

## **PUBLIC MEETING – April 6, 2005**

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, Deputy County Attorney Colleen Dowdall and County Clerk and Recorder/Treasurer Vickie Zeier. Commissioner Jean Curtiss was visiting with Congressional representatives in Washington, D.C.

### **Pledge of Allegiance**

### **Public Comment**

None

### **Routine Administrative Actions**

Commissioner Evans moved that the Board of County Commissioners approve the routine administrative items adopted the past week and approve the weekly claims lists in the amount of \$146,822.32. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

### **Bid Award (Clerk and Recorder): Title Searches**

Vickie Zeier presented the staff report.

Bids were advertised with only one vendor responding. Western Title and Escrow was the only responder, however they were well within the budgeted amount. It is the recommendation of the Clerk and Recorder to award the bid to Western Title and Escrow. Depending on the number of searches required, the total could be between \$3,500 and \$4,000 for the 2005/2006 Fiscal Year.

These searches are for taxes that are delinquent 36 months or 24 months. A title search must be done so all interested parties can be given legal notice that the tax deed process has begun.

Commissioner Evans moved that the Board of County Commissioners approve awarding the bid for Title Searches for the 2005/2006 Fiscal Year to Western Title and Escrow, at an amount well within the budgeted amount, as the lowest and only responsive bidder. Acting Chair Carey seconded the motion and asked for public comments. There were no public comments and the motion carried on a vote of 2-0.

### **Hearing (Certificate of Survey): Peters Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create a family transfer parcel for that parcel located in the southeast one-quarter of the southeast one-quarter of the southeast one-quarter of Section 12, Township 15 North, Range 20 West.

Richard E. Peters has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 10 acres in size located near Evaro, Montana. Richard proposes to create one approximately six and one-half (6.5) acre parcel for transfer to his daughter, Susan P. Pauley, for residential purposes and keep the remaining approximately three and one-half (3.5) acre parcel for residential purposes as well.

The history of the parcel is as follows: This parcel was held in trust for Elizabeth Ann Normandeau Samsel by the Bureau of Indian Affairs and deeded to her in May, 1999. Elizabeth N. Samsel deeded the property to Richard and Alice Peters in June, 1999. The property is located on the Flathead Indian Reservation and pursuant to the Missoula County Interlocal Agreement with the Confederated Salish and Kootenai Tribes, the application was sent to the tribal offices for comments on February 18, 2005. No response from the Tribes was received within the required 30 day period.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Richard E. Peters was present and came forward to answer questions.

Acting Chair Carey stated the Board is responsible to make sure these exemptions to the Subdivision and Platting Act are legitimate family transfers as the law allows and not an attempt to evade subdivision review. The Deputy County Attorney would ask a series of questions to determine his intention.

Colleen Dowdall asked how long he had owned the property.

Richard Peters stated he had owned the property for six years.

Colleen Dowdall asked if he purchased the property with the intent of dividing it.

Richard Peters stated he did not. His wife passed away three years ago and he wants to leave his daughter some land. She is graduating from nurses training in Miles City this spring. This will be an incentive for her to move back.

Colleen Dowdall asked if his daughter intends to live on the property.

Richard Peters stated his daughter did intend to live on the property.

Colleen Dowdall asked if either of them intend to transfer their parcels within the next year.

Richard Peters stated he developed the 3.5 acres he is keeping and his daughter can develop her land.

Colleen Dowdall asked if he was in the business of building or developing property.

Richard Peters stated he was not.

Colleen Dowdall asked if he was attempting to evade subdivision review.

Richard Peters stated he was not.

Colleen Dowdall asked if he understood this is not being reviewed to determine if there is adequate access.

Richard Peters stated he understood that.

Colleen Dowdall stated other permits for zoning compliance, floodplain, septic, etc., would still be needed before his daughter could build on the property.

Richard Peters stated he understood that.

Acting Chair Carey opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Richard E. Peters to create one parcel by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

### **Hearing (Certificate of Survey) Ployhar Family Transfer**

Colleen Dowdall presented the staff report.

This is a consideration of a request to create family transfer parcels for that parcel located in the southeast one-quarter of the northwest one-quarter of Section 32, Township 13 North, Range 15 West.

