni Bentley, Carol Hanel, and Mandi Ross.

Pledge of Allegiance. Everyone recited the pledge.

Addendum for MOU - Explosive Ordinance Disposal

Sheriff Cheryl Liedle presented the information. Sheriff Liedle stated that the Lewis and Clark County Sheriff's office entered into a Memorandum of Understanding (MOU) with the Missoula County Sheriff's office in January 2001. An Explosive Ordinance Detail was started in this MOU. Sheriff Liedle stated that she was requesting a renewal and an updated copy of the MOU. The original copy was signed by the previous Commissioners and previous Sheriffs in both counties, so I am updating that at the same time. Sheriff Liedle stated that she is also requesting the Commissioner's consideration of an addendum to this MOU, which gives the Sheriff's office the ability to store and house the Romer 4 Robot here in Lewis and Clark County. Under this agreement, we would pick up the cost of maintenance and repairs, also the cost of insurance for this robot. This would give us the ability to have it here on hand immediately, should there be an explosive incident, particularly as this is the state capitol of Montana. Sheriff Liedle stated that this has not been reviewed yet by the County Attorney's office and she would request that that be done prior to approval of this. Commissioner Murray moved that we offer into an agreement with Missoula County and authorize the chair to sign upon the approval of the contract agreement by the Deputy County Attorney. Commissioner Varone seconded the motion and it carried 2-0.

Bid Award.

Ron Alles stated that Staff and the Consultant are not ready to have this bid awarded yet. Ron asked that the Commissioners table this until Thursday. Commissioner Murray moved that the bid for the Cave Gulch Flood Mitigation Project be table to May 22, 2003. Commissioner Varone seconded the motion and it carried 2-0.

Bid Award - Plant Services (IT&S).

Steve Utick stated that at on Friday morning a potential issue dealing with the prevailing wage language in our request for bids. At this point, we ask that the bid packets be accepted and not opened until we resolve this issue with the County Attorney and Department of Labor and Industries. Commissioner Varone asked what kind of time frame they were looking at. Steve stated that they were waiting to here back from K. Paul Stahl. Steve stated that they hope to get this resolved in the next couple of days. Commissioner Murray stated that they needed to acknowledge and log in the bids that have been received without opening them. Commissioner Varone read the names of the companies into the record: Montana Ditch and Cable, Helena; Rocky Mountain Contractors Inc., Helena; Tabert Construction, Helena; RC Technologies, Helena. Commissioner Murray moved to table the bid opening until May 22, 2003. Commissioner Varone seconded the motion and it carried 2-0.

Proposed Minor Subdivision, Summary Review to be Known as Peters Minor.

The applicant, Ricky Peters, will propose creating 2 lots, each for one single-family dwelling. The proposed

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subdivision is located in the SW $\frac{1}{4}$ of Section 11, T10N, R3W. The proposed subdivision is located west of the Leisure Village Subdivision, and north and adjacent to Howard Road. Tammy Reich stated that she was Ricky Peters' sister-in-law and she would be standing in for Ricky Peters, since he was unable to be there. Tammy also stated that she had a letter from Ricky stating this. Frank Rives will be presenting the information. Frank stated that he had been in contact with Mr. Peters and he had explained this prior to the meeting. Frank informed Mr. Peters that a letter that stated that Tammy Reich would be standing in for him would be appreciated.

Frank Rives stated that the existing two-lot tract would be divided into two tracts of 1-acre each. Proposed Lot 1 has a manufactured home on the property, which is served by an individual well and an individual wastewater treatment system and utilities. The proposed Lot 2 would be directly north of that parcel and would be developed for a single-family dwelling. It would be served by an individual well and an individual wastewater treatment system and utilities. Frank stated that access for the subdivision would be from an internal access road, which would connect to Howard road. Road construction would be required to provide standard physical access and this would be a short cu-de-sac, which is less than 500 feet in length, minimum improved surface of 20 feet and a minimum right-of-way of 40 feet. Frank also stated that to the north of the existing home, there is a meter box and a gas meter where a trailer was formerly hooked up.

Frank stated that a five-year weed management plan is required for all new subdivisions. Frank added that the soil-mapping unit identified Nippt-Attewan Complex. This is not a soil of prime, statewide, or local importance. The soil-mapping unit does have severe limitations, which generally make it unsuited for cultivations, and limits its use to pasture, range, woodland and wildlife purposes. The soil-mapping unit identified on the property, has severe limitations for the placement of on-sight wastewater treatment systems, due to the poor filtering capacities of the soil. Both vertical and horizontal separations appear to be adequate due to the depth to ground water and the lot sizes. The Environmental Health Department responded that the soils were rather gravelly, and nondegradation may be an issue. Wells in the vicinity are rather shallow, from 40 to 58 feet. The existing well is 51 feet.

Frank stated that Staff is recommending approval subject to the findings and 12 conditions, which are contained in the staff report.

