

COMMISSIONERS APPROVAL

IMAN 

CHILCOTT 

FOSS 

STOLTZ 

KANENWISHER 

PLETTENBERG (Clerk & Recorder)

Members Present.....Commissioner J.R. Iman, Commissioner Greg Chilcott, Commissioner Suzy Foss, Commissioner Ron Stoltz, Commissioner Matt Kanenwisher

Date.....July 29, 2011

Minutes.....Glenda Wiles

► The Board met at 9:05 a.m. to continue the Sandhill Ridge 35-Lot Major Subdivision and One Variance Request. Present at this meeting was Civil Counsel Dan Browder, Planning Administrator Terry Nelson, Planning Staff Tristan Riddell, Consultant and Subdivider Paul Wilson, Anna Connelly of Datsopoulos, MacDonald & Lind P.C. It was noted Commissioner Kanenwisher was not present at this time.

Chair Iman called the meeting to order. No new correspondence was noted. No conflicts of interest were noted.

Planning Staff report: Terry stated the variance application has been approved and the BCC needs to continue with Criterion #7 (Effects on Public Safety). Terry also presented an amended and updated staff report based on the previous hearing as well as suggestions from Staff as to what happened on the Morado Mountain Subdivision at a Tuesday meeting. He noted the previous staff report ended at page 25, but the updated and amended staff report is reflected on page 30.

Paul and Anna indicated they were in concurrence with this updated and amended staff report.

Public Comment was then called for.

Anna stated their participation is with the right to challenge the road issues.

Terry noted this subdivision is under the old regulations so wildlife and wildlife habitat was reviewed together but they are approved separately. He reiterated they start on Criterion #7 which is also Criterion #6 under the old regulations.

CRITERION #6 (#7) EFFECTS ON PUBLIC HEALTH AND SAFETY

TRAFFIC SAFETY:

Commissioner Chilcott stated #2 appears to be more of a conclusion, but he is fine with that language.

Commissioner Chilcott agrees to strike #5 in the findings of fact and would make a motion to do so. Commissioner Foss seconded the motion and all voted “aye” (4-0).

Commissioner Chilcott asked Terry if the right (road) access is in order. Terry stated they did not change this because one access did not get built so the road names are not going to change.

Commissioner Chilcott agreed with staff on #8 for access and response time and to strike the last clause which reads “but this access will not be possible until the development of the Remington Ridge Subdivision complete the construction of Heaven’s Way). **Commissioner Chilcott made a motion to accept #8 but to strike the last clause as noted above. Commissioner Foss seconded the motion.**

Commissioner Kanenwisher was now present and asked for an update on the process in regard to taking out the stricken language by motion due to this updated document. He then suggested they not vote on the stricken items but to accept the staff report as written unless otherwise addressed.

Commissioner Chilcott then withdrew his motion. Commissioner Foss seconded this withdrawal of the motion and all voted aye. (5-0)

Commissioner Chilcott asked Terry to explain #18 in regard to meeting county standards. Terry stated N. Hidden Valley road abuts the property and the Fire Department asked for a road connection; however further discussion shows this section of the road is at 19%. While substantial engineering and relocation of the road would be required to improve “It” to meet county standards and another safety access could be created, you would then create another traffic hazard. Therefore another easement is left in case other emergency access is needed. Because of this those safety concerns no longer important. Basically, this language was put there to reflect that discussion.

Paul utilized the plat map to address the 19% grade. He stated if there were an emergency and the other access was blocked, one could get out that way but they would come out on a huge hill. Therefore there will be an access available, one with a good grade that anyone can get out on. Commissioner Chilcott asked how a person would find this access. Paul stated while it won’t be built, it is a road easement. Commissioner Iman asked Paul if the easement is shown on N. Hidden Valley Road. Terry stated all of N. Hidden Valley road is south of Paul’s property. Paul stated this easement is only 100’ feet long. Commissioner Chilcott indicated in order for the finding of fact to be accurate that needs to be defined. Terry then read the conditional access easement expiring in 2028, noting up until that time the landowners or county could connect. Paul stated it would revert back to the landowners if not utilized. Dan Browder stated it needs to be clear that it is a public road access and further that the county could utilize it during that time frame (up to 2028) if they so chose to. Commissioner Chilcott stated this is simply an egress but it could become an access. Paul concurred it is to be utilized as an emergency egress/access

because no one will use that point to access the subdivision. Dan stated it is important to clarify what it is going to be, in other words if it is condition it is not an egress, until it is triggered. If the BCC wants to have this utilized in an emergency it should be an easement, or draft the language to define what it is. Dan noted the preliminary plat stated as it does not use the word public nor does it use the word easement.

