

PUBLIC MEETING
September 6, 2005

Chairman Ed Tinsley called the meeting to order at 9:00 a.m. Commissioners Varone and Murray are present. Others attending all or portion of the meeting included Ron Alles, Jerry Grebenc, Lindsay Morgan, Erik Helfert, Kelly Williams, and Maria Penna.

Pledge of Allegiance. Everyone recited the pledge.

Chairman Tinsley: Good Morning and welcome to our regularly scheduled Tuesday morning Public Meeting. To my left is Commissioner Varone, to her left is Maria Penna, our Executive Assistant, I'm Commissioner Tinsley, to my right is Commissioner Murray, to his right is Ron Alles, our Chief Administrative Officer, and to his right is Jerry Grebenc, our Director of Community Development and Planning. There's one Staff person in the audience, Lindsay Morgan, from the Planning Staff, and there's also a sign in sheet out front and if you haven't had a chance, please sign in before you leave.

First item on the agenda is the Consent Action Items. Mr. Alles.

Consent Items.

Ron Alles: Mr. Chairman, Commissioners. You have three consent items. The first is a supplemental agreement with the Department of Agriculture. It's for the Headwaters of the Little Prickly Pear. It's an extension of the Noxious Weed Trust Fund Grant to be extended through September 30th, 2006. The next two are resolutions declaring County property surplus. The first has three items on there. There's a rock rake from Public Works, a 1992 Chevy Astro Van and an armchair. The second resolution is for items over \$2500.00 in value and the only item on there is a 1994 Chevy ¾ ton fire truck.

Chairman Tinsley: Would the Commission like to remove any of the items for separate consideration?

Commissioner Murray: Item C please.

Chairman Tinsley: Item C is removed.

Commissioner Murray: I move approval of Consent Items A & B.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion for A & B, 2 A & B. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

We have before us Consent Action Item number 2-C, Resolution declaring County property surplus property. Individual values more than \$2500.00. Commissioner Murray.

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Commissioner Murray: Mr. Chair, Mr. Alles, I was questioning, are you sure we own this fire truck? It isn't the old-timer that's on loan from the DNRC?

Ron Alles: It's my understanding we own this. This is, it was on our fixed asset list, so I gather we own it. The title is in our name, but I can sure double check that.

Commissioner Murray: If you're satisfied then I would move approval of a resolution declaring County property surplus in excess of \$2500.00 and authorize Chair to sign.

Commissioner Varone: Second.

Chairman Tinsley: We have a motion to second. Further discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

We have before us now a proposed major subdivision to be known as Amended Plat of Lots 2A & 2C, the Anderson Subdivision. The Applicant is Erik Helfert. The Planner is Lindsay Morgan. Ms. Morgan before you begin I would first like to ask the Applicants, are they present? And have you received the packet of information and are you prepared to go forward this morning? You are? All right. Mr. Grebenc or Miss Morgan would one of you; I noticed in reading the transmittal document that there was a question from a member of the public regarding a misunderstanding of major versus minor subdivisions, and I know it's changed since the last legislature and since our subdivision regs. Would one of you two please just give a brief outline as to why a 4 lot subdivision is considered a major now?

Proposed Major Subdivision to be known as the Amended Plat of Lots 2A & 2C, Anderson Subdivision.

Jerry Grebenc: Mr. Chairman, Commissioners. This particular subdivision was part of an original 5 lot minor subdivision. The subdivision regulations that were adopted by the Board of County Commissioners on February 1st of this year, our regulations look at the cumulative impact. This will be two additional lots on top of the original 5 that pushes it over the six mark. Under statute, six lots or more is a major subdivision and our regulations require that under the cumulative impacts this would be a major subdivision even though you are only creating two additional lots. And then just one other thing to add is under the statute SB116 that was passed by the legislature that may become even more strict. There are Attorney's that are debating this as we speak and all of the Counties in the State are preparing to amend the regulations, so this type of a review may become more common.

