

Public Meeting – May 24, 2006

This meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present: Commissioner Curtiss, Commissioner Evans, Chuck Wright and Mike Sehestedt Chief Deputy County Attorney.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT - none

ROUTINE ADMINISTRATIVE ACTIONS

Commissioner Evans moved to approve the Weekly Claims Lists in the amount of \$539,269.21.

Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

DECISION (From April 19, 2006)

Petition to Abandon a Portion of a Road Plat Book 1 Road – Marion Creek Area

Chairman Carey opened the public hearing.

Chuck Wright: Public Works Survey. Commissioner Carey and I visited the site and we looked at it and determined it is to the best advantage of the County to get rid of this old road. It's just a trail up through the middle of a pasture.

Commissioner Carey: I agree with him. Any public comment about this?

Commissioner Evans moved to grant the request to abandon the portion of the road described as Road Plat Book 1 Road per the request. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

DECISION (From March 2, 2006) – Postponed to June 28th

Petition to Incorporate the Town of Target Range

Commissioner Carey: We have postponed this hearing per request from effect citizens. If there's anyone here on this matter and you care to say anything about this, please come forward.

Paul Lacy: 2302 Pleasant Ave. I live in the proposed new city. We were not aware that there were constraints on time. We are trying to negotiate with the City, which is our next step in the process. Mr. Barons and I met with the Mayor, we visited him with a couple of hours I believe. We talked about the ins and outs of this and the reasons behind it and at this point, we felt that it was in their court. But we have not heard anything back from the Mayor. If you have any guidance or thoughts that we should be doing differently, we'd be happy to do that.

Commissioner Carey: Paul, when did you meet with the Mayor?

Paul Lacy: About a month and a half ago...I don't remember the exact date.

Commissioner Carey: So it's been a while and it is in their court.

Paul Lacy: Uh huh.

Commissioner Curtiss: When we spoke to the Mayor in the last couple of weeks, the City is waiting for a formal request. Did you present a formal request?

Paul Lacy: We did not.

Commissioner Curtiss: Maybe you should re-communicate.

Paul Lacy: We'd be happy to do that, you bet.

Commissioner Curtiss: I have a question for Mike. Is this time sensitive? Is there a time when the petition or the signatures might not be valid?

Mike Sehestedt: There's not specific statutory deadline but the statute sets a real high percentage of residents. As time goes on, you may begin to develop questions as to whether or not you still have the required percentage of people who are then residing there. I would think within a reasonable time period. What we've determined is that they had...the petitions proper in form sets out the appropriate boundaries and wards, meets all the requirements to be set for election and is in incorporation of a new town. Except it is within a couple of miles of the City and at that distance, you can't incorporate a new town unless the adjoining city has either consented to the incorporation or has refused to annex the area when requested to do so. At this point, the City's position is the key issue and unless the proponents can come up with something from the City to answer that question, we're going to be duty bound to reject it. I guess I would suggest granting and additional 30 days, but we probably need to note to a certain date, not much after that when we're going to act. We validated the petition back the first of March and we're now...March, April, most of May in another 30 days it'll be most of June...we're starting to get to the point where I think the validity of the petition could legitimately be questioned. We're not questioning it, but at some point we need to either act on it or...well, we need to act on it one way or another. I don't think it was ever contemplated in the procedure that we'd have this much delay.

Commissioner Evans moved that we grant the request of a 30 day delay before making a decision on the petition to Incorporate the Town of Target Range. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Commissioner Curtiss: I think that we should write a letter, an official letter that we can give to you, Paul and then you can present it to the City. If at the end of the 30 days, the City has something on their agenda to discuss then we can delay it a little further.

Mike Sehestedt: Quick question, do we want to do 30 days or do we want to pick a date certain, so when it'll come up again on a Wednesday?

Commissioner Evans: Well he asked for a 30 day extension. So let's make it the closest Wednesday to 30 days.