Floyd Ployhar has submitted a request to create four additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 40 acres in size located near Potomac, Montana. Floyd Ployhar proposes to create four approximately five acre parcels for transfer to his children for residential purposes and keep the remaining approximately 20 acre parcel for residential purposes as well. The parcels will be transferred to: Bo James Ployhar, Amber Ann Ployhar, Connie Jo Ployhar and Dennis Martin Ployhar (15 years old).

The history of the parcel is as follows: This parcel was deeded in July, 1982, from the estate of Mary J. Ployhar to Martin and Elaine Ployhar, co-trustees for the Ployhar Disbursing Trust. A quit claim deed was filed in March, 2001, deeding the property from the Ployhar Disbursing Trust to Martin and Elaine Ployhar. A Deed of Distribution was filed in October, 2004, from the estate of Elaine Ployhar to Floyd James Ployhar.

According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Floyd Ployhar was present and came forward to answer questions.

Acting Chair Carey stated the Board is responsible to make sure these exemptions to the Subdivision and Platting Act are legitimate family transfers as the law allows and not an attempt to evade subdivision review. The Deputy County Attorney would ask a series of questions to determine his intention.

Colleen Dowdall stated that since this is family property, it was not acquired with the intent to divide it.

Floyd Ployhar stated that was correct.

Colleen Dowdall asked if he or any of the transferees intend to transfer the property within the next year.

Floyd Ployhar stated neither he nor his children intend to transfer the property.

Colleen Dowdall asked if a trust has been established for the minor.

Floyd Ployhar stated that it had not yet been established but he was working on doing so.

Colleen Dowdall stated that the property will have to be deeded to the minor child in trust.

Floyd Ployhar stated he understood that.

Colleen Dowdall asked if he knew who the trustee will be or who will control the property.

Floyd Ployhar stated he did not know at this time.

Colleen Dowdall asked if he understood that if the property is sold, the proceeds would be the property of the trust.

Floyd Ployhar stated he understood that.

Colleen Dowdall asked if the property would be developed, would any houses be built now.

Floyd Ployhar stated that one of his children plans to build a house now and the rest will probably do so later. His oldest son Bo (age 22) is planning to build now. His daughter Amber is 20 and his daughter Connie is 19.

Colleen Dowdall asked where the recipients live now.

Floyd Ployhar stated two still live at home and the other two rent in town. Bo intends to build a house as soon as possible and the rest will probably do so later; they all want to but are not at a point in their lives where they can build right now.

Colleen Dowdall asked if he had talked to anyone in the County about going through subdivision review.

Floyd Ployhar stated he had not.

Colleen Dowdall asked if he was in the business of building or developing property.

Floyd Ployhar stated he was not.

Colleen Dowdall asked if he was attempting to evade subdivision review.

Floyd Ployhar stated he was not.

Colleen Dowdall asked if he understood this request had not been reviewed for adequate access as a subdivision would.

Floyd Ployhar stated he understood that.

Colleen Dowdall asked if he understood this was just approval for the division of land. He may need other permits prior to beginning any construction. If the permits cannot be obtained, building would not be possible on these lots.

Floyd Ployhar stated he understood that.

Acting Chair Carey opened the public hearing. There being no comments, the public hearing was closed.

Commissioner Evans moved that the Board of County Commissioners approve the request by Floyd Ployhar to create four additional parcels by use of the family transfer exemption based on the fact that there does not appear to be an attempt to evade subdivision review. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

**Consideration: Elk Meadows, Lot 42 (2 lots on 10.32 acres) – North of Huson**

Tim Worley, Office of Planning and Grants, presented the staff report.

Rob Braach of Horizon Ventures, LLC, represented by Ron Ewart of Eli & Associates, is requesting approval of Elk Meadows Lot 42 Subdivision, a 2 lot residential subdivision of 10.33 acres on Wapiti Road, north of Huson in the Sixmile area. Staff recommends approval of Elk Meadows Lot 42. The property is Tract 42 located in the Elk Meadows Ranchettes, a 55 parcel Certificate of Survey filed in 1974. Access to the lots is provided via Wapiti Road, a private road. The property is located at the end of Wapiti Road. A community water system and private septic systems are proposed to serve the lots. Much of the property is a No Improvement Zone, but there is a small buildable area on the proposed new Lot 42B and there is an existing home on Lot 42A.

