

PUBLIC MEETING
February 17, 2004

Chairman Mike Murray called the meeting to order at 9:00 a.m.

Commissioners Tinsley and Varone were present. Others attending all or a portion of the meeting included Ron Alles, Sharon Haugen, Michael McHugh, Frank Rives, Will Selser, Dean Retz, Kim Smith, Ike Lanning, Bill Ries, Archie Taylor, Robert Cummins, Renee Crawford, Everett Vinley, Richard Wysong, Mr. and Mrs. Santos Dela Cruz, C.L. Lanning, Terry Rowe, Wesley Rowe, Bill Herman, Vivian Drake, Richard Thweatt, Eugene Pizzini, Paul Johnson, Dave Stewart, Bill Ries, John Huftel, Dave Mason, Ken Mergenthaler, John Vein, Jason Mohr, Jerry Shepherd, Kris Kultgen, Cindy Stevich, and Carole Byrnes.

Pledge of Allegiance. Everyone recited the pledge.

Proposed Major Subdivision, Preliminary Plat to be known as Frontier Major. (cont. from 1/27/04) The applicant, Kim Smith, proposes to create 36 lots on two existing parcels equaling 40.07 acres. The subject property is generally located north of and adjacent to Lincoln Road West and west of Applegate Drive.

Commissioner Varone moved to approve the proposed subdivision subject to 20 conditions as outlined in the staff report. Commissioner Tinsley seconded the motion.

Michael McHugh stated the Planning Board did not forward a recommendation either to approve or deny the subdivision so there are no amendments. Planning Board discussion is included in staff's transmittal memo.

Amendments to Conditions of Approval.

Condition 9. Commissioner Varone moved to amend the condition, as requested by the applicant. "The applicant shall improve all internal access roads to the specifications required by the county subdivision regulations. Typical Section #2 from the intersection of the internal access roads with Lincoln Road West, with the exception of the internal access road between lot H-G-2 and lot H-G-3 and the internal access road between lot H-G-5 and lot H-G-6 shall be constructed per county subdivision regulations Typical Section #3, Peccia. Should the applicant develop land north of and adjacent to subject property the north property roads would be constructed to Typical Section #2, Peccia by the applicant." Commissioner Murray seconded the motion.

Michael McHugh stated the Planning Board recommended an additional condition that would exclude a provision to improve the lots between H-G-2 and H-G-3 and H-G-6. "The applicant shall improve the roads between those lots to Peccia gravel standard."

Commissioner Varone moved to amend her motion to add the Planning Board's recommendation that "the applicant shall improve the roads between those lots to Peccia gravel standard." The motion died for the lack of a second.

Condition 13.c. Commissioner Varone moved to approve the planning board recommendation to require all multi-family units greater than duplexes and all commercial units greater than 6,000 square feet in size or more than one story containing daycares, motel uses be required to be equipped with fire sprinkler systems. Commissioner Tinsley seconded the motion and it carried unanimously.

Condition 16.b. Commissioner Varone moved to correct the name of the controlled groundwater area to North Hills Temporary Controlled Groundwater Area. Commissioner Tinsley seconded the motion and it carried unanimously.

Condition 16.g. Commissioner Varone moved to modify to read, “a no access restriction along the property line restricting access at approved approaches.” Commissioner Tinsley seconded the motion and it carried unanimously.

Condition 16.j. Commissioner Varone moved to approve the planning board recommendation amending the condition to read, “a restrictive covenant, binding the landowner, any heirs, successors and assigns, and all future owners of property within the subdivision, agreeing therein to hold Lewis and Clark County harmless and indemnify Lewis and Clark County from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County’s costs and attorney’s fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following: (1) the operation of a sand and gravel pit located to the east of the subject property; and (2) radon gas, seismic activity, water quantity, water quality, availability of fire services and lawsuits regarding school attendance. Commissioner Tinsley seconded the motion and it carried unanimously.

Commissioner Murray stated even though this is a well thought out, well planned major subdivision he cannot vote for a subdivision in the north hills until water can be proven available.