Commissioner Murray stated that in the Conditions of Approval, he did not see a condition for a road easement. Frank stated that the public access easement would be graphically shown and described on the plat as part of Condition 9a. Commissioner Murray stated that he wanted to make sure there was a dedicated easement and if 9a covers that then that is fine.

Commissioner Murray asked if we would be better off requiring a small cluster box of mailboxes on the road that is going to be constructed. I thought it was our policy to get as many mailboxes as possible off of Howard Road, since they tend to be traffic problems. Frank Rives stated that it is a good reason, and the reason that he did not require it was that it was just one additional box. Commissioner Murray stated that he agreed with Frank's logic, but if we put the condition in for one box, hopefully the applicant would move his mailbox also off the road.

Commissioner Varone asked if there was a trailer on the property, was there also a drain field already and how did that trailer hook up? Was there a drain field and water? Frank stated that Environmental Health had said that the drain field was not scaled for two residences. The existing, but not presently used, meter and gas meter preceded the placement of the house that is on the property. The applicant moved the trailer off and placed his home adjacent to where the trailer was. A new meter was put in a different place. The applicant

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has no intention of putting another mobile there.

Commissioner Murray moved approval of the proposed subdivision subject to twelve conditions as proposed by Staff. Commissioner Verona seconded the motion. Commissioner Murray moved to add one additional condition that the mailboxes for both the applicant and the new lot be in cluster boxes in the interior easement road. Commissioner Varone seconded the motion and it carried 2-0.

Condition 7c: Commissioner Varone made a motion to change the language to, applicable state building code. Commissioner Murray seconded the motion and it carried 2-0.

Commissioner Varone stated that she agrees with this being a Condition of Approval, but state statutes indicate that we have to adopt the state building code before we can use it as a requirement. We have not done that. There is a difference of opinion between the State Attorney and the County Attorney on whether or not we need to do that.

The motion carried 2-0.

Request for Revocation of an Agricultural Covenant.

The applicant, Wesley and Betty Pool, will propose removing an agricultural covenant from a parcel of land. The proposal is located in the NWS $\frac{1}{4}$ of Section 6, T11N, R5W. The proposal is located approximately 1,500-feet south of Lincoln Road and adjacent to Birdseye Road. Wesley Pool stated that he did not need the 20-acres of land. Where they live, they have 2 $\frac{1}{2}$ acres of land. Jerry Grebenc stated that state statute does provide for an exemption for the division of land, if the divided land is used exclusively for agricultural purposes. The Pool's created an agricultural parcel through a declaration of agricultural covenant and a certificate of survey that were filed on February 13, 2003. The Pool's did attend two pre-application meetings with Staff, one on June 27, 2001 and the second on June 30, 2002. At the initial meeting, the Pool's proposed a division for two residential lots. Staff explained the subdivision review process. The applicants indicated that they wanted to consider their options. At the second meeting, the applicants proposed dividing the property using an agricultural covenant. They wanted to and ultimately did do, was to separate out a two-acre parcel for the existing home and that created a 20-acre parcel. During the pre-application meeting, Staff explained the purpose of an agricultural covenant, and that the property does preclude the use of the property for residential purposes. The applicants received the Board of County Commissioners Resolution 1986-55, which was the resolution putting together the process for an agricultural covenant. A blank copy of the declaration necessary to file for an agricultural covenant was given to the Pools.

Jerry Grebenc stated that the 20-acres is undeveloped. The applicants propose to sell the property with the potential for a single-family residence. The Health Department has indicated that the property is exempt from their review because it is 20-acres or larger, but they would need to get a septic tank permit.

Jerry Grebenc added that the Board of County Commissioners Resolution 1986-55 does establish a policy concerning the revocation of agricultural covenants. Section 2 states that the County assumes that an agricultural covenant was placed upon a parcel to facilitate and promote agricultural uses, and was not meant to evade the Subdivision and Platting Act. The subject parcel could be used for agricultural purposes, but it would be primarily limited to the grazing of livestock.

Jerry Grebenc stated that the request that the applicants have made, in Staff's opinion does not meet the criteria set forth in the Resolution 1986-55. The Pool's indicated in their application letter that they did not understand the restrictions imposed by the agricultural covenant. That does conflict with the following facts:

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*The applicants expressed interest in subdividing their property at the initial pre-application conference

*At the second pre-application meeting, the applicants proposed utilizing an agricultural covenant to divide their property. At that meeting, Staff explained that using that agricultural covenant would exempt the division of property from subdivision review, but would restrict that tract to agricultural uses.

*Mr. And Mrs. Pool did have an experienced local surveyor in attendance as an advisor at the pre-application conference. The surveyor was Lowell Hanson from Northland Engineering.

*The applicants did sign, before a notary, two documents, the Declaration of Agricultural Covenant and a Certificate of Survey, that both clearly state property, under the covenant, could be used only exclusively for agricultural purposes.

*Prior to making application, the Pool's verbally indicated to Staff that they did have a potential purchaser of the property, but the purchaser did not want the restrictions imposed by the agricultural covenant.

Jerry Grebenc stated that Staff does recommend denial for the requested revocation.