Commissioner Chilcott discussed the interconnectivity (of the roads) and how they might develop because of future development noting the sunset clause expires in December 31 2028. Anna asked wouldn't that come up within the next 20 years? Paul stated he could just take it away if it made the findings of fact simpler. Terry indicated in previous comments the subdivision was only going to have the access through Jenni Lane and the concern was the secondary access. Since it exists, the thought was that it might be utilized. Commissioner Iman noted there are two or three subdivisions there and the discussion with the Fire Departments and the Planning Board was this should not be a secondary access because it is too steep.

Commissioner Iman stated he did not think the secondary access is a good deal particularly if a fire came from the north. The people would have no way out. He thought putting a gate there would be a good way out for the residents, not to be used for fire personnel, particularly if a grass fire came from the north with windy conditions.

Terry stated N. Hidden Valley Road is not a county maintained road; it is an easement for the property owners who live there. Commissioner Kanenwisher stated from a fire safety standpoint, there are already existing roads and this access is not required. Paul addressed the existing entrances and exits, noting the actual roads are not well maintained, and in reality the access is not relevant. Commissioner Foss stated if a grass fire were to occur the people should just stay inside and hunker down because grass fires go by fast instead. They should not try and drive out.

Commissioner Kanenwisher asked Terry if the BCC decides not to use the access, how they would change it. Terry stated they simply don't condition it. Commissioner Iman asked if that were the case would #17 and #18 be deleted. Dan asked if this access was part of the application process and did the Planning Board base their decisions on that. He suggested Terry look to see if this would be a material change. Terry stated the applicant has suggested removing it and the BCC could simply not condition it, he does not believe it is a material change due to the other accesses. Commissioner Iman stated as a Planning Board member at the time, the reason this was proposed was because of access to other subdivisions.

Commissioner Kanenwisher made a motion to strike #17 and replace it with language to read 'the applicant proposes to eliminate the condition access easement which is shown on the preliminary plat to N. Hidden Valley Road'. Commissioner Foss seconded the motion. All voted "aye" (5-0). Commissioner Chilcott noted without condition it is not a relevant fact. Terry stated this would help to show that reasoning.

The Board concurred that the Findings of Facts under Traffic Safety Criterion #6 (#7) is sufficiently mitigated.

Moving to Page 32 of the updated and amended Staff Report, under **Water and Wastewater Treatment** the following discussion occurred.

Commissioner Iman asked how the state lands boundary up to this parcel.

Commissioner Chilcott addressed mixing zones on private property. Terry stated #24 and #25 were about the well locations.

Commissioner Chilcott made a motion to change Lea Jordan to Lea Guthrie (#25). Commissioner Kanenwisher seconded the motion, and to change the spelling of Environmentally Health Director to Environmental Health and insert the word "The" before Environmental Health Director.. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0)

The Board concurred that the Findings of Facts for Water and Wastewater Treatment under Criterion #6 (7) are sufficiently mitigated.

Also on page 32, under Natural and Man-Made Hazards the following discussion occurred.

Commissioner Kanenwisher addressed #31 in regard to the language of "no build/alteration zones". He stated they should simply be called 'no build zones' instead of no build/alterations. Paul concurred with that language. **Commissioner Kanenwisher made a motion to amend the second sentence of #31 eliminating 'no build/alteration' and to add read 'the applicant is proposing a no build zone on the slopes of 25% or greater'. Commissioner Stoltz seconded the motion and all voted "aye". (5-0).**

With this change the Board concurred that the Findings of Facts for Natural and Man-Made hazards under Criterion #6 (7) are sufficiently mitigated.