Mike Sehestedt: Just call is a 35 day extension and that'll get us to another Wednesday.

Paul Lacy: If the City does not respond even with our formal request, is that...what will that do for us?

Mike Sehestedt: At some point we have to say the City hasn't refused to annex you, because I don't think that's what you're asking, and the City hasn't consented to your incorporation. Without the consent of the City because the closest points are a mile apart, we have to find as a matter of fact that we can't order an election for incorporation. The law requires three things: population of at least 500 inhabitants, population density and again I don't remember the precise. Both of these you need. But you also have to be...I think it's at least three miles from the nearest boundary of an incorporated city. Clearly you're not that, but you can meet that requirement in the alternative if the City either refuses to annex you upon request or the City consents to your annexation. We found the first two facts entitling you to an election on incorporation, the population and the population density. The third fact that we found is that you're a mile from the City of Missoula, so the only way that we can do anything but reject this is to have a determination from the City that they consent to the annexation or refuse. That's kind of what we're sitting and waiting for, is that determination. Absent that, we have no choice but to refuse it because it doesn't meet the criteria.

Commissioner Curtiss: Maybe, instead of having it be quite so vague, the last Wednesday in June is the 28th. Should we set that for a date?

Commissioner Evans: That's fine.

Mike Sehestedt: Sure.

Commissioner Carey: The motion has been amended to June 28th. Before I call for a vote on the matter, I'll allow the public to comment on this matter.

Anne Rupkalvis: Target Range resident. I just want to say thank you for giving us the extension.

Commissioner Carey & Barbara Evans: You're welcome, our pleasure. Seeing no further comment I'll close the hearing.

HEARINGS

Heppler Family Transfer

Commissioner Carey opened hearing.

Mike Sehestedt: This is a consideration of a request to create a family transfer parcel for that parcel described as Tract 32, COS #1657 SE ½ Section 29, Township 12 North, Range 20 West and the NE ¼ Section 32, Township 12 North, Range 20 West, Geo: 2092-29-1-03-03-0000. Eric Heppler has submitted a request to create on parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 30 acres in size located near Lolo, Montana. Eric proposes to create one approximately 10 acre parcel for transfer to his wife, Joanne Heppler, for residential purposes and keep the remaining approximately 20 acre parcel for residential purposes as well. The history of the parcel is as follows: COS #1657 was filed in October 1978 to create a tract of land in excess of 20 acres. A Warranty Deed was filed in March, 2006, deeding the property to Eric Heppler. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Commissioner Carey: Is Mr. Heppler or a representative here?

Eric Heppler: I am the owner.

Commissioner Carey: Mr. Heppler, we ask our Chief Deputy County Attorney to ask applicants for the process several questions on the record in order to help assure us that this is not an attempt to evade subdivision review, which is a misdemeanor.

Mike Sehestedt: Are we correct that you've only owned this property since March of this year?

Eric Heppler: Yes, I don't know the exact closing date, but yes we closed in March sometime.

Mike Sehestedt: When you purchased the property did you intend to divide it?

Eric Heppler: Not at that time, no.

Mike Sehestedt: What has changed not that's caused you to decide to divide it?

Eric Heppler: I sold my house up the road and then I talked to....as far the building of that piece, I decided to build a house on that piece and we are building a house on that piece as we sit now. The thing that broke the camels back, I talked to Art Graham, who is my attorney on this and when I got married...15 years or so ago, we signed a preup agreement and so I'm gifting her that piece of ground to be put in her name and then we're building on the remaining property.

Mike Sehestedt: Have you talked to anyone at the County about going through subdivision review?

Eric Heppler: No, I've never talked to anyone.

Mike Sehestedt: Are you in the business of building or developing property?

Eric Heppler: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Eric Heppler: No, I'm not.

Mike Sehestedt: Do you understand that we're simply reviewing whether or not you're entitled to use the family transfer exemption. We're not reviewing the parcel for adequate access in all weather for all vehicles, even emergency services.

