

PUBLIC MEETING - OCTOBER 11, 2006

The Public Meeting was called to order at 1:33 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, and Chief Civil Deputy County Attorney Mike Sehestedt.

Pledge of Allegiance

Public Comment

Patricia Guth: Well, I apologize but I ...

Chairman Carey: Can you state your name for the record please?

Patricia Guth: Yes, I was going to do that. I apologize because I thought this was going to be--the gravel pit--was going to be discussed last week and I called and they told me this week. And now I find out its November 15, so I guess what I'll do is just go ahead and speak my peace.

Barbara, Jean, Bill, my name is Patricia Guth. I've lived in the Mullan Road area for 15 years. I've watched the debacle of Reserve Street, the crowding and increased traffic on and off Mullan Road, the greed that is the source of it, and the destruction of the land ethic, which is Montana's heritage--open space. I read the ad about Jim Edwards. I thought, hey, this might be an ethical politician. Then, thanks to a grassroots effort, followed by an article in the Missoulian, I found out the ad is just a lie. He's just another raper of the land, disguised in blue jeans; destroy the river, the tranquility of people's homes and land, crowd Mullan Road, which is already over-crowded with hazardous trucks. I'm appalled. Hopefully some sanity will come to the people of Missoula County and the State of Montana and they will vote out greed, dishonesty, and destruction of the land.

Chairman Carey: Thank you. Any other public comment?

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 \$517,451.73. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Lemm Family Transfer

Mike Sehestedt presented the staff report.

This is consideration of a request to create a family transfer parcel for that parcel described as Tract A, COS 4300, Section 33 and 34, Township 14N, Range 20W. Dianne Lemm has submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. Current parcel is approximately 160 acres in size, located near the Wye. Dianne proposes to create one approximately 22+ acre parcel for transfer to Drake Lemm, her husband, and keep the remaining approximately 138+ acre parcel. The applicant did not state the intended use for either parcel.

The history of the parcel is as follows. Charles and Nancy Deschamps filed a Warranty Deed in April 2004, deeding the property through Drake A. Lemm. Drake filed a Warranty Deed September 20, 2006, deeding the property to Dianne. Parcel history is COS 4300 back in 1993, creating a parcel greater than 160 acres. According to the records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act. My recommendation is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract A, Certificate of Survey 4300, Section 33 and 34, 14 North, 20 West.

Chairman Carey: Thank you, Michael. Is the applicant here? Is the applicant's representative here? Looks like we can't conduct a hearing.

Mike Sehestedt: I would recommend that the Commission consider this for one week. I'll try to find out what happened to notice.

Chairman Carey: So I'll formally open the hearing, but recess it until next week. Thank you.

Commissioner Curtiss: Do we want to see if there's any other comment on this?

Chairman Carey: Is there any other comment on this before we move onto something else. Okay, that hearing is in recess until next week.

Hearing: Crawford Addition (5 lots on 5.03 acres) –23850 Mullan Road, ¼ mile west of Huson Interchange

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

This is a proposal for five lots on roughly five acres. This is a proposal by Kenneth Crawford. This subdivision is located west of Huson on Mullan Road. It is in a zoned area, it's in ZD 42-R, which permits one dwelling unit per acre and this proposal does meet that zoning.

Variances are requested to paving and walkways. Specifically the variance related to the paving is to allow for 23 feet on pavement on Mullan Road and to allow Mullan Road to only be paved to the Crawford Court intersection. That is supported by County Public Works. There is a separate variance for the walkway requirement, which applies to the cul-de-sac road, which again is Crawford Court. County Public Works supported that variance request. There is another variance and that is to the 10-foot irrigation ditch easements that are shown on four of the five lots and that is something that is supported by the Frenchtown Irrigation District because Grace Cline felt that the 10-foot irrigation ditch easement width was sufficient in this case.

