

PUBLIC MEETING – May 25, 2005

The Public Meeting was called to order at 1:30 p.m. by Acting Chair Bill Carey. Also present were Commissioner Barbara Evans, Chief Civil Deputy County Attorney Mike Sehestedt and Deputy County Attorney Colleen Dowdall. Commissioner Jean Curtiss was on vacation.

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 \$954,979.90. Acting Chair Carey seconded the motion. The motion carried on a vote of 2-0.

Consideration: Secluded Acres (2 lots on 10.12 acres) – Northeast of Carlton on Leo Hansen Lane

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

Rick Robinson of RHK Partnership, Inc., represented by Ron Ewart of Eli & Associates, is requesting approval of Secluded Acres, a 2 lot residential subdivision on 10.12 acres near the terminus of Leo Hansen Road and northeast of Carlton, near the Bitterroot River. Staff recommends approval of Secluded Acres.

The property is in Citizen Initiated Zoning District 31 and complies with the 4.5 acre minimum lot size. The Lolo Regional Comprehensive Plan designation is Floodway and within an Area of Significant Flood Risk. The plat shows most of the parent parcel as being within a FEMA designated 100 year floodplain. As a result, staff recommends that the area of the subdivision within the 100 year floodplain be designated on the plat and in the legend of plat, prior to final approval. Staff is also recommending certain amendments to the Floodplain Consideration portion of the covenants, Article I, Section 12. Additionally, staff recommends that this amended section of the covenants be placed on the face of the plat.

A private road provides access to this property from the terminus of Leo Hansen Road. The road is 12 feet wide and serves a total of three homes for a distance of 300 feet west of Leo Hansen Road. The developer is requesting a variance from the 24 foot road standard that applies to this 300 foot section. Erik Dickson of County Public Works recommends that this 300 foot section of road be widened to 18 feet with a gravel surface. Staff is recommending conditional approval of the variance with a condition to widen the road to 18 feet.

The driveway that is wholly contained on the property currently is about 10 feet wide and the developer is not suggesting any improvements and requests a variance from the 12 foot standard. Florence Rural Fire reviewed this proposal and, for ingress and egress of their emergency vehicles, recommended that the driveway be widened to the 12 foot standard. Staff is therefore recommending denial of the variance request and recommending the driveway and emergency vehicle turnaround on Lot 2 be widened to 12 feet.

Any road or driveway widening project on this property, or any construction whatsoever, will require a Floodplain Development Permit. Staff is recommending a private road maintenance disclaimer be placed on the face of the plat which absolves Missoula County of any maintenance responsibilities.

The developer is requesting a variance from the private walkways standard in the Subdivision Regulations. Staff is in support of this variance request due to the substantial distance from existing pedestrian facilities.

The Montana Department of Fish, Wildlife and Parks (FWP) reviewed this subdivision and noted that there is a State section of land north of the subdivision. There is the potential for year-round recreation, including waterfowl hunting, fishing, etc. They are recommending specific covenant language that addresses the context of this subdivision and also the standard Living with Wildlife information.

Ron Ewart, Eli & Associates, developer's representative, thanked Tim for his work on this proposal. He stated that Rick and Lynette Robinson, half owners of this property, are also present. Their goal is to divide the property, thereby allowing each owner to have their homes on separate lots. There is substantial agreement with the conditions except for Condition 1, which is in regard to reconstructing the road width. The road is a Country gravel

road and works fine in this particular situation. It serves three homes and has worked well in the past. To widen it would not serve any specific purpose. He asked how intense the process was to obtain a Floodplain Permit for minimal work on the driveway.

Tim Worley stated he did not know a lot of the particulars for that process. It would be insurance that whatever is done does not raise the flood stage or alter the flow of water across the property.

Ron Ewart stated the work on the driveway would not be significant, just minor widening to make sure there is clearance for emergency vehicles.

Commissioner Evans stated that they would need to talk with Todd Klietz, Floodplain Administrator, to find out what the process entailed.

Acting Chair Carey asked for public comments.

Commissioner Evans stated that in the last few subdivisions, it has been recommended that Fish, Wildlife and Parks be made a party to the covenants. She asked if that would present any problem on this proposal.

Ron Ewart stated he did not see any problem with that.

Commissioner Evans stated the purpose is that if FWP is concerned about something specific, they can address the problem, but only if they are party to the covenants. Because the subdivision is in close proximity to a wildlife area, it makes sense to add them as a party to the covenants.