Commissioner Varone stated she intends to vote in support of this subdivision because state law requires the state make the determination of whether or not water is available and for that reason, a temporary controlled groundwater area has been established.

Commissioner Tinsley stated he intends to vote against this subdivision. The number one responsibility of a county commissioner is to protect the health and safety of the public. Knowing the nitrate levels downstream from the existing homes, he does not feel comfortable voting for this subdivision. He does not believe there is enough information to make an adequate decision right now with the temporary controlled groundwater study area in place. The state has determined the study area exists for a reason--because of the water quality and the water availability.

The motion to deny this proposal carried 2-1.

Commissioner Tinsley excused himself from the meeting to attend a Statewide Emergency Response Commission meeting.

Bid Award/Phase I Landfill Closure Project. Will Selser reported Entranco and staff recommend awarding the bid to J&S Construction of Belgrade in the amount of \$164,174.74. The bid is below the engineer's estimate. Commissioner Varone moved to approve the recommendation and authorize the chair to sign the notice of award and other necessary documents. Commissioner Murray seconded the motion and it carried 2-0.

Contract Amendment with Big Butte Compost, Inc. Will Selser reported the contract amendment increases the annual lease payment from \$3,900 to \$4,300; amends the scope of work; and extends the contract period to June 30, 2008. Commissioner Varone moved to approve the amendments and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Contract Amendment with Don Hilger. Will Selser reported the contract amendment for tire baling services increase the annual lease payment from \$600 to \$665; amends the scope of work; and extends the contract period to June 30, 2008. Commissioner Varone moved to approve the amended contract and authorize the chair to sign. Commissioner Murray seconded the motion and it carried 2-0.

Proposed Minor Subdivision, Summary Review to be known as Gray Fox Minor. The applicant, T & L Exchange, proposes to create an additional lot from a 20.01-acre tract. The subject property is generally located west of Lincoln Road and south of the Burlington Northern Railroad right-of-way. The applicant, Ike Lanning, was present and indicated his willingness to proceed.

Frank Rives presented the staff report. The main limitation on this soil is the risk of erosion. The subject property is surrounded by developed and undeveloped large acre rural tracts as well as a railroad right of way. Essential utilities are identified on the property. The applicant must obtain an approach permit from MDT for the shared approach onto Lincoln Road. A five-year weed management plan is required. The Canyon Creek Fault is located approximately ¼ mile northeast of the property and could be mitigated by constructing dwellings that meet the applicable state building codes standards for seismic zone 3. The property is located in close proximity to the Burlington Northern Railroad and may increase the potential for delays in fire protection. Staff and MDT recommend that the approach should intersect at a 90-degree angle. Neighbors expressed concern for the lack of covenants on the property. Staff has searched the records and has not been able to find covenants on this parcel. The neighbors would like to make sure the structures are compatible with the adjacent area. Staff recommends approval of the proposed subdivision subject to 12 conditions as outlined in the staff report.

Bill Ries, 6850 Green Meadow Drive. Agrees with all conditions except for the fire service fee of \$500 for each additional lot. The applicant is creating one lot.

Frank Rives believes the fee is for any additional created lot.

Wes Rowe, 5858 Racehorse Loop. Expressed concerns regarding ground water, fire, types of dwellings that will be built, the number of residences, and what is to prevent the rest of the area from being subdivided into further smaller lots.

Commissioner Murray stated future divisions need to go through the subdivision review process if they wish to subdivide. The County Growth Policy document has a provision to form neighborhood plans if you want some control over the types of development in your neighborhood.

Hearing no other comments, the public hearing is closed. Commissioner Varone moved to render a final decision Thursday, February 19 at 10:00 a.m. Commissioner Murray seconded the motion and it carried 2-0.

Proposed Minor Subdivision, Summary Review to be known as Griffin-Davis, Lot 32 South 252 Feet Minor. The applicant, John Huftel, proposes to create four spaces for lease or rent on a 1.002-acre parcel. The subject property is generally located north of and adjacent to Hope Road, in the Griffin-Davis Subdivision.