There's not too much to this subdivision, so I'll just go through the conditions one-by-one. Condition #1 is a requirement to remove a note on the plat, severing the water rights or stating that the water rights are severed in this instance--water rights cannot be severed adjacent to the Frenchtown Irrigation Ditch and so we're requiring removal of that note. Condition #2 requires Public Works to review and approve road plans. And those would be road plans for both the improvements to Mullan Road out in front of the subdivision and also Crawford Court. Condition #3 is a road signage plan, both for temporary signs as the subdivision is being developed out and for permanent signs once Crawford Court is paved. Condition #4 is a private road maintenance disclaimer. It simply absolves the County of responsibility of taking care of Crawford Court for things like snowplowing. Condition #5 is a requirement for a no-access strip along the southern edge of Lot 5, which requires that lot to access off Crawford Court. Condition #6 is a requirement for residential fire sprinklers and, coupled with that, is Condition #7, which is a requirement for payment of the \$530 per lot fire service fee to the Frenchtown Rural Fire District. Condition #8 is a re-vegetation plan requirement for the County Weed District. Condition #9, covenant amendments including revegetation plan, a revegetation plan grass species statement that simply states that the grass species in the revegetation plan are for reclamation purposes and not for areas such as the turf. Also, we're requesting that residential fire sprinkler information be contained in the covenants. We're also recommending an amendment to the living with wildlife section of the covenants that simply states that this is in an area near the Clark Fork River and people should expect hunting to occur in that area and shotgun reports as a result of that hunting.

That concludes my presentation for Crawford Addition and staff is in support of this subdivision.

Chairman Carey: Thank you, Tim. This is a public hearing. Does the developer's representative wish to speak?

Deborah Evison: Thank you, good afternoon. For the record, Deborah Evison with Montana Northwest Company. We are fine with all the conditions stated in Tim's report and I would like to thank him for his thorough and good job that he's done on this. It's a pretty straightforward five-lot subdivision. It's a true minor. The owner of the property, Mr. Crawford, is here and we'd be happy to entertain any questions. Thank you.

Chairman Carey: Thank you, Deborah. This is a public hearing. Does anybody else wish to speak to this? Any questions?

Commissioner Curtiss: I have questions. The variance to not require pedestrian connections or pedestrian connections to school bus stops, this is the area where we've been asked in the past to connect, and we built a whole trail system because of the young man that was killed on a bicycle. In subdivisions closer to the Huson exit; we've required them to build pathways along the road so that kids don't have to be on Mullan Road on a

bicycle or walking. I would just like somebody to tell me why we should go with not requiring pedestrian connections.

Tim Worley: Well, we lacked any specific recommendation from County Public Works when they reviewed this subdivision. This is actually on the west side of Huson and, to be honest with you, I don't know where the nearest pedestrian facilities are in this area, but I would guess that they are probably in the Houle Meadows area, which would be east of Huson.

Commissioner Curtiss: We just approved a public works contract the other day that brings the trail from down by the high school clear to the exit on the other side of the freeway, you're right. It just seems like it's an issue with folks in that area that we maybe should consider having pedestrian connections. Thanks.

Deborah Evison: If I may, Jean, the bus stop for this is right at the corner of Beeler and Mullan, which I'll direct you to. This is our subdivision and this is Wheeler and Mullan, so it's right here. [Inaudible, spoke without mic.]

Commissioner Curtiss: So then, Deb, how do they get the 300 feet, which is basically a block, I guess, just from the corner of the subdivision. But they need to walk from inside somewhere, so how do they get to that bus stop without being on Mullan Road?

Deborah Evison: The right-of-way is 60 feet; the pavement width is 23 feet, so there's adequate right-of-way there for them to walk. There's also drainage ditches on both sides.

Commissioner Curtiss: Okay, thanks.

Chairman Carey: Any other questions? I'll go ahead and close the hearing. Is there a motion?

Commissioner Evans: I would just point out that on page 12 of the staff report, Public Works says that it would not be reasonable to require pedestrian facilities in an area with no potential for connection or extension. So, apparently they did look at that issue and determined that if there's nothing to hook it to, it would not accomplish much.

Commissioner Curtiss: I guess I just look at the cumulative effect, that we continually do this and if we did little pieces at a time, I know that it doesn't make sense, but is there an RSID at least for that in the future?