Rick Robinson stated he did not understand exactly what making them a party to the covenants means.

Colleen Dowdall stated it means they would be allowed to enforce certain provisions of the covenants, usually having to do with any wildlife conditions. In their review letter, FWP did ask that Living with Wildlife provisions be added to the covenants. This has been done in other cases when there is a particular wildlife issue that is of special concern, such as Grizzly bears, riparian areas, Bull trout, etc. Fish, Wildlife and Parks wants to be able to enforce the provisions, if, for instance, someone in the subdivision was feeding wildlife, which is prohibited and against the law. FWP would not enforce other provisions in the covenants, just the wildlife provisions.

Commissioner Evans stated that if someone is putting out salt blocks and the homeowners didn't care, but it was causing a problem for the animals, FWP would like to be able to say residents cannot do that and enforce the restriction. They cannot do so if they are not a party to the covenants.

Rick Robinson stated he did not have a problem with adding FWP as a party to the covenants.

Acting Chair Carey stated if the width of the driveway is to remain at 12 feet for that 300 foot section, would it be possible to delete the first variance request and Condition 1.

Tim Worley stated the Board could approve, rather than conditionally approve, the first variance request and delete Condition 1.

Commissioner Evans stated that staff recommends denial of the second variance request and asked what the applicant felt about that.

Ron Ewart stated that the applicant would prefer to leave the driveway the way it is. However, if it comes down to approval or denial of the subdivision, they would widen it as recommended.

Acting Chair Carey stated that the Uniform Fire Code requires a 12 foot driveway.

Ron Ewart stated that was correct, and the Code also states minimum unobstructed vertical and horizontal clearances.

Acting Chair Carey felt it would be appropriate for the applicant to widen the driveway, but not be required to widen the road.

Commissioner Evans asked if this is required, could the additional width just be graded in.

Ron Ewart stated it could be done that way; along with the use of some compaction and some gravel.

Commissioner Evans stated the reason for a wider driveway is to provide protection to the homeowners.

Rick Robinson stated he understood that.

There were no further public comments.

Commissioner Evans moved that the Board of County Commissioners approve the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring a 24 foot paved width for a private road, based on the findings of fact in the staff report, and delete recommended Condition of Approval 1. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners deny the variance request from Article 3-2(1)(I) of the Missoula County Subdivision Regulations requiring a 12 foot driveway width, based on the findings of fact in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners 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 set forth in the staff report. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

Commissioner Evans moved that the Board of County Commissioners approve the Secluded Acres Summary Subdivision, based on the findings of fact in the staff report and subject to the conditions in the staff report, as amended, with the addition of Fish, Wildlife and Parks as a party to the covenants for those items they have recommended. Commissioner Carey seconded the motion. The motion carried on a vote of 2-0.

Secluded Acres Summary Subdivision Conditions of Approval:

1. The driveway on Lots 1 and 2 of Secluded Acres shall be constructed with a turnaround on Lot 2 to a 12 foot surface width with a 20 foot unobstructed width and a 13 foot 6 inch vertical clearance from the edge of the property to the homesite on Lot 1, subject to review and approval by the Florence Rural Fire District, prior to final plat approval. *Subdivision Regulations Article 3-2(1)(1), 3-2(10)(E) and Florence Rural Fire District recommendation.*
2. A private road disclaimer shall appear on the face of the plat that states the following:

"The owners of the lots in Secluded Acres understand and agree that private road construction, maintenance and snow removal shall be the obligation of the owners of these lots and that the County of Missoula is in no way obligated to perform such maintenance or upkeep until the roads are built to County standards and accepted by the County of Missoula as right-of-way." *Subdivision Regulations Article 5-2(4)(J) and OPG recommendation.*
3. The portion of the subdivision in the 100 year floodplain (floodway) shall be delineated on the plat and in the legend to be reviewed and approved by the Floodplain Administrator, prior to final plat approval. *Subdivision Regulations Article 4-2(5)(D)(vi), Floodplain Administrator and OPG recommendation.*
4. The covenants shall be amended as follows:
 - a. Article 1, Section 12, first sentence: The property, including both dwellings and the driveway, is located within the FEMA designated 100 year floodplain and floodway.
 - b. Article 1, Section 12, second through fourth sentences: Property owners and residents should be aware of the risk of possible flooding. In the event of a possible flood or flood warnings or predictions, residents should move themselves and their important belongings elsewhere and to higher ground until the flood event subsides. Ingress and egress to the property ~~may~~ will be hindered due to flood-inundated roads.
 - c. Article 1, Section 12, new sentence at the end: Any development, including replacement or alteration of dwellings, will require a floodplain permit.
 - d. Section 9: Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the occasional presence of wildlife such as deer, elk, moose, bears, mountain lions, coyotes, fox, skunks and raccoons. Contact the Montana Fish, Wildlife and Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.”