Eric Heppler: Correct.

Mike Sehestedt: You understand that if we approve the use of the exemption to divide the property, that doesn't mean the property is approved for zoning compliance, flood plain or any kind of septic system.

Eric Heppler: Okay.

Commissioner Curtiss: I know that this area is zoned, does this meet the zoning?

Eric Heppler: As far as I know, they've re-zoned that many times and as far as I know it's one house per 10 acres. Eli & Associates is handling that, but they've done numerous stuff up there.

Commissioner Curtiss: Because we're not allowed to do the transfers anymore if it doesn't meet....

Eric Heppler: Correct, I believe it does.

Commissioner Curtiss: You say that the piece you want to grant to your wife would be used for residential purposes too, does she plan to build a house?

Eric Heppler: No, only if she finds out that I didn't remember for sure how long we've been married. It's just in her name, solely there for future security.

Barbara Evans moved to approve the request by Eric Heppler 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. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Ulberg Family Transfer

Commissioner Carey opened the hearing

Mike Sehestedt: This is the consideration of a request to create a family transfer parcel for that parcel described as Tracts 46A, COS #5164, SW ¼ of Section 28 and the SE ¼ of Section 29, Township 12 North, Range 20 West. Matthew A. Ulberg 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 24.29 acres in size, located near Lolo, Montana. Matthew proposes to create one approximately 12 acre parcel for transfer to his mother, Paulette B. Ulberg, for residential purposes and keep the remaining approximately 12 plus acres for residential purposes as well. The history of the parcel is as follows: COS #1656 was filed in October 1978 creating tracts in excess of 20 acres. COS 5164 was filed in June of 2001 creating Tract 46A for transfer to an immediate family member. A Warranty Deed was filed in April 2002 deeding the tract to Eric and Joanne Heppler. The Heppler's will deed the property to Matthew Ulberg upon closing of the sale of the property to Mr. Ulberg. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Commissioner Evans: Michael, on page seven there is not stamp by a notary, this is supposed to be declared in front of someone for this affidavit and there isn't one.

Mike Sehestedt: I'm not sure whether....

Matt Ulberg: I have a stamp on my copy...

Mike Sehestedt: ...simply did not appear on the copy...

Commissioner Evans: I think we need to have a copy with the notary stamp on it or our records.

Matt Ulberg: I'll trade you.

Commissioner Evans: Thank you.

Mike Sehestedt: The notary's signature is there and without the seal, they acknowledge they did in fact notarize it.

Commissioner Carey: Mr. Ulberg will you please come forward and identify yourself?

I am Matthew A. Ulberg.

Commissioner Carey: Thank you. As you heard from the previous request, we ask our attorney to ask applicants several questions on the record in order to determine that this is not an attempt to evade subdivision review. That would be a misdemeanor.

Mike Sehestedt: What exactly is your interest in this property at this time?

Matt Ulberg: Right now I'm building a home on it. I'm just about ready to dry it in, our closing on the property has been delayed a couple of times. We're scheduled to close Thursday of this week. I have proceeded with construction in good faith because I couldn't afford to wait with the construction season and my schedule.

Mike Sehestedt: When you acquired the interest in the property, and I assume right now your interest is just to buy/sell?

Matt Ulberg: Yes.

Mike Sehestedt: When you acquired it, did you have the intent to divide it?

Matt Ulberg: No I did not.

Mike Sehestedt: What happened to change your mind?