Chairman Tinsley: Thank you. Any questions for Staff or comments Commissioners? Ms. Morgan, please. Thank you.

Lindsay Morgan: Good Morning Commissioners. This is the amended plat of lots 2A, 2C Anderson Subdivision. The proposed subdivision is located east of Green Meadow Drive and south of Ten Mile Creek and I have a vicinity map up on the screen for you to see. The applicant proposes to create four lots each to be used for one single-family dwelling. If approved, the existing parcel will be divided into lots ranging in size from 1.10 acres to 1.77 acres in size. All lots will be served by individual wells, individual on-site wastewater treatment systems and utilities. Access to the lots will be off of Ohana Court. Road construction may be

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required. And the Applicant has expressed a preference to provide cash-in-lieu of parkland. The existing tract of land is approximately 5.922 acres in size. The subject property is currently undeveloped. It does not lie within an existing zoning district. We received one written public comment in opposition to the proposed development. As far as affects on agriculture, the soil classifications state that there are severe limitations that reduce the choice plants and/or require special conservation practices for these plants. And even if irrigated, the soils will still have severe limitations. As far as streets and access, again, access will be off of Green Meadow Drive via Ohana Court. The Applicant is requesting three variances from the County Road Standards. The first variance is from the 2 ingress/egress route requirement that's required of all major subdivisions. When the final plat for the previous development, which was the amended plat 2, Anderson Subdivision, which was approved last year and was final platted at the beginning of this year. That development was required to dedicate a 38-foot wide easement along the eastern property boundary and that was for the future extension northward of North Benton Avenue. And in addition to that an easement was also dedicated for the extension of Ohana Court eastward to connect with that North Benton Avenue easement. The second variance request is from the dead-end road in excess of 700 feet in overall length requirement. Ohana Court is approximately 800 feet long with its cul-de-sac. If the variance is not granted the Applicant will be required to install a hammerhead turn-a-round, or a cul-de-sac at the eastern most driveway of the entrance to the development. The third variance request is from the Road Construction Standards. Ohana Court is constructed to the old County Road Standards, Typical Section Number 3, Peccia, our gravel standard. If the variance is not granted the Applicant will be required to reconstruct Ohana Court to the new County Standards which is Typical Section Number 1, our new gravel standard and that would be from it's intersection with Green Meadow Drive to the eastern most driveway entrance to the proposed development or to the end of the required cul-de-sac or hammerhead, if the variance is not granted. As far as schools, due to the distance, all middle school students generated by the proposed development will be bused at the general taxpayers expense. Both high school and elementary school students reside within 3 miles of their schools. The closes bus stop for students attending C.R. Anderson Middle School is at the junction of Alfalfa Road and Green Meadow Drive, which is approximately ½ mile north of the proposed development. In discussions with Wayne Thompson he stated that the northbound bus could potentially pick up students Ohana Court if necessary. For the students walking to and from school, they must walk along Green Meadow Drive. There's currently not a trail at this location. Once students reach Custer Drive there's a dedicated controlled crosswalks for them to use. There's also an existing bicycle/pedestrian trail that runs along the south side of Custer Avenue that students may utilize. As far as effects on natural environment water quality in the area is variable. According to a letter from Kathy Moore with our Water Quality District. With the 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, subject to 15 conditions. This was reviewed by the Planning Board in August. The Planning Board, with regard to the subdivision proposal of the whole they recommended approval in a vote of 4-1, for the subdivision. With regard to each of the three variances, they recommended denial of all 3 variances in a vote of 3-2. As far as the variance request from the 2 ingress/egress route requirement, we have discussed this issue at our legal meeting with Deputy County Attorney, K. Paul Stahl, and I guess as a whole, we decided that we would make a recommendation as Staff for the approval of that variance, so that we can, I guess in the future, we're planning to further clarify the 2 ingress/egress route standards for situations like this where they're creating 2 additional lots, a total of 7 lots. Some of the issues that we have is that there's no way from

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them to get a second route onto Green Meadow, which is a State highway. And Staff would also not want to see another route onto Green Meadow, nor would they likely even be granted a permit to access onto Green Meadow. I do have some pictures of the site for you. Here's an aerial photo. Here's a view to the south showing the City of Helena in the background. Here's Ohana Court, which was constructed again in February. Here's a view to the north. Northwest and you can see Green Meadow Drive. Do you have questions for me?