The Board called for any public comment on Criterion #6 (#7). No public comment was made.

Terry stated because this subdivision was likely to be continued, they did not do conclusions of law on each criterion, therefore it might be a good idea to go through the conditions of approval.

Commissioner Kanenwisher made a motion to approve the Findings of Fact on Criterion #6 (#7) as amended here today. Commissioner Chilcott seconded the motion and all voted "aye". (5-0)

It was agreed to go back to the conditions to mitigate then proceed to each conclusion of law.

Terry stated they need to turn to page 6 of the new staff report. **Commissioner Kanenwisher suggested they utilize the notification(s) as presented so they can move forward. The BCC concurred.**

On page 12, #5, Commissioner Kanenwisher asked if that is what they discussed. Terry stated he spoke to the applicants counsel about this and the discussion about Morado Mountain

Subdivision was that the proposed mitigation was for the county to extend payment beyond the filing of the first plat, so if the applicant will place a lien on the entire property and release it upon first conveyance, that would ensure the county would receive payment on those mitigation fees, while at the same time postponing the payment for the applicant.

Paul confirmed that on Phase 1 he will have a lien, then at first conveyance the lien is lifted on the remaining lots? It was concurred it would be the same with phase 1, 2 and 4. Terry also noted that can be done on other mitigated fees and this is simply the mechanism for the applicant to agree to. Paul stated he agrees with that.

Dan asked about the RSUD/SID waiver of protest. Terry stated it was crossed out and updated with the new MCA code and language. **Commissioner Chilcott made a motion to remove condition #15 on page 13. Commissioner Stoltz seconded the motion and all voted "aye". (5-0)**

Terry stated there should be one more condition that was inadvertently left out, which is the developer has offered to pay \$395.82 for the road contribution for N. Hidden Valley Road. **Commissioner Kanenwisher made a motion to accept that road contribution. Commissioner Chilcott seconded the motion and all voted "aye". (5-0).** Terry stated he will make sure to add that.

Commissioner Iman asked if the lighting was removed. Terry stated it was taken out of covenants and put in notifications.

The Chair asked if there was further discussion on the Conditions. Anna asked about #8 on page 12. Terry stated there was no offer at the previous hearing. Paul stated he does not recall any offer. Terry stated what was offered was \$500 to fire and \$250 to schools, with no further offer. Commissioner Stoltz asked if #8 should even stay in the report.

Commissioner Kanenwisher made a motion strike #8 on page 12. Commissioner Stoltz seconded the motion. Discussion: Commissioner Chilcott stated there is a duty of the BCC to mitigate the effects on services for the tax payers, particularly when we add more dwelling units to the service delivery areas of our public safety responders. He stated Fire Personnel/Departments are recognized, thus calls for 911 and law enforcement services will have an impact. He felt the BCC needs to discuss and determine how that provision of service will be paid for. He stated he understands they have discussed how long the lots will be vacant and not sold and taxes are still being collected, it is important to have that discussion. Commissioner Kanenwisher noted the Sheriff's Office (RCSO) stated in a previous subdivision that his budget is underfunded in general and any mitigation is immaterial and did not change his situation. Commissioner Kanenwisher stated we have no finding of fact to show what that impact would be so we have to have a way to make that calculation. Without that, what are we mitigating? Commissioner Chilcott stated he can take a stab at the calculation using round numbers. For example 911, RCSO, & GIS has a budget of roughly 4.2, adding in capital costs, and the number of citizens it is roughly \$100.00. Taking the \$100 times (the census data of 2000 (42,000 people) X 2.5 people per household, the rough number is \$250.00 per household. He stated it is also important to factor in DOR's past statements noting after the house it built it takes 18

months before the tax bills to go out. During these 18 months, the residents are still having services provided. Commissioner Chilcott added what makes it 'murky' is how long the lots will be sitting there vacant. Commissioner Kanenwisher stated he can table his motion.

Anna stated the other monies are for road, fire, and schools. There is no legal basis for requiring anything here, and if the BCC want to they can go down this road but they should look to see what the subdivider is already paying.

