

PUBLIC MEETING – FEBRUARY 13, 2008

The Public Meeting was called to order at 1:30 p.m. by Chair Jean Curtiss. Also present were Commissioner Larry Anderson, Commissioner Bill Carey, Chief Civil Deputy County Attorney Mike Sehestedt, Assistant Public Works Director Charles Wright, Office of Planning and Grants Planner Vlad Kryukov, and Assistant Chief Deputy Clerk & Recorder Kim Cox.

Pledge of Allegiance

Public Comment

Routine Administrative Actions

Commissioner Carey moved that the Board of County Commissioners approve the weekly claims list in the amount of \$297,307.81. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Hearing (Certificate of Survey): Halverson Family Transfer

Chair Curtiss opened the hearing.

Mike Sehestedt presented the staff report.

This is consideration of a request to create a family transfer parcel for that parcel described as Tract 1A of Certificate of Survey #5873, located in the West ½ of Section 12, Township 12 North, Range 18 West. Robert L. and Meta A. Halverson have submitted a request to create one parcel using the family transfer exemption to the Montana Subdivision and Platting Act. The current parcel is approximately 48 plus acres in size located near Clinton, Montana. Robert and Meta propose to create approximately a 7-acre parcel for transfer to their daughter, Bobbi Shepard, for residential purposes and to keep the remaining 41 plus acre parcel for residential purposes as well.

The history of the parcel is as follows: Certificate of Survey #1060 was filed in 1977 for the purpose of creating a parcel of land over 20 acres in size. Certificate of Survey #1060A was filed in 1978 for the purpose of a correction of Certificate of Survey #1060. Certificate of Survey #5394 was filed in 2003 for purposes of boundary relocation. Certificate of Survey #5873 was filed in 2003 as well, also for the purpose of a boundary relocation. According to records kept by the Missoula County Surveyor, the applicant has not previously used exemptions to the Subdivision and Platting Act except as listed below.

COS #5873 10/24/2006 Boundary Relocation SW ¼ NW ¼ Section 18, Township 12N, Range 12W

My recommendation to you is that you consider a request to create a family transfer parcel by dividing the parcel described as Tract 1A Certificate of Survey #5873, located in the West ½ of Section 12, Township 12 North, Range 18 West.

Chair Curtiss: Thank you, Mike.

Mike Sehestedt: I believe I misstated the legal.

Chair Curtiss: The first time, but you did it right the second time.

Mike Sehestedt: I corrected it later, so I apologize.

Chair Curtiss: This is a public hearing for us to make a decision about whether or not the law has been used in the way it was proposed. We ask our Deputy County Attorney to ask questions on the record to show it's now an evasion of subdivision. Is someone here from the Halverson family? Okay, if one of your or both could come to the microphone please so we can ask you some questions. Could you state your name for us, please?

Robert Halverson: Robert Lloyd Halverson.

Mike Sehestedt: Mr. Halverson, I'm Mike Sehestedt; I'm a Deputy County Attorney. I'm going to be asked some questions that may seem a little prying or intrusive. Questions aren't asked to embarrass you; they're just trying to get to the facts as quickly as we can to determine whether or not this is a bonafide use of an exemption to subdivision review or an attempt to evade. With that in mind and your forbearance, how long have you owned the property?

Robert Halverson: Since 2000, I'm sorry, 1991.

Mike Sehestedt: Did you buy the property with the intention of dividing it?

Robert Halverson: At the time, no.

Mike Sehestedt: Do either you or your daughter, should the Commissioners grant the use of this exemption, intend to transfer either the new parcel or the remainder parcel...?

Robert Halverson: No, that's going to be theirs and theirs alone, period.

Mike Sehestedt: Your daughter is not a minor?

Robert Halverson: Yes, my daughter is here.

Chair Curtiss: Is she younger than 18?

Robert Halverson: I'm sorry, my hearing aid was off.

Mike Sehestedt: And my voice sometimes is not as hearable as others.

Chair Curtiss: So your daughter is not a minor, right?

Robert Halverson: No, no.

Chair Curtiss: She's of legal age? Okay.