Chairman Tinsley: Questions for Staff.

Commissioner Varone: Mr. Chair.

Chairman Tinsley: Commissioner Varone.

Commissioner Varone: Mr. Chair, Lindsay, would you explain again the variance request for the dead end road. From the pictures, I'm going to go and take a look at it, but from the pictures I can't tell what's constructed at the end. If the variance is denied does that mean a hammerhead needs to be constructed at the end rather than a cul-de-sac? If it's approved does that mean a cul-de-sac is required, rather than a hammerhead? I guess I'm just not fully understanding what your narrative was.

Lindsay Morgan: Right now, there is a cul-de-sac already installed at the end of this road. So with a cul-de-sac the road is a total of 800 feet in length. If the variance is denied the Applicant will have to construct either, they'll have the option of either a cul-de-sac or a hammerhead. Our old regulations didn't allow for hammerheads. Our new regulations actually allow and have standards for the hammerheads, so the Applicant would have the option of installing either a hammerhead or cul-de-sac. And he would probably be installing it somewhere in this location on the picture.

Chairman Tinsley: Is that the eastern most boundary of the, right there, approximately?

Lindsay Morgan: It's the driveway entrance to that property. And then in that case if an emergency vehicle went down the road, they would have the option of turning around much sooner than having to go all the way to the end of the road.

Commissioner Varone: Thank you.

Chairman Tinsley: The prior subdivision, to the east, that this was a part of, where we looking right now where it dead ends into that field, they're required to connect that to the eventual connection of Benton, is that correct? Or is that Benton down there? It still needs to go through that field to hit Benton, doesn't it?

Lindsay Morgan: Yes, and Benton doesn't exist at this location.

Chairman Tinsley: Right. Somewhere along those trees I believe.

Lindsay Morgan: The Applicant for that subdivision isn't required to connect it at this point, but the easement is there, it exists, so they cannot build anything within that easement. So, if somebody were to subdivide in the future that person could potentially be required to extend

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that road.

Chairman Tinsley: So the property we're talking about to the east even farther from where it dead ends currently is not owned by this subdivision, it's a different?

Lindsay Morgan: That's correct.

Chairman Tinsley: OK.

Lindsay Morgan: I can show you in the aerial photo; well I guess the vicinity map. If you look at the vicinity map, this entire lot here is the one that was reviewed for the last subdivision. This lot has not gone through subdivision review, and I don't know if there are any plans for that.

Chairman Tinsley: Oh, but if that's the case, that's Benton Avenue right where your arrow is right there.

Lindsay Morgan: Benton Avenue, the easement is right here, and it's only a 38-foot wide easement. And then Ohana Court extends right here. So this all exists, it's just that the roads haven't been constructed, but the easements are already dedicated.

Chairman Tinsley: Everything in that, where the arrow is pointing now in that space, has been, has gone through subdivision review, though, correct? And has been preliminary approved?

Lindsay Morgan: Yes. Actually this was granted final approval.

Chairman Tinsley: So Ohana Court by virtue of the preliminary approval of the previous subdivision, not only has an easement been established, but it is being required to be connected to Benton at some point in the future, correct?

Lindsay Morgan: Not for that subdivision approval. It would be for a future subdivision approval.

Chairman Tinsley: But it's already been subdivided.