Commissioner Murray asked if the agricultural covenant was used to separate out the 2½ acres for the existing home site without subdivision review. Jerry Grebenc stated that it was and that this is quite common within the agriculture community. A retired farmer or rancher does not want to run the operation anymore, but wants to retain his home site, he'll divide out however many acres he wants for his home site. He keeps ownership of the home, but sells the remaining agricultural operation. This is the rationale behind the exemption.

Commissioner Murray asked Mr. Pool why he put an agricultural covenant on his property with advice from his surveyor and from Staff. Mr. Pool stated that he did not know. This has been going on since last July. He stated that Lowell Hanson said that there was nothing to it. If he had known all he had to go through, he doesn't think he would have tried it. Mr. Pool stated that there is plenty of water on the land. There is an artisan water above his house. He stated that it is good level land.

Commissioner Murray stated that it appears that Mr. Pool placed an agricultural covenant on this property to avoid the Subdivision and Platting Act. Explain how you did not, with the action you took on February 13th, avoid the Subdivision and Platting Act. Wesley Pool stated that he has a man who thought about buying the property and putting his horses and leave it to the grandchildren when he dies. The buyer thought the property would be hard to sell, since you can't put a house on it. We decided to see if we could set it up to put a house on.

Commissioner Varone stated that she is surprised that Mr. Pool's engineer is not here today to help respond to the questions. Commissioner Varone added that there were two opportunities to go through the Subdivision application process. Several Staff explained that process to you, and you still chose to establish an agricultural covenant. Mr. Pool asked if he decided to, could he sell the land for agriculture. Commissioner Varone stated yes.

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Commissioner Murray stated there is plenty of water and grazing area to put a horse on the land. This would be the best use for this land, due to the Agricultural Covenant. The fact that Mr. Pool placed this Agricultural Covenant on this land in February would indicate to Commissioner Murray that the purpose was to put this land aside for agricultural purposes with the advice of your surveyor. Commissioner Murray added that he thought it was too soon to change this.

Jerry Grebenc added that the other thing that is to be considered is that the Pool's have requested a waiver of the fee of \$150.00

Mr. Pool stated that they have spent \$3400.00 already on this project

Commissioner Murray asked what our expense was so far in research and advertising the revocation of the Agricultural Covenant.

Sharon Haugan stated that in addition to Staff time, also the advertising cost of the Public Hearing and the cost for the notification to the adjacent property owners is around \$100.00.

Commissioner Murray moved to refund \$50.00 and charge the \$100.00 that we've incurred in this request. Commissioner Varone seconded the motion and it carried 2-0.

Commissioner Murray moved for denial of the request for revocation of the Agricultural Covenant. Commissioner Varone seconded the motion and it carried 2-0.

Resolution to Create Rural Improvement District 2003-1 To Include The Lots in the Gable Estates Major Subdivision

Ron Alles stated that a rate hearing would be held at a later time to determine the rates. Staff has been working with the property owners and does recommend approval. Ron also stated that Staff is working with DA Davidson and the Intercap Program. The amount necessary to borrow on this particular RID exceeds the amounts where we can go to Intercap. We need to get a letter from the underwriting companies, DA Davidson, stating that they don't have an interest in issuing bonds for this project. It could be that if they are interested, we may need to issue bonds rather than borrow from the Intercap Program.

Mike Murray asked if that was an arbitrage problem.

Ron Alles stated that he believed it was something that the underwriters put in to state statute to guarantee them business on projects like this.

Marni Bentley handed out a letter from Rich Nelson that she had received the afternoon before and it was added to the record.

Commissioner Murray moved for approval of the resolution and authorize the chair to sign. Commissioner Varone seconded the motion.

Anita Varone read aloud the letter from Rich Nelson and asked for a comment on the part of the letter that stated the cost of paving the roads should be the responsibility of the owners and purchasers of the newly

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subdivided lots.

Sharon Haugan stated that when the RID is created, all lots would be equally assessed.

The motion carried 2-0.

Resolution Levying and Assessing a Tax Upon All Benefited Property Within the Rural Maintenance District No. 1987-4 and 4C, Middlemas Road

Ron Alles stated that the purpose of this resolution is to raise the RID assessment up to \$51.00. This is to generate enough money to chip seal Middlemas Road in 3 years.

Commissioner Varone stated that two letters were received and to include them in the public record. She also stated that the fee now is \$26.00.

Commissioner Murray stated that in Ms. Solich's letter, she came up with a figure of \$40.00. He wanted to know why this figure would not work.

Carol Hanel stated that in 3 years, the chip seal will cost approximately \$14,000.00 and the current cash balance in the fund is \$5500.00. If the increase were not to \$51.00, there would not be enough money in the account for the chip seal. This is a very conservative increase.

Commissioner Murray stated that in the second letter, there was a request to continue this to an evening meeting.

Commissioner Murray moved to continue the hearing on Middlemas Road RID Rate Hearing to June 3, 2003 at 5:30. Commissioner Varone seconded the motion and it carried 2-0.

There being no other business, the meeting adjourned at 10:10am.

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