Matt Ulberg: I got a notice of a zoning district 44 amendment that and I've met with you and the Commissioners on that zoning district since then and the notice that I got had wording that it was going to change the zoning where my property was from a 10 acre per house minimum to a one house per 40 acre density. I didn't think a lot of it until I started to discuss it with others and they said right now if it's one per 10, you could potentially give that away for residential purposes such as your daughter or your wife. So I started to think about that and the more I did, the more nervous I got about losing some ability to do that. My mom called me right while this was going on and she works for a servicing center for DirecTV and she wanted to know what was going on with the DirecTV building up here, because everyone in her office was talking about Missoula, Montana and she'd like to move back here. So, I got a hold of some people and found out that yes, it's going to be done this summer, supposedly and she wants to move up here. That's the reason behind this, getting it done. I got the application in the day before or the day of the meeting about the zoning district. The information that I had received was incorrect, I don't know if you remember that meeting, but I was a little bit excited unnecessarily so and that's all gone through, it is zoned one per 10, so we're okay with the zoning. In the process of talking with you and with

a surveyor who works where I work, I've decided to keep doing what I'm doing. There's nothing wrong with it, my mom can move up, have a piece of land when she gets here.

Mike Sehestedt: Have you talked with anyone here at the County about going through subdivision review?

Matt Ulberg: Other than the conversations with you, no.

Mike Sehestedt: And your contemplation is that your portion of the property will be developed?

Matt Ulberg: I'm developing it right now and I'll be living there hopefully by September.

Mike Sehestedt: What do you anticipate with regard to your mother's portion?

Matt Ulberg: It's up to her. She doesn't have the means right now to move up here and buy a home. The covenants are such that she can't move a mobile or modular on it. I do think that building there is a possibility for her, but I'm going to leave it up to her. I haven't discussed this with her yet, I wanted it to be a sure thing or at least approved through you before I even bring it up. I don't want to get her excited about something that she can't do. So, my hope is that she does with it what will be most beneficial to her.

Mike Sehestedt: Are you in the business of building or developing property?

Matt Ulberg: No. Well, I'm sorry, my company is but I am not.

Mike Sehestedt: What company is that?

Matt Ulberg: DJ & A Engineers, I'm a road design engineer.

Mike Sehestedt: Are you attempting to evade subdivision review?

Matt Ulberg: No, I'm not.

Mike Sehestedt: And you understand that we're not reviewing this for adequate access to either parcel in all weather for all vehicles, including emergency services.

Matt Ulberg: Yes I do.

Mike Sehestedt: Do you also understand that this approval does not mean the property is approved for zoning compliance, flood plain or septic system?

Matt Ulberg: Yes.

Commissioner Curtiss: I have one just because the two happen to come in the same day. So, this is the parcel that Eric sold and he bought the other one?

Matt Ulberg: I don't know.

Commissioner Curtiss: It's just confusing to have both of you on the same day.

Matt Ulberg: Yes, I thought it was an interesting coincidence.

Eric Heppler: I have a residence on 21 acres that's adjoining that piece of property and then I had this vacant piece of property as well. I was planning on just hanging on to it, it was a nice 45 acre piece that I had there. So I sold my house as of yesterday and then I bought the other piece in March and then I

have a buy/sell agreement with Matt on that 24...so I'm just moving down the road and he's buying the 24...does that make sense?

Mike Sehestedt: It makes sense, yes.

Eric Heppler: I had 45 acres up there on two legal spots. Matt has 25 under contract with me now.

Commissioner Curtiss: Okay, thank you.

Matt Ulberg: There is one thing, I think it's 24.23 or something acres and so potentially the split could be 12 and 12 or....just (inaudible).

Mike Sehestedt: It's not an issue as long as the parcel is large enough to comply with zoning.

Seeing no comment Commissioner Carey closed the hearing.

Commissioner Evans moved to grant the request by Matthew A. Ulberg 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. Commissioner Curtiss seconded. The motion carried on a vote of 3-0.