Lindsay Morgan: Right, I mean for example, this lot was subdivided and they needed to use this access, this could potentially be connected, or it could be connected at some point. Right now there's no clear answer as to who would construct that road.

Chairman Tinsley: Well, let me ask this. If it's been subdivided already, what is, and, all that's been established is an easement, there's got to be some kind of access to those lots that were created from this subdivision.

Lindsay Morgan: Right, and all of those lots created from this subdivision access off of Ohana Court.

Chairman Tinsley: From where it is right now.

Lindsay Morgan: Right. Because they're larger lots, so, let me see if I can. This is, you know,

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Ohana Court extends down to about here, and then you've got, this is one of the lots, this is another lot, this is a lot here and I think a larger lot here, and then one here. So all of them, the driveways, go off of the cul-de-sac, or Ohana Court itself. So they all meet access requirements. And when that subdivision was approved our regulations allowed for a dead end road to be a maximum of 1,000 feet in overall length and they constructed the road to 800, so at that time they didn't need a variance for the length of the road.

Chairman Tinsley: Right. Pardon me, Commissioner, I think I intruded on your line of questions. Do you have more questions?

Commissioner Varone: Actually you asked all of the questions I had.

Chairman Tinsley: (Laughter) I apologize, they were just popping into my head and I figured I might as well get them out. I have a couple of more questions. I might as well just go ahead. You indicated that the Planning Staff and Legal Staff have met subsequent to the Planning Board meeting and indicated some kind of rare advice to the Commission, which you normally don't give on variances. I've a couple of questions on that. Number 1: Has the Legal Staff and the County Staff notified the Planning Board, to let them know of this advice that you're giving us, given the fact that they voted to deny. I think it's only a courtesy, since you are giving that advice to us that you folks should give them a heads-up on what you're doing. And number 2: why are we going against our own subdivision regulations and giving this advice? And I'm asking this for clarification, not to create a stir. I want to know.

Jerry Grebenc: Mr. Chairman. With regards to the Planning Board, typically what we do is after the Board of County Commissioners makes a decision we give them a notice, a heads-up of exactly what happened in the hearing, what was approved, what variances were denied, what variances were approved. We typically don't do that in mid-stream. Typically we do it after you've made your decision whichever way that is. With regards to the variance request, this is one of those situations that, if I look back through the years, this is one of those, the variance request from 2 ingress/egress routes, is one of those we probably should have had even further clarified in our subdivision regulations. Time and time again, we run into situations like this where yes it is a major subdivision, our current regulations require that they have 2 ingress/egress routes but you have a situation where 1: Staff doesn't want to see a route that close, you could put a little loop road in there, but it makes absolutely no sense from our standpoint, DOT is not going to want to see it. This is one of those situations that we have to clarify our subdivision regulations to deal with this much better and we sat down with Paul and discussed it and said, we need to be reasonable here, we've got to, I mean this is a situation where they're less than, what is it, 250 feet from Green Meadow Drive, the second lot, there's no way we want to see a second route, and then Staff usually never makes a recommendation on variances, but this is one of those situations that 1: we need to clarify in our subdivision regulations when they come before you again to outline situations like this, that yes, the Board has the leeway to grant, not have to deal with the variance if it's the dead end road or a road that's 250 feet long, DOT doesn't want to see a second access route, it's not a public health, a major public health and safety issue, so those 2 variables together, in talking to Paul, we just felt comfortable letting the Board know this is one of those variances you should grant because it's an awkward situation to say the least.

Chairman Tinsley: As an individual Commissioner, I don't necessarily disagree with your line of

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thinking or your reasoning, however, I do agree that we, the statute exists, or the subdivision regulation exist for a reason because there are times when it does make a difference.

Jerry Grebenc: Absolutely.

Chairman Tinsley: And it should make a difference, and I guess what I'm asking is, are you folks confident that you're going to be able to come to some kind of reasonable way to clarify this when we reopen the subdivision regulations to do some amendments. Will there be a way we can do it that's going to retain what we need to retain and still allow in these kinds of instances?