Mike Sehestedt: Does she have any current plans to develop the property, put a house on it or take other action?

Robert Halverson: Well, it's on hold now because of her husband decided to go into the regular Army, back to the regular Army in the [inaudible] corp.

Mike Sehestedt: I suppose the same answer then, will the recipient be residing on the property?

Robert Halverson: Yes.

Chair Curtiss: Not for a while.

Robert Halverson: Not for long, but they will eventually.

Mike Sehestedt: Where does the recipient live now?

Robert Halverson: They live with us.

Mike Sehestedt: I begin to understand your motivations. I'm sorry. Have you talked to anyone at the County about going through subdivision review?

Robert Halverson: No, I have no interest in subdividing.

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

Robert Halverson: No.

Mike Sehestedt: Are you attempting to evade subdivision review?

Robert Halverson: No.

Mike Sehestedt: Do you understand that if the Commissioners approve the use of this exemption, we're not reviewing either the parcel to be given to your daughter or the parcel you're retaining for adequate access in all weather for all vehicles, including emergency services? We're not reviewing it, do you understand?

Robert Halverson: Yeah, right. Okay.

Mike Sehestedt: It's up to you to decide whether or not it's going to be adequate.

Robert Halverson: Okay.

Mike Sehestedt: Do you also understand that, should the Commissioners approve this use of the exemption, the approval doesn't mean that you're also approved for zoning, for floodplain, for building permit, or for septic systems? You'll have to get all of those approvals separately.

Robert Halverson: Yes, I understand.

Mike Sehestedt: Thank you very much and again my apologies.

Robert Halverson: Quite all right.

Chair Curtiss: Does the Commission have any question for Mr. Halverson? I just have one curiosity question. Looks like you've done a couple boundary relocations, did you do those?

Unidentified Speaker: My wife and I...

Chair Curtiss: Could you state your name please?

Brent Shepard: Brent Shepard. My wife and I--it would be easy if I could approach and show you exactly...

Chair Curtiss: Sure, bring the microphone with you.

Brent Shepard: Okay. Originally, when my wife and I were looking at this property, Warren Hampton, the neighbor to my in-laws, he owned this property here. I think it was two years ago, we did a boundary relocation between my father-in-law and Warren Hampton. So essentially my father-in-law's property, the size of it, was increased by 39 acres. Then so my wife and I paid Warren for the transfer, so the property was held in our in-laws name. They currently hold the property and now we're doing the family transfer so he's reconveying that property to us. The intent was always just to put a family home in this location here. Again, I'm going back into the Army, so those plans are on hold and eventually, we'd like to build a home there, but we just don't know when that would occur.

Chair Curtiss: Okay, so to try and explain that for the typed minutes, they increased the tract of land so the bigger piece of land became part of this parcel.

Brent Shepard: Correct. Then the larger portion would be held by my wife and I and the seven-acre tract would be held by Bob and Meta.

Chair Curtiss: And that's where their current home is?

Brent Shepard: Correct, the current home sits right in this location.

Chair Curtiss: Okay, thank you. Any other questions? Mike, does that boundary relocation change any of the intent, do you think, of what the law allows?

Mike Sehestedt: I do not believe that it does. The title passed to Mr. and Mrs. Halverson. Looking at transferring that parcel to daughter and son-in-law and that's a legitimate use. I think--the question of whether or not it's an evasion is up to you, but I don't think as a matter of law we can say that it is.

Chair Curtiss: Is there anyone else that wants to speak to the transfer as proposed?

Commissioner Carey: Just so I'm clear, the--actually the--Mr. Shepard said that he's getting the larger 41+-acre parcel?

Mike Sehestedt: Yes, correct. My staff report had it reversed. I apologize for the misunderstanding.

Chair Curtiss: So we need to make sure the staff report reflects that the 41 acres to the daughter and the seven-acre would be kept. Sure, Mr. Halverson.

Robert Halverson: That 41 acres, it shows flat there, but it's mostly mountain, it's all treed. Here's only got about--before he only had about two acres of flat land and there's a stream going through there. I'm giving him west property of mine so if he can't build where he wanted to, he always has the area on the west of my property that's flat where he could build. So it's not all flat land; that's...