Frank Rives reported the applicant has requested the hearing be postponed to Thursday, March 4. There is no commission quorum March 4. The applicant requested the commission extend the review period to March 10 with the hearing to occur March 9. Commissioner Varone moved to approve applicant's extension. Commissioner Murray seconded the motion and it carried 2-0.

Richard Wyson, 360 Griffin Road, questioned the notification process because other folks on Griffin Road did not receive notice of this proposal, and what is to stop other adjacent properties from subdividing.

Commissioner Murray stated according to state statute, only adjacent property owners receive written notice, everyone else can get the information on the orange signs that are posted near the lot which is part of this proposal. In addition, notice is advertised in the Independent Record.

Sharon Haugen stated all landowners have the opportunity to make an application for the subdivision. It is the County Commission's decision-making process through subdivision review to see if applicants fall within the rules and regulations of the subdivision.

Santos Dela Cruz, 375 Griffin Road, asked if all the other parcels in the community have the same covenants.

Frank Rives stated not all lots in Griffin-Davis have covenants.

John Huftel stated this is not a proposed subdivision. The intent of the request is to clarify legally how the existing proposal was subdivided.

Hearing no other comments, the hearing is continued to March 9 at 10:00 a.m. Written testimony will be taken until that time.

The Commissioners recessed for five minutes.

Request for Modification of Conditions of Approval for South Boundary Acres II Major Subdivision. (cont. from 2/3/04) The proposal is located adjacent to and south of Boundary Street, approximately ¼ mile east of Lake Helena Drive. The applicant, Archie Taylor, has requested the Commission to modify condition of approval #6 to read: (a) fire protection would be provided by the use of an existing fire hydrant located at the northwest corner of the subdivision owned and operated by the Eastgate Water and Sewer Association, or (b) contribute \$500 per lot to the Eastgate Fire Department.

Archie Taylor was present and indicated his willingness to proceed.

Sharon Haugen reported preliminary approval was given in November 1999 for 19 single-family lots. All of the conditions have been met except for this fire issue. There is an additional cost for providing a storage tank. The service lines are not currently in place to provide services for water flow. The Eastgate Fire Department does not consider this an option for this proposal. The Eastgate water system is not currently designed for fire protection for this subdivision. It is designed to provide adequate water for the adjacent property owners and there is no evidence on record to demonstrate that the water supply cannot be completed. Staff recommends denial of the request to modify preliminary approval as adopted by the Commission on July 4, 2003 and removal of condition 6.b.

Byron Stahly, 2687 Airport Road, offered for clarification that the residential fire sprinkler option needs approximately 30 gallons per minute to run the fire sprinklers.

Robert Cummins, 1 North Last Chance Gulch, attorney for applicant. In addition to exhibits A-D he also distributed exhibits E-F. There were no fire restrictions to supply supplemental water source in the original subdivision proposal. The applicant is seeking to amend a previously amended requirement of 6.b (sprinkler) and 6.a (amending the requirement to provide a wet hydrant or filling station). The current requirement is the Taylor's build, at their expense, for use by the Eastgate Fire Department, a filling station that will produce 500 gallons per minute for 60 minutes accessible by a wet hydrant. As a practical matter, the applicant has asked to eliminate 500 gallon/minute restriction. The Taylor's believe \$500 is appropriate.

The Commission recessed for five minutes and then opened the public hearing.

Mary Schuler, Landmark Company, stated the properties are priced for low income to moderate income families and will be cost prohibitive if the interior sprinklers restriction is not removed. She supports the removal of this condition.

Cindy Stevich, Heritage 21 Realty, supports the removal of this condition to allow

prospective buyers to purchase affordable housing.

Adrian Peterson, 2635 Sundance, is trying to buy two lots which are conditioned upon the removal of the sprinkler condition.

