

PUBLIC MEETING – OCTOBER 25, 2006

The Public Meeting was called to order at 1:30 p.m. by Chairman Bill Carey. Also present were Commissioner Barbara Evans, Commissioner Jean Curtiss, Chief Civil Deputy County Attorney Mike Sehestadt, County Public Works Director Greg Robertson, and Barb Martens, Projects Coordinator.

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 \$788,706.95. Commissioner Curtiss seconded the motion. The motion carried on a vote of 3-0.

Bid Award: Technology District Park #10 (Landscaping)

Barb Martens, Special Projects Coordinator, presented the staff report.

The Invitation to Bid was advertised in the Missoulian for improvements to Redfern Park, which is Missoula Development Park – Park 10. Four bids were received and opened on October 24, 2006, with the following results:

Bidder	Amount
L.S. Jensen Construction	\$149,183.00
Earls Construction	\$249,840.00
Western Reclamation	\$197,197.30
Advanced Earthworks	\$159,191.00

The low bidder was L.S. Jensen Construction. After reviewing the bids, PCI, the County's engineering consultant, and staff are recommending that L.S. Jensen Construction be awarded the bid in the amount of \$149,183.00. Staff is also recommending that the three alternates be rejected due to costs associated with those alternates. The three alternatives include the following: Alternate 1) delete the canopies over the picnic shelters, we're recommending those stay within the bid and be installed; 2) delete the benches and tables, we're recommending that those stay in the bid as well, which is included in the \$149,183 cost; and 3) change the pathway from an 8 foot wide asphalt pathway to a 6 foot wide concrete sidewalk, because of the costs we're recommending that we keep with the asphalt rather than going to concrete. In addition, we will eventually be drilling a well to irrigate Redfern Park, but that's not part of this contract. PCI will be the firm that oversees the contract.

Staff's recommendation is to go ahead and award this bid to L.S. Jensen Construction for the improvements to Redfern Park – Missoula Development Park – Park 10. Staff also recommends that the three alternatives be rejected due to costs associated with those alternates. Also I wanted to make note that this project is partially funded (approximately 10%) through the U.S. Department of Commerce Economic Development Administration. Lastly, I'd also recommend that you sign a reimbursement resolution for this project should you award it.

Chairman Carey: Is there any public comment?

Commissioner Evans moved that the Board of County Commissioners award the bid to L.S. Jensen Construction for improvements to Redfern Park – Missoula Development Park – Park 10 as the lowest and most responsive bidder, that the reimbursing resolution to the Tax Increment Financing District be approved, and that the three alternatives be rejected due to costs associated with those alternates. Commissioner Curtiss seconded the motion. The motion carried 3-0.

Hearing (Certificate of Survey): Lemm Family Transfer

Mike Sehestadt, Chief Civil Deputy County Attorney, presented the staff report.

Okay, thank you Commissioner Carey. This is consideration of a request to create a family transfer parcel for that parcel described as Tract A, Certificate of Survey 4300 located in Sections 33 and 34, Township 14N, Range 20W. By way of background, Dianne Lemm 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 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 to keep the remaining 138+ acre parcel. The applicant did not state the intended use for either parcel.

The history of the parcel is as follows: Charles M. and Nancy A. Deschamps filed a Warranty Deed in April 2004 deeding the property to Drake A. Lemm. Drake Lemm filed a Warranty Deed September 20, 2006, deeding the property to Diane.

Parcel history is that it was created by COS 4300 in 1993 using the exemption for parcels at that time 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.

Recommendation: Consider a request to create a family transfer parcel by dividing the parcel described as Tract A, COS 4300.

Chairman Carey: Thank you Michael. Mr. Lemm, would you come to the mic please to answer a few questions?

Drake Lemm: You can probably hear me regardless.

Chairman Carey: And your name is?

Drake Lemm: Drake Anderson Lemm.

Chairman Carey: Okay, we ask the attorney to put some questions to applicants in order to put their responses on the record and in order to help us try to determine whether or not this is an attempt to evade subdivision regulations or review rather, which is a misdemeanor.

Mike Sehestadt: Okay, Mr. Lemm, the applicant here is your wife and you're here to speak on her behalf, is that correct?

Drake Lemm: That's dangerous ground. I wasn't informed of that, but I could try to speak on her behalf. I thought mostly I was going to speak on my behalf.

Mike Sehestadt: Let's see, then we're accurate in that the property was deeded to you by the Deschamps in 2004?

Drake Lemm: I bought the property quite a while prior to that and you know what happened because I'm dumb when it comes to these things. But banks, escrow accounts in banks, some of them do things differently. At any rate, once I'd paid off the contract to Deschamps, I was supposed to record that deed and I didn't record that deed because I thought the bank was recording that deed. So in 2004 I was somehow notified that maybe it was through tax receipts or something that, at any rate, that that deed hadn't been recorded. And so that's when it got recorded when it did, but I think I bought the property initially, gosh, I don't know, three or four years prior to that—seven or eight years ago, but at any rate...

Mike Sehestadt: Okay, good enough. Do either of the people that are going to have pieces of this real estate after the division intend to transfer the property within the next year?