Chair Curtiss: Yeah, the aerial photo shows a lot of trees and hill. Thank you, Mr. Halverson. Is there any further comment? Seeing none, I'll close the hearing.

Commissioner Anderson made a motion that the Board of County Commissioners approve the request by Robert and Meta Halverson to create one additional 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 Carey seconded the motion. The motion carried on a vote of 3-0.

Chair Curtiss: Okay, so we'll make sure that the staff report reflects the correct transfer and we'll be sending you a letter when the secretary gets time to type it, but you can have a survey done or that kind of thing beforehand. It's been approved. Thank you and we aren't insulted if you decide to leave early.

Hearing: Petition to Abandon a Portion of Woodville Avenue in Clinton (250 feet south of previous abandonment)

Chair Curtiss opened the hearing.

Charles Wright presented the staff report.

This is the Woodville Avenue from 7th Street South. That particular land was also taken out. They changed those from lots to actually tract lands, so that's why this thing was taken care of the way it was. As far as I'm concerned, it's fine, the way it's presented and what's going on because there's an existing house in that 60-foot [inaudible] right-of-way.

Cathie Cichosz: Oops, I didn't notice you weren't talking into the mic.

Charles Wright: My name is Chuck Wright. I was talking about Woodville Avenue abandonment from 7th Street South to Tract A-1, Certificate of Survey 3045. I have no problems with that whatsoever. It's a way to get the problems that they have out there in that area solved. Okay?

Chair Curtiss: Thank you. Kim is here to tell us whether or not the petition has been verified.

Kim Cox: I'm Kim Cox from the Clerk & Recorder's Office. Yes, I did verify the required signatures.

Chair Curtiss: Thank you, Kim. Is there someone here who would like to speak to this proposed abandonment? This is a hearing, so we've officially opened it. The law requires that one commissioner and someone from the Public Works Surveyor's Office actually do a site visit to determine if it has any future public need or use. We'll have to recess the hearing. Cathie, do you have that note with us as to whose turn it is next?

Cathie Cichosz: Yes, Bill.

Chair Curtiss: Bill's turn? Okay. Yes, Larry.

Commissioner Anderson: Chuck, I just had one question. Go ahead and decide on a date, but....

Chair Curtiss: It looks like the 5th we have a pretty loaded--we could probably do it between now and next week, do you think?

Commissioner Carey: Check with Patty and see...?

Chair Curtiss: So we'll delay the decision until next week. Larry, you had a question?

Commissioner Anderson: Chuck, the abandonment covers from 7th Avenue down to the Tract A-1 of the Certificate of Survey 3045, but on the report here by Eli & Associates, they have a portion owned by Kermit and Nancy Wheeler that says portion has been previously abandoned. Is there a portion of that that was already abandoned or vacated?

Charles Wright: I don't know, I'd have to check that out. I saw that too, well, you know, why would he be re-abandoning it if....

Commissioner Anderson: Yeah, I was just curious...

Chair Curtiss: The hatch marks go a different direction, so maybe it's just to show it.

Charles Wright: They do?

Chair Curtiss: Uh, huh, on mine anyway. So it's just showing the old abandonment or something.

Charles Wright: We'll get that straightened out.

Commissioner Anderson: Okay.

Chair Curtiss: We'll do a site visit and take it up next week.

Consideration: Leischner Tracts, Lot 1 (2 lots on 4.27 acres) - Pine Cone Drive in Clinton

Chair Curtiss opened the hearing.

Vlad Kryukov presented the staff report.

