

PUBLIC MEETING – September 14, 2005

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

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 list in the amount of \$483,403.35. Commissioner Carey seconded the motion. The motion carried on a vote of 3-0.

Consideration: Blackfoot Acres (4 parcel subdivision on 15.23 acres) – 7 miles north of Bonner on Highway 200

Dale McCormick, Office of Planning and Grants, presented the staff report.

Peter Persing, represented by Ron Ewart of Eli & Associates, is proposing to create the Blackfoot Acres Subdivision. The property is located along the Blackfoot River on the south side of Highway 200, approximately 8 miles northeast of Bonner. The applicants are requesting approval of a 4 tract residential subdivision on 15.23 acres. The lots are proposed to be 3.66 acres and 9.09 acres with two tracts on the south side of the river that are 1.61 acres and 0.87 acres. The property is unique in that the land is divided by the Blackfoot River, the bed and banks of which are owned by the State of Montana. Lot 1 and Lot 2 would be single family residence lots located on the north side of the Blackfoot River, and Tract 1A and Tract 2A would be unbuildable lots located on the south side of the river. Tract 1A could not be transferred separately from Lot 1 and Tract 2A could not be transferred separately from Lot 2.

The 2002 Missoula County Growth Policy, including the Missoula Regional Land Use Guide, based on the 1975 Missoula County Comprehensive Plan, is the applicable plan for this property. The property is within an area designated by the plan as "Suburban Residential," with a recommended density of 2 dwelling units per acre and "Parks and Open Space" for the area of the property occupied by the Blackfoot River.

The lots are accessed from Montana State Highway 200, a two lane highway paved to a width of 42 feet in a 130 foot right-of-way. The Montana Department of Transportation (MDT) commented that any new access or change in use of an existing access requires an approach permit to be approved by MDT. Highway 200 is designated as a Primary Travel Corridor and the preliminary plat indicates a 50 foot setback in compliance with those standards. The area within the 50 foot setback contains healthy pine trees and grasses that comply with the landscape requirements of the Primary Travel Corridor Standards.

The property is primarily covered in coniferous trees. The covenants include fire and driveway standards that include address signage, driveway design, fuel management and roofing materials, in response to agency concerns expressed by the Missoula Rural Fire District. Staff is recommending a condition that the plat contain a waiver of the right to protest a future RSID/SID for connection to a community or municipal water system for fire protection purposes.

The Floodplain Administrator commented that this parcel resides within a Zone A regulatory floodplain and that Zone A floodplains must provide elevation data and determine the extent of the true 100 year floodplain, and that upon establishment of the true 100 year floodplain, the subdivision plat should reflect that floodplain as approved by FEMA through a Letter of Map Amendment (LOMA). Also, development should be restricted to locations outside of that floodplain with lowest floor and all utilities located a minimum of two feet above the base flood elevation as documented through an Elevation Certificate. Staff is recommending this as a condition of approval.

Riparian vegetation, consisting of smooth brome grasses, water sedge, junipers and alder, exist along the river along a 20 foot edge within the proposed 100 foot wide No Build/No Improvement Zone on either side of the Blackfoot River. A Riparian Resource Management Plan is included in the proposed covenants. Montana Fish,

Wildlife and Parks commented that the covenants should be amended to ensure the riparian area is protected from overgrazing by livestock, restricting lawns and removal of live or dead vegetation. They also indicated that property owners responsibilities for living with wildlife are important for this subdivision. Staff is recommending a condition that items/issues identified by Montana Fish, Wildlife and Parks be included in amended covenants signed by the property owners.

Ron Ewart: Good afternoon, my name is Ron Ewart, I'm with Eli & Associates. I want to say thanks to Dale. We are in agreement with the recommended conditions of approval in the staff report. Land and Water is doing a floodplain study right now on the property. I thought it would be ready by today, I was hoping he would be here, but anyway, so that condition will be taken care of and as I understand, Land and Water will go through the LOMA process as well. We had a lot of discussion in our office when we did the survey. First of all, I don't know, maybe Colleen might comment on this, but, the original survey was for 20.07 acres and – COS 3055 – and it included all of the Blackfoot River and we determined that, or we felt, our surveyors felt that you can't own the Blackfoot River because it's a navigable waterway. So what we did was drew the line along the mean water mark of the Blackfoot River and took that out of it. The final result would be the same as if, basically, we did just cut it down the middle, to where you would still own the property on the other side of the river and that property has to be on the same deed as the buildable tracts, they cannot be separated, so the intent is still the same. Someone did question me on that – not anyone here – but stating that they felt that the original COS was correct. But anyway, this is the way we feel it should done and the landowner doesn't have a problem with it.