Drake Lemm: You know, right now, I guess it'll be my decision. I know the 130 or 40 acres remaining, we're certainly—my wife—I guess I can speak on her behalf when it comes to real estate items. There's no chance at all that that would get transferred. The 20 acres, it may, I'm kind of keeping my options open on that. It's a really nice parcel with a nice view and I may, you know, build a house on it or I may sell it.

Mike Sehestadt: That kind of leads to the next question, will the property be developed?

Drake Lemm: It's not going to be developed by me. I can guarantee you that. If it ends up being sold, I guess, dependant on the zoning that ends up being put into place on that parcel, it could be developed, but it's not going to be by me though, that's for sure.

Mike Sehestadt: At this point, you don't have any immediate plans to build and reside on the parcel?

Drake Lemm: No, not immediate, no.

Mike Sehestadt: You talk to anyone at the County about going through subdivision review for this parcel?

Drake Lemm: No.

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

Drake Lemm: Never, ever done any--just kidding, yes, I am.

Mike Sehestadt: I was going to say I should say you're under oath.

Drake Lemm: I was just wondering if you guys knew what I did for a living. I have done some, yep.

Mike Sehestadt: Are you attempting to evade subdivision review?

Drake Lemm: No.

Mike Sehestadt: Do you understand that this request is not being reviewed for adequate access in all weather for all vehicles including emergency services?

Drake Lemm: Yep.

Mike Sehestadt: And do you understand that this approval does not mean that the property is approved for zoning compliance, floodplain, or septic systems?

Drake Lemm: Yes

Mike Sehestadt: Do you know if the property is currently zoned?

Drake Lemm: Well I should know that. Toby, do I know that?

Unidentified Speaker: C-RR1

Mike Sehestadt: Okay, so this split would be in compliance—

Drake Lemm: I thought it was zoned light industrial. Some of that property on that eastern edge is and so I was thinking—well obviously I don't...

Mike Sehestadt: Either light industrial or C-RR1 would be in compliance with zoning.

Drake Lemm: Okay.

Chairman Carey: Further questions for Mr. Lemm?

Commissioner Evans: Are we not now supposed to--what you just said, you asked if it was in compliance with the zoning. Do we need to determine that before we make a decision?

Mike Sehestadt: Actually, I checked and it is in compliance. I'm trying not to put myself on the record here.

Commissioner Evans: Thank you

Commissioner Curtiss: I guess my question is our job here today is to figure out whether you're using this method of dividing property to evade subdivision review and it seems like your plan is to sell the property at some point.

Drake Lemm: I'll either build on it and sell it. I'm sure I won't move onto it or I'll sell it outright. One of those two, I'm sure of that.

Commissioner Curtiss: So, that's where I'm confused as to whether that is subdivision.

Mike Sehestadt: Well, it doesn't make it subdivision per se, I mean in many cases at traditional family division, giving a kid ten acres is going to be how he pays for college. The mere fact they don't plan to reside on it—or to build on it, doesn't make it per se an evasion.

Commissioner Curtiss: Okay.

Chairman Carey: Additional questions:

Commissioner Barbara Evans: I'd like to understand if you don't mind, Drake, when you purchased it or you and your wife purchased it from Charles and Nancy Deschamps, it was put in your name.

Drake Lemm: Just exclusively my name? It could have been.

Commissioner Evans: That's what it says.

Drake Lemm: Okay, it probably was then.

Commissioner Evans: And then you deeded it to your wife and now she's deeding it back to you.

Drake Lemm: Well, deeding back 20+ acres, yes.

Commissioner Evans: It sounds a little shaky to me

Drake Lemm: I could understand that.

Commissioner Evans: However, on the other hand, if I'm not mistaken, the law allows one family transfer per County in a lifetime. Is that correct, Michael?

Mike Sehestadt: Per County, per recipient, per lifetime.

Commissioner Evans: And they have not had any previous use of this?

Mike Sehestadt: According to our records, Diane Lemm has never used any exceptions to the Subdivision and Platting Act.

Commissioner Evans: You do realize that with the other 134 acres or 130 acres, whatever's left, that you can't do this again?

Drake Lemm: Yeah, I do, but—if we get City sewer out there eventually, I wouldn't want to, so I'm kind of hoping that's what's going to happen, but—at any rate, sure, I understand that.

Commissioner Evans: ...that's on the horizon.

Drake Lemm: Yeah I know, but, yep, I understand that.

Commissioner Evans: Well as long as the law allows it and your wife has never deeded it or used this process before—

Commissioner Evans made a motion that the Board of County Commissioners approve the request by Dianne Lemm 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.

Commissioner Curtiss: I'll second the motion, but I also think that this is—it just seems like its way too convenient to deed it to one and deed it back and deed it back. If Mike says that the law allows us to do that, I'll go for it.

The motion carried on a vote of 3-0.

Consideration Benjamin-Renz Subdivision for Lease or Rent (Postponed to November 8, 2006)

Chairman Carey: All right, the consideration of the Benjamin-Renz Subdivision for Lease or Rent has been postponed to November 8.

Other Business

None.

Recess

There being no further business to come before the Board, the Commissioners were in recess at 1:46 p.m.