Before you, you have Leischner Tracts, Lot 1 consideration for a two-lot minor subdivision. Matt Mozingo, represented by Eli & Associates, is proposing Leischner Tracts, Lot 1, a two-lot residential subdivision on 4.27 acres. Access to the subdivision is from Pine Cone Drive and Donovan Creek Road. The applicant proposes that both lots will share an existing multi-user well. The lots will be served by individual septic systems. Much of the property is forested with steep slopes (over 25%) and is designated as a no-build zone/steep slope, shown in red on the preliminary plat. The lower portion of the property close to Pine Cone Drive is relatively flat. Lot 1A is 3.22 acres and contains an existing home with a detached garage. It has an existing gravel driveway leading to the house on site. Lot 1B is 1.05 acres and contains an existing barn. It also has an existing two-tract driveway leading to the barn currently sitting on the property. It will have a new [inaudible] in its place. There are no areas of riparian resource, irrigation ditches, or wetlands on the property. Donovan Creek is located to the west about 200 feet beyond the subject property and the lowest elevation of the property is about 10 feet higher than the creek, so there are no floodplain issues. The property is unzoned and complies with the 2002 Missoula County Urban Growth Policy and the applicable amendment the 1975 Missoula Comprehensive Plan recommended a land-use designation of suburban residential (two dwellings per acre). The applicant is proposing two lots on 4.27 acres for a residential density of one dwelling unit per 2.13 acres. It complies with the Comprehensive Plan.

Staff recommends eight conditions of approval. I will highlight four of the conditions related to roads, access, pedestrian facilities, and fire. Condition of Approval #1 requires driveways in excess of 150 feet in length to incorporate a turnaround for fire apparatus at the terminus of the driveway and shall be approved by Missoula

Rural Fire District on behalf of Clinton Rural Fire prior to building permit approval. Condition of Approval #2 requires the RSID/SID waiver statement on the plat regarding future improvements to Pine Cone Drive be revised to include Donovan Creek Road prior to final plat approval. Condition of Approval #3 requires water supply for fire protection to be provided via a hydrant system and water storage or interior residential fire sprinklers in each new home. Condition of Approval #5 requires an RSID/SID waiver statement for a public water system for fire protection be placed on the face of plat prior to final plat approval. In addition to the conditions of approval that have already been mentioned regarding roads, access pedestrian facilities, and fire, staff also recommends conditions of approval regarding standard requirements such as address signage plan and development covenants.

Staff recommended motions: approval of the Leischner Tracts, Lot 1 subdivision subject to the recommended conditions of approval and findings of fact in the staff report. That concludes my report. If anyone has any questions, I would be more than willing to answer them.

Chair Curtiss: Thank you, Vlad. Is the developer's representative here?

Ron Ewart: Good afternoon, my name is Ron Ewart. I'm with Eli & Associates. I'd like to thank Vlad and OPG for all their work on the subdivision proposal and staff report. We're not in opposition to any of the conditions. Here this after with us is Matt Mazingo, his wife Jenna, and Jenna's father Mark Harrington. Just a little bit of background here. Mark wants to purchase the empty lot and I believe he's still staying with his daughter...

Chair Curtiss: We watched that they're related to the previous statement about families living together.

Ron Ewart: ...and they have three little children living there, so I think Mark will be glad to get his own home. The way this sort of developed was I believe that Mark had already purchased a manufactured home, then he found about the sprinkler requirement. I guess you can retrofit them; it's not that easy to do, but just a comment on Condition #3. Of course, this comes directly from the fire department, not that we have to discuss it now but maybe [inaudible] think about possibly in the future. He's given a choice, a hydrant system that produces a thousand gallons a minute with a minimum two-hour storage. If you think about it, that would a 120,000 gallon tank. Then a thousand gallon a minute pump would be a huge pump and then all the other things that go with it. It probably cost a couple hundred thousand dollars for that system; so obviously, you're going to find a way to make the sprinkler system work. Just something that sort of comes to my mind, I guess when you discourage a hydrant system or a tank system, then, well, if you have a hydrant tank system, then that could be used for other homes. It could be used maybe to put out a grass fire or a forest fire that's just starting up. I would think that if the fire department is going to give people a choice, it should be somewhat viable and not just well, you can do this, which is somewhat viable, then another choice, which is just completely out of the question. It's just an observation that I had, not that we need to discuss it. Again, we're in agreement, I guess we have to be, with the conditions. Thank you.

Chair Curtiss: Thank you, Ron. Is there anyone else that would like to speak to this proposal? Either Vlad or Mike, could you remind me where the fire flow numbers come from as to how many gallons for two hours? Is it in our regulations or it's in the fire code?