Jerry Grebenc: Absolutely. I think when the revisions come before the Board, you have, let's say bullets: 1. Planning Staff and MDOT recommend no further access points from that. The road is set less than 700 feet long. There's a lot, whole litany of things you could make is so that if it's more than 8 or 10 lots, no, you've got to have a second route. Or there are easements in place to eventually connect such as in this situation; some day we foresee Benton going northward and yeah, it may be two or three years, but eventually it's going to happen so, I think you can lay out criteria, so you don't compromise. The idea of having 2 ingress/egress routes for a major subdivision is very valid and makes sense, but, we're running into situations and we have through the years like this, that it probably doesn't make that much sense. So yes, we've got to make sure that there's criteria there so you don't compromise the reason for having that. If that answer your questions.

Chairman Tinsley: Thank you. Thank you very much. Do you have your transmittal document, Lindsay? I want to go to page 4, there was a discussion from Board Member Mandeville and Applicant Williams, about, just about half way down the page, Mr. Mandeville asked if "there are any restrictions regarding further subdivision and/or minimum lot sizes placed in the covenants under the original minor subdivision Amended Plat of Lot 2 – Anderson Subdivisions." Mr. Williams stated "there are no covenants regarding size restrictions, but that there are restrictions limiting the further subdivision of each lot to one time." Mr. Mandeville asked "if the lots to the east", and then they go on into the discussion but ultimately talk about a total of 10 lots. I think I may have gotten the answer when we were talking about Ohana Court, but I wanted to just clarify what the 10 lots that can be potentially be created and where are we now with this subdivision if it is in fact approved. Does that make sense?

Lindsay Morgan: Yes. And this may be a question that you may want to ask Kelly Williams. But I think I can cover it, I'm not, I haven't seen the covenants, and he's looked over the covenants regarding that, I guess that specific covenant. But, basically what they're saying is, from the 5 lot development each of those lots, they've sold to an individual or maybe two parties, each of those lots, the developers of the first subdivision said, you can subdivide that lot in accordance with our covenants one time and right now we would have a total of 7 lots created from the, you know, from that original tract, potentially the other 3 lots that have not gone through subdivision review, could be divided in half and that would create a total of 10 from that original tract. So right now, they're proposing, if this is approved today, or, you know, if it's approved, I guess it would, this would be a total of 7 created from the original tract.

Chairman Tinsley: Thank you very much. Further questions for Staff? Or comments? Thank you Miss Morgan. The Applicant is Mr. Helfert or Mr. Williams, or both. Please come forward,

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whoever wants to give the presentation, and introduce yourself and give us your name and address.

Kelly Williams: Thank you, Mr. Chairman, Commissioners. My name is Kelly Williams and I'm with Stahly Engineering, representing the owner/developer Erik Helfert. I live at 901 Clinton Street in East Helena. Just a couple of things, in regards to the variance requests, because I talk about each of them individually. The cul-de-sac variance request put in was submitted simply because the cul-de-sac is very close to the regulation, from our calculations from the property line to the center of the cul-de-sac which I'm not really sure where you measure them too, is about 750 feet which is very close to the current regulations, so we put that request in. Subsequent discussions with the developer and Staff, it seems likely that that hammerhead will be constructed simply because of where his driveway locations are going to be and how he intends to construct those driveways. That variance request is of course still submitted but is not quite as important to the developer as some of the others. In terms of the surfacing request or the request to not meet the current gravel typical section, what we are trying to get at there, or trying to accomplish is that the road was constructed to the old County gravel standard, Peccia number 3 within the last year, and in order to change that to the new County gravel standard exactly, we would have to tear up part of that road and not only just add surfacing to it but we would have to add sub-grade and surfacing, so we would be de-constructing a well constructed road that was recently constructed to County standard, and that seemed counter-productive so we submitted that variance request as well, in hopes that we could avoid de-constructing the road. If that variance isn't granted I would still like to discuss with Staff, I guess I'm not really sure on how to go about this but, if that variance isn't granted I would still hope that there would be some way that we could possibly just add surfacing to that road, rather than have to de-construct a well constructed road to get us up to compliance to the County standard. And in terms of the ingress/egress variance request, I think Lindsay and Mr. Grebenc and you guys discussed that pretty well, so I would just open that up, if you have any additional questions you have for me I would be happy to answer them on that variance request, but I think most of the information was covered very well by Staff. Other than that I would just like to open it up for some questions if you have some for me.