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

- i. There is high potential for **vegetation damage by wildlife**, particularly from deer feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
- ii. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against State law (MCA 87-3-130) to provide supplemental feed attractants if it results in a “concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners should be aware that deer might occasionally attract mountain lions to the area.
- iii. **Garbage** must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears, raccoons, dogs, etc. It is best not to set garbage cans out until the morning of garbage pickup.
- iv. **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the direct control of the owner and not be allowed to roam as they can chase and kill big game and small birds and mammals. Under current State law, it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124).
- v. **Pet food and livestock feed** must be stored indoors, in enclosed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons, etc. When feeding pets or livestock, do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.
- vi. **Barbecue grills** should be stored indoors. Permanent outdoor barbecue grills are not allowed in this subdivision. Keep all portions of the barbecues clean. Food spills and smells on the grill, lid, etc., can attract bears and other wildlife.
- vii. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
- viii. **Gardens** can attract wildlife. Keep the produce picked because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
- ix. **Fruit trees or orchards** can attract wildlife such as deer and bears. Keep ripe fruit picked and do not allow rotten fruit to collect under trees. Consider fencing to keep deer out.
- x. **Bird feeders** attract bears and should not be used in this area from April through October. If used during other times of the year, bird feeders should: 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 plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
- xi. **Compost piles** can attract skunks and bears. If used, they should be kept indoors or built to be wildlife-resistant.

- xii. Purchasers of lots within this subdivision must recognize the subdivision is located near the Bitterroot River and its natural sloughs where lawful waterfowl hunting and the associated **discharge of shotguns** could occur from early morning until sunset and the season can run from September into January.
 - xiii. Homeowners should familiarize themselves with the provisions of the **Montana Stream Access Law** (MCA 23-2-301 through 322) as it relates to water-related recreational activities allowed within the high water marks of rivers and streams, including the side sloughs. Under this law, the general public is allowed to partake in water-related activities on the Bitterroot River (and its sloughs) that include (but are not limited to) swimming, fishing, boating and waterfowl hunting. Contact FWP for a brochure about stream access.
 - xiv. State-owned school trust land (640 acres) is located immediately to the north of this subdivision. Homeowners should familiarize themselves with the provisions for general recreational use of State trust lands (contact FWP or the Montana Department of Natural Resources and Conservation). Allowable public activities on this land can include (but are not limited to) hiking with or without dogs, cross-country skiing, fishing, hunting and trapping. *Subdivision Regulations Article 3-1(2), Floodplain Administrator, Montana Fish, Wildlife and Parks and OPG recommendation.*
- 5. Article 1, Section 12 of the covenants as amended shall be placed as a note on the final plat. *Subdivision Regulations Article 3-1(2) and Floodplain Administrator recommendation.*
 - 6. Article II, Section 2 of the covenants (“Amendment”) shall include Fire Standards and Driveways and Floodplain Consideration as sections of the covenants that may not be amended without Governing Body approval. *Subdivision Regulations Article 3-1(10) and OPG recommendation.*
 - 7. Add Article X (“Enforcement”) to the covenants as follows:

Declarant, any successive owner, Montana Department of Fish, Wildlife and Parks, or Missoula County, shall have the right to enforce by any proceeding at law or in equity all protective covenants related to reducing conflicts between humans and wildlife imposed as a condition of subdivision approval. The method of enforcement may include legal action to enjoin actions that violate the covenants, to recover damages resulting from a violation, or both. Failure to enforce by any parties having the right to enforce shall not be deemed a waiver of the right to enforce future violations. None of the parties permitted to enforce these covenants will incur liability for failure to enforce the protective covenants. Parties permitted to enforce the covenants may enter into a memorandum of understanding of enforcement responsibilities among those parties. *Board of County Commissioners recommendation.*

There being no further business to come before the Board, the Commissioners were in recess at 1:45 p.m.