The property is unzoned. The Comprehensive Plan recommends a maximum residential density of one dwelling units per 10 acres. The proposal does not meet the density requirement, but it is in an area with existing infrastructure.

Wapiti Road has been widened to the County standard width up to the cul-de-sac. The cul-de-sac is a little short of being the 35 foot radius standard, thereby requiring a variance to that standard. Both Public Works and Frenchtown Fire reviewed the variance request and did not have an objection to it. The second of the two lots does not front on the cul-de-sac thereby requiring a second variance from the standard that all lots front on a public or private road. Public Works did not object to the variance request. The existing driveway on the property falls a few feet short of the 12 foot standard in the Subdivision Regulations. Staff is recommending that the driveway be widened to the 12 foot County standard surface width all the way up to the second lot, with an overall 20 foot unobstructed width. There is also a variance for walkways which Public Works did not object to because this location is about a mile from the nearest County road and the nearest walkway is fairly distant from this location.

There is a hydrant located within the Wapiti Road cul-de-sac. Fire safety has also been addressed through Wildland/Residential Interface information contained within the covenants that will be recorded. Staff is recommending a condition that, per Frenchtown Rural Fire District (FRFD), payment be made to the FRFD Development Mitigation Program. Cindy Crittendon from Frenchtown Rural Fire is here today and will speak to the particulars of that issue.

Fish, Wildlife and Parks recommends some amendments to the covenants which have been passed on to the applicant. Staff is also recommending the developer file a Revegetation Plan with the Weed District and that radon mitigation language be included in the covenants.

Acting Chair Carey asked for public comments.

Cindy Crittendon, Frenchtown Rural Fire District, stated she has made a few site visits concerning the road issue. It is currently not wide enough and she passed that information to Tim. The District's Board of Trustees has approved a base mitigation fee of \$530 per lot. Every subdivision is different, so the fee could be higher in some cases, but the base amount is \$530. Other subdivisions, in the Petty Creek area for example, may have a higher fee due to their location. This subdivision already has water in place.

Commissioner Evans stated she would like to sit down with the Frenchtown Fire personnel to discuss this because she felt this was an excessive amount. She would like to know what the amount is based on and how they came to their conclusions.

Cindy Crittendon stated the letter she gave Tim identifies some of the things looked at when a subdivision is investigated, including the initial site visit and the agency review. She has been to this location a couple of time to

review the driveway access. Review also includes whether or not there are sprinklers and if so, to make sure they are installed and tested. Fuel reduction assessment and final site review are also included. Those are some of the criteria used to determine the amount of the fee. Also, Frenchtown Rural Fire District paid for a study a few years ago that provided guidelines for determining mitigation fees. The results, on a 2,000 square foot house, were somewhere in the neighborhood of \$1,700. The trustees felt that was too much and reduced the base amount using time and effort as contributing factors.

Rob Braach, Eli & Associates, stated he was also the developer in this case. They are in agreement with the conditions with the exception of the fire assessment. He would like some explanation on that. This property was logged last winter to lessen the fire danger. There was a heavy canopy base and in consultation with a forester, he had the logging done to help out with the fire mitigation. There is also a fire hydrant located on the edge of the property, which helps mitigate not having sprinklers in the house. He just received the letter from FRFD today regarding the \$530 per lot. His question was whether that was for the new lot or all lots. On a recent three lot subdivision, only one new lot was created and the assessment was \$530 for just the new lot. He would like that clarified for this subdivision. The letter states that the mitigation impact will vary from one subdivision to another; did that mean the fee would only go up and not down.

Acting Chair Carey stated that was how he interpreted the letter; it says a "base growth mitigation fee of \$530 per lot."

Colleen Dowdall stated the way Frenchtown has structured this is more in the way of a review fee, similar to what the Surveyor's Office or Public Works charges for review of documents in order to issue permits. She has talked to the Missoula County Fire Protection Association about this type of fee instead of an impact fee, because they had mentioned the need to hire additional personnel just to review subdivision and if there was a way to defray that cost and help them to do a better job. She felt the name probably could be changed to Review Fee as opposed to mitigation or growth impact.