Colleen Dowdall: I agree with Ron. It is a navigable river, so the State owns the bed and banks, and I thought this solution was ingenious.

Commissioner Evans: The concern that I had about it, and you say the client doesn't care, but I'm wondering how we have the power to tell somebody they can't sell a piece of their land.

Ron Ewart: Well, I'm not sure if I put it in the covenants or not, but I'll make sure it gets in the covenants, that – I'm pretty sure it's in there – that those tracts have to go with each other, you can't sell –

Commissioner Evans: I want to know why? Do we have the legal power to say you can't sell a piece of your land, that's what I want to know.

Ron Ewart: Well, I think we probably have that ability, through the proposal process, I believe. Nobody would have a need to own it, because they can't build on it. We wouldn't want somebody to buy it and then think they could put up a tent or something.

Colleen Dowdall: We don't even call it a lot, because it doesn't have physical access, we're not providing legal access to it. It's in the floodplain. I don't think the size is large enough for a drainfield, even if you could get one in the floodplain.

Ron Ewart: You couldn't get one.

Colleen Dowdall: Because of the river cutting the property, and it may be that at the time the original survey was done that it had not yet been determined that the Blackfoot was a navigable river, although I think it probably was, but in any event, but it does break up the ownership, so this is a way for these, really they owned two lots to start with, they had property on one side of the river and property on the other side of the river, without going through any review, because of the intervening ownership. So this was a way to turn that boundary, through subdivision review, and keep – let both lots have property on both sides of the river, but we can't call it the same lot. They want it to be all Lot 1 and Lot 2, but there's no legal way to do that, so the way to accomplish what this developer wanted to do was to be able to say Lot 1 and Tract 1A go together, Lot 2 and Tract 2A go together. Otherwise, we couldn't approve the subdivision.

Commissioner Evans: I fail to understand why we couldn't approve the subdivision.

Colleen Dowdall: Because two of the lots on the other side of the river, you can't access them, there's no legal or physical access, and they aren't buildable because they are in the floodplain, they're wholly within the floodplain and you can't get septic for them. And we can only approve lots that are buildable.

Commissioner Evans: The problem I've got is, let's say the owner of the place got a request from someone to buy the piece of land on the other side of the river and they wanted to do a wildlife preserve or something. Why

shouldn't the people who own that land be able to sell it for that. It just is a problem for me that we're telling somebody they can't sell their land.

Colleen Dowdall: If they came back and asked us to change that part of the covenants, we could tell them, for that purpose they could, but what we don't want them to do is to sell this as a separate buildable lot. And that's what the requirement is. I mean, they might do a boundary relocation with the neighboring lot and that would be fine, but as long as they don't sell this as a lot created by subdivision review for building. We want anyone to be warned that it can't be used that way.

Dale McCormick: Actually, the applicant has put a note that you see on the lower left corner, right under the drawing, that note basically says that those tracts can't be separated, so it will be on the plat as well as in the covenants.

Commissioner Evans: And I understand all that, it's just to me, government shouldn't be able to tell you, you can't sell a piece of your land, that violates my feelings, thank you very much.

Chair Curtiss: Thank you Ron. This is a consideration, not a hearing, but is there anyone else who like to make any comments? Seeing no one, we're ready for a motion.

Commissioner Carey moved that the Board of County Commissioners approve the Blackfoot Acres Subdivision, based on the finding of fact in the staff report and subject to the conditions in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Blackfoot Acres Subdivision Conditions of Approval:

Fire

1. The following statement shall appear on the face of the plat:

"Acceptance of a deed for a lot within this subdivision constitutes waiver of the right to protest a future RSID or SID for a public water system for fire protection, based on benefit. The waiver shall run with the land and shall be binding on the transferees, successors and assigns of the owners of the land." *Subdivision Regulations Article 3-7(2)*.

Floodplain

2. The true 100 year floodplain shall be established through a flood study issued by a licensed engineer. The final plat shall reflect that floodplain as approved by FEMA through a Letter of Map Amendment (LOMA). A note shall be placed on the final plat that states the following:

"The lowest floor elevation, including basements, mechanical equipment and ductwork, shall be a minimum of two feet above 100 year base flood elevation. Pre-Construction Elevation Certificates shall be submitted documenting the lowest floor and utility elevations." *Subdivision Regulations Article 3-1(1)(B) and Floodplain Administrator recommendation*.