[Tim Worley nodded.]

Commissioner Evans moved that the Board of County Commissioners approve the variance requests from Article 3-2(3)(B) and Article 3-2(14) requiring a 24 foot paved width for Mullan Road; from Article 3-2(8)(A)(iv) requiring internal pedestrian connections and pedestrian connections to school bus stops and adjoining neighborhoods; and from Article 3-6 requiring an irrigation ditch easement width of 20 feet, all based on the findings of fact set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Commissioner Evans moved that the Board of County Commissioners approve Crawford Addition based on the findings of fact and the recommended conditions set forth in the staff report. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Crawford Addition Subdivision Conditions of Approval:

1. The note severing water rights from Lots 2-5 shall be removed from the plat prior to final plat approval. *Subdivision Regulations Article 3-1(1)(F) and Frenchtown Irrigation District recommendation.*
2. Plans for paving Mullan Road to a 23 foot width from the end of the existing pavement to the subdivision cul-de-sac, and Crawford Court to a 24 foot width shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(3)(B), Article 3-2(1)(I), and OPG recommendation.*
3. A road signage plan in conformance with the Manual on Uniform Traffic Control Devices, including provisions for temporary signage during construction and permanent signage shall be reviewed and approved by County Public Works prior to final plat approval. The cost of installation of the signs shall be included in the security deposit. *Subdivision Regulations Article 3-2(2)(F) and County Public Works recommendation.*

4. A private road disclaimer shall appear on the face of the plat that states the following:

"The owners of Lots 2-5 of Crawford Addition 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 road is 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.*
5. The plat shall be revised to show a 1-foot no-access strip along the Mullan Road frontage of Lot 5 from Crawford Court to the eastern lot boundary. The covenants shall be amended to include the following language:

"Access to Lot 5 shall be limited to Crawford Court subject to approval of County Public Works." *Subdivision Regulations Article 3-2(1)(E) and OPG recommendation.*
6. Installation of interior residential fire sprinklers that meet NFPA 13D standards, and include a domestic valve connection and a fire department connection, are required in each new home for the purposes of fire protection. Plans for installation of interior residential fire sprinklers are subject to the review and approval by the Frenchtown Rural Fire District prior Building Permit approval. *Subdivision Regulations Article 3-7(1)(E) and Frenchtown Rural Fire District recommendation.*
7. The developer shall contribute a fire service fee of \$530.00 per new lot to the Frenchtown Rural Fire District for fire protection purposes. Payment of this contribution shall be verified prior to final plat approval. *Subdivision Regulations Article 3-7(1) and Frenchtown Rural Fire District recommendation.*
8. 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.*
9. The covenants for Crawford Addition shall be amended to include the following items, and these sections of the covenants shall not be amended, deleted, modified or added to without consent of the governing body:
 - a. Section 3h of the covenants shall be amended to include the following:

"The grass species included in the Revegetation Plan are not turf species but for reclamation purposes and are not suitable for maintained turf lawn use."
 - b. The covenants shall be amended as follows:

"Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purposes of fire protection. Plans for installation of interior residential fire sprinklers shall be approved by the Frenchtown Rural Fire District prior to building permit approval. Sprinkler systems shall be tested and approved by Frenchtown Fire prior to completion of interior walls. Failure to install residential sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes."
 - c. The first sentence of Section 4b of the covenants shall be amended as follows:

"Driveways in access excess of 150 feet must be approved by the Frenchtown Rural Fire District."
 - d. Section 9 ("Amendment") shall be amended to include the following statement:

"No covenants or sections thereof relating to noxious weed control, radon, address signage, interior residential fire sprinklers, driveways, private road maintenance, and living with wildlife may be amended without Governing Body approval."

e. Section 5, (“Animals and Pets”) shall be amended to include the following information:

“Residents of this subdivision must recognize that the subdivision is located about one-third mile from the Clark Fork River and its associated sloughs, where lawful waterfowl hunting and the associated discharge of shotguns could occur from a half-hour before sunrise through sunset, and the season can run from September into January.”