Mike Sehestedt: Basically, I believe, it's in our regulations, but the regulations are drawn from fire code to establish effective fire flows. Typically, we would--and maybe we should--just require fire flows as a condition to subdivision approval, but as Ron points out, that, particularly in the context of a small subdivision such as this, so burdensome, it would effectively preclude small subdivision on this order. We do allow developer's in lieu of providing the fire flow, to address the life safety issues associated with fire by doing a residential sprinkler system within the new homes to be built on the subdivision.

Chair Curtiss: Any other questions? Comments from the public?

Commissioner Carey made a motion that the Board of County Commissioners approve the Leischner Tracts, Lot 1 based on the findings of fact and subject to the recommended conditions in the staff report. Commissioner Anderson seconded the motion. The motion carried on a vote of 3-0.

Leischner Tracts, Lot 1 Condition of Approvals

Roads and Driveways

1. Driveways in excess of 150 feet in length shall incorporate a turn around for fire apparatus at the terminus of the driveway. The driveway must provide 20 feet of driveable unobstructed horizontal clearance, 13 feet 6 inches vertical clearance and be engineered to support the weight of emergency equipment in all weather conditions. This language shall be included in the Development Covenants prior to final plat approval. Plans for new driveways shall be approved by Missoula Rural Fire District prior to building permit approval.

Pedestrian Facilities

2. The subdivider shall revise the RSID/SID statement on the plat regarding future improvements to Pine Cone Drive to add Donovan Creek Road to the waiver statement prior to final plat approval.

Fire

3. The subdivider shall provide a water supply for fire protection via a hydrant system that produces 1000 GPM fire flow with minimum two hours of storage, approved by the Missoula Rural Fire District. In lieu of a water supply with hydrant, the subdivider shall request approval from the Missoula Rural Fire District to install interior residential fire sprinklers that meet NFPA 13D standards in each new home. Plans for a water supply and hydrant location shall be approved by the Missoula Rural Fire District prior to final plat approval. Plans for the installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to building permit approval and Article I, Section 3 of the development covenants shall be replaced with the following language prior to final plat approval:

“Residential Fire Sprinklers:

Installation of interior residential fire sprinklers that meet NFPA 13D standards are required in each new home for the purpose of fire protection. Plans for installation of interior residential fire sprinklers shall be approved by the Missoula Rural Fire District prior to Building Permit approval. Fire sprinkler installations shall be inspected and approved by the Missoula Rural Fire District. Failure to install residential fire sprinklers in any new home may subject the entire subdivision to the cost of installation of a shared water source for fire fighting purposes.”

This section of the covenants may not be changed or deleted without governing body approval.

4. Plans for address signs, including size and location, shall be reviewed and approved by the Missoula Rural Fire District prior to final plat approval and the approved design shall be incorporated into the covenants.
5. 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.”

Development Covenants:

6. The subdivider shall add a No Build Zone/Steep Slope definition to the Development Covenants as follows prior to final plat approval:

“No Build Zone/Steep Slope-Areas with slopes greater than 25% are designated No Build Zone/Steep Slope. Low impact use within this zone shall be defined as the prohibition of all buildings, structures, utilities, parking, roads, motorized vehicle access (except for routine maintenance activities), storage, or any other development. It shall also prohibit any mining, cutting, burning, or removal of live vegetation (except as needed for wildfire prevention, noxious weed control or conservation management), filling with substances such as gravel soil, slash or other debris, or the planting of non native vegetation such as lawn grasses.”

7. Article I, Section 2(c) of the Development Covenants shall be amended to include all of the language required by the Subdivision Regulations Article 5.2(10)(a)&(b) and the Wildland-Residential Interface (WRI) vegetation reduction guidelines as shown in [Section 8] of the Missoula County Subdivision Regulations shall be attached to the development covenants subject to review and approval of OPG prior to final plat approval.
8. Article I, Section 7 of the Development Covenants shall be amended to include the following sections that cannot be amended or deleted without governing body approval: fire standards, wildland-residential interface guidelines, No Build Zone/Steep Slope and Amendments subject to review and approval of OPG prior to final plat approval.

Other Business

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