Rob Braach stated he was not in a position to argue one way or the other without justification of their costs. He did feel it would be excessive if he was charged \$530 for the existing lot as well as the new lot.

Cindy Crittendon stated the fee is per new lot, not every lot within a subdivision. She will put that stipulation in subsequent letters so it is better understood.

Commissioner Evans stated she had concerns about this. When the study was done on impact fees, it was well advertised. Fees based on the results of the report have never been adopted by the Board of County Commissioners, nor has there been a public hearing. Now, there is this fee being charged, it doesn't matter what it is being called, it is something new the developer did not know about when the process began. She needs to understand how the base amount of \$530 has been determined. She will support the subdivision but ask that this not be included as a requirement, but an agreement regarding the fee be made with the County Commissioners before final plat.

Colleen Dowdall stated the condition reads that way now, no dollar amount is specified. That gives the Board an opportunity to look at the justification. The fee has been adopted by the Board of Trustees of the Frenchtown Rural Fire District, which they are entitled to do. It has not been adopted by the Board of County Commissioners. If the Board does not require that it be paid prior to final plat, FRFD will probably require it before they will review a subdivision.

Commissioner Evans stated that would be better. It says the amount will vary from one subdivision to another and if it is a growth mitigation fee, she could understand that. If it is a cost for reviewing a subdivision, everybody should pay the same amount. This is not satisfactory.

Cindy Crittendon stated that she and Chief Waldron can sit down with the Commissioners to explain exactly what was used to determine the fee amount.

Commissioner Evans stated she would like to have that discussion prior to final plat approval for this subdivision and before the next subdivision within the Frenchtown Rural Fire District comes before the Board.

Rob Braach asked if it would be possible to have a not to exceed amount listed.

Commissioner Evans stated the condition does not list a specific amount, so a not to exceed amount is unnecessary.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Section 3-2(6)(c)(iii) of the Missoula County Subdivision Regulations to allow a 30 foot paved radius for the Wapiti Road cul-de-sac, based on the findings of fact in the staff report; approve the variance request from Section 3-2(8)(A)(iv) of the Missoula County Subdivision Regulations to not provide internal pedestrian connections and pedestrian connections to school bus stops and adjoining neighborhoods, based on the findings of fact in the staff report; and approve the variance request from Section 3-3(1)(D)(iii) of the Missoula County Subdivision Regulations to allow a lot to not abut a private or public road, based on the findings of fact in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Elk Meadows Lot 42 Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

**Elk Meadows Lot 42 Summary Subdivision Conditions of Approval:**

1. The driveway on Lot 42A shall be constructed to a 12 foot surface width with a 20 foot unobstructed width and a 13 foot 6 inch vertical clearance from Wapiti Road to the northern boundary of Lot 42B, subject to review and approval by the Frenchtown Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(1), 3-2(10)(E) and Frenchtown Rural Fire District recommendation.*
2. The developer shall pay Frenchtown Rural Fire District an amount adequate to mitigate the impact of the new development on the District, as determined by the Frenchtown Rural Fire District Development Mitigation Program, to be reviewed and approved by the Board of County Commissioners. Proof of payment shall be provided prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
3. The covenants shall be amended as follows:
  - a. The property owners within the Elk Meadows Lot 42 are advised that Missoula County has high radon potential and all new construction should incorporate passive radon mitigation systems.
  - b. Article I, Section 12f: a) be suspended a minimum of 20 feet above ground level; b) be at least 4 feet from any support poles or points; and c) should be designed with a catch plat located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds. *City-County Health Department; Fish, Wildlife and Parks and OPG recommendation.*
4. Article III, Section 2 of the covenants ("Amendments") shall include Radon, Fire Standards and Driveways as sections of the covenants that may not be amended without Governing Body approval. *Subdivision Regulations Article 3-1(10) and OPG recommendation.*
5. A Revegetation Plan for disturbed sites shall be submitted to and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B) and Missoula County Weed District recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 2:00 p.m.