Adams Family Transfer

Commissioner Carey opened the hearing

Mike Sehestedt: This is a consideration of a request to create family transfer parcels for that parcel described as Tract 10 COS #1730 Section 30, Township 15 North, Range 21 West. Karen Adams has submitted a request to create three additional parcels using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 20.28 acres in size located near Huson, Montana. Karen proposes to create three approximately five (5) acre parcels for transfer to her children; her son Thane Adams, her daughter Tasha (Adams) Nelson and her son Ty Adams, for residential purposes and keep the remaining approximately five plus (5.28) acres for residential purposes as well. The history of the parcel is as follows: COS #1730 was filed in December 1978 to create parcels of land 20 acres or greater. A Warranty Deed was filed in May 1979, deeding this parcel of land to Karen V. Adams. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act.

Dick Ainsworth: w/PCI. I'm representing Karen Adams. The only thing I would add to what Mike said is Karen and her husband lived out there for 20, 30 years and they want to move into town. They want to sell their home and give five acres each to their three children. There are covenants in the area that say a minimum of five acre parcels and there's been some other ones done adjacent to it like that. I had shown on our little sketch that the parcel that has the house on was going to be given to her son and they don't want to do that. She wants to keep the piece with the house on it and sell it and then give her son a vacant parcel as she would the other two children. It's the same number of parcels, it's just a matter of which one goes to who.

Commissioner Curtiss: So which one becomes the remainder then?

Dick Ainsworth: The remainder would be Lot 10B, that's where the house is located. And 10A they would give to their son, Thane. Karen is her to answer questions for you.

Commissioner Carey: As you've heard, we ask our attorney to ask several questions in order to help assure us that there isn't an attempt to evade subdivision review, that would be a misdemeanor.

Mike Sehestedt: You acquired this property back in 1979, correct?

Karen Adams: Yes.

Mike Sehestedt: And you've lived on it ever since?

Karen Adams: Since 1981.

Mike Sehestedt: Okay. You didn't buy the property with the intention of dividing it did you?

Karen Adams: No.

Mike Sehestedt: Do you or your transferees intend to transfer the property within the year?

Karen Adams: Not as far as I know.

Mike Sehestedt: None of your children are minors?

Karen Adams: No.

Mike Sehestedt: Do you know if the children have plans to develop the property themselves?

Karen Adams: Not at this time. They don't live here.

Mike Sehestedt: So they won't be residing on it in the near future?

Karen Adams: No.

Mike Sehestedt: Where do they live now?

Karen Adams: I have one in Belgrade, one in Las Vegas and one in Tucson.

Mike Sehestedt: Have you talked to anyone at the County about going through subdivision review?

Karen Adams: No.

Mike Sehestedt: Are you in the business of building or developing property?

Karen Adams: No, I wish I were (laughs)

Mike Sehestedt: Are you attempting to evade subdivision review?

Karen Adams: No.

Mike Sehestedt: Do you understand that we're not reviewing this request for adequate access to any or all the parcels in all weather for all vehicles including emergency services?

Karen Adams: Right.

Mike Sehestedt: And you understand if we approve this request to divide the property, it doesn't necessarily mean the property is approved for zoning compliance, floodplain or septic system.

Karen Adams: Right, yes.

Commissioner Evans: I'd like to add one other thing – I've been dealing with Houle Creek for 27 plus years, I would like you to make sure that the folks to whom you transfer this know that if it isn't paved we don't promise we're going to pave it!

Karen Adams: Okay, thank you.

Mike Sehestedt: I thought about adding that, Barbara, but then I thought 'nah, she knows all about access', we've heard from everyone up there at some point or another.

Commissioner Curtiss: Mike, is there a problem for her to gift the properties to her children and sell her own piece in any time frame?

Mike Sehestedt: No. The test here is, I believe for the use of it is, does the transfer ...actually is the real transaction to the economic benefit of the children. The fact that she's going to sell her remainder at some point in the near future doesn't really impact the heart of that transaction.

Seeing no further comment, Commissioner Carey closed the hearing.

Commissioner Curtiss moved to approve the request by Karen V. Adams to create three 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. Commissioner Evans seconded. The motion carried on a vote of 3-0.

Seeing no further business, Commissioner Carey recessed the hearing at 2:05 p.m.