Subdivision Regulations Article 3-1(1)(F); Subdivision Regulations Article 3-7(1)(E), and Frenchtown Rural Fire District recommendation; Subdivision Regulations Article 5-3(5)(T)(x); Subdivision Regulations Article 3 1(10); and Fish, Wildlife & Parks recommendation.

Consideration: Del’s Acres Subdivision for Lease or Rent (Add a second dwelling to a 2.5-acre parcel) – Humble Road and North Avenue

Zack Brandt, Office of Planning and Grants, presented the staff report.

This is a proposal for a subdivision for lease or rent proposed by Delbert Schmelebeck who is here this afternoon. This is a request to add a second dwelling unit to his 2.5-acre property located on the northeast corner of Humble Road and North Avenue. The property is relatively flat and a Missoula County irrigation ditch crosses diagonally across the property from North Avenue to Humble Road. This location is within the Urban Growth Area and the Air Stagnation Zone. The property is zoned C-RR2 at two dwelling units per acre and this proposal complies with the zoning district.

Humble Road, the road going north/south on the plat on the wall is a county-maintained road within a 60-foot right-of-way paved to a surface width of 24 feet. Subdivision regulations require this road to be 26 feet and the applicant is requesting a variance to this standard. North Avenue is a county-maintained road within a 60-foot right-of-way that has a current pavement width of 24 feet. Subdivision regulations require North Avenue in this location to be between 32 feet and 44 feet. The applicant’s requesting a variance to this standard.

Subdivision regulations also require a pedestrian walkway for both of these roads. Currently, there is a pedestrian walkway on the south side of North Avenue, so the applicant is requesting a variance to the pedestrian walkway requirement for Humble Road.

An RSID waiver is included in the application packet, which waives the right to protest a future water system for fire protection and for improvements to both North Avenue and Humble Road, including improvements to surface widths and to the sidewalks. So staff supports these three variances based on comment from Public Works.

Staff has recommended eight conditions of approval. The first condition requires that the driveway accessing off Humble Road be paved a minimum of 20 feet from Humble Road. Condition of approval #2 and 3 require that the applicant file the RSID waiver with the Clerk and Recorder. Conditions 4 through 9 require the standard development covenant language that we have for address signs, driveway standards, weed control, radon mitigation, and woodstoves, and we ask that these be filed with the County Clerk and Recorder, subject to review and approval by OPG.

In conclusion, staff has not received any public comment for this subdivision and we recommend approval of the variance requests and of Del’s Acre Subdivision for Lease or Rent. Thank you.

Chairman Carey: Thank you Zack. Is the developer here or his or her representative? Would you care to speak, sir?

Delbert Schmelebeck: No.

Chairman Carey: This is a consideration, but we would entertain anybody’s comments/questions.

Commissioner Curtiss: I have a question for the developer. Could you come to the microphone please? Hi, my question is just what are your plans that you are doing this as a lease or rent rather than a subdivision, which would probably be approved also.

Delbert Schmelebeck: Well, I'd currently like to keep it as one piece of property and there is a small house on there now that I rented out and I'm planning on building one house there for myself. I sold my house on Poly Drive and am currently living in Polson and planning on moving back to Missoula next year.

Commissioner Curtiss: So you'll rent the other house then?

Delbert Schmelebeck: I'll keep the little house rented, yes.

Commissioner Curtiss: Okay.

Chairman Carey: Would you identify yourself for the record, sir.

Delbert Schmelebeck: Delbert Schmelebeck, I live in Polson, Montana.

Commissioner Curtiss: Thank you. Anyone else care to speak to this? Is there a motion?

Commissioner Curtiss moved that the Board of County Commissioners approve the variance requests from Article 3-2(3) requiring a 32-44 foot surface width for North Avenue; from Article 3-2(3) requiring a 26 foot surface width for Humble Road; and from Article 3-2(8)(A)(ii) requiring concrete boulevard sidewalks on one side of Humble Road, all based on the findings of fact in the staff report. Commissioner Evans seconded the motion. The motion carried on a vote of 3-0.