Commissioner Chilcott stated he does believe it is clear that they have to exclude public safety as the BCC clearly has a responsibility to mitigate those impacts. Paul stated fire is a voluntary contribution as is school, and they are not part of the regulations. He felt there is no legal basis to demand mitigation. All of these fees are truly voluntary and he does not want to propose contribution for any more than he has to. He stated he does understand what Commissioner Chilcott stated. For him this subdivision process has been 3 ½ years long and he wants to be done and keep it clean and in the same manner that the subdivision was started. So if this (public safety mitigation) is going to be applied, then we all know the process and how it will be much longer.

Commissioner Kanenwisher stated there is no specific provision in the law without a process for mitigation. We need to do the findings of fact and see if it is credible. He does not personally find Commissioner Chilcott's proposal to be credible. Commissioner Kanenwisher stated they are talking about lots, not people, so he does not find that credible as a finding of fact. The applicant proposed something and it is called a donation. You cannot have another number that is generated with no basis. The applicant does not have to justify, but the government does. Therefore if we cannot justify it we cannot require it.

Dan stated he disagrees. 76-3-608 MCA does address the criteria and the Subdivision Regulations break that down. Plus the local services criteria include law enforcement and emergency services – as well as public health and safety. So while the applicant is paying for one effect, it does not lessen the duty of the BCC. As Counsel to the Commissioners he notes there is a basis in law for what you are asking. Commissioner Kanenwisher stated he was stating there is no basis, thus the process. Anna stated they can consider it but there is no obligation.

Dan noted he addressed his comments by the applicant's statements. So if you are considering the adverse impacts and if there adverse impacts the BCC must consider the applicants request for mitigation as a discussion. How the Board addresses the impact should be a dialogue. The word negotiation has been used, and there is statutory law for that. Dan also noted the BCC has required payment for public safety for the last several subdivisions in the last several weeks, and if the BCC does not require it, the BCC needs to show in the record why you are not taking it now, as the other subdivider applicants needs to see that difference. Commissioner Kanenwisher stated the previous subdivisions offered and we accepted. The BCC did not ask or give a dollar amount.

Ed Churchill stated he is not against those services, but at the time they were not discussed.

Dan suggested in order for the Board to be consistent in these subdivisions they should re-open that discussion. Commissioner Kanenwisher stated he did not see any inconsistencies because what we have in Ravalli County is the way things have been done, and that changes with new elected officials. Therefore what has been proposed has been accepted.

Commissioner Foss stated in regard to this conversation, what is offered by the developer is voluntary. The County does not have a formula.

Commissioner Iman stated they should limit their discussion to the motion made which was to strike #8. Commissioner Iman then asked the applicant if they strike # 8, would he agree to lien. Commissioner Kanenwisher noted that language remains in #5 and #7. Commissioner Iman noted the motion is only for public safety and services not for what has been offered.

The vote was called. **Commissioners Foss, Kanenwisher, Stoltz and Iman voted “aye”.** **Commissioner Chilcott voted “nay”.** **(The motion carried 4-1).** Commissioner Chilcott stated he voted “nay” because while he agrees with Commissioner Kanenwisher and Paul, his concern is the BCC needs a solid record to mitigate events, as it has been stated by a number of people to the BCC in this room, that there is an effect on public health and safety and we need to make a determination if it is significant or not. And while there is no formula we have identified an impact, and an affect. Commissioner Chilcott felt it is important to determine how we mitigate that effect, in other words, so the recognized effect would be the taxable value. Commissioner Kanenwisher stated we did not find there was a need. Commissioner Chilcott stated several people indicated the effects are significant. Commissioner Iman stated the vacant lot does not create a law enforcement effect, the people in the future do, so he has a problem assigning mitigation to a lot, and there is no process to associate the lot to the effect. He further indicated there are taxes on the lot until people move on it.

The Board then concurred on the conditions for the Subdivision as amended.

THE BOARD THEN PROCEEDED TO ADDRESS THE CONCLUSIONS OF LAW FOR EACH CRITERION.