Covenants

3. The covenants shall be amended prior to final plat approval to include the following language amendments:
 - A. Substitute the two following sentences for the two sentences in the Blackfoot Acres Nuisance (section I.7) covenants beginning, "All garbage shall": Garbage must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears and raccoons. If stored indoors, do not set garbage cans out until the morning of garbage pickup.
 - B. Add the following language to section I.14.B (Low-impact use of the area) of the Riparian Plan: Keep livestock out of the Area. Develop off-stream watering facilities (e.g., water troughs) for livestock and use fences if necessary to keep livestock from trampling and grazing riparian vegetation.
 - C. Delete the second sentence ("Any planting should be native") of section I.14.C (Planned restoration of the area with native species) of the Riparian Resource Management Plan, and replacing it with the following: Do not cut or remove live or dead vegetation, particularly shrubs and trees, from the Area. Wood (i.e., fallen branches, downed trees) is an important part of fish habitat and contributes significantly to overall stream health. Wood regularly causes bed scour that creates pools where fish reside to feed and seek cover and wood stores sediment that is used for spawning. Dead trees also function as

important wildlife nesting habitat. Do not plant lawns in the Area; leave or plant native vegetation as ground cover as this avoids the use of fertilizers that contribute to water quality problems. Exception: proper use of chemicals or other methods of control for noxious weeds is allowed. Planting appropriate native riparian vegetation (trees, shrubs) that enhances the Area is allowed.

- D. The third sentence in the Amendment section (II.2) to state: “No sections relating to wildlife, pets, nuisances (garbage), No Build/No Improvement Zone, Area of Riparian Resource Management Plan, Stream Access Law, weed control ... may be changed without prior written consent of the governing body.”
- E. Replace **Section 12** with the following language:

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, black bear, mountain lion, wolf, coyote, fox, skunk, raccoon and magpie. Please contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners “live with wildlife.” Alternatively, see the Education portion of FWP’s web site at www.fwp.mt.gov.

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.

1. Homeowners must be aware of the 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 prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Also, consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
2. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep produce and fruit picked and off the ground, because rotting vegetable material can attract bears, skunks and other wildlife. 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.
3. **Garbage** must be stored in secure bear-resistant containers or indoors to avoid attracting animals such as bears and raccoons. If stored indoors, do not set garbage cans out until the morning of garbage pickup.
4. **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 purposely or knowingly attract bears with supplemental food attractants (any food, garbage, or other attractant for game animals) or to provide supplemental feed attractants in a manner that results in “an artificial concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety.” Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
5. **Bird feeders** attract bears. Use of bird feeders is not recommended from April 1st through the end of November. If used, bird feeders must: 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) 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. Birdseed is an attractant to bears and would cause bears to cross Highway 200 and increase road-kill incidents.
6. **Pets** must be confined to the house, in a fenced yard or in an outdoor kennel area when not under the immediate control of the owner and not be allowed to roam as they can chase and kill big game and small birds and mammals. Keeping pets confined also helps protect them from predatory wildlife.

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).

7. **Pet food and/or livestock feed** must be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as bears, mountain lions, skunks, raccoons and other wildlife. When feeding pets and/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.
8. **Barbecue grills** should be stored indoors and permanent outdoor barbecue grills are discouraged. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
9. 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 and/or elk becoming entangled in the fence or injuring themselves when trying to jump the fence. We encourage the use of split rail fences.
10. **Compost piles** can attract skunks and bears and should be avoided. If used they should be kept indoors or built to be wildlife-resistant. Compost piles should be limited to grass, leaves and garden clippings and piles should be turned regularly. Adding lime can reduce smells and help decomposition. Do not add food scraps. (Kitchen scraps could be composted indoors in a worm box with minimum odor and the finished compost can later be added to garden soil.)
11. **Apiaries** (bee hives) could attract bears in this area and should be avoided. (If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.)
12. **Domestic sheep and goats** (including those kept as 4-H projects) are not allowed in this subdivision because of the proximity to the Bonner bighorn sheep herd. The possibility exists that domestic sheep could transmit a potentially fatal bacterial infection to bighorn sheep, leading to heavy mortality in the native bighorns.

F. Add the following language:

Section 15. Stream Access Law and the Blackfoot River.

Purchasers of lots within this subdivision must recognize that portions of this subdivision include the **Blackfoot River** 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. Owners should also 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 the Blackfoot River (class I), including any side sloughs. Under this law, the general public is allowed to partake in water-related activities between the high water marks of the Blackfoot River, which include (but are not limited to) swimming, fishing, boating and waterfowl hunting, without landowner permission. Contact Montana Fish, Wildlife & Parks for a brochure about stream access. *Subdivision Regulations Articles 3-1(1), 3-1(10), OPG and Montana Fish, Wildlife and Parks recommendation.*

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