Chairman Tinsley: Thank you Mr. Williams. Questions for Mr. Williams, or comments? Thank you very much. Miss Morgan I do have one that came to mind. You can stay there if you want, do you have a mike? And or Jerry can answer this. There was some talk in the transmittal memo at the Planning Board hearing of the Applicants considering, and I think he kind of alluded to it, he didn't necessarily come right out and say it, adding pavement to the existing Ohana Court, if that were to be the case, what standard would it be added to? Would there be a standard for the paving? I mean we have a standard for gravel roads, we have a standard for paving, for hard surface, if they wanted to add pavement to the top of that, would there be a minimum requirement that they would have to meet? Or just (sic) block of adding an overlay, would it suffice to gravel standard? I don't know that's just something that popped into my head just now. I don't know.

Jerry Grebenc: This is a question that comes up periodically. You'll have an existing gravel road, and someone will propose, well, I don't know, we'll just pave it. And the question becomes, does that exceed our lowest standard, because it's a paved road? And that's a question we have to ask our Public Works and probably a third party engineer to give you an answer because, obviously we're not engineers, but that's a question that comes up, if we put

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an asphalt map on top of the existing road even though the existing gravel road doesn't meet County standards, does that meet Typical Section Number 1, which is our gravel standard?

Chairman Tinsley: I guess I would request, on behalf of the Commission, two things, if Lindsay or Jerry or both would approach Eric Griffin our Public Works Director, ask him that question for this road specifically, and that means he's going to have to go and look at it, it's not that far from the Public Works Department, number 1 and number 2 the question that Mr. Williams had would it be possible to add something to an existing gravel road that while it doesn't quite necessarily meet the our minimum requirements for the new subdivision regs, it's a pretty good road, is there something they can add to it without having to tear it up and re-do it? Would you ask him those questions and see if it makes sense?

Jerry Grebenc: Uh huh.

Chairman Tinsley: Because normally we are talking about roads that need to come, be brought up to a standard. This one has actually been brought up to a previous standard, and it's in pretty good shape. You know the question to ask.

Jerry Grebenc: Right. And this is going to be a situation we're going to run into for probably the next two years, because we've had so many roads built to the, just built to the old standard, now we're in the new subdivision regulations so it's going to be difficult with those.

Chairman Tinsley: And since Stahly helped us with our minimum standards for our new subdivision regs, (laughter); it's a good question coming from them. Thank you very much. If you can get that to us before, I'm anticipating we're going to have a decision probably on Thursday. We're required by our County Attorney, or asked by our County Attorney not to render decisions at the same meeting where we are consider the evidence. So, further discussion or questions for Staff? Hearing none is there a motion?

Commissioner Varone: Mr. Chair, I make a motion to render a final decision this Thursday.

Chairman Tinsley: We have a motion to render a final on Thursday.

Commissioner Murray: Second. September 8th.

Chairman Tinsley: September 8th? And a second. Any discussion? All in favor of the motion signify by saying Aye. Aye. Motion passes 3-0.

There's nothing else on the agenda except public comment on matters not listed above. If nobody has any comments, we are adjourned. Thank you.

Public comments on matters not mentioned above. None

Adjourn. 9:35 a.m.

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