Effects of Agriculture: (page 21)

Anna asked if they should start on page 17. Commissioner Iman answered no, as they are done with the finding of facts in evidence. Dan stated the conclusions of law include the final plat approval; and the consent to lien is not in the final plat requirements so that should be added. Commissioner Iman noted the BCC needs to go through final plat requirements before the conclusions of law. It was agreed to go back to page 13 under Final Plat Requirements 3-4-4 (a).

Commissioner Chilcott noted on page 15 #22 is not well connected. Commissioner Kanenwisher asked Dan if the rest of the process is established procedure, then can they simply need to acknowledge. Dan stated the actual filing of the lien is done when the other documents are filed. Terry stated prior to final plat approval, the applicant shall provide the lien.

Commissioner Chilcott asked what we are calling the \$500 and \$250 amount. Terry stated it is mitigation. **Commissioner Chilcott made a motion to leave out the dollar amount as noted**

on page 12, #5. Commissioner Kanenwisher seconded the motion. Commissioner Iman asked if the lien is released on first conveyance. Dan stated if the lien is to secure payment then the lien goes away by operation of law. He noted there would be three lien releases in the file for the three phases of the subdivision which all agreed could be set forth in the conditions.

Commissioner Chilcott stated the applicant can provide the consent to lien language, then the county can review and we will have a form that is appropriate and agreed upon. Dan stated this would be a ministerial discussion to release the lien.

Terry stated to jump further ahead on this discussion on page 23, #6, he addressed the language that was Morado Mountain, which he read stated this defines the consent to lien. Paul noted ne agrees to this consent to lien. **All voted "aye". (5-0)**

Commissioner Iman asked if there was any further discussion of final plat. It was noted there was none.

Dan asked about #23 on page 15 for parks dedication. Terry stated Bob Cron (former member of the Park Board) gave testimony that the Park Board wanted Parks 1 and 2, which would be deeded to the county. Discussion included whether the county wants the parks and the responsibility of them. Terry noted a deed would be separate from the park dedication. Dan stated if the county does not wish the park deeded to the county then the final plat would show the lots permanently set aside for recreational uses with ownership by the homeowners. **Dan suggested they add a new sentence to state if the applicant does not deed Parks 1 and 2, there shall be a notation on the Final Plat that Parks 1 and 2 are permanently set aside for recreational uses. Commissioner Stoltz made the motion to amend #24 on page 15 to reflect what Dan suggested. Commissioner Kanenwisher seconded the motion and all voted "aye". (5-0).**

In regard to the Conclusions of Law (page 21), **Commissioner Chilcott made a motion to accept conclusions of law for the Effects of Agriculture for Criterion 1. Commissioner Stoltz seconded the motion and all voted "aye".**

For Criterion #2 Water User Facilities, there was no public comment.

In regard to Conclusions of Law, **Commissioner Stoltz made a motion to accept the conclusions of Law for Agriculture Water Users. Commissioner Kanenwisher seconded the motion and all voted "aye" (5-0)**

For Criterion #3 Effects on Local Service, Terry noted this was added after the Morado Mountain Subdivision so the BCC needs to find these as findings of fact. Commissioner Chilcott suggested they do a motion because they accepted staff's recommendation. The Board concurred. **Commissioner Chilcott made a motion to accept #6 and #11 under Effects on Local Services (page 22 and page 23) as presented with concurrence of applicant. Paul stated he accepts. Commissioner Kanenwisher seconded the motion and all voted "aye".**

In regard to Findings of Fact for Effects on Local Services, Commissioner Chilcott asked if #26 (page 24) was part of the access. Terry stated it was not. **Commissioner Chilcott made a**

motion to accept #57 on page 26 with the concurrence of Paul. Paul concurred. Commissioner Kanenwisher seconded the motion and all voted “aye.” (5-0)

In regard to the additions to Findings of Fact, the BCC concurred there are none so to proceed to the Conclusions of law under Criteria #3.