Ken Mergenthaler, Chief, Eastgate Volunteer Fire Department. Regardless of the outcome of this proposal, the Eastgate Fire Department will continue to provide fire protection to the residents in that area. The fire department is only requesting a wet hydrant. The applicant can install a storage tank for water with a pump system to pressurize the hydrant

Jerry Shepherd, Chief, West Valley stated 8 private subdivisions have water systems and another 3 with water sources.

Dave Mason, developers have a responsibility to provide for public safety. It is not unreasonable to request this water supply. Encouraged the commission to keep the sprinkler system in this proposal.

Eugene Pizzini, President, Eastgate Water Users Association. Eastgate Water and Sewer is the largest water and users association in the state. At this time Eastgate does not have adequate water and would like to see long term planning for fire protection in those homes. The Association requests that the county not look at either of the two options because it will not meet the fire demands and the burden will fall back on the Association.

Dave Stewart, Doney Law Firm, P.O. Box 1185 Helena, clarified liability issues. The Association has fiduciary duties to their members to make sure that there is sufficient water for everyone at Eastgate. Eastgate would have to question this Commission's authority on whether or not they acted beyond the scope of that authority under the Sanitation and Subdivisions Act by granting or allowing such a condition and imposing such.

Commissioner Tinsley is now present.

Paul Johnson, 3853 Daisy Street, President of Eastgate I HOA, shares many of Mr. Pizzini's comments. Eastgate I is in the process of upgrading the water system. It is the responsibility of the Water and Sewer Board to take care of Eastgate's interests and make sure they are adequately protected.

John Vein, 5997 Shawn Drive. As a sprinkler contractor he gave estimates of approximately \$5,200 to \$6,800 for tank, pump, and installation system for a 2,000 square foot home.

Commissioner Varone stated she has known Mr. Vein for many years and can verify his expertise in sprinkler installation.

Ken Mergenthaler, Chief, Eastgate Fire Department. Acknowledged that Eastgate Water and Sewer Association does not turn water off without first contacting the fire department.

Hearing no other public comments, the public hearing is closed.

Byron Stahly, Stahly Engineering & Associates, 2687 Airport Road. In 1997 the applicant had approval for 56 units with no fire protection. Financially this developer should have the requirement to make a financial commitment to this project. The applicant had every intention to comply with one of those conditions and the one that was most reasonable. It comes down to a fairness issue and an expectation issue.

Robert Cummins. The applicant is not making any requests for Eastgate Water and Sewer to provide South Boundary with fire protection. He encouraged the commission to recognize the facts and circumstances of the situation and that a fire hydrant is available for Eastgate Fire Department's use and the use of sprinklers is not practical. Request the applicant be allowed to provide the \$500 fee.

Commissioner Murray suggested the commission render a decision March 25 to allow staff additional time to provide the Commission with information about subdivisions in the area that use this requirement.

Commissioner Varone moved to remove condition 6.b. (fire sprinkler option)
Commissioner Murray seconded the motion. Commissioner Tinsley abstained.

Commissioner Varone moved to render a final decision to amend the conditions of approval Thursday, March 25. Commissioner Tinsley seconded the motion and it carried unanimously.

Final Plat Approval for the Canyon Meadows Minor Subdivision. (Applicant, Harold Paulsen) Frank Rives reported the applicant has met all of the conditions. Staff recommends approval. By consensus, the Commissioner will sign the final plat at the conclusion of this meeting.

Resolution Establishing the 2004-2005 Fire Season for Lewis and Clark County. Ron Alles reported this is a standard annual resolution. Staff recommends approval.

Ken Mergenthaler, DNRC Fire Dispatcher, 3425 Skyway Drive, recommended amending the resolution to show the burning permit program is now being transferred to the Helena National Forest Service Supervisor's Office for better public access.

Commissioner Tinsley moved to approve the resolution as amended and authorize the chair to sign. Commissioner Varone seconded the motion as amended and it carried unanimously.

Public Comments. None.

There was no other business and the meeting adjourned at 12:10 p.m.