Commissioner Curtiss moved that the Board of County Commissioners approve Del's Acres Subdivision for Lease or Rent based on the findings 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.

Del's Acres Subdivision Conditions of Approval

Roads and Driveways

1. The driveway accessing Humble Road shall be paved a minimum distance of 20 feet back from the edge of the paving or right-of-way boundary for Humble Road, whatever is longer and plans for paving shall be reviewed and approved by County Public Works prior to final plat approval. *Subdivision Regulations Article 3-2(10)(A) and Health Department recommendation.*
2. The applicant shall file with the Clerk and Recorder an RSID/SID waiver statement for improvements to North Avenue and Humble Road including but not limited to paving, surface width, nonmotorized facilities, curb and gutter, and drainage in a form approved by OPG prior to final plat approval. *Subdivision Regulations Article 3-2(3)(E), Article 3-1(1)(D), and City-County Health Department and OPG Recommendation.*

Fire

3. The applicant shall file with the Clerk and Recorder an RSID/SID waiver statement, which requires the applicant to participate in the RSID/SID for a community or municipal water system when it is available in a form approved by OPG prior to final plan approval. *Subdivision Regulations Article 3-7(2).*
4. All residences within this subdivision shall post address signs visible from public streets in all light conditions. Plans for visible addressing shall be reviewed and approved by the Missoula Rural Fire District and shall be included in a development covenant, prior to final plan approval. This section of covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2(2)(G).*
5. Driveways shall be a minimum of 12 feet wide. Dead end driveways greater than 150 feet in length shall have an approved turnaround for fire apparatus, a minimum unobstructed width of 20 feet, and a minimum unobstructed vertical clearance of 13 feet 6 inches. Plans for driveways shall be reviewed and approved by Missoula Rural Fire District and the driveway requirements included in a development covenant, prior to final plan approval. This section of the covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-2(10)(E).*

Weeds

6. A Revegetation Plan for disturbed sites shall be reviewed and approved by the Missoula County Weed Board prior to final plat approval. *Subdivision Regulations Article 3-1(1)(B), Missoula County Weed Board recommendation, and OPG recommendation.*
7. The subdivider shall file a development covenant, which includes the following statements, subject to review and approval by OPG prior to final plat approval:

“Lot owners shall maintain their lot in compliance with the Montana County Noxious Weed Control Act and the Missoula County Noxious Weed Management Plan. Lot owners shall revegetate any ground disturbance with beneficial species at the first appropriate opportunity after the disturbance occurs.” This section of covenants may not be changed or deleted without governing body approval. *Subdivision Regulations Article 3-1(1).*

Covenants

8. Development Covenants for this subdivision shall also include the following sections and shall be filed with the Missoula County Clerk and Recorder’s Office, subject to review and approval by OPG, prior to final plat approval:
 - a. Radon Mitigation - The property owner is advised that the Environmental Protection Agency has designated Missoula County as having high radon gas potential (Zone 1). Therefore, the Missoula City-County Health Department recommends that all new residences incorporate radon resistant construction features. *Missoula City-County Health Department Recommendation.*
 - b. Woodstoves - The Missoula City-County Air Pollution Control Program regulations prohibit the installation of wood burning stoves or fireplaces. Pellet stoves that meet emission requirements or natural gas or propane fireplaces may be installed. Pellet stoves require an installation permit from the Health Department. *Missoula City-County Health Department Recommendation.*

Chairman Carey: Is there any other business to come before the Board?

Commissioner Evans: I do have one question. We have an RSID waiver in the packet, waiving the right to protest a public water system for fire protection and improvements. Does that mean we’re not requiring the sprinkler system?

Mike Sehestedt: I have no idea; I’ll let Zack respond to that.

Zack Brandt: Zack Brandt. Missoula Rural Fire did not request fire sprinklers for this subdivision.

Commissioner Evans: Okay, I just wanted to make sure that we weren’t doing two at a time.

There being no further business to come before the Board, the Commissioners were in recess at 1:55 p.m.