Commissioner Kanenwisher made a motion to strike #69 on pages 27 and 28 based upon the Findings of Fact, submitted with final plat approval, that the impacts are sufficiently mitigated. Commissioner Chilcott seconded the motion and all voted “aye”.
(5-0)

For Criterion #4 Effects on Natural Environment, **Commissioner Chilcott made a motion based on Findings of Fact and Conclusions of law and as subject to the conditions and requirements of approval, the potential impacts of this subdivision are sufficiently mitigated. Commissioner Foss seconded the motion and all voted “aye”.**

For Criterion #5, Effects on Wildlife and Habitat, none noted. **Commissioner Chilcott made a motion to recognize that MCA has been amended and there are now two criteria on wildlife and wildlife habitat, as review by combined and individual criterion and we have found that based on the findings of fact and subject to conditions and requirements of approval as amended the potentially significant adverse impacts of the subdivision on wildlife and wildlife habitat will be sufficiently mitigated. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0).**

For Criterion #6, Effects on Public Health and Safety, none noted. Commissioner Kanenwisher asked if the BCC adopted the findings on this section. It was noted they did. **Commissioner Stoltz made a motion based on Findings of Fact and the conclusions of law, as a subject to the conditions and requirements of approval, the potentially significant adverse impacts of the subdivision on public health and safety will be sufficiently mitigated. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0)**

Dan then addressed the Findings of Fact, #60 on page 27, noting in order to be consistent; it should be added to #1 #4, #6, #9 & #10. Discussion was the consent to lien will be filed prior to Phase 1. Terry stated he will need to find the road maintenance agreement to continue this discussion.

A short break was taken at 11:00 a.m. The Board reconvened at 11:11 a.m.

Terry indicated the language for the road maintenance agreements outside the platted subdivision will be a condition of the final plat requirement and will read as follows: “Prior to final plat approval of Phase 1, the applicant shall submit updated road maintenance agreements (RMA’s) for Heaven’s Way and Jenne Lane which shall replace any exiting RMA’s. The updated RMAs shall state that owners of the lots within the Sandhill Ridge Subdivision are party to the RMAs. Alternatively, the applicant can provide evidence showing that the current parties listed in the existing RMAs will not allow additional parties to join the agreements. If the current properties

that are party to the existing RMAs are not willing to replace them, and are not willing to allow the developer of Sandhill Ridge to become a party to the RMAs, then the developer will be required to create new RMAs, specific to this subdivision, for Heavens Way and Jenne Lane”.

Commissioner Kanenwisher asked what happens if they (the owners of the lots) want something silly. Terry stated the other road maintenance agreements were what the county wanted before, they are not old road agreements, and they do comply. Commissioner Chilcott asked if it is advisable to make it a proportionate share in the other agreements. Terry stated they are from 2004 to 2008. If the parties do agree to a new road maintenance agreement, one could be done instead of six different ones. Terry felt it is in the best interest of the county to do this and if the owners of the lots chose not to, the county can still meet the subdivision regulations. Paul could obtain a letter to that effect back to the Board if the lot owners decline. Dan stated the standard road maintenance agreement allows the county’s consent to amend. Paul stated he is fine with this. **Commissioner Chilcott made a motion to adopt this specific to road maintenance under the conditions and final plat. Commissioner Kanenwisher seconded the motion and all voted “aye”. (5-0).**

Commissioner Kanenwisher made a motion in regard to Dan’s comments on the Findings of Facts for #60, on page 27, and the other pages prior to page 27 to include #1, #4, #6, #9, #10, #12 and #13 to add the words “of each phase” after “the final plat”. Commissioner Stoltz seconded the motion and all voted “aye”.

Commissioner Chilcott made a motion that the Sandhill Ridge Major Subdivision be approved, based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report as amended during this hearing. Commissioner Foss seconded the motion and all voted “aye”. (5-0) The hearing was adjourned at 11:23 a.m.

► In other business the Board met at 1:08 p.m. with County Attorney Bill Fulbright and Human Resource Director Robert Jenni. Bill noted MACo staff will arrive at 1:30 p.m., those being Keith Stapley, Maureen Lennon and Michael Schested. It was concurred by the Board to start the meeting prior to their arrival. Commissioner Chilcott made a motion to invoke closed door due to personnel and litigation strategy. Bill indicated this is litigation strategy, not a discussion of personnel. Chair Iman then invoked 2-3-203 MCA closed door. The Board concurred; Commissioner Chilcott withdrew his motion due to Board concurrence.

